JD(SF)–02–26
Eugene, OR

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

RECREATIONAL EQUIPMENT, INC.

Cases 19-CA-316615
19-CA-318002
19-CA-318067
and 19-CA-318571
19-RC-315803

UNITED FOOD AND COMMERCIAL
WORKERS, LOCAL 555

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for the Respondent.

Decision

Eleanor Laws, Administrative Law Judge.

STATEMENT OF THE CASE

This combined case was tried in Eugene, Oregon, on July 29-31, 2025. The United Food and Commercial Workers Union, Local 555 (the Charging Party or Union) filed a representation petition with the National Labor Relations Board (the Board) on April 10, 2023,[1] seeking to represent the following unit of employees at Recreational Equipment Inc.'s (REI or the Respondent) retail store in Eugene, Oregon:

> **Included**: All full-time and regular part-time employees employed by Respondent at its Eugene, OR facility, including Retail Sales Specialists, Shop Mechanics Bike & Snow, and Shipping Receiving Specialists.
>
> **Excluded**: All professional employees, and guards and supervisors as defined by the Act.

The Regional Director for Region 19 issued a decision and order of election on May 12, 2023. A secret ballot election occurred on May 30, 2023, resulting in an initial tally of 20 votes

[1] All dates are in 2023 unless otherwise indicated.

for union representation, 22 against, and 9 challenged ballots. The Union filed challenges and objections, but on July 28, 2025, the day before the hearing opened, the Union withdrew its challenges. I issued an order severing the challenged ballots and remanding the challenges to Region 19. A revised tally of ballots issued on August 8, 2025, shows 20 votes for union representation, 26 against, with one unresolved ballot.

The Union filed unfair labor practice charges in April and May 2023, and the General Counsel issued a complaint and an order directing a hearing on the challenged ballots and objections, as well as an order consolidating the cases, on December 10, 2024. The complaint alleges the Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act) by discharging employee Lindlee Hamlin because of her union activity, interrogating employees, and directing them not to discuss certain terminated employees in connection with the election.[2] The complaint also seeks a bargaining order pursuant to *NLRB v. Gissel Packing Co*., 395 U.S. 575 (1969). The Respondent filed a timely answer denying all material allegations and setting forth affirmative defenses. The Union was not represented at the hearing. Accordingly, at the end of the hearing I dismissed 7 objections that did not overlap with the complaint allegations, as no evidence was introduced to support these objections. The remaining objections mirror the complaint allegations.

On the entire record, I make the following findings, conclusions of law, and recommendations.

JURISDICTION

At all material times, REI has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and the Union has been a labor organization within the meaning of Section 2(5) of the Act. Based on the foregoing, I find that this dispute affects commerce and that the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

ALLEGED UNFAIR LABOR PRACTICES

A. Background: The Respondent's Operations and Union Organizing Efforts

REI is a consumer cooperative that operates retail stores selling outdoor gear and apparel, and provides services such as bicycle maintenance and repair, at locations throughout the United States. This case concerns an organizing drive at REI's store in Eugene, Oregon, home to Oregon's flagship university, the University of Oregon.[3] The store opens at 10:00 a.m. Opening shifts for sales floor employees begin at 9:45 a.m. Other employees' shifts start either on the hour or the half hour.[4] (Tr. 373.) [5] The Eugene store is a two-story building on the corner of Lawrence

[2] At the hearing, the General Counsel withdrew an allegation that a second employee was unlawfully discharged, which appeared at complaint paragraph 7(b).

[3] Some of REI's Eugene store employees are students, and this contributes to relatively high staff turnover rates, as detailed in the remedy section below.

[4] The record reflects starting times earlier in the morning than 9:45, which coincides with testimony that there were truck-receiving shifts and other non-sales positions. (Tr. 372; GC Exh. 5.)

[5] Abbreviations used in this decision are as follows: "Tr." for transcript; "R Exh." for Respondent's

Street and Third Avenue in downtown Eugene, occupying about a half block of Third and less than 1/3 block of Lawrence.[6] (R Exh. 2.)

Employees at the Eugene Store began an organizing drive in the winter of 2022/2023. Niko Aberle was the organizer for the Union assigned to work with employees from the Eugene store.[7] (Tr. 77.) Aberle received a call from employee Lindlee Hamlin[8] and met with a small group of employees at a Teamsters Hall in neighboring Springfield, Oregon. They formed an organizing committee of nine employees and began organizing the store's employees, at first in private. The organizing committee consisted of employees Hamlin, Emily Bawcom, Forrest Houldin, Parker ("Ashe") Pease, Jake Aliperti, Leelah Schwartzburg, Rachel Tochen, Miguel Torres, and Heather Zalabak. Aberle gave the organizing committee members authorization cards to distribute and collect. The Union filed a petition for representation with the Board on April 10, 2023, based on the collection of authorization cards. Members of the committee collected authorization cards from 28 employees, which was just over 62 percent of the proposed bargaining unit.[9] (Tr. 57-64, 77-90, 130, 166, 220-223, 256; GC Exhs. 2(a)-(f), (h)-(m), (o), (p), (t), (u), (w)-(hh)). An election was scheduled for May 30. 2023.

From the start of the organizing drive through April 19, Ben Sprague was the store manager. Employees were not happy with Sprague for a number of reasons, including lack of accountability, poor communication, and favoritism. (Tr. 42-43, 112, 144-145, 209-210.)

Hamlin worked at REI from April 30, 2012, until her termination on May 11, 2023. (Tr. 66.) During the relevant time, she worked in the bike shop. Russell Anderson was the bike shop manager.[10]

On April 10, 2023, during a daily morning meeting called a "huddle", Hamlin informed Sprague and the other attendees that the Union was filing a petition for representation with the Board. Houldin, a sales specialist and organizing committee member, asked for voluntary recognition, and Sprague responded that he could not recognize the Union.[11] (Tr. 92-93.) The

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exhibit; "GC Exh." for General Counsel's exhibit; and "Jt. Exh." for joint exhibit. Although I have included several citations to the record to highlight particular testimony or exhibits, I emphasize that my findings and conclusions are based not solely on the evidence specifically cited but rather are based my review and consideration of the entire record.

[6] In addition to R Exh. 2, I take administrative notice of the store's location. REI - Google Maps. See *Bud Antle, Inc*., 359 NLRB 1257 n. 3 (2013), reaffd. 361 NLRB 873 (2014). I note that if this case is further reviewed, the location of the store may have changed, as a new Eugene store is slated to replace the existing one.

[7] Aberle's supervisor was Grace Korenkov, a lead organizer for the Union

[8] Hamlin uses the nickname Lin.

[9] Employee Guy Larson also signed a card, but he no longer worked for REI at the time of the election, as discussed below, so his card was not factored into the equation. (GC Exh. 2(v)).

Aberle estimated that just under 70 percent of employees supported the Union. (Tr. 32.) The record shows 28 signed authorization cards, out of a proposed unit of 45, which is just over 62 percent. (Jt. Exh. 2.)

[10] At the time of the hearing, Anderson no longer worked for REI, having been involuntarily separated.

[11] Houldin worked for REI from April 2021 to August 2023. During the relevant time period, he

organizers distributed a flyer promoting the Union, with a picture of the organizing committee members on the front. (GC Exh. 3.) Sprague declined to take a copy, so Hamlin placed one on his desk. (Tr. 95.) Pease, a sales lead and organizing committee member, added that if anyone had questions about the Union, they should feel free to contact the organizing committee.[12] (Tr. 178.) After the announcement, Hamlin wore a union button and T-shirt every day. Pease wore union shirts, a beanie, and buttons with the Union logo. Houldin wore a union button every day. Bawcom, a sales specialist and organizing committee member, wore pins throughout the campaign.[13] Zalabak, a sales specialist and organizing committee member, wore pins on her vest every day.[14] (Tr. 96, 140, 179, 232.)

B. Change in Store Manager and Alleged Interrogation of Houldin

April 19, 2023, was Sprague's last day at the Eugene store. Kayla DeForest replaced Sprague as interim store manager and became the permanent store manager in May 2023.[15] Shortly after Sprague's departure, Anderson, the bike shop manager, came into the bike shop and began working at a computer adjacent to Houldin. He asked for a word with Houldin, and proceeded to close the door separating the bike shop from the sales floor. Anderson told Houldin he would be a resource in Sprague's absence if he needed anything clarified about the union organizing process. Houldin declined this offer and said it was in his best interest not to have that conversation. Anderson then asked what Houldin hoped to achieve by unionizing. Houldin responded that they would find out at the bargaining table, and reiterated it was in their best interest not to have this conversation. (Tr. 140-141.)

After Sprague's departure, DeForest started as interim store manager and held meetings with managers. DeForest told managers that they would be consistent with holding employees accountable to REI's time and attendance policies. She also sat in on department meetings and listened to employees' concerns. DeForest perceived the culture in the store was poor as it pertained to accountability, communication, and favoritism. She attributed this in part to Sprague's leadership style, which she described as results-driven rather than more in line with REI's loyalty culture around membership. She also observed that employees were divided over union representation. After DeForest became the store manager, numerous employees shared with DeForest that her leadership style resonated with them, and they felt more supported and encouraged.[16] (Tr. 361-376.) Hamlin expressed relief that Sprague had departed and there was an

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worked in the bike shop. Pease recalled it was Hamlin who asked for voluntary recognition. The dispute is not material, but I credit Hamlin's recollection because she more likely would have recalled that it was someone else who asked for recognition.

[12] Pease worked as a sales lead at the Eugene store from April 2021 to October 2024.

[13] Bawcom worked at the Eugene store from July 2021 to August 2023, in the bike shop during the relevant time period. She left REI voluntarily to become a student and work at a restaurant.

[14] Zalabak worked in the Eugene store from May 2021 to July 2024.

[15] DeForest did not testify as to her precise start dates as either interim store manager or store manager, and the record does not contain independent evidence of these dates. Logic dictates and the record supports that DeForest became interim store manager at some point after Sprague's departure. (Tr. 96.) DeForest is listed as a store sales specialist in the Eugene store as of January 1, 2021.

DeForest had worked in several REI locations, and had been in managerial positions for about 5 years at stores in Boulder and Portland prior to serving as manager of the Eugene store. (Jt. Exh. 4.)

[16] DeForest named four specific employees that stood out to her as making such comments.

opportunity for a new start, and testified that other employees shared this sentiment. (Tr. 113-114.) Pease acknowledged that the change in management had an impact on the store. (Tr. 209.)

On April 30, DeForest held an all-employee meeting. DeForest said she did not think the Union was a good fit for REI, and asked for a chance to straighten things out before trying to unionize. After the meeting, several members of the organizing committee, including Hamlin, met with DeForest in her office. Houldin told DeForest he did not think it was appropriate for her to express her opinion on unionizing, because as a manager, it would not affect her because she could not be included in the bargaining unit. Houldin asked DeForest to talk to some of the anti-union employees whom they alleged were treating the organizing committee with disrespect. Houldin and the others present also commended DeForest on her leadership style. (Tr. 97-99, 150-152, 183.)

C. Timekeeping Practices and Hamlin's Termination

Employees clock in when they arrive for their shifts, either on a computer or at the time clock, which is upstairs.[17] During the relevant time period, REI used the Kronos timekeeping system. Employees were permitted to clock in up to 7 minutes before their shifts started and clock out up to 3 minutes after their shifts ended. (R Exh. 7.) Clocking in more than 7 minutes before the scheduled start time required approval from a manager. Exceptions to regular clock-in rules were denoted on a discrepancy log, which includes columns depicting the times the employee had begun work, taken lunch, and ended working, a column for the employee to comment, and columns for management to sign their initials and enter a checkmark. (GC Exh. 5; R Exh. 3.) Although there is a spot for the manager's initial, DeForest testified that manager approval is not depicted on the discrepancy logs. Rather, the initial and checkmark on the log only indicate that the operations lead or someone else charged with oversight of timekeeping entered the punch in the timekeeping system, and not that the discrepancy had management approval.[18] (Tr. 292, 369-370.)

Rue Wisher-McIver, was the store's operations lead during the relevant time period.[19] In this capacity, she reviewed timecards to ensure they accurately reflected time worked. As described by T. Montgomery, the department manager with oversight of attendance and timekeeping, "She does that by reviewing the digital punches, reviewing the discrepancy log, putting any punches from there into the time cards, and notifying the management when they are ready for review." No other non-managers shared Wisher-McIver's responsibilities. About 10 days after DeForest started at the Eugene store, Montgomery informed her about a concern she said Wisher-McIver had raised regarding Hamlin's discrepancy logs. The specific concern was

[17] Employees could clock in on their phone or computer during Covid. According to Hamlin and Larson, employees could still clock in on their computers after Covid. Bawcom recalled that after Covid, the time clock was the only way to clock in. I do not find this factual discrepancy to be material, particularly considering the passage of time and the ambiguities inherent in "before Covid" and "after Covid" as temporal benchmarks.

[18] The presence of the initials and checkmark is inconsistent, with numerous blank entries. Though Wisher-McIver's initials appear most frequently, several other initials also appear in the slot for "mgr. initals." (GC Exh. 5.)

[19] At some point she became the senior operations lead.

Hamlin punching in more than seven minutes early. Montgomery escalated anything unusual to the employee's direct manager aside from "run-of the mill" tardiness, which she described as more than 4 or 5 minutes late. Montgomery did not raise any other discrepancy log concerns with DeForest. (Tr. 273, 374, 400-403.) DeForest reviewed the discrepancy logs from February 2022 forward, Hamlin's digital timecard in Kronos, as well as CCTV footage of the days and times in question. (Tr. 283.)

On March 28, 2023, Hamlin's start time on the discrepancy log was 10:15, when her scheduled shift started at 11:30. Wisher-McIver initialed the discrepancy. Later, upon reviewing the entry, DeForest wrote a question mark and a comment on the log questioning whether the date should instead have been March 29. When DeForest asked her about it, Hamlin said she made a clerical error and the date was supposed to be March 29, when she was scheduled to start at 10:30. On April 19, Hamlin was scheduled to begin at 11:30 and she clocked in at 11:13. Wisher-McIver did not initial this entry, but instead wrote "already in". (Tr. 289-291.) On April 26, Hamlin clocked in at 9:17 for a 9:30 shift. She clocked out at 6:10 with a scheduled end time of 6:00. Wisher-McIver initialed the entry. DeForest was the opening manager on April 26, and Andy Henderson was the opening manager on March 29 and April 19. DeForest did not approve an early start time on April 26. At some point, DeForest asked Henderson if he had approved early starts for Hamlin on March 29 and April 19, and she testified he conveyed to her that he had not approved an early start for Hamlin on those dates.[20] (Tr. 294-295.)

The time stamp on the CCTV footage for March 29 shows Hamlin entering the building at 10:13:56 and recording her punch on the discrepancy log at 10:17:20 rather than 10:15, as reflected on the discrepancy log. (R Exhs. 4(a), 4(b); Tr. 303.) On April 19, the day Hamlin wrote an 11:13 start time, the CCTV time stamp showed Hamlin enter the building at 11:12:04 (R Exh. 4(c).) CCTV footage from April 26, the day Hamlin clocked in at 9:17, shows Hamlin entering the crosswalk adjacent to the building and using the intercom by the employee entrance at 9:17. She gained access to the store at 9:17:48. (R Exh. 4(d).) DeForest testified it would take at least a couple of minutes to get from the entrance to the time clock. (Tr. 329.)

On May 3 or 4, Hamlin was instructed to meet with DeForest in her office, where DeForest and a manager from another REI store were present. DeForest informed Hamlin that she had used the discrepancy log to start early without her store manager's permission. Hamlin was surprised this was raised, as in her observation the policy had not previously been enforced. Prior to this meeting, no manager had spoken to Hamlin about how she punched in. (Tr. 101-103.) According to DeForest, Hamlin acknowledged her actions were not appropriate, and not in line with REI's policies, and said she would correct her behavior. (Tr. 104, 318-319.) DeForest determined that termination was the appropriate level of discipline.[21] (Tr. 337.)

[20] It is unclear whether the bike shop manager, Anderson, was working on the dates in question. DeForest could not recall whether she asked Henderson about approval of Hamlin's early start time before or after she met with Hamlin about the matter on May 3 or 4. (Tr. 320.) DeForest's testimony about what Henderson told her is uncorroborated hearsay and is not given weight to establish the truth of the matter asserted.

[21] She consulted with her supervisor and HR in making her decision. (Tr. 339; R Exh. 14.)

On May 11, Hamlin was again instructed to report to DeForest's office. A different store manager from another REI store was present as a witness. DeForest showed Hamlin the discrepancy log, and asked if she recalled seeking approval from management on the dates in question. Hamlin said she did not recall, but affirmed she did not ask DeForest, the opening manager, for approval on April 26. DeForest presented Hamlin with a termination notice. Her termination notice recounted an August 2, 2021, verbal performance improvement plan (PIP) for conducting herself in an unprofessional and disrespectful manner toward coworkers. More specifically, the PIP noted that she had been disrespectful in her interactions with a specific sales specialist. Hamlin had stated she was frustrated because she believed this person treated her differently by failing to respond to her calls for assistance. The termination notice further stated that DeForest began an integrity investigation on April 29, 2023, based on discovery that Hamlin had clocked in more than 7 minutes before her shift 3 times in the last 30 days, and that Hamlin said she did not recall if she asked a store manager for approval for the early arrivals. (GC Exh. 4.)

In reaching her decision to terminate Hamlin, DeForest considered another previous PIP, not just the one cited in the termination notice. This other PIP, a written notice from 2016, did not factor into DeForest's decision because Hamlin had self-reported the incident to management after she realized, due to an oversight on her part, that her actions had violated policy. The incident involved purchasing equipment for personal use with her employee discount using another individual's credit card. (Tr. 320-321, 333-334; R Exh. 12.) With regard to the PIP in 2021, referenced above, which did factor into DeForest's decision to terminate Hamlin, DeForest testified that it was part of a pattern of Hamlin not acting with integrity. (Tr. 336.)

D. Policies Relied on for Hamlin's Termination

The termination notice cited certain policies Hamlin violated by inaccurately recording her start times. REI's policy entitled "Reporting Hours Worked" sets forth rules for employee timekeeping. The termination notice cited the following provision from the policy:

- Non-exempt Retail, Distribution Center, and Sales & Customer Support employees, use time clocks to record their hours worked when they arrive for work, leave the premises, and take meal periods.

Though not recited in the termination notice, the policy further provides:

- Notify your manager, using the communication method your location or department designated, if you miss a punch or fail to complete a timesheet.

- Use time clocks and timekeeping systems consistently and correctly.

- Use of the time clock, timekeeping system, or exception log is required. Failure to do so may be addressed through the Performance Improvement Process.

- Working off the clock is not permissible and is a violation of REI policy. Failure to accurately report all time worked may be addressed through the Performance Improvement Process up to and including termination.

(GC Exh. 4; R Exh. 6.) DeForest testified that Hamlin violated this policy by intentionally reporting her work hours inaccurately and not using the time clock in their time-keeping system consistently and correctly. (Tr. 322.)

REI's Kronos (UKG) Time Clock rules and its Attendance and Punctuality policy likewise provide that employees may clock in 7 minutes before their shifts, but may not clock in 8 or more minutes before their shifts. The termination notice relied on these provisions, and DeForest testified that Hamlin violated this rule by clocking in more than 7 minutes before her start time. The Attendance and Punctuality policy further provides that employees are considered late if they punch in more than 3 minutes after the start of their shift. It specifically states the performance improvement process may be used for any combination of 4 punctuality infractions within a rolling 4-week timeframe, or punctuality infractions for more than 25 percent of scheduled shifts in a rolling 4-week timeframe. DeForest said Hamlin violated this policy by clocking in 8 or more minutes prior to the start of her shift without management approval. (Tr. 324-326; R Exhs. 7, 8.)

REI's Fraud or Theft policy states, in pertinent part, "Any attempt to commit fraud or theft will not be tolerated and is subject to corrective action up to and including termination." (R Exh. 9.) Deforest testified that Hamlin violated this policy in connection with her timecard use. (Tr. 327.)

REI's Integrity in Your Work policy, true to its name, instructs employees to maintain integrity in their work, including conducting their work with honesty and adhering to REI's policies. Hamlin's termination notice relied upon the following provisions:

- Conduct all work you perform on behalf of REI with honesty
- Be helpful, polite and courteous
- Know and follow REI guidelines, rules, policies and safety regulations, including those listed in Living Our Values

DeForest said Hamlin violated this policy when she misrepresented her start times. (Tr. 329; R Exh. 10.)

Like most large employers, REI has a discipline policy, known as the Performance Improvement Process. It may be used after informal coaching efforts or instead of them, and may include verbal notice, written notice, and/or involuntary termination. Hamlin's termination notice cites three provisions that provide grounds for involuntary termination:

- Falsification of a timecard or time sheet or punching in or out on the time clock for another employee.

- Falsification of company records or any information to coworkers or management.

- Behavior that is not consistent with any portion of REI's Co-Op Way, Code of Business Conduct, or the Employee Handbook

DeForest determined that Hamlin violated the first and third bullet points of this policy. (Tr. 331; R Exh. 11.)

E. Other Employees' Time Clock Practices

Sales specialist Bawcom observed employees in the bike shop regularly clocked in early because things got very busy. If an employee was at the store early and the bike shop needed help, they were expected to help. She also observed employees and managers clocking in early throughout the store, and referred to it as "a very, very common thing." (Tr. 216, 228.) Bawcom was late once or twice because she was stuck in traffic due to a train. She was permitted to write in the time she was supposed to clock in on the discrepancy log and the manager input that time as their clock-in time. (Tr. 217.) Guy Larson,[22] who worked in REI's bike shop for about 17 years, testified he regularly worked before his shift and would record the extra time in the discrepancy log. He would mention it to a manager if one was available, but often times no manager was available. Larson used the discrepancy log a couple times per week or once every couple weeks in the summertime when he arrived early or ended late to service customers.[23] Larson specified that if a customer saw him walking into the store, he may provide some customer service before clocking in for his shift. Nobody from management spoke to him about this practice. (Tr. 239-243, 246-247.) Hamlin had never been approached by a manager for using the exception log for clocking in more than 7 minutes early without management's approval, and she knew of other people who had done the same thing, and nobody had talked to them about it. (Tr. 102.)

Discrepancy logs from 2022 and 2023, which DeForest reviewed, show numerous punches outside the attendance and punctuality policy's parameters:[24]

[22] Larson oversaw bike shop operations until he decided to go part-time in the spring of 2023 and subsequently resigned.

[23] The discrepancy log shows two possible early starts between February 22 and May 10, 2023. Given Larson's 17-year tenure with REI, I do not find this snapshot of time necessarily reflects how often he typically clocked in early during the spring and summer over the course of his employment.

[24] I did not consider any entries where there was an indication the employee was the keyholder or any 9:45 a.m. entries, including the grace period, unless there was a notation the punch was early, as DeForest testified that the sales associates working opening shifts had a start time of 9:45 rather than on the hour or half-hour for other employees. I also did not include days where the employee indicated travel.

I included individuals with only a single irregular punch to show the widespread use of the discrepancy log, not to assert that individuals with a single irregular punch were similarly situated to Hamlin.

Employee	Time In	Date	Position	Apparent Discrepancy	Comment
Adam	3:15	6/17/22	Sales manager	15 minutes late or early	Meeting w/ Russ posting schedule
Allie	5:15	3/3/23	Store sales specialist	15 minutes late or early	Missed first punch
Allie	7:34	Undated[25]	Store sales specialist	4 minutes late or 26 minutes early	n/a
Andy	8:45	2/22/23	Sales manager	15 minutes early	Early
Andy	8:45	4/8/23	Sales manager	15 minutes early	Early and would not allow clockings also stayed late w/AP issue.
Andy	7:15	4/20/23	Sales manager	15 minutes late or early	n/a
Angela	2:15	1/11/23	Department manager	15 minutes late or early	Early clock in
Annika	10:15	7/8/22	Store sales specialist	15 minutes late or early	Late punch
Annika	7:50	2/24/23	Store sales specialist	20 minutes late	Late ☹
Annika	7:45	3/5/23	Store sales specialist	15 minutes late	Late ☹
Annika	7:50	4/30/23	Store sales specialist	20 minutes late	Store meeting late because of marathon
Blank name, employee number 119451	None	2/20/23	Unknown	See comments	Punched out then worked more
Cameron	9:35	3/19/22	Store sales specialist	5 minutes late or 10 minutes early	Cover shift won't let me clock in
Cameron	9:35	4/22/22	Store sales specialist	5 minutes late or 10 minutes early	Phone wouldn't let me login to Kronos
Chris	9:50	10/10/22	Sales lead	5 minutes late or 10 minutes early	Dog grooming appointment
Chris	5:50	10/22/22	Sales lead	20 minutes late or 10 minutes early	n/a
Chris	6:45	1/19/23	Sales lead	15 minutes late or early	Miss-scheduled
Chris	6:40	3/27/23	Sales lead	10 minutes late	No one here to let us in
Derek	9:50	1/23/23	Store sales specialist	5 minutes late or 10 minutes early	n/a

[25] All of page REI119 in GC Exh. 5 is undated but it appears between entries from 4/30/23 and 5/1/23

Employee	Time In	Date	Position	Apparent Discrepancy	Comment
Derek	1:45	2/5/23	Store sales specialist	15 minutes late or early	n/a
Guy	7:25	9/17/22	Shop service lead bike & snow	5 minutes late or 25 minutes early	n/a
Guy	10:40?[26]	12/23/22	Shop service lead bike & snow	10 minutes late or 20 minutes early	n/a
Gwen	8:40	9/10/22	Unknown	10 minutes late or 20 minutes early	No employee # yet
Jake	12:45	2/25/23	Store sales specialist	15 minutes late or early	Lunch
Je Yi	4:07	2/25/22	Store sales specialist	7 minutes late	Uka didn't working
John	6:42	4/11/22	Sr sales specialist	12 minutes late or 18 minutes early	n/a
John	6:43	6/20/22	Sr. sales specialist	13 minutes late or 17 minutes early	n/a
John	6:45	8/10/22	Sr. sales specialist	15 minutes late or early	I dislike Carob
John	6:43	8/3/22	Sr. sales specialist	13 minutes late or 17 minutes early	n/a
John	6:40	12/7/22	Sr. sales specialist	10 minutes late or 20 minutes early	n/a
John	10:15	12/24/22	Sr. Sales specialist	15 minutes late or early	n/a
Jordan	5:12	4/20/22	Store sales specialist	12 minutes late or 18 minutes early	n/a
Kaiyana	9:35	6/22/22	Store sales specialist	5 minutes late or 10 minutes earky	n/a
Kaiyana	9:35	8/5/22	Store sales specialist	5 minutes late or 10 minutes early	Kronos problems
Karin	7:15	4/30/23	Store sales specialist	15 minutes late or early	n/a
Kathryn	6:42	6/1/22	Store sales specialist	12 minutes late or 17 minutes early	Schedule not changed in Kronos and stayed late to SIF
Misael	11:10	12/5/22	Retail sales specialist	10 minutes late or 20 minutes early	Missed lunch punches

[26] The writing is scribbled but appears to be 10:40. At the very least it is an abnormal punch.

Employee	Time In	Date	Position	Apparent Discrepancy	Comment
Parker	10:39	5/1/22	Sales lead	9 minutes late or 21 minutes early	Eugene marathon
Parker	7:45	5/6/22	Sales lead	15 minutes early or late	Meeting prep
Parker	12:04	5/16/22	Sales lead	4 minutes late	Health check
Parker	9:36	8/5/22	Sales lead	6 minutes late or 9 minutes early	u
Parker	9:35	8/1/22	Sales lead	5 minutes late or 10 minutes early	Health check
Parker (Ashe)	7:36	11/26/22	Sales lead	6 minutes late or 24 minutes early	n/a
Pete	7:48	4/12/23	Store sales specialist	18 minutes late or 12 minutes early	Oops
Rachel	9:35	2/21/22	Retail sales specialist	5 minutes late or 10 minutes early	Figured wouldn't work since couldn't clock out
Rachel	9:37	5/28/22	Retail sales specialist	7 minutes late or 8 minutes early	UKG wouldn't log in
Rachel	2:14	9/4/22	Retail sales specialist	14 minutes late or 16 minutes early	Please use sick time for me going home early thanks
Reece	9:35	4/2/22	Store sales specialist	5 minutes late or 10 minutes early	Forgot to clock out
Reece	9:45	5/5/22	Store sales specialist	15 minutes early	Came in early
Rue	7:10	2/7/23	Operations lead	10 minutes late or 20 minutes early	Buying coffee
Rue	6:37	4/10/23	Operations lead	7 minutes late or 8 minutes early	n/a
Sarah E	9:08	12/4/22	Store sales specialist	8 minutes late or 22 minutes early	n/a
Shane	6:45	2/3/23	Shipping receiving specialist	15 minutes late or early	On time
Shane	6:43	2/24/23	Shipping receiving specialist	15 minutes late or early	Missed punches
Shannon	10:45	2/21/22	Retail sales specialist	15 minutes early	15 minutes early for footwear support
Susan	12:04	3/7/23	Store sales specialist	4 minutes late or 26 minutes early	Left late to cover gaps
Susan	9:50	3/17/23	Store sales specialist	5 minutes late	Train
Susan	11:16	3/23/23	Store sales specialist	16 minutes late	Was LATE getting here

Employee	Time In	Date	Position	Apparent Discrepancy	Comment
Susan	8:37	4/7/23	Store sales specialist	7 minutes late or 23 minutes early	Did not "see" that I was in REDI mttg
T	6:38	12/5/22	Sales manager	8 minutes late or 22 minutes early	n/a
T	6:39	1/31/23	Sales manager	9 minutes late or 21 minutes early	I done goofed
T	5:15	3/8/23	Sales manager	15 minutes late or early	Overnight
T	9:35	4/2/23	Sales manager	5 minutes late or 10 minutes early	n/a
Wayne	11:34	11/9/22	Store sales specialist	4 minute late or 24 minutes early	voting

F. Decline in Union Meeting Attendance and Alleged Interrogation of Pease

After Hamlin's termination, employee Shane Garvey expressed his shock to union representative Aberle when he learned the reason given for Hamlin's termination, because he had acted similarly.[27] Employee attendance at weekly union meetings declined following Hamlin's termination, and it became difficult to get the entire group in a room together. (Tr. 35-39.)

At some point, an employee informed DeForest that Pease had told her two previous employees, including Hamlin, intended to vote in the election. On May 20, DeForest asked Pease if she could talk to them. DeForest said she heard Pease had been telling other employees that Hamlin and another former employee would be voting in the election. Pease affirmed this and said they had been working with the Union to make sure these individuals could vote. DeForest said she did not understand how these former employees could vote because the election was scheduled to take place in an employee-only part of the store.[28] According to Pease, DeForest asked them not to discuss the topic anymore. DeForest denied making this comment. (Tr. 187, 202, 351-352; R Exh. 16.)

[27] While Garvin's statement to Aberle is hearsay, it is corroborated by multiple other witness' testimony about the Respondent's timekeeping practices during Sprague's tenure, and is therefore reliable. See *Midland Hilton & Towers*, 324 NLRB 1141, 1141 fn. 1 (1997), citing *Alvin J. Bart & Co*., 236 NLRB 242, 242 (1978), enf. denied on other grounds 598 F.2d 1267 (2d Cir. 1979).

I do not find Aberle's testimony that employee Josh Hernandez, when approached by Hamlin at a combination coffee shop/climbing gym displayed unspecified non-verbal language and only engaged for two minutes and then left to go climbing (presumably one of the reasons for his presence at the gym) to be indicative of loss of support. Hamlin, who was more directly involved, provided no testimony on the matter, and Aberle's testimony is too vague and speculative to have weight on the issue. (Tr. 37-38.)

[28] DeForest also recalled commenting that the other former employee had been a seasonal employee who was not eligible to vote. Both employees were ultimately permitted to vote.

LEGAL STANDARDS AND ANALYSIS

A. Hamlin's Termination

Paragraphs 7(a), (c) and 10 of the complaint allege the Respondent violated Section 8(a)(1) and (3) when, on or around May 11, 2023, the Respondent discharged employee Lindlee Hamlin.

In mixed-motives cases, where an employer defends against an allegation that it has terminated an employee because of their union activity by asserting that the termination was for legitimate reasons, the Board applies the analysis set forth in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert denied 455 U.S. 989 (1982). Under this framework, the General Counsel has the initial burden to provide evidence supporting the inference that union activity was a motivating factor in the employer's decision. See, e.g., *Intertape Polymer Corp*., 372 NLRB No. 133, slip op. at 6 (2023), enfd. 2024 WL 2764160 (6th Cir. 2024). The elements required to sustain the General Counsel's initial burden are: (1) union or other protected activity by the employee, (2) employer knowledge of that activity, and (3) employer animus against union or other protected activity. Id. Once the General Counsel has established that the employee's protected conduct was a motivating factor in the employer's decision, the burden of persuasion shifts to the employer to demonstrate that it would have taken the same action even in the absence of the protected conduct. The employer cannot meet its burden merely by showing that it had a legitimate reason for the action; rather, it must demonstrate that it would have taken the same action even in the absence of the protected conduct. Id.

In the instant case, Hamlin's union activity was indisputably known to REI management since at least April 10, 2023. The parties disagree on the element of animus. Evidence of the employer's hostility toward union activity may be circumstantial, and may include, among other things: (1) the timing of the employer's adverse action in relationship to the employee's protected activity; (2) the presence of other unfair labor practices; (3) statements and actions showing the employer's general and specific animus; (4) disparate treatment of the discriminatees; (5) departure from past practice; and (6) evidence that an employer's proffered explanation for the adverse action is a pretext. See *Golden Day Schools v. NLRB*, 644 F.2d 834, 838 (9th Cir. 1981); *NLRB v. Rain-Ware, Inc*., 732 F.2d 1349, 1354 (7th Cir. 1984) (timing); *Mid-Mountain Foods, Inc*., 332 NLRB 251, 260 (2000), enfd. mem. 169 LRRM 2448 (4th Cir. 2001); *Richardson Bros. South*, 312 NLRB 534 (1993) (other unfair labor practices); *NLRB v. Vemco, Inc*., 989 F.2d 1468, 1473-1474 (6th Cir. 1993); *Affiliated Foods, Inc*., 328 NLRB 1107 (1999)(statements showing animus); *Naomi Knitting Plant*, 328 NLRB 1279, 1283 (1999)(disparate treatment); *JAMCO*, 294 NLRB 896, 905 (1989), affd. mem. 927 F.2d 614 (11th Cir. 1991), cert. denied 502 U.S. 814 (1991) (departure from past practice); *Wright Line*, 251 NLRB at 1089; *Roadway Express*, 327 NLRB 25, 26 (1998) (disparate treatment). Another indicator of unlawful motivation is shifting explanations for a personnel action. See *City Stationery, Inc*., 340 NLRB 523, 524 (2003) (nondiscriminatory reasons for discharge offered at the hearing were found to be pretextual where different from those set forth in the discharge letters); *GATX Logistics, Inc*., 323 NLRB 328, 335 (1997).

Timing can be a strong indicator of animus. The Board has held that "[t]iming alone may suggest anti-union animus as a motivating factor in an employer's action." *Masland Industries*, 311 NLRB 184, 197 (1993), quoting *NLRB v. Rain-Ware, Inc*., above. Here, the timing of Hamlin's termination, just a month after Hamlin informed the then store manager during a group meeting that the Union was filing a petition for representation, and less than three weeks before the scheduled election, is suspicious on its face.

On a more nuanced level, the timing strongly suggests the termination was unlawfully motivated. The argument that, in essence, DeForest was the new sheriff in town and was just benignly enforcing stricter adherence to time and attendance fails to withstand scrutiny. The testimony and documentary evidence make clear that, when Sprague was the store manager, employees regularly clocked in early and/or clocked out late.[29] The witness testimony was also consistent that, at least within the bike shop, the employees would get management approval if a manager was available, but this was not always the case.[30] Reliance on this change of practice might have the cloak of legitimacy if it was forward-looking and communicated to the employees who would then have a chance to show compliance. Instead, two of the three discrepancy log entries relied upon to justify Hamlin's termination (March 29 and April 19) occurred while Sprague was still store manager. The third (April 26) occurred, at best, a few days after DeForest became interim store manager. The record is devoid of evidence that, as of April 26, DeForest had communicated this change in adherence to time clock deviations to employees. She testified she had meetings with managers after she arrived in April about being consistent with REI's time and attendance policies, but did not testify as to any specific dates, and could not recall whether such communications took place during an in-person meeting with managers. The first meeting of record DeForest held with employees was the April 30 all-store meeting, and not a single witness, including DeForest, testified that she addressed time and attendance at all during this meeting. Instead, the focus appeared to be the ongoing union drive and DeForest's request to give her a chance to make positive changes.

I also find there is other evidence of disparate treatment, as discussed more fully below. Hamlin was faulted for not using the time clock consistently and accurately. By their very existence, the discrepancy logs indicate inconsistencies among employees and managers in time clock usage.[31] The Respondent attempts to single out Hamlin by asserting that Hamlin was the only employee who had used the discrepancy log three times in one month to record early start shifts. Given the multiple discrepancies above, and the lack of evidence in many cases as to

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[29] DeForest relied on the lack of accountability in Sprague's timekeeping practices as a catalyst to implement changes. (Tr. 361.)

[30] The Respondent asserts that Larson should not be credited because he mistakenly testified that the reason given for Hamlin's termination was that she "clocked out late" which was incorrect. In addition, the Respondent asserts that Larson misrepresented in his testimony that he used the discrepancy log to start early a couple times a week during the busy season in spring and summer. Larson, who no longer worked for REI at the time of the hearing, was a 17-year employee. While the discrepancy logs show Larson did not clock in early during the busy season of 2022, he was being asked to remember his practice over a 17-year period. I do not find his testimony as a whole is unworthy of belief. See *NLRB v. Universal Camera Corp*., 179 F.2d 749 (2d Cir. 1950).

[31] DeForest used the discrepancy log when she forgot to clock in on April 21 and her entire shift was not reflected on the timeclock. (Tr. 371; R Exh. 3.)

whether they indicated early or late starts and/or finishes, this explanation strikes me as a hand-picked after-the-fact justification.[32] This is especially true considering there is a policy that speaks in detail regarding the alleged infraction here. Specifically, REI's attendance and punctuality policy states, in relevant part, that the performance improvement process may be used for, "[a]ny combination of 4 punctuality infractions within a rolling 4-week timeframe."[33] The non-adherence to this benchmark, turning it into 3 infractions rather than 4 to create a made-up metric, especially considering the miniscule nature of Hamlin's discrepancies, is hard to fathom. It reflects a laser focus to pin any infraction it could muster on Hamlin. The Respondent's additional reliance on its more general policies around falsification, fraud, and theft perhaps reflects management's understanding that discipline for the 3 irregular punches alone was not contemplated by the attendance and punctuality policy. Falsification, by contrast, comes with grounds for involuntary termination. As fully explained below, I find these intent-reliant justifications are pretextual.

The lack of explanation as to what prompted Wisher-McIver to report concerns about Hamlin's timekeeping exhibits anomalies around timing as well as pretext. Wisher-McIver's job, as described by her manager, was reviewing timecards, entering data into the timekeeping system, and notifying management when her work was ready for review.[34] There is no explanation as to what prompted her to look backward as far as March 29 to flag a pattern of irregular time punches for Hamlin, using a guideline shy of what the attendance and punctuality policy prescribes. Wisher-McIver still worked for REI at the time of the hearing but did not testify.[35] I view the weight and persuasiveness of Montgomery's testimony as diminished because of Wisher-McIver's failure to testify and because Montgomery's testimony that Wisher-McIver told her she noticed a pattern of Hamlin clocking in early is uncorroborated hearsay.[36] As there is no evidence regarding what purportedly prompted Wisher-McIver's actions, and no evidence that she reported similar irregularities to her manager, I find Hamlin was subjected to disparate treatment. Moreover, Montgomery testified that her practice was to escalate anything unusual to the employee's direct manager. Russell Anderson, the bike shop manager, was Hamlin's direct manager. Instead of raising the matter with him, Montgomery raised it with

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[32] Notably, Hamlin was the only person for whom late and/or early time punches triggered CCTV review or any other investigative efforts.

[33] Though the dictionary definition of "punctuality" refers to being on time, the standards in the Respondent's punctuality policy apply to clocking in early by the language on the policy's face. The relevant portion, at the bottom of page 2 and the top of page 3, defines "punctuality" to encompass clocking in earlier than the policy's prescribed times. (R Exh. 8.)

[34] DeForest testified that "reconciling payroll" was part of Wisher-McIver's regular duties. (Tr. 273, 275.) As DeForest had been interim store manager for less than 2 weeks at the time of the incident at issue, I give more weight to Montgomery's description of Wisher-McIver's duties, as she was Wisher-McIver's direct manager.

[35] No explanation was offered regarding Wisher-McIver's failure to testify, and the General Counsel has not asked for an adverse inference.

[36] See *Midland Hilton & Towers*, 324 NLRB 1141 n. 1 (1997), citing *Alvin J. Bart & Co.*, 236 NLRB 242 (1978), enf. denied on other grounds 598 F.2d 1267 (2d Cir. 1979); *Conley Trucking*, 349 NLRB 308, 310–312 (2007), enfd. 520 F.3d 629 (6th Cir. 2008).

Any explanation DeForest gave as to what Wisher-McIver said is double hearsay and entitled to no weight. See *Auto Workers Local 651 (General Motors)*, 331 NLRB 479, 481 (2000).

DeForest, the highest level manager at the store, with no explanation for this deviation from her stated usual practice.

Hamlin's termination also occurred in the context of other unfair labor practices, which are detailed below, supporting a showing of animus. DeForest's comment that she did not believe the Union was a good fit for REI shows that she did not look favorably upon the Union representing the Eugene store's employees.

The Respondent argues that any claim of animus is contradicted by REI's treatment of the other organizing committee members, who were likewise open Union supporters. Action against all union adherents, of course, is not required to establish animus. Countless individual Board and court cases have found animus in the context of the termination of a single union adherent. Indeed, *Wright Line* itself is such a case.

Turning to the stated reasons for Hamlin's discharge, the performance improvement process action form effectuating it states, "Lin's employment with REI is being terminated for falsifying timekeeping records and lack of honesty/integrity." (R Exh. 15; GC Exh. 4.) I find this proffered legitimate nondiscriminatory reason is pretextual for a number of reasons.

First and foremost, the evidence to suggest Hamlin falsified her time records is highly nitpicky and is, at each turn, construed unfavorably against Hamlin, an 11-year employee who had very little discipline in her long tenure at REI, and none for timekeeping infractions or infractions indicating dishonesty, such as falsification. The only other discipline DeForest considered when deciding to terminate Hamlin was a 2021 PIP verbal notice based on her interactions with a coworker with whom she had conflict, and nothing on the notice even hints that she acted dishonestly. The sole excerpt on the 2021 PIP regarding integrity states, "Living Our Values states: Integrity in our practices and interactions is of the utmost importance at REI. You are expected to use good judgment in all your actions."[37] The other PIP, which did not factor into the termination decision, and which was from 2016, shows Hamlin displayed honesty by proactively coming forward when she realized she had violated a policy.

The level of scrutiny of Hamlin's time, particularly in light of her employment record, is telling, and shows her actions and the motivations attributed to her actions were viewed with a jaundiced eye. The time differences between when Hamlin recorded her start times and the time stamp on the CCTV system, which the Respondent relied upon, are negligible. Importantly, there was no evidence presented establishing the Kronos system and the CCTV were synchronized. The only date for which video footage shows Hamlin signing in was on March 29, when the CCTV video time stamp of Hamlin recording her start time showed 10:17, but her recorded time was 10:15. Any time display Hamlin may have consulted when recording her start time is not visible from the video footage. One thing is certain, though— Hamlin was not looking at the time stamp on the Respondent's CCTV video when she recorded her start time on March 29 or any other day. Considered in conjunction with unrefuted evidence that employees were sometimes approached by customers with questions before clocking in, the evidence simply does not establish that Hamlin engaged in falsification, which carries with it an intent to deceive.[38]

[37] See R Exh. 13.

[38] Whether phrased as falsification, theft, or fraud, intent is a requisite element.

For the remaining dates, there is even less evidence to support a fathomable justification of falsification. DeForest, in making her estimate of Hamlin's progress toward the time clock, testified it would take at least a couple of minutes to get from the store's main entrance to the time clock. Yet, the store occupies less than half a block, and the distance between the front entrance and the time clock, while requiring climbing a flight of stairs, is far less than half a block. On April 19, the day Hamlin wrote an 11:13 start time, the CCTV time stamp showed Hamlin enter the building at 11:12:04. Considered with the absence of evidence that the CCTV was synchronized with the timekeeping system or any other clock employees relied upon, any conclusion that Hamlin committed falsification that day is highly speculative and would require viewing Hamlin's actions in a suspiciously unfavorable light. And even assuming the CCTV footage and any clock Hamlin referenced when clocking in were synchronized, if Hamlin clocked in at 11:13:59, this would span almost two minutes from her entry. Just as speculative is the footage from April 26, the day Hamlin clocked in at 9:17. The CCTV footage showed Hamlin gaining access to the employee entrance, which is adjacent to the time clock, at 9:17:48. Whatever clock Hamlin may have consulted on that date to record her start time would need to have been synchronized within seconds of the CCTV footage time stamp to suggest even a thin claim of falsification.[39] Admittedly, DeForest's justification that Hamlin repeatedly displayed lack of integrity relied on Hamlin knowingly falsifying her start times.[40] This element of intent has clearly not been established.

Finally, any assertion that the lack of management approval justified Hamlin's termination is a red herring. For her first two early punches, Sprague was still the store manager. Hamlin admitted she did not recall if she asked for management approval. I find this credible based on unrefuted testimony that management approval was not an enforced requirement when Sprague managed the store. Moreover, if prior management approval was at any point deemed indispensable, it is hard to believe it would not be depicted on the discrepancy logs, especially considering there is a box labeled "Mgr initials" ostensibly for a manager (as opposed to the nonmanagerial operations specialist/lead) to initial. Instead, for such a backward-looking review as DeForest conducted here, knowing whether there was management approval on any given date would require determining which managers were scheduled, and then relying on independent memory of whether oral permission was granted for a specific shift. For something as commonplace and mundane as entries in the discrepancy log, it is not realistic to expect managers to recall with any precision an interaction that, at the time, seemed like just another ordinary day at work, especially considering many such entries were remote in time.[41] In any

[39] The measure of distrust displayed by pinning dishonest intent on Hamlin, who was trustworthy enough to be a loyal employee at REI for over a decade, is so out of line with ordinary workplace behavior, I find there was no reasonable belief that she acted with intent to defraud REI. See *Con-Way Freight*, 366 NLRB No. 183 (2018); Cf. *McKesson Drug Co*., 337 NLRB 935, 937 fn. 7 (2002); see also *Cellco Partnership v. NLRB*, 892 F.3d 1256, 1262 (D.C. Cir. 2018). Instead, the leap to falsification, fraud, or theft, rather than an honestly held reasonable belief, was a false and intentional attempt to justify Hamlin's termination and chill the organizing drive.

[40] See Tr. 329.

[41] DeForest testified that she saw no other instances where store employees clocked in early without manager approval. (Tr. 365.) Unless she went back and, for each of the approximately 870 entries depicted in the discrepancy logs asked if management approved the specific discrepancy, she would not

event, without showing an element of intent to falsify, Hamlin's three punches did not, pursuant to REI's attendance and punctuality policy, trigger the performance improvement process, much less call for her termination.

When confronted with the early start times, Hamlin was forthcoming and truthfully responded that she could not recall if she had asked a manager's permission to start early. She also said she would change her behavior going forward. Considering Hamlin's longevity with REI, and her history of being honest and forthcoming, it is highly telling that she was not given a chance to do so once notified of the newly implemented stricter adherence to timekeeping policies.

Based on the foregoing, I find the General Counsel has established that Hamlin's discharge violated the Act as alleged in the complaint.

B. The Alleged Section 8(a)(1) violations

The Board's longstanding test to determine if there has been a violation of Section 8(a)(1) of the Act is whether the employer engaged in conduct which might reasonably tend to interfere with the free exercise of employee rights under Section 7. *American Freightways Co*., 124 NLRB 146 (1959). The rights guaranteed employees in Section 7 include the right "to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . . ." "It is well settled that the test of interference, restraint, and coercion under Section 8(a)(1) of the Act does not turn on the employer's motive or on whether the coercion succeeded or failed." *American Tissue Corp*., 336 NLRB 435, 441 (2001) (citing *NLRB v. Illinois Tool Works*, 153 F.2d 811, 814 (7th Cir. 1946)). It is the General Counsel's burden to prove an 8(a)(1) violation.

1. Alleged interrogation

Paragraphs 5 and 9 of the complaint allege, on or around April 20, 2023, the Respondent, by Russell Anderson, interrogated its employees by asking them their opinions about the Union and what they sought to gain from having a Union.

The Board considers the totality of the circumstances in determining whether the questioning of an employee constitutes an unlawful interrogation. *Rossmore House*, 269 NLRB 1176, 1178 fn. 20 (1984), affd. sub nom. *HERE Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). This test involves a case-by-case analysis of various factors, including those set out in *Bourne v. NLRB*, 332 F.2d 47, 48 (2d Cir. 1964): (1) the background, i.e., whether the employer has a history of hostility toward or discrimination against union activity; (2) the nature of the information sought; (3) the identity of the interrogator, *i.e*., his or her placement in the Respondent's hierarchy; (4) the place and method of the interrogation; and (5) the truthfulness of the interrogated employee's reply. See*,* e.g*., Sproule Construction Co*., 350 NLRB 774 fn. 2 (2007); *Grass Valley Grocery Outlet*, 338 NLRB 877, fn. 1 (2003), affd. mem. 121 Fed. Appx.

know whether there was management approval. For the reasons stated herein, undertaking such a task would be a fool's errand.

720 (9th Cir. 2005). The Board also considers the timing of the interrogation and whether the interrogated employees are open and active union supporters. See, e.g., *Gardner Engineering*, 313 NLRB 755 (1994), enfd. as modified on other grounds 115 F.3d 636 (9th Cir. 1997); *Blue Flash Express*, 109 NLRB 591 (1954). Another factor is whether adequate assurances against reprisal were provided. See *RHCG Safety Corp.,* 365 NLRB 852, 853 (2017) These factors "are not to be mechanically applied," they represent "some areas of inquiry" for consideration in evaluating an interrogation's legality. *Rossmore House*, supra, fn. 20.

Houldin's unrefuted testimony establishes that Anderson, his direct supervisor and the bike shop manager, asked Houldin what he hoped to achieve by unionizing. This question, asked by the employee's direct manager, who was offering to step into a leadership void caused by the store manager's departure, strikes at the heart of the organizing efforts—its purpose. See *Starbucks Corp*., 373 NLRB No. 90, slip op. at 1 (2024) (asking employee what she hoped to gain through unionization was unlawful interrogation). As such, I find the nature of the information sought and the identity of the interrogator weigh in the General Counsel's favor. The questioning took place in the bike shop, after Anderson had closed the door separating the bike shop from the salesroom floor. I find, therefore, the place and method of interrogation weigh in favor of the General Counsel. As to the truthfulness of Houldin's response, this element cannot be evaluated, as he was neither truthful nor untruthful, but rather declined to answer the question. The evidence does not establish a history of hostility against union activity, so this factor weighs in the Respondent's favor. Finally, no assurances against reprisal were offered, which favors the General Counsel.

As the Board and the courts have long recognized, "an employer, in questioning his employees as to their union sympathies, is not expressing views, argument, or opinion within the meaning of Section 8(c) of the Act, as the purpose of an inquiry is not to express views but to ascertain those of the person questioned." *Struksnes Construction Co*., 165 NLRB 1062, 1062 fn. 8 (1967) (citing *Martin Sprocket & Gear Co. v. NLRB*, 329 F.2d 417, 420 (5th Cir. 1964)); *NLRB v. Minnesota Mining & Mfg. Co*., 179 F.2d 323, 326 (8th Cir. 1950)). That is what occurred here. In sum, considering the totality of the circumstances, I find the General Counsel has established this complaint allegation.[42]

[42] The caselaw the Respondent cites to is distinguishable. For example, in *Frito Lay, Inc*, 341 NLRB No. 65 (2004), a representation case, the Board agreed with the Regional Director's determination that "ride-alongs", where employer officials rode with truck drivers to campaign against the union were not inherently unlawful. The case, however, did not touch upon the lawfulness of a manager asking what an employee hoped to gain by organizing. *Pony Express Courier Corp.*, 283 NLRB 868 (1987), involved a supervisor asking an employee whether anyone from the union had approached him. *Great Lakes Oriental Prods., Inc*., 283 NLRB 99, 99 n.1 (1987), involved a low-level supervisor asking an employee whether employees had signed cards. The Respondent cites other cases for the proposition that Anderson's conduct did not violate the Act because it was a single question to a known union supporter. However, Houldin being a known union supporter does not insulate the Respondent. The questioning in the cited cases was different, and none involved the question as to the employees' purpose in organizing.

2. Alleged directive not to discuss the terminated union supporters' voting rights

Complaint paragraphs 6 and 9 allege that, on or about May 18, 2023, DeForest directed its employees not to discuss the terminations of other employees who had supported the Union and those terminated employees' voting rights.[43]

Resolution of this allegation begins with credibility.[44] I credit Pease's version of the conversation over DeForest's. Pease no longer worked for REI at the time of the hearing, and therefore their interest in fabricating what occurred is far less than DeForest's, as the current store manager.[45] In addition, DeForest initiated the conversation based on an employee reporting to her a concern that Pease was discussing the terminated employees' voting rights. It makes no sense for DeForest to raise the matter if she did not view it as a real concern. In this context, Pease's version of events is far more logical—Why address what was clearly viewed as an employee's concerning workplace behavior and then not instruct the employee to modify it?[46] Pease's testimony was in response to open-ended questions, and their demeanor was straightforward. They did not embellish their testimony and readily admitted areas where they lacked specific knowledge. DeForest simply replied "No" when asked if she asked Pease not to discuss the terminated employees' vote in the upcoming election. For these reasons, I credit Pease's testimony that DeForest asked Pease not to discuss with other employees the topic of Hamlin and the other terminated employee voting in the upcoming election.

Turning to whether such instruction was coercive, the Board has consistently held that instructing employees not to discuss union-related topics but allowing discussion of other non-work topics violates Section 8(a)(1). *Jennie-O Foods*, 301 NLRB 305, 316 (1991); quoting *Orval Kent Food Co*., 278 NLRB 402, 407 (1986). Here, DeForest's instruction to Pease singles out discussions about terminated union supporters. Moreover, I agree with the General Counsel's argument that, even without asking Pease not to discuss the terminated employees' ability to vote, DeForest's conduct in conveying to Pease the vote was scheduled in an employee-only area and it was her understanding the former employees would be denied access, was itself coercive. It sent the message that REI had the power to discharge union supporters and prevent them from

[43] The testimony in the record fails to establish that Pease or anyone was instructed not to discuss terminated employees generally.

[44] A credibility determination may rest on various factors, including "the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole." *Hills & Dales General Hospital*, 360 NLRB 611, 615 (2014), citing *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001). In making credibility resolutions, it is well established that the trier of fact may believe some, but not all, of a witness's testimony. *NLRB v. Universal Camera Corp*., supra.

[45] DeForest's own omission of any instruction not to discuss the terminated employees' voting in the election from her log of the conversation is not persuasive to me, as it is self-serving.

[46] The Respondent points to minor discrepancies in Pease's testimony to assert they were not credible overall. I would not expect Pease to recall, more than 2 years later, specific facts such as Hamlin's termination date, DeForest's start date, the date of the election, the length of his conversation with DeForest, or the specific words they said during the conversation. The inability to recall verbatim what was said does not men Pease did not recall the conversation, or recalled what was conveyed to them inaccurately.

voting in the election simply by barring them from entry to the voting site. A reasonable employee would perceive such a comment, just 10 days before the election, as coercive. Considering the totality of the circumstances, I find the General Counsel has established this complaint allegation.

3. Applicability of *Counterman v. Colorado*

The Respondent argues that proof of some subjective understanding of the threatening nature of the alleged coercive statements is required under *Counterman v. Colorado*, 600 U.S. 66 (2023). As the Board stated in *Apple, Inc.*, 373 NLRB No. 52, slip op. at 1, fn.2 (2024):

> *Counterman* is inapplicable here, as it involved a criminal prosecution, and the Supreme Court's decision gave no indication that its principles or reasoning extends to cases arising under the National Labor Relations Act. Accordingly, we find it appropriate to apply the Board's longstanding objective standard, endorsed by the Supreme Court in *NLRB v. Gissel Packing Co*., 395 U.S. 575, 616-620 (1969).

While the Court of Appeals for the Fifth Circuit disagreed with the Board, the Board adheres to its precedent unless it is subsequently overturned by the Supreme Court or the Board. As the Board's precedent finding *Counterman* does not apply to cases arising under the Act still stands, I find this argument unpersuasive.

C. The Remedy

The General Counsel has requested a remedial bargaining order pursuant to *Gissel*, supra. The Respondent contends that the election results should be certified. I find the appropriate remedy is to set aside the election and have a second election. I also grant certain enhanced remedies requested by the General Counsel, and deny others.

I turn first to whether a bargaining order should issue. The purpose of a remedial bargaining order is "to remedy past election damage [and] deter future misconduct." Gissel, 395 U.S. at 612. The Supreme Court has sanctioned the issuance of such a bargaining order "where an employer has committed independent unfair labor practices which have made the holding of a fair election unlikely or which have in fact undermined the union's majority. . . ." Id. at 610. The Board thus has the authority to order an employer to recognize and bargain with a union even if the employees have not voted for union representation in an election.

In *Gissel*, the Court identified two categories of employer misconduct that warrant imposition of a bargaining order. The first, referred to as category I cases, are "exceptional" and "marked by 'outrageous' and 'pervasive' unfair labor practices." Id. at 613. The second, referred to as category II cases, involve "less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election processes." Id. at 614.

In assessing whether to impose a *Gissel* bargaining order, the Board examines factors such as "the seriousness of the violations and their pervasiveness, the size of the unit, the number

of affected employees, the extent of dissemination, and the position of the persons committing the violations." *Bristol Industrial Corp. & C.O. Sabino Corp*., 366 NLRB No. 101, slip op. at 3 (2018). The Board also considers "the inadequacy of the Board's traditional remedies," "the Section 7 rights of all employees involved," and whether an affirmative bargaining order "serves the policies of the Act." Id, slip op. at 3-4. In making this latter determination, the Board takes into account the length of time between the election and its order, as well as whether there has been significant employee turnover since the employer began commission of unfair labor practices. See *Stern Produce*, 368 NLRB No. 31, slip op. at 5 (2019), and cases cited therein; *Sysco Grand Rapids, LLC*, 367 NLRB No. 111, slip op. at 2 (2019).

I find the facts of the instant case do not support a bargaining order under category I. While I do not diminish the gravity of the unfair labor practices here, most significantly Hamlin's termination, I find they do not rise to the requisite level of pervasiveness. As the Respondent correctly points out, there is no evidence the two instances of unlawful interrogation I have found above were disseminated among employees. While Hamlin's termination was serious, I do not find it, combined with a discrete instance of interrogation and a discrete comment not to discuss terminated employees voting in the election, rises to the level required for a category I bargaining order.

Category II is a much closer call. Certain factors weigh in the General Counsel's favor. The hasty removal of Hamlin, a union leader, by the highest level manager at the store, a hallmark violation, is not likely to be forgotten by employees. *Michael's Painting, Inc*., 337 NLRB 860, 861 (2002), enfd. 85 Fed.Appx. 614 (9th Cir. 2004). Union representative Aberle provided unrefuted testimony that after Hamlin's termination, attendance at meetings declined, and at least one employee expressed shock when he learned the justification for Hamlin's termination.[47] The effect of Hamlin's termination is unlikely to be dissipated considering the small size of the bargaining unit along with evidence showing knowledge of Hamlin's removal spread through the store. Moreover, employees were not given contemporaneous or after-the-fact assurances that Hamlin's removal from the workplace was unrelated to the union campaign. See *Arkansas Lighthouse for the Blind*, 284 NLRB 1214, 1219 (1987), enf. denied on other grounds, 851 F.2d 180 (8th Cir. 1988).

Significant factors also weigh against a bargaining order. First, it is clear employee sentiment toward management changed palpably following Sprague's departure and DeForest's arrival as store manager.[48] It is undisputed that the Union once had majority support, presenting authorization cards from 28 eligible employees, which represented 62 percent of the proposed bargaining unit.[49] By contrast, 20 employees voted for the Union in the election. Given the consistent evidence that perceptions of management culture at the store changed considerably for

[47] As detailed below, the Respondent's argument that employees actually believed Hamlin was terminated for "blatant timecard fraud" and not her union activity, is unsupported and unpersuasive.

[48] Though I have found DeForest committed two unfair labor practices, it is also clear employees, viewed her overall management style as a significant improvement over Sprague. Given the widespread and widely publicized organizing campaign at REI stores across the country at the time of the events in this decision, it would be naïve to believe that the unfair labor practices, and particularly Hamlin's discharge, started and ended with interim and then new store manager Kayla DeForest.

[49] The Respondent claims a lesser percentage, but still a majority.

the better from the time the cards were presented to Sprague to the date of the election, the loss of 8 votes is not necessarily attributed entirely to the effects of Hamlin's termination.

The time between the election and when the Board will likely issue any order, which although not dispositive alone, also weighs against a bargaining order. More than 2 years and 7 months have passed since the election and the issuance of this decision. Almost certainly, well over 3 years will have passed before the issuance of any Board order.[50] The Respondent also submitted evidence that there has been significant turnover since the time it began its unfair labor practices. Joint Exhibit 4 shows the following turnover rates: January 1, 2021 to January 1, 2022 (46%); January 1, 2022 to January 1, 2023 (29%); January 1, 2023 to January 1, 2024 (42%); January 1, 2024 to January 1, 2025 (52%). This weighs strongly against a bargaining order. See *Novelis Corp. v. NLRB*, 885 F.3d 100, 110-111 (2d Cir. 2018) (one-third employee turnover compels denial of enforcement). Turnover is an important factor, because, as the *Gissel* Court emphasized, in a category II case, "effectuating ascertainable employee free choice becomes as important a goal as deterring employer misbehavior." *Gissel* at 614; See also *NLRB v. Village IX, Inc*., 723 F.2d 1360, 1370 (7th Cir. 1983) ("to give employees a collective bargaining representative that they do not want, as a way of punishing their employer for committing unfair labor practices, is . . . discordant with the basic philosophy of the Act"); *Charlotte Amphitheater Corp. v. NLRB*, 82 F.3d 1074, 1078-1079 (D.C. Cir. 1996).

I find the balance weighs against issuance of a bargaining order, and the employees' rights would be best served by a second election, which, for the reasons discussed below, I find to be the appropriate remedy rather than certification of the election.

To ensure that employees are fully able to exercise their section 7 rights, the Board requires that elections take place under "laboratory conditions" free from coercion by the union or the employer. *Harborside Healthcare, Inc*., 343 NLRB 906, 909 (2004). The critical period begins on the date the petition is filed and runs through the date of the election. *Ideal Electric Mfg. Co*., 134 NLRB 1275 (1961); *Dal-Tex Optical Co*., 137 NLRB 1782 (1962). Under longstanding Board caselaw, an election will be set aside when an employer violates Section 8(a)(3) of the Act during the critical period. See *Baton Rouge Hospital*, 283 NLRB 192, 192 fn. 5 (1987); *Lucky Cab Co.*, 360 NLRB 271, 277 (2014); *Advanced Masonry Assocs*., 366 NLRB No. 57, slip op. at 1 fn.3 (2018).

The Respondent contends that, despite any finding of an 8(a)(3) violation in connection with Hamlin's termination, this case falls into some sort of exception to the above-cited precedent. The Respondent argues that the election results should stand because the employees understood that DeForest discharged Hamlin for her blatant timecard fraud and not for her Union activity.[51] As explained above, I find the record does not support the conclusion that Hamlin engaged in fraud, and even more attenuated, there is no evidence that supports a notion that employees believed Hamlin engaged in fraud. Regardless, it is widely understood that "[i]In modern day labor relations, an employer will rarely" admit "that it has disciplined an employee because it detests unions or will not tolerate employees engaging in union or other protected

[50] Given the current circumstances, including a prolonged time period without a Board quorum in 2025 and a recent 7-week government shutdown, this estimate is extremely conservative.

[51] See Respondent's Brief at p. 33.

activities." *Wright Line*, 251 NLRB at 1083. Of course REI was not going to tell employees that Hamlin was terminated because of her union support and/or to quell the ongoing organizing drive. And, contrary to the Respondent's assertion, the reported shock by employee Garvey when he heard the justification for Hamlin's termination suggests an inference that he found it unbelievable.[52]

Applying the principles set forth in the Board's caselaw above against the facts presented warrants setting aside the election and directing that a new election be conducted.

Because REI's "unfair labor practices are such that they are likely to have a continuing coercive effect on the free exercise by employees of their Section 7 rights long after the violations have occurred," I recommend that additional remedial action be ordered to "dissipate as much as possible the lingering atmosphere of fear created by the Respondent's unlawful conduct and to ensure employees will "be able to voice a free choice" when a re-run election occurs. *Haddon House Food Products, Inc*., 242 NLRB 1057, 1058-1059 (1979) enfd. in pert. part, 640 F.2d 392 (D.C. Cir. 1981), cert. denied 454 U.S. 827 (1981).

The General Counsel has requested a notice reading and a reading of the Board's Explanation of Employee rights. The Board has explained the rationale for notice readings, distilled from its caselaw:

> The Board has ordered the notice-reading remedy in cases where the respondent's unlawful conduct has been "sufficiently serious and widespread" to ensure that the content of the notice is disseminated to all employees. . . . Notice reading is a way to let in a "warming wind of information" to not only alert employees to their rights but also impress upon them that, as a matter of law, their employer or union must and will respect those rights in the future. Reading the notice . . . aloud disseminates that information through the work force in a clear and effective way. This awareness, in turn, means that respondents will be less able to violate the Act unnoticed as a matter of course. . . . Notice reading offers employees a chance to hear, in a formal setting and in the presence of other employees and a Board agent, that their rights have value and that the Board takes those rights seriously.

Noah's Ark Processors, LLC d/b/a WR Reserve, 372 NLRB No. 80, slip op. at 6 (2023) (footnotes omitted). I agree a notice reading is needed to remedy the effects of the discrimination and to ensure any re-run election is undertaken with employee knowledge that management understands their rights under the Act, and their vote will be free from coercion. *Stern Produce*, above, slip op. at 5.

The General Counsel has also requested a reading of the Board's Explanation of Employee Rights. I find the notice reading will be an effective remedy to convey to employees and managers their rights and responsibilities. I therefore decline to grant this remedy. I also decline to grant the requested remedy of a letter of apology to Hamlin. The General Counsel has not shown that the letter is necessary, and in my view the notice posting and notice reading are

[52] Even without Aberle's testimony regarding his conversation with Garvey, I would come to the same conclusion.

the best vehicles to assure Hamlin and all employees know that the Respondent understands its obligations under the Act and will not infringe upon employees' Section 7 rights. See *Titan Health, LLC d/b/a Tweedleaf,* 372 NLRB No. 96, slip op. at 3 fn. 2 (2023).

CONCLUSIONS OF LAW

1. The Respondent, Recreational Equipment, Inc., is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Charging Party, United Food and Commercial Workers, Local 555, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) and (3) of the Act by, on May 11, 2023, discharging employee Lindlee Hamlin.

4. The Respondent violated Section 8(a)(1) of the Act by, on or about April 20, 2023, coercively interrogating its employees by asking what they wanted to gain from a union.

5. The Respondent violated Section 8(a)(1) of the Act by, on or about May 18, 2023, telling its employees not to talk about their terminated coworkers' voting rights.

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

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent, having unlawfully discharged Lindlee Hamlin, must offer her reinstatement to her former job or if that job no longer exists, to a substantially equivalent position without prejudice to her seniority and other rights and privileges she would have enjoyed absent the discrimination against her.

The Respondent shall make Hamlin whole, with interest, for any loss of earnings and other benefits suffered as a result of the unlawful discharge. Backpay shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed *in Kentucky River Medical Center*, 356 NLRB 6 (2010).

In accordance with *Thryv, Inc*., 372 NLRB No. 22 (2022), enf. denied on other grounds 102 F.4th 727 (5th Cir. 2024), the Respondent shall also compensate Hamlin for any other direct or foreseeable pecuniary harms incurred as a result of the unlawful discharge, including reasonable search-for-work and interim employment expenses, if any, regardless of whether

these expenses exceed interim earnings.[53] Compensation for these harms shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

The Respondent shall also be required to remove from its files any references to the unlawful discharge of Hamlin and to notify her in writing that this has been done and that the discharge will not be used against her in any way.

Having found the Respondent interrogated an employee by asking what they wanted to gain from a union, the Respondent shall be ordered to cease and desist from such action. Having found the Respondent coercively told an employee not to talk about their terminated coworkers' voting rights, the Respondent shall be ordered to cease and desist from such action.

The Respondent shall post an appropriate informational notice, as described in the attached appendix. This notice, on a form provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the Respondent shall distribute the notice electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notice is not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed its facility, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at the facility at any time since April 20, 2023.

I shall recommend the Respondent be ordered to hold a meeting or meetings during work time at its Eugene, Oregon store, scheduled to ensure the widest possible attendance of employees, at which the attached notice marked "Appendix" will be read to employees by Store Manager Kayla DeForest, in the presence of a Board agent and an agent of the Union if the Region or the Union so desires, or, at the Respondent's option, by a Board agent in the presence of Kayla DeForest and, if the Union so desires, the presence of an agent of the Union. See *Bozzuto's, Inc*., 365 NLRB 1444, 1448 (2017).

Finally, I will order that the election held on May 30, 2023, be set aside, and Case 19-RC-315803 be severed and remanded to the Regional Director for Region 19 to direct a second election whenever the Regional Director shall deem appropriate.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[54]

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[53] *Thryv* remains valid Board precedent under the Board's long-established policy of nonacquiescence to adverse appellate court decisions. *Airgas USA, LLC*, 373 NLRB No. 102, slip op. at 1 fn. 2 (2024)

[54] 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.

ORDER

The Respondent, Recreational Equipment, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating employees by asking what they hope to gain or what they want from a union.

(b) Coercively telling employees not to discuss their terminated coworkers' voting rights.

(c) Disciplining or firing its employees because of their Union membership or support or because they choose to engage in protected activities, or to discourage other employees from engaging in such activities.

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

(a) Within 14 days from the date of this Order, offer Lindlee Hamlin full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges she previously enjoyed.

(b) Within 14 days from the date of the Board's Order, make Hamlin whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, including for all consequential damages incurred. Compensate Hamlin for any search-for-work and work-related expenses, regardless of whether Hamlin received interim earnings in excess of those expenses, or at all, during any given quarter, or during the overall backpay period.

(c) Within 14 days from of the date of the Board's Order, compensate Hamlin for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and (1) file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters, and (2) provide a copy of the IRS form W-2 for wages earned in the current calendar year.

(d) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharge of Hamlin and, within 3 days thereafter, notify her in writing that this has been done and that the discharge will not be used against her in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an

electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay, if any, under the terms of this Order.

(f) Within 14 days after service by the Region, post at the Store, copies of the attached Notice to Employees. Copies of the Notice, on forms provided by the Regional Director for Region 19 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for at least 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as text messaging, e-mail, posting on social media websites, and posting on internal applications, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at the Eugene, Oregon store since April 20, 2023.

(g) Grant Board agents access to its facilities and produce records so that the Board agents can determine whether it has complied with posting, distribution, and mailing requirements.

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

IT IS FURTHER ORDERED that the election held on May 30, 2023, is set aside, and Case 19-RC-315803 is severed and remanded to the Regional Director for Region 19 to direct a second election whenever the Regional Director shall deem appropriate.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. January 14, 2026

Eleanor Laws
Administrative Law Judge

APPENDIX

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

FEDERAL LAW GIVES YOU THE RIGHT TO:

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

WE WILL NOT interfere with, restrain, or coerce you in the exercise of the above rights

WE WILL NOT coercively interrogate you by asking you what you hope to gain or what you want from the Union.

WE WILL NOT instruct you not to discuss your terminated coworkers' voting rights.

WE WILL NOT discharge you because you engage in activities on behalf of, or in support of the Union.

WE WILL offer Lindlee Hamlin immediate and full reinstatement to her former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights and/or privileges.

WE WILL pay Lindlee Hamlin for any loss of earnings and other benefits because we fired her, less any net interim earnings, plus interest and adverse tax consequences and **WE WILL** also make Lindlee Hamlin whole for any other including direct or foreseeable financial harms suffered, plus interest computed in accordance with current Board policy, plus reasonable search-for-work and interim employment expenses.

WE WILL remove from our files all references to our discharge of Lindlee Hamlin and **WE WILL** notify her in writing that this has been done and that the termination will not be used against her in any way.

RECREATIONAL EQUIPMENT, INC.
(Employer)

Dated: _____ By: _____
(Representative) (Title)

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

915 2nd Avenue, Room 2948, Seattle, WA 98174-1078
(206) 220-6300, Hours: 8:15 a.m. to 4:45 p.m. PT

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/19-CA-316615 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (206) 220-6340.