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

ALDRIDGE ELECTRIC, INC.,
Respondent

and Case 5-CA-323420

ROBERT STAFFORD, an Individual,
Charging Party

Andrew Andela, Esq., *Patrick J. Cullen, Esq.*, and *Stephanie Cotilla Eitzen, Esq.(*on brief*),* for the General Counsel.

Jacob Sitman, Esq.,
for Respondent.

DECISION

STATEMENT OF THE CASE

ROBERT A. GIANNASI, Administrative Law Judge. The complaint in this case, as amended (G.C. Exh. 20), alleges that the Respondent violated Section 8(a) (3) and (1) of the Act by discharging Charging Party Robert Stafford both on May 19 and on July 6, 2023, also on July 6 deeming him ineligible for rehire, and, on June 16, 2023, imposing "onerous and rigorous" terms and conditions of employment on him by directing him to take a drug test under direct observation. Such actions were allegedly

undertaken because Stafford engaged in activities protected by Section 7 of the Act and to discourage union activities—more particularly, because he made safety complaints, engaged in a work stoppage and filed a grievance through his union. Respondent filed an answer denying the essential allegations in the complaint.[1]

The case was tried before me virtually in the Zoom for Government platform for several days from July through December 3, 2025. After the conclusion of the trial, the General Counsel and the Respondent filed briefs, which I have read and considered. Based on the briefs and the entire record, including the testimony of the witnesses, and my observation of their demeanor, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation with an office and place of business in Libertyville, Illinois, is engaged in providing electrical services to private and government customers. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. Respondent also admits, and I find, that Local Unions Nos. 26 and 70, International Brotherhood of Electrical Workers, AFL-CIO (hereafter referred to as Local 26 and Local 70) are labor organizations within the meaning of Section 2(5) of the Act. Tr. 318.

[1] The original charge in this case was filed on August 9, 2023, and an amended charge was filed on September 9, 2023. The complaint was not issued until April 29, 2025. G.C. Exh. 1.

II. Alleged Unfair Labor Practices
A. The Facts

This case deals with evidence involving Charging Party Robert Stafford on two separate projects Respondent was undertaking in the Washington D.C. area, one in 2022, and the other in 2023. The complaint allegations, however, deal only with the second project, the one in 2023 at the Mount Vernon substation for PEPCO, the area-wide utility company (Tr. 374). Respondent obtained electricians, including Stafford, from Local 26 for the 2022 project, and from Local 70 for the other, although no specific collective bargaining agreement was offered into evidence to define the relationship between the parties. Stafford was a member of both unions and obtained his jobs through the hiring halls of both locals. Other electricians working on Respondent's projects included so-called travelers, members of other locals, who used Local 26 and Local 70 hiring halls and were referred to jobs after the members of Local 26 and 70.[2]

Background

Respondent, which has been in the electrical construction business for over 70 years, operates throughout the United States. It employs over 1,400 employees and has union contracts covering many of its employees. G.C. Exh. 12.

Sometime in early Spring of 2022, Robert Stafford, a journeyman electrician and member of Local 26, was referred to Respondent to work on its project replacing "fiber optics lines" on the Washington, D.C. Metro Area Transit System (WMATA, also

[2] Respondent admits that the following are its supervisors and agents within the meaning of Section 2(11) and 2(13) of the Act: Kyle Brooks; Ben Coats; Jacob Goudreau; Giancarlo Matallana; and Amanda Rossmann. G.C. Exh. 26 and Tr. 319-320, 338.

referred to as Metro). Tr. 49-51. Stafford worked on that job for a "couple of months." Tr.52. Some of the work was above ground and some below ground. On one occasion, Stafford complained about air monitors, used for work he and others were assigned down in a manhole, not being properly calibrated. His foreman, Chris Hubbard, agreed to send the monitors back to the shop to be properly calibrated and reassigned Stafford and his crew to other work for the rest of the day. Tr. 53-55.[3]

On his last day of work on the project, June 10, 2022, Stafford and his crew were again assigned work in an underground manhole. Stafford noticed that the winch on a tripod used to extract workers from the manhole in an emergency was broken. He also noticed the air monitor was not properly calibrated. He informed Hubbard of these problems and told Hubbard that he and his crew would not go into the manhole without a resolution of these matters. Stafford and his crew were not ordered to go into the manhole and were given other duties for the rest of the day. Tr. 60-62,125.[4]

At the end of his workday, when Stafford was leaving and going to the Landover Metro station parking lot where his car was parked, he was met by Respondent's job superintendent,

[3] The Metro job is sometimes referred to in the record as the Metro/Ramada job. Respondent and a company called C3M contracted to do the Metro job as a joint project with both firms having employees working side by side. Hubbard, who was a designated foreman, was a C3M employee. The General Counsel does not allege he was a supervisor or agent of the Respondent. Tr. 99, 103,124-125, 415-416.

[4] At first Stafford insisted that there was a contract right to refuse work for safety reasons, but later it was conceded that that was not true. Rather, according to the General Counsel, this was an OSHA regulation. Tr. 57-60, 122-123. Neither the alleged contract provision nor the OSHA regulation was offered in evidence. So there is nothing in this record to show under what circumstances there was a right to refuse work and whether an employee had the unilateral right to make that decision.

Giancarlo Matallana, who handed him a termination notice and laid him off. Tr. 61-65, 135-140, 144, 149, 152-156, G.C. Exh. 2. None of the other employees on Stafford's crew, all travelers, were laid off at this time. Tr. 65, 141,147. [5]

After laying off Stafford, Matallana asked him to turn in his Metro badge in the presence of a Washington Metro inspector. Stafford refused and left the area without returning the badge. This finding is supported by documentary evidence from witnesses, who provided emails on the matter to Respondent. In his email, the Metro construction manager on the job made clear that Metro did not want Stafford "working on WMATA property" and wanted Stafford's Metro badge returned. R. Exh. 1A. The Metro inspector, who was present, also sent an email to Respondent describing what happened as follows. After Stafford refused to return his badge, the inspector enlisted a Metro police officer, who was also in the area, to help him retrieve the badge. He stated, "As the officer and I were walking over," Stafford "noticed us [and] he hurriedly got in his car [and] drove off." R. Exh. 1A. I find the documentary evidence from the Metro officials particularly reliable as it comes from individuals who have no reason to falsify their accounts.[6]

[5] The three separations in this case were called terminations, discharges or layoffs at various times in this record. Respondent viewed them as layoffs. The three terms are used interchangeably in this decision.

[6] Stafford testified that he did nothing wrong with respect to keeping his badge, which, according to him, he still has "to this day." Tr. 126. He denied that any Metro official was present at the time (Tr. 101), which, as shown above, was false. Much of his testimony was delivered in a self-serving and defensive manner. On cross-examination, he had difficulty recalling the circumstances surrounding the alleged 2022 safety complaints that the General Counsel described (Brief at 27-29) as "central" to the 2023 unfair labor practice case—because, according to Stafford, the events occurred two years before (Tr. 106). Moreover, as mentioned above, his testimony about a contractual right to refuse work on the Metro job was shown to be

No unfair labor practices charges were filed over the Metro layoff. But Stafford filed a grievance through Local 26 over his termination. The record does not include the grievance itself, but Stafford testified that the grievance contested the layoff because of the "reverse layoff procedure" in the applicable bargaining agreement, that is, that he was laid off while travelers were retained. Tr. 65. Respondent's risk manager, Michael Geers, who handled the grievance on behalf of the Respondent, agreed with Stafford that the grievance involved a contract issue dealing with the layoff procedure between members and travelers. The grievance was resolved in favor of Stafford by reimbursement to him of backpay and benefits lost. Tr. 399-401, 445-446, G.C. Exhs. 3-5.[7]

Stafford's Initial Short Stint with Respondent at the Mount Vernon jobsite

Stafford was also a member of Local 70, which has the same geographic jurisdiction as Local 26 but covers different electrical work involving power distribution. Stafford is certified to do such work in addition to his certification to do work covered by Local 26. Stafford utilizes the hiring hall of Local 70 for jobs just as he does the hiring hall for Local 26. Tr. 69-70. But he had been a member of Local 70 for "less than a year" at the time of the hearing and worked out of Local 70 on "probably four or five job sites." Tr. 97.

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false. As a result, I do not find his testimony on any significant issue in this case reliable unless it is corroborated by other reliable testimony or documentary evidence.

[7] Geers testified that Metro's insistence that Stafford could not return to the job compromised Respondent's position on the grievance because, but for that constraint, Respondent was willing to reinstate him to the Metro job. Tr. 416-418.

In May 2023, Stafford was assigned, through Local 70, to work for Respondent at its job at the Mount Vernon substation in the Washington, D.C. area. He attended an orientation session the day before he was scheduled to start work. The very next day, May 19, 2023, he reported for work at the substation and proceeded to work until about noon. Tr. 70-73.

At 11:30 am on May 19, 2023, Respondent's senior vice-president, Jim Splendoria, sent an email to a group of Respondent's officials. It stated that Giancarlo Matallana had notified him that "we accidentally rehired Robert Stafford via L70 today on a utility job. He grieved us and was a real challenge via L26 last year." The remainder of the email was addressed to the future enforcement of the no rehire list. Jt. Exh. 1(c). The record contains another document from Respondent that explicitly states that the reason for Stafford's placement on the no rehire list on June 20, 2022 was that he filed a grievance against Respondent. Jt. Exh. 1(b).[8]

As Stafford prepared for his lunch break, a management representative on the Mount Vernon job approached him at the job trailer and told him he was being laid off. Stafford told him he had just started and asked why he was being laid off so soon. Stafford was told he would find out when he received his "pink slip." Tr. 73-77, 371-375. Shortly thereafter, Stafford was given a pre-printed termination notice under the heading of Local 70 with the notation that he was being laid off by Respondent because he "was on our not eligible for rehire list." It listed the time as 12:55 pm. G.C. Exh. 6.

Stafford reported his layoff to an official of Local 70 who said that Respondent did not have the right to refuse a referral after

[8] No details were offered in Splendoria's email about whatever challenges were posed other than the filing of the grievance. Tr. 503.

the employee started work. The official called a representative of Respondent to discuss the matter. Two days later, after further discussion between representatives of Respondent and Local 70, Stafford was reinstated and returned to the Mount Vernon job site. He was fully reimbursed for time lost due to the short layoff. Tr. 77-78.

Stafford's Further Employment at Mount Vernon and His Accident and Drug Test

Stafford continued working at the Mount Vernon jobsite from the time of his reinstatement through June and the first part of July of 2023. On the morning of Friday, June 16, 2023, Stafford was involved in an accident that happened at about 9:30 am. He was operating the controls of a large lift machine with a basket at the top that permitted a worker inside to reach objects in the upper heights of the workplace. There was no worker in the basket at the time of the accident, but the machine, which weighed a couple of thousand pounds (Tr. 112), fell over on its side and was damaged. This was the first time at Mount Vernon that Stafford had operated this equipment (Tr. 111). No one was apparently injured. Tr. 78-80, 11-113, 260-268. A Safety First Report prepared by Safety Manager Kyle Brooks the same day as the accident stated that the damage caused by the accident totaled between $5,000 and $9,999. The report also contains a picture of the equipment on its side after the accident. G.C. Exh. 13, Tr. 191-192.

Immediately thereafter, Stafford and members of his crew were directed to the job trailer to debrief Respondent's management officials about the accident. The employees were interviewed separately, but Stafford asked for and was permitted to be accompanied by a representative of Local 70 during his interview. It took about an hour and a half for the representative to get to the job site and participate in Stafford's interview. After

the interviews, Stafford and the three other members of the crew were directed to choose sites close to their homes to take drug tests, more specifically, a breathalyzer and a urine test. Tr. 79-83, 110-113, 260-268, G.C. Exh. 7. Respondent's written policy requires drug and alcohol testing of participants in workplace accidents. G.C. Exh. 9, Tr. 210. Stafford conceded that requiring employees to take a drug test after accidents is normal procedure in the industry. Tr. 113.

Stafford lives in Fredericksburg, Virginia, some 50 miles away from the jobsite, so, with the help of Kyle Brooks, Respondent's safety manager, he chose a test site in Fredericksburg. Tr. 82,174-178,182-183, 223-225. The document referring Stafford to the test site has a time notation of 11:57 am. G.C. Exh. 15.

When he arrived at the assigned lab test site, Stafford was told that there was no one present there to administer the breathalyzer test, so he was sent to another site about 20 minutes away to have that test administered. Stafford went to that location and took the breathalyzer test, after which he went back to the first location where he took the urine test under the observation of a male technician. Tr. 83-88. According to documentary evidence, the urine test was taken, under direct observation, at 7:25 pm. G.C. Exh. 7, pp. 4 and 5.

On the following Sunday, an official of Respondent told Stafford that his drug test results had not yet been received, and Stafford should not report for work until the results came in. His test results ultimately came in, and they were negative. G.C. Exhs.16 and 17. He returned to work on Wednesday and was compensated for the two days he missed. Tr. 88.

Direct Observation for Stafford's Urine Test

Much time at the trial was devoted to the requirement that Stafford's urine test was to be taken under "direct observation," meaning that the test is taken with a person present to assure that the sample indeed comes from the body of the person who takes the test. Tr. 163, 247. The three other crew members present when the accident took place were not required to take their urine tests under direct observation. But, according to Amanda Rossmann, Respondent's corporate compliance officer who has overseen Respondent's drug testing procedures for over 16 years (Tr.208), Stafford, unlike the others, did not take his urine test within a reasonable amount of time after the accident. Tr. 170-173, 179. Respondent's policy requires that drug tests are to be taken "as soon as possible following an incident." G.C. Exh. 9, p. 6. That policy also provides that the "[f]ailure to permit a directly observed or monitored collection when required" amounts to a refusal to submit to a drug test. G.C. Exh. 9, p. 7.

As the afternoon progressed, Rossmann became concerned about Stafford's delay in completing his drug test. After being notified by Safety Officer Kyle Brooks of the accident on Friday, June 16, Rossmann started monitoring the drug tests of the four crew members taking the tests by accessing HireRight, the website of the third party administrator that tracks the assignment of the testing site, when the drug tests are taken, and when the results are reported. Tr. 213-222. She spoke to Brooks, who was in contact with Stafford as he was proceeding to the test site, several times during the afternoon. Tr. 169,189-190. The record also contains four sequential email exchanges between the two. G.C. Exh. 10.[9] At 1: 44 pm Eastern Time, Brooks asked

[9] The times on the exhibit reflect that Rossmann was in the Central Time zone and Brooks was in the Eastern Time zone. I have used the Eastern Time zone times above for ease of comparison.

Rossmann to update him on the drug test results of all 4 employees. Tr.219. Rossmann responded at 3: 04 pm Eastern Time as follows (Tr. 216-218):

Michael Plonish----------Completed. Negative.
John Pedrazas----------Completed. Negative.
Michael Ayres-----Completed drug test sent to lab for testing.
Robert Stafford—Not yet complete. Will be conducted under direct observation.

At 3:13 Eastern Time, Brooks emailed that "Robert notified me he just completed." Rossmann replied, "I have no record that it has been completed." G.C. Exh. 10, p.4, Tr. 219-221.

Rossmann knew from checking the HireRight website that what Brooks reported was wrong and that Stafford had not completed his drug test at that point. Tr. 217-220. Rossmann was concerned that Stafford could not be reached (Tr. 171-173), and that he might, by delaying the urine test, subvert the system so that any improper substances would leave his system before the test. Tr. 228-229.[10]

As a result, Rossmann called the lab performing Stafford's urine test to clarify how the test was to be conducted. The lab recorded the call as requiring a direct observation urine test on its authorizing document. Stafford took his urine drug test by direct observation at 7:25 pm, and it was negative for prohibited drugs

[10] It is not unusual for Respondent to require urine tests to be taken by direct observation. Tr.226-228. Of the 7 post-accident test results from the Mount Vernon project mentioned in the record, two other tests were as delayed as was Stafford's, but it is not clear that they were ordered to be taken under direct observation. Tr. 304-307, 357.

G.C. Exh. 7, p. 1, G.C. Exhs. 16 and 17, Tr. 172-173, 230-231, 248-250.[11]

Rossmann, who alone made the decision to require direct observation for Stafford's urine test, does not have anything to do with the working or production side of Respondent and has no knowledge of the work records of particular employees. She works out of the Respondent's headquarters in the Midwest and has no regular contact with Respondent's on-site supervisors at either the Metro or Mount Vernon jobs in the Washington, D.C. area. Rossman credibly testified that she did not know that Stafford had previously been employed by Respondent in 2022, and she never talked to Giancarlo Matallana about Stafford. Thus, she knew nothing about whether or not Stafford had made safety complaints or filed a grievance over his earlier discharge through Local 26. She also did not know anything about his being put on a no rehire list. Tr. 232-235. There is no record evidence to suggest otherwise.

The Last Part of Stafford's Employment and His Termination

Once his urine test was confirmed as being negative, Stafford returned to work at Mount Vernon. But the Respondent

[11] Rossmann insisted in her testimony that she did not tell the Fredericksburg lab to conduct Stafford's urine test under direct observation—that was the lab's determination. Rather, she told the lab to make sure Stafford was watched closely when undergoing the test—by "keeping an eye on him." Tr. 183, 186, 203, 228-230. This part of Rossmann's testimony is contrary to her email to Brooks cited above, which specifically mentioned direct observation. However, even if Rossmann told the lab what she said she did, the lab rightly read that direction to require a direct observation test. The semantic difference between the two descriptions is not significant here because they both support a requirement of direct observation. I therefore find that Respondent did in fact order direct observation of Stafford's urine test.

continued its investigation of the accident. Two additional accident reports, one an interim report dated June 21, and the other a final report dated June 27, clearly show that Stafford was responsible for the accident. According to the reports, when the accident occurred, the regular lift operator had exited the area, and Stafford took it upon himself to "pack up the lift by retracting the outriggers." But only one of them was raised, "causing the lift to tilt onto its side." The investigatory reports state that "there was no mechanical failure." They also state that Stafford was not qualified to operate the lift and had not been certified by Respondent or any third party to operate it. Jt. Exhs. 1(e) and 1(f), Tr. 490-497.

Risk Manager Geers referenced those reports when the General Counsel questioned him on cross examination claiming Stafford was "never disciplined" for the accident "other than not being rehired." Geers responded directly and firmly, "I don't agree with that." He went on to describe in detail Stafford's responsibility for the accident. Tr. 440-442.

At some point during the day of July 6, 2023, Stafford was given a pre-printed Local 70 termination notice stating that he had been laid off by Respondent due to a reduction in force. The notice also stated that he was not eligible for rehire. G. C. Exh. 8, Tr. 88-92.

Mount Vernon Superintendent Kevin Guizar, who was not involved in placing Stafford on the no rehire list (Tr. 384), made the July 6 layoff decision. He credibly testified that this was a routine layoff, based on the ebb and flow of the needs on that particular job. Other journeymen electricians like Stafford were also laid off at this time because of lack of work. Tr. 373-384. Guizar regulates manpower by considering such matters as "[s]cheduling, material issues. Just as the work would be completed, if we completed a portion of the work where we didn't

need the manpower, we would have to leave them go." Tr. 372. Guizar had no knowledge of Stafford's prior work for Respondent or his union or protected activities. Tr. 373. There is nothing in the record that reliably refutes Guizar's testimony.[12]

In late September or early October of 2023, Respondent's risk manager, Michael Geers, who, among other things, manages union contracts and grievances for Respondent, submitted a position statement to the Board during the investigation of this case. Tr. 401-402. He stated that Stafford was terminated on July 6 "as part of a larger reduction in the number of employees . . . based on the needs of the [Mount Vernon] project." R. Exh 1 A and G.C. Exh. 12. He also stated that Stafford was placed on the no rehire list that same day because of "concern for safety and security, due to his unacceptable behavior and actions" on the 2022 project and his "unsafe actions: that led to the incident on June 16, 2023." The latter was a reference to the accident caused by Stafford that was described earlier in the position statement, as well as earlier in this decision. The former was a reference to Stafford's refusal to surrender his Metro badge at the time of his 2022 termination, as discussed above. In his testimony, Geers emphasized Stafford's accident as the main cause of placing him on the do not rehire list on July 6, 2023. Tr. Tr. 403-421.[13]

[12] The General Counsel subpoenaed the physical layoff notices and questioned Geers about the subject. Geers testified that he searched for them in response to the subpoena and learned that they did not exist for the Mount Vernon job. They however may have been available through the Union. See Tr. 310-316. None were presented in this record. I found Geers's testimony on this issue, as in all his testimony, to be candid, credible and reliable. Thus, I also find that Respondent was fully compliant with the subpoena on this matter.

[13] I find, contrary to the General Counsel's assertion (Tr.350), that Geers's reference in the position statement to safety and security as one of the reasons for Stafford's placement on the no rehire list on July 6, 2023 is

B. Discussion and Analysis

An employer violates Section 8(a)(1) of the Act if it discriminates against employees because they engaged in protected concerted activity within the meaning of Section 7 of the Act, and violates Section 8(a)(3) and (1) if that discrimination is based on union activity. *St. Paul Park Refining Co*., 366 NLRB No. 83 (2018), enfd. 929 F.3d. 610 (8th Cir. 2019). Section 7 protects activity that is done with or with the authority of other employees and taken to improve or safeguard their terms and conditions of employment. *Fresh & Easy Neighborhood Market, Inc.*, 361 NLRB 151, 152-153 (2014). Filing a grievance to enforce the terms of a collective bargaining agreement is undeniably a concerted protected activity. *NLRB v. Disposal Systems, Inc.,* 465 U.S. 822 (1984).

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not a statement against interest. His position statement lists two reasons for Stafford's placement on the no-rehire list. The most recent and significant reason was Stafford's "unsafe actions" that caused the serious accident at Mount Vernon in mid-June. Geers also added safety and security concerns about Stafford at the time of his termination from the Metro job the year before. But his reference to those concerns did not involve a security issue and does not mention any union or protected activity. Geers credibly explained that the language he used referred to the failure of Stafford to return his Metro card and his flight from the Metro inspector and policeman with his Metro card immediately after he was terminated. That did involve a security issue. As Geers testified, "it wasn't just Aldridge that had an issue with Stafford's behavior. It was really the owner also and their recognizing that he was an issue on the project site and his behavior was unacceptable. It wasn't about his union activity. It was about the owner not wanting him back." Tr. 418. In any event, the General Counsel's assertion focuses on Stafford's July 2023 placement on the no-rehire list. As to that, there is no doubt about the reference to Stafford's accident which alone would have justified putting him on the no rehire list at that point.

The issue of discrimination basically presents a question of motivation. Such cases are analyzed under the causation test set forth in *Wright Line*, 251 NLRB 1083 (1980), enf'd. on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.,* 462 U.S. 393 (1983). Under *Wright Line,* the General Counsel must satisfy an initial burden of showing by a preponderance of the evidence that the employee's protected activity was a motivating factor in a respondent's adverse action. In addition to the causal connection inherent in the *Wright Line* test, the General Counsel satisfies the initial burden by showing (1) the employee's union or protected activity; (2) the employer's knowledge of such activity; and (3) the employer's animus. If the General Counsel meets that initial burden, the burden shifts to the respondent to show that it would have taken the same action even absent the employee's protected activity. *St. Paul Park,* cited above, at slip op. 12. See also *Pro-Spec Painting*, Inc., 339 NLRB 946, 949 (2003).

The First Termination or Layoff

After being hired for work on Respondent's Mount Vernon project through the Local 70 hiring hall, attending a one-day orientation session, and working on the job the next day for about half a day, Stafford was laid off on May 19, 2023. The termination notice stated that the reason was his prior placement on Respondent's do not rehire list. Stafford was placed on the no rehire list after he was laid off in 2022 from the Local 26 Metro job by Superintendent Matallana. The irrefutable evidence of a reason for such action is based on Respondent's documents showing that Matallana placed Stafford on the do not rehire list because Stafford filed a grievance against Respondent. Thus, I find that Respondent laid Stafford off from the Mount Vernon job with Local 70 because he was on its no rehire list and he was placed on that list by Matallana because he had filed a grievance

against Respondent—a protected activity under Section 7 of the Act. I must therefore find that the May 19 layoff was unlawful.[14]

But I nevertheless believe the circumstances warrant dismissal of the complaint allegation regarding the May 19 layoff on *de minimis* grounds. The layoff was rescinded two days later, and Stafford was reinstated with full backpay. Thus, the violation was quickly and substantially remedied. Respondent does not, insofar as the record shows, have a record of violating the Act. Indeed, it appears to have a decent relationship with the unions it deals with and from which it obtains its workers. Also relevant is that Stafford was placed on the no rehire list due to Matallana's animus against Stafford for filing a grievance against his layoff of Stafford the year before. There is no evidence that Greer, who granted Stafford's grievance based on a contract interpretation issue, or Guizar, the superintendent, who hired Stafford for the Mount Vernon job (Tr. 371-372), bore the same animus against Stafford or had anything to do with placing him on the no rehire list for what happened the year before. Nor is there any evidence of any contact between Matallana and Guizar about the layoff itself. Indeed, the Metro job operated under a separate division of Respondent than the Mount Vernon job. Tr. 409. There is thus

[14] I reject the repeated assertions in General Counsel's brief that the May 19 layoff and other alleged complaint violations on the Mount Vernon job in 2023 were somehow causally connected to Matallana's layoff of Stafford on the Metro job in 2022 that was, in turn, caused by Stafford's safety complaints. Stafford confirmed that he could only "recall" two safety complaints he made during his entire tenure on the Metro job (Tr. 104). Not only was what happened on the Metro job attenuated in time and place from what happened on the Mount Vernon job, but the jobs were under separate and different divisions of the Respondent. And there is no evidence of communications about safety complaints between Matallana and the Mount Vernon decision makers. Significantly, there is also no evidence that the earlier safety complaints on the Metro job were ever raised during Stafford's stint on the Mount Vernon job either by him or Respondent.

good reason for the Board to stay its hand on this allegation. See *American Federation of Musicians, Local 76 (Jimmy Wakely Show),* 202 NLRB 620, 621-622 (1973). See also *Dish Network Service Corp.,* 339 NLRB 1126, 1128 fn. 11 (2003); and *Titanium Metals Corp.*, 274 NLRB 706 (1985).[15]

The Allegation that Respondent Imposed Onerous and Burdensome Working Conditions on Stafford by Requiring Him to Undertake His Urine Test by Direct Observation.

I am doubtful that ordering a urine test to be done under direct observation after a work accident amounts to an "onerous and rigorous" working condition as stated in the complaint. But assuming it is, I nevertheless dismiss this allegation under the circumstances here.

Ms. Rossmann, the only person in charge of making the decision on direct observation, credibly denied any knowledge of Stafford's previous employment with Respondent, which would include any knowledge that he was originally placed on the no rehire list because he had filed a grievance against Respondent. She did not communicate with Matallana, who was responsible for putting him on the no rehire list for that reason. Nor would Rossmann have had knowledge of any other protected or concerted activity, whether from Stafford's 2022 work or from his work at the Mount Vernon job, due to her complete separation from the production part of Respondent's operations. Moreover,

[15] The *Jimmy Wakely* case cited above involved an alleged union unfair labor practice. The employer was the Jimmy Wakely Show, a traveling musical revue headed by Jimmy himself. Wakely was a second tier singing cowboy and recording artist, whose singles included "I Love You so Much it Hurts" and "Everyone Knew but Me." Jimmy Wakely died in 1982 at age 68, but he lives on eponymously in the Board case reports, including as recently as 2017 in a dissent from Former Chairman Ring at 368 NLRB No. 115, slip op. 6.

there is no evidence Rossmann had any improper animus, or any animus at all, toward Stafford that caused her to order a direct observation urine test for Stafford.

It is clear from Rossmann's credible and uncontradicted testimony that her reason for ordering a direct observation test for Stafford was because of his unreasonable delay in taking the urine test. The accident occurred at 9:30 am and he took his urine test at 7:25 pm. Thus, not only has the General Counsel failed to meet the initial *Wright-Line* burden for the alleged violation, but Rossmann's only reason for ordering the direct observation test was non-discriminatory. This means Stafford would have been ordered to take his urine test by direct observation even if the General Counsel had met the initial burden of proof. Accordingly, this allegation of the complaint is dismissed. [16]

The July 6 Termination & Placement on the Do-Not Rehire List

Like the termination notice of May 19 discussed above, Stafford's layoff and his placement on the do not rehire list are both set forth in the termination notice of July 6, 2023. It is the General Counsel's *Wright-Line* burden to prove that both were motivated by Respondent's animus toward Stafford because of his protected union or concerted activity. But the General Counsel has failed to meet that burden whether the layoff is considered part and parcel of the placement on the no rehire list or whether they are considered two separate matters.

[16] Had I found a violation on this allegation, it would have been another candidate for a *de minimis* dismissal. The drug test was negative, and Stafford was not punished for any delay in taking the test. Nor did Stafford suffer any adverse consequences over the drug test incident. Here again, Stafford garnered a two-day vacation with pay.

First, as shown above, there is insufficient evidence that either of the two kinds of alleged protected activity—the 2022 safety complaints and the 2022 grievance, with the exception of the fully remedied May 19 violation, carried over to the Mount Vernon job, that there was any lingering animus, and, more importantly, a causal connection to the alleged violations on the Mount Vernon job. This applies particularly to Stafford's July 6 termination and placement on the do not rehire list. Significantly, the decision makers in the actions taken against Stafford at the Mount Vernon job on July 6 were not shown to have any contact on either matter with Matallana, the person responsible for originally putting Stafford on the no rehire list. Matallana managed the Metro job—an entirely different job under a different division of Respondent (Tr. 409) that took place a year before the Mount Vernon job. More specifically, Matallana's knowledge and animus related to Stafford's grievance filing over the Metro layoff the year before is not imputable to the Respondent for the July 6 layoff of Stafford on the Mount Vernon job. As the General Counsel concedes (Br. at 34), an inference that one supervisor's knowledge and animus is imputed to a second one is not automatic. This is especially applicable where, as here, the supervisors do not interact in the same workplace. In a similar context, the Board has stated that it will impute knowledge of protected activity from one supervisor to another "unless the employer affirmatively establishes a basis for negating such imputation." *Intertape Polymer Corp.,* 372 NLRB No. 133, slip op. 13, fn. 85 (2023).

Here there is an affirmative showing that there is no reasonable basis to impute Matallana's knowledge and animus to the decision makers in the July 6, 2023 actions. As shown above, Matallana had no presence on or authority over the Mount Vernon job and had no role in the decisions made about the July 2023 termination and placement on the no rehire list. Nor is there any evidence that those who decided, on July 6, to lay off Stafford or

put him on the no rehire list had any animus against him for having filed a grievance or any other protected or union activity. Indeed, the record does not establish exactly who placed Stafford on the no rehire list on July 6, 2023. Finally, there is no evidence of separate protected or union activity by Stafford on the Mount Vernon job after his initial reinstatement on May 21. Accordingly, I find that the General Counsel has not established the first part of the *Wright-Line* burden. [17]

In any event, the Respondent has established that Stafford would have been terminated and placed on the no-rehire list even in the absence of protected or union activities. Geers specifically stated that Stafford's placement on the no rehire list on July 6, 2023 was due to his part in causing the accident in mid-June by taking it upon himself to operate the machinery that was destroyed. He also stated that the layoff was in part based on safety concerns that obviously referred to the accident that Stafford caused. Indeed, timing alone supports the validity of this reason. The accident was the only significant thing in which Stafford was involved in the weeks leading up to his termination at Mount Vernon, save for his delay in getting his drug test, which does not count in his favor. In addition, Superintendent Guizar, who made the decision to lay off Stafford, credibly testified he did so because, at that point, he did not need Stafford or other

[17] I reject the General Counsel's contention (Br. 43) that Splendoria's May 19 email reflected Respondent's unlawful animus against Stafford for his July 6 layoff and placement on the no-rehire list. protected concerted activity. The email seemed less an indication of improper animus, which, in any event came from Matallana, than a reminder to enforce the no-rehire list in the future. Indeed, Respondent essentially admitted that such enforcement on May 19 was an error since Respondent immediately put him back on the job with full backpay. There is no evidence that the matter came up again prior to the July 6 layoff. What did occur, however, in that time frame, was a group layoff of several employees that included Stafford and Stafford's responsibility for a serious work-place accident.

electricians whom he laid off at the same time. This is how he regulates manpower based on the ebb and flow of the needs of the job. As the General Counsel concedes (Br. at 23-24), Stafford was not the only electrician laid off at this time, which is strong evidence that supports Respondent's position. In these circumstances, Stafford would have been laid off and placed on the no rehire list in any event.[18]

Accordingly, the July 6 allegations regarding the layoff and the placement on the no rehire list are dismissed.[19]

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[18] The General Counsel suggests (Brief at 33-34) that Respondent's reason for laying off Stafford on July 6 did not meet its *Wright Line* burden because the hours worked at Mount Vernon show that there was still work to be done on the project. But the document referred to (G.C. Exh. 28) is not reliable in showing that there was more work available of the type Stafford was doing. Nor does the document account for the fact that other employees were also laid off at the same time, as the General Counsel concedes. Indeed, Geers, who prepared the document, testified that the document includes hours of employees with specialties other than those performed by Stafford. Tr. 439-440. Moreover, construction jobs are different than making widgets in a factory. Hours worked on construction projects are affected by many outside factors, including weather and delayed delivery of materials that affect the ebb and flow of work on the job for which, Guizar testified, he was responsible. Thus, any reliance on the hours worked document is unpersuasive on the point raised by the General Counsel.

[19] Even assuming there was a technical violation in Stafford's July 6 termination and placement on the no rehire list, I find that Stafford's responsibility for the accident, as demonstrated on this record, would justify a failure to order reinstatement in this case. Indeed, another justification for the failure to reinstate would be Stafford's refusal to surrender his Metro card upon his layoff in 2022, especially considering that the owner made clear it did not want Stafford back working on any of its projects. This finding is consistent with the Board's policy of denying reinstatement, despite a finding of discrimination, where the employee "engaged in unprotected conduct for which the employee would have discharged any employee." *Marshall Durbin Poultry Co*., 310 NLRB 68, 70 (1993). See

Conclusion of Law

Respondent has not violated the Act in any way. On these findings of fact and conclusion of law, and on the entire record, I issue the following recommended[20]

ORDER

The complaint herein is dismissed in its entirety.

Dated at Washington, D.C., January 27, 2026.

Robert A. Giannasi
Administrative Law Judge

also *NLRB v. Big Three Indus. Gas & Equip. Co.,* 405 F.2d. 1140, 1142 (5th Cir. 1969) (truck driver denied reinstatement because he had multiple traffic violations).

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