

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

MEDIEVAL KNIGHTS, LLC AND
MEDIEVAL TIMES U.S.A. INC.

and

Case 22-CA-351533

MARCUS VERE, AN INDIVIDUAL

Trent Hanifin, Esq., for the General Counsel
Daniel J. Sobel, Michael G. Rodriguez, and
Michael G. Greenfield, Esqs. (Blank Rome LLP),
Philadelphia, PA, for the Respondent

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried in Newark, New Jersey on August 25-26 and September 9, 2025. The charge in this case was filed by Marcus Vere on October 1, 2024. Based on that charge, the Acting General Counsel (General Counsel) issued a complaint on June 5, 2025 alleging that Medieval Knights, LLC and Medieval Times U.S.A., Inc. (Respondent) violated Sections 8(a)(3), (4) and (1) of the National Labor Relations Act (the Act)¹ by issuing warnings to Vere on April 17 and 28, July 19, and August 14, 2024², and a final warning on September 23, 2024, because he supported the American Guild of Variety Artists (the Union), engaged in other concerted activities, and testified in National Labor Relations Board (Board) hearings in Cases 22-CA-301865, 22-CA-305612, 22-CA-311585, 22-CA-312517, 22-CA-311421, and 22-CA-332987.

Respondent admits that it disciplined Vere on the aforementioned occasions but denies that those actions were discriminatorily motivated. As for defenses raised by Respondent that are appropriately before the administrative law judge,³ Respondent contends that it acted properly at all times, it has been denied due process of law, was prejudiced by the undue delay in filing the complaint, and the allegations fail to state a cause of action, are not justified or identified with sufficient particularity, exceed those alleged in the unfair labor practice charge, do not warrant relief, are contrary to Board precedent, are time-barred, or, at most, are de minimis violations.

On the entire record,⁴ including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

¹ 29 U.S.C. §§ 151-169.

² All dates refer to 2024 unless otherwise stated.

³ Respondent's affirmative defenses at ¶¶ 18-22 of its answer raise constitutional objections that can only be addressed by the Board.

⁴ Respondent's unopposed "Motion to Amend the Record to Strike References to Respondent's Exhibit 16," dated September 16, 2025, is granted. R. Exh. 16 has been withdrawn and is stricken from the record.

FINDINGS OF FACT

I. JURISDICTION

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Respondent, a company with its principal office and place of business in Irving, Texas, with other locations throughout the United States, including Lyndhurst, New Jersey (the Lyndhurst Castle), is engaged in the business of show performance services. Annually, Respondent derives gross revenues in excess of \$500,000 in conducting its nationwide business operations, and purchases and receives goods at the Lyndhurst Castle products, goods, and materials valued in excess of \$5,000 directly from points outside the State of New Jersey. The 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.

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II. ALLEGED UNFAIR LABOR PRACTICES

A. Respondent's Operations

1. General Background

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Respondent provides a dinner theatre show to guests at several facilities, referred to as castles, throughout the United States. The show is presented in a medieval setting, with a king, queen, horseman, jousting, sword fighting, and a parade consisting of eight knights on horseback, each conducting a coordinated dressage routine while food and beverages are served to the guests.

25

The Lyndhurst Castle's show is produced through the efforts of 12 departments and over 100 employees. The show side includes the Knights and Squires (Knights Department), Stables, Horse Trainers, and Show Cast departments. The building side includes the Food Retail, Cash Control, Bar, Event Staff, Sound and Lightning, and Maintenance departments.

30

Nate Thompson has been the Lyndhurst Castle's general manager since 2022. He hires and fires employees, and oversees and castle's 12 managers. Thompson issues and sits in on all final notices of discipline. However, he is not generally involved in coaching and lesser discipline unless managers request it.⁵ The department at issue in this case, the Knights Department, is managed by Head Knight Kyle Watkins and Assistant Head Knight James Brown.⁶

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2. The Knights Department

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The Knights Department employs knights and squires. Employees are hired as squires and can earn promotion to knight. Knights joust on foot with swords and other weapons, and ride and

⁵ Although Thompson testified that managers do not require his approval for all discipline below the level of a "final notice," he still signed the "progressive discipline form-USA" issued to employees for all forms of formal discipline. (Tr. 181-183; GC Exhs. 13-14; R. Exh. 15, pp. 285, 382, 388, 501.)

⁶ At all material times, Thompson, Watkins, and Brown acted as supervisors within the meaning of Section 2(11) of the Act and/or agents of Respondent within the meaning of Section 2(13) of the Act

choreograph stunts on horses. At the end of the show, they are also expected to interact with the guests by giving autographs and being photographed.

The promotional ladder for knights is as follows: Apprentice Knight, Knight 1, Knight 2, Knight 3 (Senior Knight), and Senior Knight Speaking Role. Beginning with Knight One, the level dictates how many fights per show the knight will participate in. At the Knight Two level, the employee begins to work with horses. Promotion to Senior Knight Speaking Role requires proficiency in all fighting skills, jousting, and horse routines (long lines) and parade. Promotional reviews are conducted annually.

On days when there are no performances, knights and squires are required to attend practices. During practice days, knights participate in several activities, including teaching new skills to new knights and squires, and practicing and implementing new shows. The practices are instructed by Watkins, who is assisted by Brown and knights considered to be good performers and teachers.

B. Respondent's Policies and Practices

Respondent's employees, including Vere, were provided with the revised Team Member Handbook in September 2021 (employee handbook).⁷ The applicable sections include:

1. Standards of Conduct

Section 9 of the employee handbook sets forth Respondent's progressive disciplinary policy. The policy gives managers and supervisors discretion in enforcing the standards of conduct. The policy states, in relevant part:

All Medieval Times Team Members are required to demonstrate the highest standards of personal conduct. The following regulations are provided to assist and guide you in becoming the best Team Member possible, as well as to create a pleasant atmosphere for our guests. The Company has established a system of progressive discipline which includes formal coaching, written warnings, final warnings, and termination. The system is not formal and the Company may, at its sole discretion, utilize whatever form of discipline is deemed appropriate under the circumstances. This includes termination of employment without any prior warnings or discipline. The Company's discipline policy in no way limits or alters the at-will employment relationship.

The following list is intended to give an example of the types of conduct prohibited by the Company. Obviously, it is not possible to cover every possible situation that may arise, and this list should not be considered exhaustive. Team Members should therefore realize that conduct not specifically listed below, but which the Company believes in its judgment adversely affects the interests of the Company, other Team Members, or guests, may also result in disciplinary action, up to and including unpaid suspension or termination:

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⁷ GC Exh. 2; R. Exh. 26.

(9) Excessive unexcused absence from work, or persistent tardiness for work or in returning from breaks.

5 (11) Gambling or engaging in non-work activities during working time, including sleeping on the job.

10 (17) Failure to abide by current and subsequently issued policies, including all policies in this Team Member Handbook, or work rules of the Company or any existing department standards, including, but not limited to:

10 • Leaving your assigned work area without the permission of your supervisor.

15 In most instances, Respondent's managers initially address disciplinary issues by verbally counseling employees. Although not issued in writing or considered to be discipline, informal coaching is usually documented by the manager and incorporated into any subsequent discipline.

20 In its December 17, 2024 supplemental position statement, Respondent described, in pertinent part, the process that it followed regarding the coaching and discipline of employees in the Knights Department:⁸

25 If Watkins and Thompson detect a pattern indicating a time and attendance concern with a particular employee, then the coaching/counseling process is initiated in order to try and resolve the issue without the need for formal progressive discipline. If these coachings and counselings are unsuccessful or unimpactful in addressing and rectifying the employee's time and attendance issues, then formal progressive discipline is initiated unless and until the problem is abated.

2. Attendance

30 Section 38 at of the employee handbook provides managers and supervisors with discretion in maintaining and enforcing employee time and attendance:

35 From time to time, it may be necessary for you to be absent from work. Medieval Times is aware that emergencies, illnesses, or pressing personal business that cannot be scheduled outside your work hours may arise.

40 If you are unable to report to work, or if you will arrive late, contact your supervisor immediately by telephone. (Texting or emailing is not an acceptable form of notification.) If you know in advance that you will need to be absent, request this time off directly from your supervisor.

45 A consistent pattern of questionable absences can be considered excessive, and may result in disciplinary action up to and including termination. Absence from work for three (3) consecutive days without notifying your supervisor will be considered a voluntary resignation.

⁸ Jt. Exh. 7, p. 3.

If you are absent because of an illness for three (3) or more successive days, your supervisor may request that you submit written documentation from a doctor stating you are able to resume normal work duties before you will be allowed to return to work.

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Notwithstanding the attendance policy requiring employees to call a supervisor by telephone if they were going to be late, Head Knight Kyle Watkins requires Knights Department employees to text in those instances. If he is out, the employee is to notify Assistant Head Knight James Brown. Prior to December 2023, Watkins permitted Knights Department employees to 10 clock-in up to 10 minutes before and 10 minutes after their start scheduled shift.⁹

C. Marcus Vere's Employment By Respondent

Vere has been employed by Respondent since 2019 as a knight. He is currently a Knight 15 Level 2. Kyle Watkins, the Head Knight, has been his supervisor since 2019. Vere usually rides in the parade in the rear left spot. He has had several speaking roles during performances, including roles as a villain or beggar.

Vere was a Union member, attended most collective-bargaining meetings, and participated 20 in the organizing campaign at the Lyndhurst Castle's parking lot by handbilling in January 2023. Vere was never issued discipline prior to April 17, 2024. Watkins considered Vere to be a good employee and he remains part of a select group of knights that Watkins relies on during practices for teaching newer knights and squires.¹⁰ In June 2024, Vere was considered for promotion to Senior Knight Speaking, but Watkins and Thompson decided not to promote him because he 25 needed to improve his horsemanship skills, specifically, the long long line routines.¹¹

D. The Organizing Campaign

In January 2022, Respondent's employees initiated an organizing effort by contacting the 30 Union, a labor organization within the meaning of Section 2(5) of the Act. On May 26, 2022, the Union filed a representation petition for a bargaining unit consisting of the Lyndhurst Castle's knights, squires, show cast (including trumpeters), and stable hands (bargaining unit). Employees excluded from the bargaining unit were food servers, wardrobe employees, bartenders, retail employees, sound and lighting employees, maintenance employees, housekeeping employees, 35 kitchen employees, event staff employees, administration, and marketing employees.

On July 15, 2022, an election in Case 22-RC-296686 was conducted at the Lyndhurst Castle. The Union prevailed and, on July 25, 2022, the Board certified the Union as the exclusive 40 collective-bargaining representative of the bargaining unit.

⁹ I credited Vere's undisputed testimony that he was never told what would be considered "continuous" or "excessive." (Tr. 31.)

¹⁰ Watkins testified that Vere was one of the employees who "know the fight well and . . . do a good job teaching" and "was a good employee for a long time . . . he was one of my go-to guy that . . . I leaned on him for a long time." (Tr. 161.)

¹¹ Respondent's decision to deny promote Vere in June 2024 is not at issue. (R. Exh. 8; Tr. 192.)

Contract negotiations began in September 2022.¹² Bargaining unit members who regularly attended the sessions included Queen Monica Garcia, Knight Jonathan Beckas, and Vere. Subsequently, the Union filed charges alleging unfair labor practices by the Respondent and a third consolidated complaint issued on November 20, 2023.¹³ However, that complaint did not include 5 any allegation that Respondent failed to bargain in good faith.

The cases were tried before Administrative Law Judge Lauren Esposito over ten days between January 16 and February 1, 2024 (the 2024 hearing). Several Lyndhurst Castle employees 10 testified, including Vere, Garza, and Beckas.¹⁴ General Manager Nate Thompson and Head Knight Kyle Watkins also testified.

During the hearing before Judge Esposito on January 18, 2024, Vere testified that he was accused of trespassing and threatened with disciplinary action by Thompson while handbilling in 15 support of the Union at the Lyndhurst Castle on February 10, 2023. Although Thompson confirmed Vere's account, Respondent asserted that counsel repudiated Thompson's statements on February 13, 2023:¹⁵

Medieval Times will not prohibit Marcus Vere, while off duty, from peaceably 20 distributing union literature in the castle parking lot. Furthermore, Medieval Times will not prohibit any bargaining unit members, while off duty, from peaceably distributing union literature in the castle parking lot.

Vere also testified about numerous instances of lateness in 2021 and 2022, Respondent's 25 increased enforcement of its attendance policies, and an informal coaching that he was issued. Although not the subject of a charge, Judge Esposito considered Vere's testimony regarding his "lateness" in determining whether comparable discipline had been applied to discriminatee Christopher Lucas. Asked how often he had been late, Vere testified, "I think not often." After being shown records of how often he was late, however, Vere revised his testimony: "I'm late a lot more often than I thought."¹⁶

At the previous trial, Wakins testified that, although he monitored employee tardiness, he 30 typically did not take notice when someone was late or missed practices or performances until "20 minutes or 30 minutes into the scheduled time" and did not check employee's time punches on a regular basis outside of this circumstance.¹⁷ There was no mention, however, of his practice of permitting Knights Department employees to clock-in up to 10 minutes before or up to 10 minutes after the start of their scheduled shift.¹⁸

¹² Jt. Exh. 2, p. 018.

¹³ The complaint consolidated six cases: Cases 22-CA-301865, 22-CA-305612, 22-CA-311585, 22-CA-312517, 22-CA-332987, and 22-CA-311421.

¹⁴ Beckas was subsequently promoted in 2024 from Knight 3 to Senior Knight Speaking Role. He resigned in July 2025 for another job.

¹⁵ Jt. Exh. 1(c), pp. 83-93.

¹⁶ Jt. Exh. 1(c), pp. 94-100; GC Exhs. 3-4; Tr. 28-30; Jt. Exh. 2 at 90-91 and fn. 55.

¹⁷ Jt. Exh. 1(i), p.. 40.

¹⁸ Id. at 17-59.

5 On February 13, 2025, Judge Esposito issued a decision finding that Respondent violated Section 8(a)(1) on February 10, 2023, by “threaten[ing] employees [Vere] with discipline for peaceably distributing handbills to the public while on non-work time and in a non-work area, in violation of Section 8(a)(1).” The evidence further establishes that Medieval Times failed to effectively repudiate this violation pursuant to the standards articulated in *Passavant Memorial Hospital* [237 NLRB 138, 138-139 (1987)] and subsequent cases.”¹⁹

10 Judge Esposito also found that Respondent violated Section 8(a)(3) and (1) by issuing a written warning to employee Christopher Lucas on October 14, 2022, a final warning on December 15, 2022, and discharging Lucas on January 21, 2023 for time and attendance, in retaliation for his activities on behalf of the Union. Judge Esposito also found that Respondent committed additional Section 8(a)(1) violations by: filing a retaliatory lawsuit against the Union and its members on October 13, 2022; threatening employees at non-unionized facilities that they could not receive a wage increase because the Union filed a representation petition; contacting social media platforms 15 and seeking to block posts by the Union because they infringed upon Respondent’s trademark; and serving employees with subpoenas to appear in the proceeding before her. Finally, Judge Esposito dismissed the allegation that Respondent violated Section 8(a)(1) by convening mandatory meetings during paid time to listen to Respondent’s views regarding the Union.²⁰ Respondent subsequently filed exceptions to those findings, which are pending before the Board.

20 In March 2024, the Union disclaimed interest in the bargaining unit. After the Union disclaimed interest, Respondent significantly increased employees’ hourly pay rates. In Vere’s case, his hourly pay rate increased from approximately \$16 per hour to \$28 per hour. The allegation that Respondent discriminated against bargaining unit employees by denying them wage increases 25 had been the subject of Vere’s handbilling on February 10, 2023.²¹

E. Changes to the Attendance and Punctuality Policy

30 Respondent uses TimeStar, a web-based timekeeping system, to record when employees clock-in and clock-out. Prior to December 2023, Head Knight Watkins generally permitted employee to clock-in up to 10 minutes before and 10 minutes after their scheduled times. That month, he started informing the knights and squires during pre-show meetings that the clock-in policy was changed to a 15-minute grace period. It consisted of a 10-minute grace period for 35 clocking-in before their scheduled time and a five-minute grace period for clocking-in late.²²

Watkins also began more closely monitoring time and attendance by compiling a binder of tracking sheets for Knights Department employees. The sheets, which documented employee lateness, call-out times, and requested and/or scheduled days off, enabled Watkins to detect patterns and determine whether informal coaching or discipline was warranted. He also recorded

¹⁹ Judge Esposito rejected the *Passavant* defense on the grounds that it: (1) did not acknowledge Thompson’s “unlawful threat . . . nor did it specifically disavow that threat;” (2) did not communicate its repudiation to Vere or other bargaining unit employees; (3) and committed other violations “intended to hamper or extinguish the employees’ communications amongst themselves and with the public regarding the Union organizing campaign and collective-bargaining.” (Jt. Exh. 2, pp. 91-93.)

²⁰ *Id.*, pp. 97-98.

²¹ Jt. Exh. 2 at 97; Tr. 45-46.

²² Vere confirmed that Watkins previously allowed a 20-minute window for clocking-in. (Tr. 32, 42.)

any coaching or discipline, call-outs, and performance-related remarks.²³ Watkins also began posting a chart in the locker room listing the wages that knights lost over the course of the year by clocking-in late. If employees did not comply, Watkins would take them aside and talk to them.²⁴

5 In February 2025, Respondent informed employees in meetings that the attendance policy would be changing to clocking-in on time, with no more five-minute grace period. Employees were told that the policy was changed because too many employees were abusing it. On February 28, 2025, Respondent formally notified employees of the change in an email titled, “New Clock In Time Protocol.”²⁵

10 Starting March 1st, we will expect all team members to clock in according to the time which they are scheduled. For instance, if you are scheduled to clock in at 12:00 PM on the sent and posted schedule, you should clock in at 12:00 PM. Failure to do so will result in disciplinary action. As always, if there is trouble showing to work on time you must contact a manager or supervisor informing them of the issue causing you to be late and the estimated time of arrival.

15 On or about March 1, 2025, Respondent revised the policy to permit employees to clock-in within the three-minute window prior to the scheduled start time.²⁶

20 *F. Vere’s Coaching and Discipline*

1. April 3 and 17

25 On January 25, one week after testifying at the 2024 hearing, Vere called out sick. He called out sick again on February 16, March 13, 20, and 27, 2024. Considering that a pattern, Watkins pulled Vere aside on April 3 and informally counseled him about calling out on three consecutive Wednesdays in March.²⁷ During that conversation, Vere asked to be excused from practices in order to reduce his hours, but Watkins denied the request. Afterwards, Watkins

²³ R. Exh. 2(a)-(f).

²⁴ I found Watkins to be a mostly credible witness, although his testimony regarding his increased focus on time and attendance in December 2023 contradicted his January 26, 2024 testimony, when he denied regularly monitoring employees’ “time punches,” unless they had been informally coached for time and attendance. (Tr. 106-114, 146; Jt. Exh. 1(i), pp. 40-41.) Regarding the “shame” sheet, Vere speculated that Watkins posted the sheet to “shame” knights about how much pay they lost over the course of the year by not clocking in earlier than they did. He did not attribute Watkins’ change in course to the organizing campaign or the January 2024 hearing, but a belief that that Watkins “wanted to -- to run a tight ship and, you know, make sure, you know, we -- we clocked in as early as possible so we could do more work.” (GC Exhs. 10, 16; Tr. 56-59.) Watkins was not questioned about the “shame” sheet. In any event, there is no evidence that Respondent’s reduction of the grace period or the use of the shame sheet were motivated by union animus.

²⁵ GC Exh. 11; Tr. 62-64, 88-90.

²⁶ Watkins testified that the three-minute window was calculated based on the time it would take 15 employees to clock-in. (Tr. 105, 157.)

²⁷ Vere’s testimony was unconvincing as to why he took “sick leave” on three consecutive Wednesdays in March 2024. Glib in his response on cross-examination, Vere provided no indication that he tried to convince the managers on April 3 or April 17 that he was actually sick on those days. (Tr. 35-36, 65-66.)

documented their discussion in the employee tracking sheet: “spoke to about calling out + issues” and “asked for special hours.”²⁸

During practices, knights are expected to be present throughout the session. When they are not practicing their routines, knights are expected to watch and be available to train or assist other knights as needed. In the past, Vere was an active participant during practices and often helped train and assist other employees. However, after Watkins denied his request for reduced hours, Vere’s participation during practices decreased and he started spending time in the break rooms whenever he was not practicing a routine. Vere also began disappearing after performing his assigned show duties.²⁹

On April 17, Vere was called into a meeting with Watkins and Thompson for an informal coaching about “attendance and work ethic.”³⁰ Thompson asked Vere if he still wanted to work there. Vere replied that he did. Thompson then mentioned that Vere told Watkins that he was interested in taking a six-week long acting class in New York City, and that it would alter his schedule slightly. However, he also recalled that Vere assured him that it would not cause him to lose any hours or miss any shows and he would just need to have one or two days off during the week to attend the class.³¹ Thompson stated several more times, “it doesn’t seem like you want to be here anymore. You’re trying to take days off.”³² Vere responded that he was simply trying to take classes like others on the roster and that it was very temporary. The discussion ended with Vere stating that he was not going to do the class.³³

Watkins also documented the April 17 meeting on Vere’s employee tracking sheet, noting that he spoke to Vere about his “work ethic.”³⁴

The April 17 coaching was addressed in Respondent’s November 1, 2024 position statement where it asserted that Vere’s informal coaching “was occasioned solely by his

²⁸ Vere corroborated the accuracy of Watkins’ April 3 note. (Tr. 36-38, 128; R. Exh. 2(e), pp. 1-2.)

²⁹ Watkins’ testimony regarding the changes to Vere’s behavior during practices and performances after the April 3 conversation was undisputed. (Tr. (129-130, 171.) It was also corroborated by Vere’s testimony that Thompson told him on April 17 that Vere seemed to have lost interest in working there. (Tr. 35.)

³⁰ Asked on cross-examination whether April 17 was the first time that he was spoken to about time and attendance, Vere responded with uncertainty: “I’m not sure.” Asked again, he responded, “very in passing. But never anything on paper.” He then conceded that he was spoken to about time and attendance prior to testifying in January 2024. (GC Exh. 6; Tr. 67.)

³¹ Respondent provides employees with tuition reimbursement for college courses of up to \$1,200 per semester. (GC Exh. 2 at Section 33.)

³² Watkins considers it a pattern if the tardiness or call-outs occur “all in the same month, or . . . in a consecutive . . . time period,” (Tr. 105.) or “[m]ore than a handful or two or three or four within a certain period of time, which would seem suspect. (Tr. 123.) That was consistent with his prior testimony on January 26, 2024, when he testified that he would call employees aside if he noticed a pattern of lateness. (Jt. Exh. 1(i) at 40.)

³³ On direct examination, Vere was asked about his prior testimony on January 18, 2024, Vere conceded that he “was late a lot.” (Tr. 28.) At first, Vere could not recall if he ever called out saying he was not going to be able to come to work. However, he then admitted that he had called out sick several times during the winter. (GC Exh. 5; Tr. 32-38.)

³⁴ R. Exh. 2(e) at 2.

insubordination and his time and attendance violations” and denied any connection with the timing to his January 18, 2024 testimony:

5 Any argument that Vere’s discipline was close in time to his testimony is misplaced. Vere testified on January 18, 2024, while his initial discipline occurred nearly four (4) months later on April 17, 2024, and the final warning occurred more than nine (9) months later. A gap of four (4) to nine (9) months is wholly insufficient to claim temporal proximity in support of a claim of retaliation.

10 In its December 17, 2024 supplemental position statement, Respondent described, in pertinent part, the process that it followed regarding the coaching and discipline of employees in the Knights Department, including Vere:³⁵

15 If Watkins and Thompson detect a pattern indicating a time and attendance concern with a particular employee, then the coaching/counseling process is initiated in order to try and resolve the issue without the need for formal progressive discipline. If these coachings and counselings are unsuccessful or unimpactful in addressing and rectifying the employee’s time and attendance issues, then formal progressive discipline is initiated unless and until the problem is abated.

20 * * *

25 Vere’s time and attendance issues first began on or about January 25, 2024, when Marcus called out sick on a practice day. Next, on February 16, 2024, Marcus called off on a performance day. Beginning on March 13, 2024, Vere called out of multiple practices. The next week, on March 20, 2024, Vere again called out of practice. The following week on March 27, 2024, Vere called out again. It was at this time that Watkins and Thompson detected an escalating pattern of call outs for Vere.

30 2. April 28 Formal Coaching

35 As he explained during his prior testimony on January 18, 2024, Vere was late on nine dates in 2022 ranging from 13 to 83 minutes, but was not disciplined.³⁶ In 2023, however, Vere was late only twice beyond the permitted grace period twice during the entire year. It also shows that he called out just once during the second half of that year.³⁷

40 On April 28, Watkins, with James Brown also present, met with Vere and told him that he needed to write him up for arriving seven minutes late after the scheduled times on April 23, 25, and 28. Vere replied that he arrived within the 20-minute window before the show started. However, Watkins replied that the 10-minute before and 5-minute after being scheduled grace

³⁵ Jt. Exh. 7, p. 3.

³⁶ February 13, 2022—36 minutes, February 18, 2022—18 minutes, March 18, 2022—13 minutes. (Jt. Exh. 1(c), pp. 96-97.)

³⁷ R. Exh. 2(e), p.1.

period policy was changed a while ago. Watkins then handed Vere a written “Formal Coaching” for attendance.³⁸

5 The disciplinary history listed the April 17 “Informal Coaching,” when Vere was “[spoken] to about attendance and work ethic.” The reason given for the “Current Coaching” stated, “Marcus was late 7 Mins on 4-23, 7 mins late on 4-25, & 7 mins late on 4-28. Marcus needs to arrive to work on time according to his scheduled shifts.” If Vere’s “behavior or conduct” did not change, he was warned of “[f]urther disciplinary action up to and including termination.”³⁹

10 In the comments section, Vere wrote: “I have been under the knowledge that being late is 10 minutes after scheduled call time.” The form was signed by Vere, Watkins, Brown, and Thompson.⁴⁰ Watkins also noted the disciplinary meeting on Vere’s employee tracking sheet: “Wrote up for tardiness.”⁴¹

15 3. The July 19 Informal Coaching

20 Prior to July 2024, Respondent implemented a program to select a knight to manage the squires and backstage staff after every show. Watkins would randomly pull the name out of a bag and Vere’s name was selected on numerous occasions. The role required the selected knight to do “the count,” i.e., walk around with a checklist of tasks that needed to be completed by the squires and backstage staff before and after the show. The tasks included cleaning up the arena, properly storing the weapons and lances, and caring for the horses. The assigned knight was also required to sign off on the count sheet. If the sheet was inaccurate or staff did not complete the required tasks, the assigned knight would be held responsible.⁴²

25 On July 19, 2024, Thompson issued Vere an “informal coaching” Vere for failing to fill out the count sheet correctly. Brown was also present.⁴³

30 4. The August 14 Warning

As a Knight Level 2, Vere usually rides in the parade. The parade spot for each knight is written on a board and Vere was usually assigned the “back left spot.” On August 11, however, Vere was assigned to a different spot and horse. When he looked at the board, Vere did not see his name in the usual spot and assumed he would not be riding in the parade. Watkins was out that

³⁸ Watkins did not refute Vere’s recollection of their discussion. (Tr. 41-42, 163-164.)

³⁹ Jt. Exh. 3.

⁴⁰ Vere speculated that Watkins was “visibly upset” and “kind of wrenching his hands and breathing” because he “chose to write in the box.” (Tr. 42-43.)

⁴¹ R. Exh. 2(e) at 2.

⁴² The count sheet is currently handled by Watkins and Brown. (Tr. 126-127.)

⁴³ Vere griped that he was selected “quite often,” but there was no corroboration for his assertion that Watkins’ picked his name out of a bag more often than any other knight. Nor was there corroboration for Vere’s speculative testimony that he “felt more monitored” after the Union disclaimed interest in Spring 2024. (Tr. 44-47.) Moreover, on cross-examination, uncertain as to whether the July 19 write-up was issued for failing to complete the count sheet (“I think so”), Vere conceded that he “would not be surprised” if his Board affidavit omitted any reference to the count sheet. (Tr. 68-69.) On August 14, Watkins documented the coaching: “Spoke to about presence for assigned duties.” (Jt. Exh. 4.)

day, but Brown was in charge. Employees searched for Vere but were unable to find him. As a result, Vere missed the parade.⁴⁴

5 On August 14, Vere was called into a meeting with Thompson and Watkins and told he was being disciplined for missing the parade. Vere conceded that he missed his parade assignment, but explained that he was not told beforehand that he was assigned to a different spot. Thompson was not swayed and Vere was issued a written warning.⁴⁵

10 Marcus is being put on a written warning for failure to adhere to department standards. On August 11th, 2024 Marcus missed his assigned role in Parade. He was in a break room and not present for his curtain call.

15 Marcus will be present and available during all acts of the show. He will double check the assignment board and be ready for his assigned roles.

15 Vere was also warned that “[f]urther disciplinary action [would be] up to and including termination. He did not write anything in the “Team Member Comments” section.

5. The September 23 Final Warning

20 On September 21, Vere was scheduled to clock-in at 1:00 p.m. At 11:41 a.m., he texted Watkins, “Running late I’ll get there around 1230-1245.” At 11:47 a.m., Vere revised his estimate, “Probably 1.” Watkins replied at 11:56 a.m., “You’ve always been scheduled at 1.” At 12:06 p.m., Vere replied, “Oh nice.” However, at 12:33 p.m., he wrote, “I’m still throwing up,” followed by 25 “Don’t think I’ll make it in today.” At 12:37 p.m., Vere wrote, “Can’t really call right now.”⁴⁶

⁴⁴ Vere conceded that he missed his parade assignment: “I just missed it, you know. I was looking at the spot, and no one told me; I just missed it.” He also sought to minimize the importance of his role: “the parade routine could have been done with six. It was quite often done with six, even when you had eight because our arena is kind of tapered in, so we have - - we have trouble fitting all eight in sometimes. So sometimes we would do six. If someone misses the parade, which has happened, they just do the routine with six or if someone can jump in really quick, we’ll do it with eight.” (Tr. 47-51.) Knight Jonathan Beckas confirmed that missing the cue for the parade results in the a six-horse formation. (Tr. 82.)

⁴⁵ Jt. Exh. 4.

⁴⁶ Vere’s testimony regarding his communications with Watkins during the morning of September 21 was shifting and evasive. On direct examination, Vere testified that he messaged Watkins that morning, “mentioning to him that I was sick and I’m not sure if I’ll be able to come in on time. And then I had called him and texted him saying - - there’s no way I’m going to be able to come in. I’m - - I’m not healthy enough to perform today.” Asked if Watkins responded, Vere hedged, as if unable to recall, then surmised that “I may have gotten on the phone with him briefly.” (Tr. 52-54.) On cross-examination, Vere evaded the question again when asked if he communicated that he was sick that morning in a manner other than text: “I don’t know. I thought I had texted sooner - - around when I was waking up. But I don’t . . . have the phone that has any of the other . . . messages that may have been in that thread.” (Tr. 71-72.) Moreover, the text messages shown to Vere at the meeting, which he acknowledged as accurate, showed that he did not text Watkins prior to 11:41 a.m., when he stated, “Running late I’ll get there around 1230-1245.” (R. Exh. 14.) Accordingly, I credit Watkins’ testimony that Vere first informed him that he was calling-out due to illness only 27 minutes before he was scheduled to work. (Tr. 132-133.)

On September 23, Vere was called into a meeting with Thompson and Watkins. Thompson started by asking Vere what happened when he called out sick on September 21. Vere said that he initially thought he would be able to cover his shift that day before deciding that he was too sick. Thompson replied that Vere was being issued a final warning because he told Watkins he would arrive to work by 1:00 p.m. and then called-out sick about a half hour before his shift, causing Watkins to revise the assignments board on the busiest day of the week. He then recounted Vere's previous time and attendance infractions. Responding to Vere's question as to how much notice of a call-out was sufficient, Thompson said, "as early as possible," noting that Vere should have been clearer about communicating that he was ill if he woke up ill that morning.⁴⁷ The final warning stated:⁴⁸

Marcus is receiving a Final Notice for ongoing Time and Attendance issues. On Saturday, 9/21/24, Marcus was scheduled to clock in at 1:00 pm for his shift.

Marcus sent a text to his manager at 11:41 am to inform his manager that he expected to arrive to work around 12:30-12:45, his manager informed him that he wasn't scheduled to work until 1:00 to which Marcus replied [,] "oh great".

At 12:33 pm, Marcus sent another message stating that he was "still throwing up" and had to call off.

The document also detailed Vere's problems with time and attendance and untimely communications with his manager when he would be miss a shift.

Marcus has been talked to numerous times about his time and attendance, this is not the first time we have talked with Marcus about communicating when he cannot work a scheduled shift. If Marcus is sick, he should let his manager know as early as possible so his manager can make the necessary adjustments to the board. Marcus was in contact with his manager an hour and twenty minutes before his scheduled shift but waited until half an hour before he was scheduled to clock in before he told his manager he was sick and needed to call off, this is unacceptable. Marcus should notify his manager as early as possible if he is too sick to work a scheduled shift.

If Vere's "behavior or conduct" did not change, he was once again warned of "[f]urther disciplinary action up to and including termination." Later that day, Vere filed unfair labor practice charges.

G. Comparable Discipline

1. Informal Coaching for Excessive Absences, Work Ethic, and Presence

⁴⁷ Vere and Thompson provided generally consistent versions of the September 23 meeting. (Tr. 52-55, 193-195.) Watkins was not questioned about the disciplinary meeting. Like Thompson, however, he was upset about the circumstances leading to Vere's call-out only 27 minutes before his start time, which required him "to go back and redo the whole board, which is essentially is just a giant math problem that I have to redo." He added that Vere called-out on a Saturday, the busiest day of the week. (Tr. 131-133.)

⁴⁸ Jt. Exh. 5.

5 Prior to 2024, there is some evidence of informal coaching or discipline for excessive call-outs and work ethic/presence issues.⁴⁹ There is ample evidence, however, that Respondent's managers have, since 2024, ramped up enforcement by informally coaching or disciplining employees for calling out and/or work ethic/presence issues.⁵⁰ Those actions were comparable to the treatment by Respondent's managers, including Watkins, towards other employees.⁵¹ The increased enforcement affected all the departments, resulting in well over one hundred instances in which employees were informally coached.⁵²

10 December 2023 and December 2024, Respondent's managers coached or disciplined 21 employees for calling-out and/or performance-related issues. That figure rose to 24 employees in 2025. Watkins documented at least 14 informal coaching conversations in the Knights Department for excessive call-outs, no-call, no-shows, or performance issues. The affected employees included Assistant Head Knight James Brown.⁵³ While no employees in the Knights Department were issued formal discipline prior to December 2023, Respondent's discipline of employees for similar 15 deficiencies increased significantly since then, with 13 formal coachings,⁵⁴ 11 written warnings,⁵⁵ and six final warnings.⁵⁶

2. Formal Coaching for Lateness

20 Prior to December 2023, there were relatively few instances in which employees were coached or disciplined for lateness.⁵⁷ Since December 2023, when Watkins informally coached four employees, Respondent's enforcement of the lateness policy has significantly increased.⁵⁸

25 In 2024, Respondent's focus on timely clock-ins persisted, as managers informally coached employees on numerous occasions. In addition to Vere, formal coaching for lateness was issued to four employees. In three of those instances, the discipline was preceded by informal coaching for time and attendance within the previous five weeks; in one case, the employee was preceded

⁴⁹ R. Exh. 15, pp. 54, 96, 104, 122, 275, 352, 582.

⁵⁰ There is no evidence, much less an allegation, that Respondent's systemic increase in the enforcement of time and attendance since December 2023 was attributable to union animus.

⁵¹ Contrary to the General Counsel's assertion, Respondent coached or disciplined numerous employees for work ethic/performance-type issues. They included: disappearing from work area, using cell phone, lack of presence, performance, declining performance, work attitude, laziness, harassment, fighting with coworker, discourteous behavior, insubordination, failure to check age identification for alcoholic beverage, mistreatment of horses, not completing assignments, and violating company policy. (R. Exh. 15, pp. 54, 104, 257, 334, 352, 625, 627, 632; R. Exh. 2(f), pp. 18, 42, 45; GC Exh. 23, pp. 1, 54, 131, 143, 195, 210, 220, 234, 252, 291, 308, 332, 339, 356, 360, 433, 437, 441.) In one instance, an employee was terminated for performance because he was “[n]ot a good fit.” (GC Exh. 23, p. 336.)

⁵² There are also various instances noted on Watkins' employee tracking sheets where employees were neither coached nor disciplined for calling out. However, there is no evidence in the record that Respondent tolerated last-minute or suspicious callouts. Moreover, the record shows that managers enforced the call-out policy in both the unionized and nonunion sides of its operations. (R. Exh. 15, *passim*.)

⁵³ GC Exh. 1(f); R Exhs. 2(b), pp. 2-3; 2(e), p. 2; R-2(f), pp. 3, 18, 29, 42, 44, 45, 47, 48, 49, 52, 57.

⁵⁴ R. Exh. 15, pp. 74, 76, 78, 102, 109, 131, 226, 257, 280, 334, 541, 543, 632; GC Exh. 23, p. 446.

⁵⁵ R. Exh. 15, pp. 107, 109, 144, 185, 273, 302, 424, 516, 625, 627, 629.

⁵⁶ *Id.*, pp. 104, 177, 179-180, 198, 370, 574.

⁵⁷ R. Exh. 15, pp. 129, 246, 332, 547, 580, 640.

⁵⁸ R. Exh. 2(f), pp. 4-6, 9.

by a written warning seven months earlier for discourteous behavior.⁵⁹ Another employee was issued a written warning on April 11 after arriving six minutes late. That discipline was preceded by informal and formal coaching within the previous five weeks.⁶⁰

5 Additionally, two employees were terminated in 2024 for time and attendance issues, both preceded by final warnings: Zyaire Berry (June 2)⁶¹ and Emmett Lane (July 27).⁶²

10 In 2025, Respondent continued to stress time and attendance. Managers continued to issue informal coaching for lateness, but the number of employees issued formal coaching for arriving late on one or more occasions increased to nine. The discipline was preceded by informal coaching for previous lateness ranging from one week to three months earlier.⁶³ Two written warnings were issued to employees in July 2025. One of the affected employees had been issued formal coaching for lateness 12 days earlier; the other employee was formally coached four months earlier.⁶⁴

15 Additionally, four employees were terminated in 2025 for time and attendance issues: Rafael Hernandez Vargas (April 9);⁶⁵ Joshua Espitia (June 9);⁶⁶ Chrystopher Fernandez (July 25);⁶⁷ and Seth Cohen (August 17).⁶⁸ All had been on final warnings, except for Fernandez, who failed to complete employee training due to excessive absences.

20 Respondent's records also contain evidence that Watkins documented, but neither coached nor disciplined employees for being late on various occasions in 2024 and 2025.⁶⁹ Most notable were Assistant Head Knight James Brown, Knight Luis Arzuaga, and Vere. Brown, who was out due to injury for most of the period from April to July, was late 32 times in 2024. He was informally counseled on time and attendance on February 18 and August 14.⁷⁰ Brown was also late 23 times in 25 2025. On May 15, 2025, he was informally counseled again for lateness.⁷¹

30 Arzuaga was late 11 times in 2024, but neither coached nor disciplined.⁷² However, the records also reveals that Respondent did not treat Vere any differently for clocking-in late on 10 occasions in 2024: January 26 (six minutes late); January 29 (seven minutes late), February 24 (52 minutes late); March 19 (19 minutes late); May 5 (6 minutes), June 6 (49 minutes), July 13 (56 minutes), August 1 (7), August 4 (22 minutes), and August 9 (six minutes).⁷³

⁵⁹ R. Exh. 15, pp. 285, 382, 388, 501.

⁶⁰ Id., p. 283.

⁶¹ GC Exh. 23, p. 258.

⁶² Id., p. 231.

⁶³ R. Exh. 2(f), pp. 44, 48, 55; R. Exh. 15, pp. 49, 118, 147, 217, 238; GC Exh. 23, p. 446.

⁶⁴ R. Exh. 2(f), p. 45; R. Exh. 15, p. 215.

⁶⁵ GC Exh. 23, p. 283.

⁶⁶ Id., p. 226.

⁶⁷ Id., p. 425.

⁶⁸ GC Exh. 23, p. 44.

⁶⁹ Id., *passim*.

⁷⁰ R. Exh. 2(f), p.18; Tr. 118.

⁷¹ R. Exh. 2(f), p. 41.

⁷² Watkins identified Arzuaga as a “lead” employee in the Knights Department.. (Tr. 126; Id., p. 15.)

⁷³ R. Exh. 2(e), p. 2.

3. Informal Coaching for Failing to Complete the Count Sheet

5 Vere's informal coaching on July 19 for failing to fill out the daily count sheet correctly was more lenient than the comparable discipline applied to others. On August 1, formal coaching issued to Knight Sergio Felipe for failing to complete a different document, the daily show sheet, on July 25. Felipe had not previously been coached or disciplined.⁷⁴ Similarly, on August 7, 2025, Watkins formally coached Squire Nick Capone for failing to put away all his equipment. Capone had one previous coaching for the same issue.⁷⁵

10 4. Written Warning for Missing the Parade

15 On August 14, Vere was issued a written warning for missing the parade portion of the show on August 11. At the time, he was nowhere to be found. During his disciplinary meeting, Vere did not contest the seriousness of the incident and the consequence of the parade being reduced to a six-horse formation. That much was evident, as Respondent terminated another knight, Ryan Gallagher, one month later "failing to perform in the parade portion of the show when he was assigned to do so on 9/13/2024." He had been on final warning from a week earlier.⁷⁶

20 5. Final Warning for Insufficient Notice of Call-Out

25 On September 23, 2024, Vere received a final warning for failing to notify his manager "as early as possible" on September 21 that he would be absent due to illness. It noted that Vere had "been talked to numerous times about his time and attendance, this is not the first time we have talked with Marcus about communicating when he cannot work a scheduled shift." Up to that point, Vere had been issued three informal coachings, one formal coaching, and one written warning. The comparables indicate that Vere's final warning was consistent with Respondent's application of its progressive disciplinary policy in addressing similar time and attendance issues.

30 On July 27, 2024, Retail Sales Clerk Iyahnie Reyes was issued a final warning "for persistent time and attendance issues." The notice specified that she "called out sick on 7/3, 7/10, 7/24 and 7/25. She was also a no-call no-show for her matinee shift on 7/26." Four months earlier, Reyes was issued a formal coaching for time and attendance issues, followed two weeks later by a written warning for time and attendance.⁷⁷

35 On October 25, 2024, Bartender Adam Elamrani was issued a final warning for time and attendance after failing to let anyone know that he would not show up for his shift. The discipline was preceded by a written warning for a no-call, no-show and an informal coaching for lateness.⁷⁸

40 On June 21, 2025, Retail Sales Clerk Rusbel Vega received a final warning for calling out twice due to illness. The notice specified that "Rusbel calls out frequently due to illness or other poorly planned events." Three months earlier, she was informally coached for "time and

⁷⁴ Felipe was not a member of the bargaining committee; nor did he testify at the 2024 hearing. (GC Exh. 20, p. 57; R. Exh. 4, pp. 3-4; Tr. 126-127.)

⁷⁵ R. Exh. 15, p. 257.

⁷⁶ GC Exh. 12, pp. 16, 22, 25-26; R Exh. 2(c), p. 2.

⁷⁷ Id., p. 370.

⁷⁸ GC Exh. 23, p. 224.

attendance issues/excessive call outs,” followed six weeks later by a written warning for “time and attendance issues.”⁷⁹

On August 24, 2024, Respondent issued a written warning to Bartender Taisha Taveras for “persistent time and attendance issues.” Taveras had called out twice within a two-week period. Each time, she called out one hour before her shift. The first time was due to an upset stomach; the second call-out related to a car insurance issue. Three weeks earlier, Taveras had been issued a formal coaching for “persistent time and attendance issues.” The month before that, she was informally coached about time and attendance.⁸⁰

On March 22, 2025, Food Server Anis Alamov received “formal coaching regarding his time and attendance due to repeated issues.” Alamov arrived “15 minutes late to his shift and failed to notify management in advance.” One week earlier, Alamov was issued a formal coaching for “receiving tip make-up pay.”⁸¹

LEGAL ANALYSIS

I. APPLICABLE PRECEDENT

In determining whether an employer unlawfully discriminated against an employee to hinder or promote union membership, the Board applies the test outlined in *Wright Line*, 251 NLRB 1083 (1980). The General Counsel must make a *prima facie* case that the employee’s protected activity was a motivating factor in the adverse employment action. The General Counsel must prove that the employee engaged in union or other protected activity, the employer knew about that activity, and the adverse employment action was motivated by animus on the part of the employer. Once the General Counsel makes that showing, the burden shifts to Respondent to show that the same adverse action would have been taken in the absence of the protected conduct. *Donaldson Bros. Ready Mix, Inc.*, 341 NLRB 958, 961 (2004), citing *Wright Line*, *supra* at 1089.

Unlawful motivation may be established by direct evidence of the employer’s discriminatory motivation or “inferred from circumstantial evidence based on the record as a whole.” *Tschiggfrie Properties, Ltd.*, 368 NLRB No. 120, slip op. at 1 (2019). Circumstantial evidence of discriminatory intent might include the timing of the adverse action in relation to the employee’s protected activity, the presence of other unfair labor practices, disparate treatment of the discriminatees, the employer’s perfunctory investigation, shifting defenses by the employer, and evidence of pretext. See e.g., *Embassy Vacation Resorts*, 340 NLRB 846, 848 (2003) (employer’s union animus demonstrated by suspension of union supporters less than two weeks after a second election was ordered and discharged a few weeks after union was certified).

If the evidence as a whole “establishes that the reasons given for the [employer’s] action are pretextual—that is, either false or not relied upon—the [employer] fails by definition to show that it would have taken the same action for those reasons, absent protected conduct, and thus there is no need to perform the second part of the *Wright Line* analysis.” *Donaldson Bros. Ready*

⁷⁹ *Id.*, p. 180.

⁸⁰ R. Exh. 15, pp. 424-425.

⁸¹ *Id.*, p. 72.

Mix, Inc., supra at 961, citing *Wright Line*, supra at 1089. See also *Cintas Corporation*, 372 NLRB No. 34, slip op at 5 (2022), citing *Metropolitan Transportation Services*, 351 NLRB 657, 659 (2007) (employer's burden not met by merely showing a legitimate reason).

5

II. APPLICATION OF THE WRIGHT-LINE FRAMEWORK

A. Union or Other Protected Activities

10 It is undisputed that Vere engaged in union and protected activity and Respondent was well aware of it. He was actively engaged in the 2023 union organizing campaign and contract bargaining. Vere also testified at the January 2024 hearing and Judge Esposito found that Thompson prohibited him from handbilling in the parking lot, a non-work area, during non-work time in February 2023.

15

B. Animus Towards Vere's Union or Protected Activities

20 The General Counsel contends that Respondent demonstrated animus by the unfair labor practices, which included threats to Vere regarding his union activity, departures from past practices, shifting defenses, and Vere's disparate treatment compared to other knights. Respondent denies that Vere's union and protected activities motivated the discipline issued to Vere. Instead, Respondent maintains that Vere's discipline ensued only after he became disengaged and his performance declined, and was consistent with the progressive discipline applied to similarly situated employees. Additionally, it notes that other employees, including Garza and Beckas, were also involved in union activity and testified at the January 2024 hearing, and received no discipline.

25

1. Unfair Labor Practices Found in Case 22-CA-301865

30 The General Counsel contends that Judge Esposito's findings in the 2024 case should be relied upon as evidence of Respondent's animus. In her decision, Judge Esposito found that Respondent engaged in unfair labor practices during the Union campaign and contract bargaining, including threats to Vere for handbilling and animus in the discharge of Christopher Lucas for, in part, time and attendance.

35 Respondent asserts that Federal Rule of Evidence 201 permits an administrative law judge to take judicial notice of facts that are "not subject to reasonable dispute." However, since Respondent's exceptions to Judge Esposito's findings are pending before the Board, Respondent argues that it would be inappropriate to rely on her findings here.

40 An administrative law judge has the discretion to rely on factual findings of animus made by another judge in a prior case even if the case is still pending before the Board on exceptions. See *Grand Rapids Press of Booth Newspapers, Inc.*, 327 NLRB 393, 394–395 (1998) (where the administrative law judge relied on another judge's findings in an earlier case as evidence of animus and the Board subsequently adopted that decision), enfd. mem. 215 F.3d 1327 (6th Cir. 2000). However, I decline to rely on Judge Esposito's findings for two reasons. First, Respondent's exceptions to Judge Esposito's findings that it committed various unfair labor practices are still pending before the Board.

Second, it would be inappropriate to rely on another judge's contested prior findings in the absence of testimony in this case to support them. Although I considered the prior testimony of Vere, Garza, and Beckas in assessing their credibility, none offered testimony in the instant proceeding regarding the unfair labor practices found by Judge Esposito. Vere did testify that he 5 handballed during the campaign, but did not address the previous allegation that Thompson threatened to discipline him for handbilling. With respect to time and attendance, Vere and Beckas testified regarding Respondent's revisions to the clock-in policy after December 2023, but did not touch on the prior allegations of Respondent's disparate application of the policy in 2022-2023.

10 2. Timing

It is undisputed that Vere engaged in union activity throughout 2023 and was still supporting the Union when he testified at the January 2024 hearing. Although not specifically 15 stated, the General Counsel suggests that Respondent's decision to begin tracking Vere's time and attendance just seven days after he testified was suspicious. Although close in time, however, that coincidence was not evidence of animus; it was attributable to the fact that Watkins had already begun tracking every Knights Department employee's time and attendance one month earlier. See 20 *Basic Industries, Inc.*, 348 NLRB 1267, 1267 (2006) (layoff of two employees four days after learned that they were union supporters was lawful where timing was explained by the completion of a work project); *Ronin Shipbuilding, Inc.*, 330 NLRB 464, 464-465 (2000) (discharge of known union supporter for lateness and absences three week after election was lawful where evidence showed that employer, who previously tolerated a high degree of absenteeism and tardiness, also discharged other employees with similar or less severe deficiencies).

25 3. Departures from Past Practices

As Judge Esposito noted in her decision, prior to January 21, 2023, Respondent "had a 30 lengthy history of tolerating an employee's failure to report for their shift on time." Watkins confirmed as much in the instant proceeding. In December 2023, however, based on his conclusion that employees were abusing the grace period for clocking-in, Watkins began to more closely monitor time and attendance. The General Counsel contends that the increased monitoring, as well 35 as the change to the 10/10-minute clock-in policy reveals animus because it was precipitated by the January 2024 hearing and resulted in Watkins closely tracking Vere's attendance seven days after he testified.

Discriminatory motive may be established by showing departure from past practice or 40 disparate treatment. See *JAMCO*, 294 NLRB 896, 905 (1989), affd. mem. 927 F.2d 614 (11th Cir. 1991), cert. denied 502 U.S. 814 (1991); *Naomi Knitting Plant*, 328 NLRB 1279, 1283 (1999). However, the General Counsel's argument fails for two reasons. First, there is no evidence, much less an allegation, that the systemic change to a 10/5-minute policy, which Vere subsequently violated, was pretextual, in retaliation for the 2024 hearing, or targeted at him, Union supporters, or any other subset of employees. Second, there was no evidence to refute Watkins' testimony that employees were abusing the grace period for clocking-in.

4. Disparate Treatment

The General Counsel focused on Respondent's treatment of Assistant Head Knight James Brown and Knight Luis Arzuaga as evidence that the time and attendance policy was applied more harshly to Vere. Respondent concedes that its process for coaching and disciplining for time and attendance violations is not mechanical and fails to provide employees with a predictable impression that lateness will inevitably lead to coaching and discipline. However, it asserts that the lack of consistency in its disciplinary process does not establish animus. Nor were Vere's union activities any more pronounced than that of the many other disciplined employees against whom the Respondent exhibited no animosity. I agree.

Vere's progressive discipline for tardiness and performance-related issues were hardly outliers. In 2024, Respondent continued to discipline employees for a wide variety of performance-related issues. In addition, managers, including Watkins, significantly increasingly focused on time and attendance by informally coaching and disciplining at least 15 employees. In addition to Vere, four employees received formal coaching for lateness. In three of those instances, the discipline was preceded by informal coaching for time and attendance within the previous five weeks; in one case, the discipline was preceded by a written warning seven months earlier for discourteous behavior. Another employee, who had received informal and formal coaching within the previous five weeks, was issued a written warning after arriving six minutes late.

Similarly, in 2025, the number of employees coached or disciplined for lateness increased to 19, including nine employees who were issued formal coaching for arriving late on one or more occasions. The discipline was preceded by informal coaching for previous lateness ranging from one week to three months earlier. Two written warnings were issued to employees. One of the affected employees had been issued formal coaching for lateness 12 days earlier; the other employee was formally coached four months earlier.

The record established that Brown and Arzuaga were essentially given a pass for numerous instances of late clock-ins or call-outs in 2024. Brown was late 32 times in 2024 and 23 times in 2025, but received only informal coaching on two occasions in 2024 and once in 2025. Arzuaga was late 11 times, but was neither coached nor disciplined. However, the record also reveals that Respondent did not treat Vere any differently when it failed to coach or discipline him for clocking-in late on 10 occasions in 2024.

Respondent's enforcement of its standards of conduct relating to attendance and performance, albeit inconsistent, does not support an inference of retaliation against Vere. *Intertape Polymer Corp*, 372 NLRB No. 133, slip op. at 8 (2023) (employer's failure to present any evidence that it previously disciplined employees for engaging in similar conduct suggested animus); *Shamrock Foods*, 366 NLRB No. 107 (2018), enfd. 799 F. App'x 752, reh'g en banc denied (D.C. Cir. 2019) (respondents exclusively targeted employees who had engaged in protected conduct by scrutinizing their workplace conduct more strictly than the conduct of other employees).

5. Shifting Defenses

Finally, the General Counsel asserts that discrepancies between its position statements and the testimony of Watkins and Thompson regarding Vere's disciplines reveal shifting defenses. In 5 its supplemental position statement, Respondent identified January 25, 2024 as the beginning of Vere's time and attendance issues, while Watkins testified that he informally and formally coached Vere in April 2024 because he missed three consecutive Wednesdays in March 2024. Contextually, however, both claims were not inconsistent since Watkins's credited testimony established that he 10 considered Vere's call-outs on January 25, February 16, and the three Wednesdays in March when he informally and formally counseled him in April 2024.

The General Counsel also refers to the discrepancy between Thompson's testimony and 15 Respondent's position statement regarding his role in the disciplinary process. In its position statement, Respondent stated that the coaching/counseling process is initiated "if Watkins and Thompson detect a pattern indicating a time and attendance concern." In his testimony, however, Thompson testified that he issued final warnings and only became involved in coaching or lesser discipline if requested by Watkins. First, the evidence showed that Thompson is involved in all 20 documented discipline because he signs off on every "progressive discipline form-USA." Second, since Watkins requested Thompson's involvement in the April 28 formal coaching, it is not inaccurate to say that both "detect[ed] a pattern indicating a time and attendance concern."

Neither contention reflected a change in the reasons why Respondent coached and 25 disciplined Vere. They simply present a "distinction without a difference." *Volvo Group North America, LLC*, 370 NLRB No. 52, slip op. at 4 (2020) (rejecting judge's finding that employer shifted explanations for the discipline by "drawing a distinction between being in the break room early and having unexplained time gaps between parts scans," as they were "merely two different ways" of saying that the employee wasted time in violation of work rule).

30 C. Burden Shifting Analysis is Unnecessary

Based on the foregoing, the General Counsel failed to meet her burden of demonstrating 35 that Vere's formal coaching and discipline was motivated by Respondent's animus toward his union and other protected activities. That determination relieves Respondent of the burden of showing that it would have taken the same adverse action even in the absence of the protected conduct. *Intertape Polymer Corp*, supra at 8. For purposes of administrative efficiency, however, I also find that, had Respondent been required to do so, it would not have been able to meet such a burden. Although Respondent's inconsistent application of its coaching and disciplinary policies to the many comparators in the record failed to reveal animus toward Vere, it also precluded 40 Respondent from demonstrating that it would have taken the same action regardless of the protected conduct.

Having considered the record as a whole, I find that the General Counsel failed to prove 45 by a preponderance of the evidence that Respondent violated Sections 8(a)(3), (4) and (1). Accordingly, I shall recommend dismissal of the complaint.

CONCLUSIONS OF LAW

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

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2. The General Counsel did not prove that Respondent violated the Act as alleged.

On these findings of fact and conclusions of law and on the entire record, I issue the
following recommended⁸²

10

ORDER

The complaint is dismissed.

15 Dated, Washington, D.C. January 29, 2026



Michael A. Rosas
Administrative Law Judge

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⁸² If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Orders shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes due under the terms of this Order.