Amazon.com Services LLC *and* Dana Joann Miller *and* Amazon Labor Union. Cases 29–CA–280153, 29–CA–286577, 29–CA–287614, 29–CA–290880, 29–CA–292392, and 29–CA–295663

February 19, 2026

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS PROUTY, MURPHY, AND MAYER

On January 30, 2023, Administrative Law Judge Benjamin W. Green issued the attached decision. The General Counsel filed exceptions and a supporting brief, the Respondent filed an answering brief, and the General Counsel filed a reply brief. The Respondent filed cross-exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief.

On November 13, 2024, the National Labor Relations Board issued a Decision and Order in which it resolved most of the issues in these cases. 373 NLRB No. 136 (2024). The Board also severed and retained for further consideration complaint allegations that the Respondent violated Section 8(a)(1) of the Act on November 10 and 11, 2021, by promising employees improvements in its Career Choice Program in order to discourage them from selecting the Union as their collective-bargaining representative. Id., slip op. at 1 fn. 5, 25.

Upon further consideration of this matter, the Board has decided to affirm the judge's dismissal of these allegations for the reasons given by the judge and as discussed below.

As set forth more fully in the judge's decision, in April 2021,[1] a group of the Respondent's employees formed the Union and began organizing facilities including the JFK8 fulfillment center in Staten Island, New York, at issue in this case. The Union filed a representation petition for employees at JFK8 on October 25, which it withdrew on November 12 before filing a new petition on December 22.

In September, after the commencement of the Union's campaign but before the first JFK8 petition, the Respondent announced a plan for January 2022 companywide enhancements to a previously existing Career Choice Program that provided reimbursement to employees for educational expenses. On November 10 and 11, the Respondent conducted mandatory employee meetings at the JFK8 facility, during which its stipulated agents discussed, among other things, the Career Choice Program and the previously announced planned enhancements to that program.

[1] Dates below are in 2021 unless otherwise specified.

The General Counsel alleges that the Respondent's November discussions of the program violated Section 8(a)(1) by promising employees improved benefits in order to discourage them from selecting the Union. However, the General Counsel does not dispute that the Respondent separately announced the planned benefit enhancements in September, a distinct communication from the November discussions, and has not alleged that the September announcement was unlawful.

An employer violates Section 8(a)(1) by granting, announcing, or promising benefits during a union campaign in order to dissuade its employees from supporting the union.[2] The lawfulness of a promise of benefits in this context depends upon the employer's motive, and "[t]he Board infers improper motive and interference with employees' Sec[tion] 7 rights when an employer grants [or promises] benefits during an organizing campaign without showing a legitimate business reason."[3] However, an employer may lawfully remind employees of existing benefits, so long as the employer does not communicate a threat that such benefits may be lost if employees choose the union.[4] The Board has specifically held that employees' lack of prior knowledge about a particular existing benefit does not render an employer's reference to that benefit during a campaign unlawful.[5]

Here, the General Counsel contends that the judge erred in failing to infer that the Respondent's decision to enhance benefits and the September announcement were unlawfully motivated because the Respondent failed to present a legitimate business reason for this conduct. However, absent a complaint allegation that the Respondent's decision or its September announcement was unlawfully motivated, the Respondent's motive for that conduct was not litigated. As the judge observed, record evidence that the benefits changes were companywide and that the September announcement made no reference to the Union tends to weigh against an inference that the September announcement was intended to dissuade employees from supporting the Union under extant Board law.[6]

[2] *NLRB v. Exchange Parts Co.*, 375 U.S. 405, 409 (1964); see also, e.g., *Shamrock Foods Co.*, 366 NLRB No. 117, slip op. at 1–2 & fn. 6, 13 (2018), enfd. 779 Fed.Appx. 752, 756 (D.C. Cir. 2019).

[3] *Vista Del Sol Health Services*, 363 NLRB 1193, 1193 fn. 2 (2016).

[4] See, e.g., *MEMC Electronic Materials, Inc.*, 342 NLRB 1172, 1174 (2004); *Wayne J. Griffin Electric*, 335 NLRB 1362, 1362 & 1383 (2001), enfd. 36 Fed.Appx. 138 (4th Cir. 2002); *Sparks Nugget, Inc.*, 161 NLRB 1195, 1195 & 1205 (1966).

[5] *Ideal Macaroni Co.*, 301 NLRB 507, 507 (1991), enf. denied on other grounds 989 F.2d 880 (6th Cir. 1993); *Weather Shield of Connecticut*, 300 NLRB 93, 96–97 (1990); *Scotts IGA Foodliner*, 223 NLRB 394, 394 fn. 1 (1976), enfd. mem. 549 F.2d 805 (7th Cir. 1977).

[6] See, e.g., *Nalco Chemical Co.*, 163 NLRB 68, 70–71 (1967) (finding changes in vacation policy which affected 1000 employees in multiple plants, and which were not contingent upon result of representation election, were not made for purpose of influencing election among 34 employees at one plant).

Member Prouty notes that the Board has also found systemwide benefit changes *unlawful* where the extent of union organizing activity

The General Counsel further contends, in essence, that the judge erred in failing to find the November remarks unlawful because the September announcement was insufficient to put most employees on actual notice of the improvements to the Career Choice Program, making the November remarks the first *effective* announcement of the changes. However, as noted above, the General Counsel does not deny that the September announcement was made or contend that the September announcement was unlawful. Further, as also noted above, the Board has held that an employer may lawfully refer to existing benefits of which employees may not have been aware.[7] Because controlling Board precedent holds that the lawfulness of an employer's reference to existing benefits does not turn on the extent to which employees had prior actual notice of the existence of those benefits, the judge did not err in dismissing these complaint allegations.

ORDER

The remaining complaint allegations are dismissed.

Dated, Washington, D.C. February 19, 2026

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David M. Prouty, Member

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James M. Murphy, Member

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Scott A. Mayer, Member

or other evidence has suggested that the changes were calculated to discourage union activity throughout the company. See, e.g., *NP Red Rock LLC d/b/a Red Rock Casino Resort Spa*, 373 NLRB No. 67, slip op. at 2–4 (2024) (finding unlawful promises, announcements, and implementation of systemwide benefits based in part on affirmative record evidence that benefits were developed in order to combat union campaign); *Holly Farms Corp.*, 311 NLRB 273, 274 (1993) (fact that wage increase was given to 11,000 employees did not indicate lack of intent to coerce 201 members of petitioned-for unit where numerous other employees were also engaged in organizing activities), enfd. on other grounds 48 F.3d 1360 (4th Cir. 1995), affd. on other grounds 517 U.S. 392 (1996). Here, facts about the ratio of JFK8 employees to all employees affected by the changes, the extent of any other ongoing organization efforts, and the inception and development of the Respondent's decision to improve the Career Choice Program would be relevant to any factual inference about the Respondent's motive for the September announcement, but such facts do not appear in this record. Because the Respondent's motive for the September announcement was not pled or litigated, Member Prouty finds that due process concerns and established Board law preclude a conclusion that the motive was *either* lawful *or* unlawful. Cf. *Pergament United Sales*, 296 NLRB 333, 334 (1989) ("[T]he Board may find and remedy a violation even in the absence of a specified allegation in the complaint if the issue is closely connected to the subject matter of the complaint and has been fully litigated."), enfd. 920 F.2d 130 (2d Cir. 1990).

[7] *Ideal Macaroni*, above, 301 NLRB at 507; *Weather Shield of Connecticut*, above, 300 NLRB at 96–97; *Scotts IGA Foodliner*, above, 223 NLRB at 394 fn. 1.

(SEAL) NATIONAL LABOR RELATIONS BOARD

Emily Cabrera, Esq. and *Lynda Tooker, Esq.,* for the General Counsel.

Juan Enjamio, Esq. and *Kurtis Powell, Esq.,* for the Respondent.

Retu R. Singla, Esq. and *Seth Goldstein, Esq.,* for the Charging Party Union.

DECISION

STATEMENT OF THE CASE

BENJAMIN W. GREEN, Administrative Law Judge. The Respondent operates, in Staten Island, New York, a fulfillment center designated as JFK8 and a storage center designated as LDJ5. (Tr. 254.) This case largely concerns alleged unlawful statements made by the Respondent's admitted agents to employees during mandatory meetings held at JFK8 and LDJ5 as part of a campaign to convince employees not to sign union authorization cards and elect union representation. The complaint further alleges that the Respondent discriminatorily enforced its solicitation policy by removing certain posts of employee Dana Miller from its Voice of Associates Board (VOA) and threatening Miller with discipline for those posts.[1]

The charges in this case were filed on dates between July 16, 2021,[2] and May 12, 2022. An amended consolidated complaint issued on August 11, 2022 and the Respondent filed an answer on August 25, 2022.[3] This case was tried before me by Zoom virtual technology on September 19–21 and October 4–5, 2022.

In this case, the General Counsel argues that certain Board precedent should be overruled. In support of complaint paragraphs 7–8 and 20, the General Counsel seeks to overturn Board law in effect since *Tri-Cast Inc.*, 274 NLRB 377 (1985), to the extent it allows employers to misrepresent the law under Section 9(a) of the Act. In support of complaint paragraph 9–12, the General Counsel seeks to overturn *Guard Publishing Co. d/b/a the Register Guard*, 351 NLRB 1110 (2007) to the extent it narrows the circumstances under which the Board will find that an employer has discriminatorily limited employee solicitation. In support of paragraph 13–14, the General Counsel seeks to overturn Board law in effect since *Babcock & Wilcox Co.*, 77 NLRB 577 (1948) to the extent it allows employers to require employees to attend mandatory anti-union meetings. However, I am required to apply current law. Accordingly, herein, I will not address arguments that existing precedent be overruled. And since the General Counsel has relied exclusively on arguments that I reject Board law in support of complaint paragraphs 7(a), 8(a), 13–14, and 20, those allegations are dismissed.

Of the remaining allegations, as discussed below, I find that the Respondent violated the Act by discriminatorily enforcing its solicitation policy and threatening to withhold wage increases and improved benefits from employees if they elect a union

[1] The General Counsel has moved to withdraw complaint paragraph 11(c), which alleged that the Respondent unlawfully revoked Miller's permission to post on the VOA. I grant that motion.

[2] All dates herein refer to 2021 unless stated otherwise.

[3] A copy of the complaint which corrects a typographical error (i.e., two paragraphs with the number 18) was entered into evidence as GC Exh. 26.

as their bargaining representative. (Complaint ¶¶ 11(a), 18(A)(b), 19(a)) The rest of the allegations are dismissed. (Complaint ¶¶ 7(b), 8(b), 11(b), 15(a)-(b), 16(a)-(b), 16(c), 17(a)-(b), 18(A)(a), 19(a))

On the entire record, including my observation of the demeanor of the witnesses, and after considering the post-hearing briefs filed by the General Counsel and the Respondent, I render these

FINDINGS OF FACT

JURISDICTION AND LABOR ORGANIZATION STATUS

The Respondent admits that it satisfies the commerce requirements for jurisdiction and has been, at all relevant times, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Accordingly, I find that this dispute affects commerce and the Board has jurisdiction pursuant to Section 10(a) of the Act.

In its answer to the complaint, the Respondent denied having sufficient information to admit that the Amazon Labor Union (the Union or ALU) is a labor organization within the meaning of Section 2(5) of the Act. Section 2(5) states:

> The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

The Respondent stipulated to the Union's 2(5) status in prior representation cases and, in briefing this case, the Respondent makes no argument to the contrary. (GC Exh. 32–33.) Indeed, the evidence indicates that the Union meets the statutory definition. In April, a group of the Respondent's employees founded the ALU and began a campaign to organize the Respondent's workers on Staten Island for the purpose of improving working conditions through collective bargaining. (Tr. 59–60, 187.) The Union's Constitution and By Laws, at Section 1.5, includes the following "Objectives" (GC Exh. 9):

> (a). To improve the wages, benefits, working conditions, terms of employment, job security, and general welfare of its members and other workers.
>
> (b). To organize unorganized workers.

The Respondent's employees have held leadership positions in the Union, obtained authorization cards, circulated petitions, and otherwise engaged in organizing. (Tr. 59-61, 187–188.) Since employees participate in the Union and the Union exists for the purpose of dealing with an employer concerning employees' wages, hours, and other terms and conditions of employment, the Union is a labor organization within the meaning of Section 2(5) of the Act. See *Alto Plastics Mfg. Corp.*, 136 NLRB 850, 851–852 (1962).

ALLEGED UNFAIR LABOR PRACTICES

The Respondent's Solicitation Policy

The Respondent's "Owner's Manual and Guide to Employment" (Owner's Manual) summarizes the Respondent's personnel policies and practices, including the following "Solicitation" policy (GC Exh. 58, p. 5, 24) (Tr. 359–360, 437):

> Solicitation
>
> The orderly and efficient operation of Amazon's business requires certain restrictions on solicitation of associates and the distribution of materials or information on company property. This includes solicitation via company bulletin boards or email or through other electronic communication media.
>
> The following activities are prohibited:
>
> -Solicitation of any kind by associates on company property during working time;
>
> -Distribution of literature or materials of any type or description (other than as necessary in the course of your job) by associates in working areas at any time; and
>
> -Solicitation of any type on company premises at any time by non-associates.
>
> -Examples of prohibited solicitation include the sale of merchandise, products, or services (except as allowed on forsale@Amazon alias), soliciting for financial contributions, memberships, subscriptions, and signatures on petitions, or distributing advertisements or other commercial materials.
>
> -The only exceptions to this policy are communications for company-sponsored activities or benefits, or for company-approved charitable causes, or other specific exceptions formally approved by the company. All communications under these exceptions must also have prior approval of Human Resources. Violation of this policy may result in immediate disciplinary action, up to and including termination of employment.

The Respondent has also maintained a list of frequently asked questions regarding the solicitation policy, which include the following (GC Exh. 29) (Tr. 42):

> Solicitation Policy FAQ
>
> 1. What are some examples of solicitation that are prohibited, unless legally protected?
>
> -The sale, advertisement, or marketing of things like merchandise, products, subscriptions, or services (except as allowed on for-sale@ alias).
> -Distributing advertisements, marketing communications, or other commercial materials.
> -Solicitation for financial or other contributions (e.g., money, time, services) for any cause, including a charity.
> -Solicitation for memberships, subscriptions, or signatures on petitions.
> -Distribution of literature or materials of any kind.
> -Organizing or seeking participation in political, charitable, or protest activities.
> -Encouraging others to sign up for a mailing or distribution list used for any of the above purposes.
>
> 2. What is included in company property?
>
> -All company property including meeting spaces, offices, cafes, lobbies, and outdoor areas.
> -All company equipment including bulletin boards, furniture, mail slots, elevators, and posters.
> -All company electronic systems including email, Phone Tool, Amazon Wiki, Chime, and calendaring.
>
> 3. What are the exceptions?
>
> As exceptions to this policy, solicitation is permitted for:
>
> -Company-sponsored benefits (e.g., health plans and

employee discount programs).
-Company-sponsored business activities (e.g., internal marketing and advertising, company events, and learning activities).
-Company-approved charitable causes.
-Specific exceptions approved by Human Resources
-All legally protected activity as defined under local law.

4. In the US, when is solicitation legally protected?

In the US, solicitation is legally protected if it:

-Does NOT use any company electronic systems (e.g., email, Phone Tool, Amazon Wiki, Chime, and calendaring), company equipment (e.g., bulletin boards, furniture, mail slots, elevators, and posters); *and*
-Relates to terms and conditions of employment. Terms and conditions of employment include pay, work hours, benefits, and job duties. They do not include the products we sell, our customers, and non-work related social or political causes; *and*
-Happens during non-working time.

Additionally, if solicitation involves distributing materials or literature, to be legally protected in the US, it must *also* occur outside working areas (spaces where work is done, as opposed to break rooms, cafes, etc.).

The VOA, Open Door Policy, Gemba Walks, Birthday Roundtables, and Connections

The VOA is a digital message board which allows the Respondent's employees at JFK8 to post messages for viewing by management and other employees. Employees often post messages which express concerns about their terms and conditions of employment. (GC Exh. 27) Management can respond in writing to a post and employees may indicate their agreement with a post by adding a thumbs-up emoji. The VOA can be viewed on screens at that facility. The VOA can also be accessed by employees on the Respondent's "A to Z" app[4] and from kiosks at the facility. (Tr. 75, 81–88, 122–128, 414–418, 441–444) (GC Exh. 27).

The Owner's Manual which was entered into evidence[5] contains the following provision regarding an "Open Door Policy and Conflict Resolution" (GC Exh. 58, p. 7):

> Amazon believes that candid and constructive communication is essential to the smooth functioning of our workplace and to maintaining an atmosphere of mutual respect. Accordingly, we have an "open door" policy, which means that you are welcome to discuss any suggestion, concern, or other feedback with any member of the company's management. Associates are encouraged to bring their ideas to the attention of management.
>
> The majority of misunderstandings are satisfactorily resolved by a thorough discussion and mutual understanding between the parties involved. In general, it is best to discuss any concerns with your immediate supervisor first. If you are unable to reach a satisfactory resolution with your supervisor or are not comfortable discussing the issue with your supervisor, you are welcome to discuss the matter with the next level of management, with Human Resources, or with any member of senior management. When you bring a concern to Human Resources, it will be reviewed, and if appropriate, action will be taken. Human Resources will communicate with you regarding the outcome.
>
> If you believe that you or another associate has been subject to workplace harassment, pursuant to the provisions of the Workplace Harassment policy in this Manual, you should immediately report this to any manager or member of Human Resources. See the Workplace Harassment policy for more information

The Respondent also conducts "Gemba walks" and holds "birthday roundtables." Gemba walks are when managers walk the floor of a facility and ask employees what they like and do not like about the company. (Tr. 216–218, 380–382.) Birthday roundtables are monthly meetings held for employees whose birthdays fall within the month to talk and raise concerns with the general manager or assistant general manager of the facility. (Tr. 218, 310–311, 317–318.)

Beyond in-person contact, the Respondent uses a computer system called "connections" to ask employees questions when they first sign on for a shift. Employees may raise concerns in response to these questions. (Tr. 312, 317–319.)

The Respondent's Career Choice Program

Since 2012, the Respondent has offered a Career Choice Program (CCP) of refunding employees for certain educational expenses. Prior to September, employees with a year of service were reimbursed for 80 percent of qualifying educational expenses. (Tr. 375–377.)

In September, the Respondent announced certain company-wide improvements to the CCP which would take effect in January 2022. (R. Exh. 2.) These improvements included a reduction in the employment service required to qualify for reimbursement from 1 year to 90 days and an increase in the cost reimbursement from 80 percent to 100 percent. The Respondent also increased the number of educational expenses which qualified for reimbursement, including classes for GED testing and English as a second language. The record contains no indication that the Respondent referenced the Union or the Union's organizing campaign when it announced these improvements to the CCP in September. (Tr. 375–377, 396–399) (R. Exh. 2).

The Respondent's Practice of Providing Wage Increases

The Respondent provides employees with certain regular wage increases based upon the amount of time they work for the company. (Tr. 234–235, 254–255, 384–385) (R. Exh. 4).

The Union Organizing Campaign and Representation Petitions

As noted above, the Union was formed and began a campaign to organize employees at JFK8 in April. The Union campaign was based in a tent at a bus stop across the street from the facility. In this tent, the Union distributed literature and authorization cards, collected signed authorization cards, had speakers and cookouts, and the like. (Tr. 59–61.) The Respondent responded to the Union's organizing activity with a

[4] The Respondent's A to Z app also allows employees to perform certain human resource functions such as viewing their schedules, requesting time off, transferring shifts, and receiving notices from management. (Tr. 75, 81–88.)

[5] The Owner's Manual which was entered into evidence is dated January 2019. Apparently, a more recent manual issued in 2021. However, Senior Human Resources Manager Jenna Edwards testified that she believed the Owner's Manual was last updated in 2019 and has not been changed. (Tr. 436–437.)

campaign of its own to dissuade employees from signing union authorization cards and electing union representation. (Tr. 72–80) During the campaign, employees posted VOA messages for and against the Union. (Tr. 82) (GC Exh. 20).

On October 25, the Union filed its first petition (29–RC–285057) to represent a unit of employees at JFK8. The Union later withdrew that petition and filed another one (29–RC–288020) on December 22. On February 4, 2022, the Union filed a petition to represent a unit of employees at LDJ5. (GC Exh. 30(a–c).)

Dana Miller VOA Posts and the Respondent's Response

Miller is an employee who has posted many messages on the VOA, including pro-union messages and messages critical of the Respondent. (Tr. 163–167.) Miller testified that, in June, she saw VOA posts from employees asking if the new Juneteenth paid federal holiday would be recognized by the Respondent. (Tr. 132.) On June 18, Miller posted the following VOA message (GC Exh. 22, 27):

> Since Juneteenth is now a federal holiday shouldn't we get holiday pay as we do for all the other holidays. It's all over every news channel and in the papers as well that June 19 is now a federal holiday.

Senior Human Resources Manager Jenna Edwards posted the following VOA message in response to Miller's post (GC Exh. 22, 27):

> Hi Dayna, thank you for your comment. The news of Juneteenth becoming a federal holiday is very recent, and at this point there has not been communication about whether this will be a paid holiday. We will let you know as more information becomes available. If you have a scheduled shift and choose to take the day to reflect, you can use existing time off options, paid or unpaid, and record that via your normal time off reporting mechanism. Thank you.

On June 18, a different employee posted the VOA message, "[m]ost of your staffs are African American. No acknowledgement of Juneteenth, a federal holiday. Really JFK8???" Edwards posted a response similar to her earlier response to Miller. (GC Exh. 22, 27.)

Miller and Conner Spence, a JFK8 employee and then Union vice president of membership, subsequently circulated a petition among employees which asked the Respondent to recognize Juneteenth as a paid holiday. (Tr. 89.)

On July 8, Miller and Spence delivered the Juneteenth petition to JFK8 General Manager Felipe Santos and a human resources manager. Santos told the employees he did not know of any company plan to recognize Juneteenth as a paid holiday and that he could not do anything more for employees regarding the issue. (Tr. 89–91, 134–135) (GC Exh. 13.)

On July 9, Miller posted the following VOA message which invited employees to sign the Juneteenth petition at the Union tent (Tr. 136) (GC Exh. 13):

> 6/21/21: ALU AA's spoke to G.M. for holiday pay on Juneteenth. Dismissed, ALU put together a petition and is gathering signatures, over 50+ now! 7/8/21: Presented again, Felipe confirmed that he wouldn't use any energy/effort to make positive change for workers! So you're invited to come sign the petition for well-deserved holiday pay at the ALU tent, speak up for yourself and help make history.

That same day, July 9, certain managers had the following discussion on the Respondent's "Chime" messaging platform regarding Miller's post (GC Exh. 51):

> Edwards – 17:16:32 – I'm shocked Stephanie is suggesting to remove a VOA comment but I'm aligned 100%
>
> Assistant General Manager Marc Zachary – 17:17:19 – Yea awesome
>
> Edwards – 17:17:39 – It is not asking any type of question and instead antagonizing and trying to rally a group of people. We should not stand for that
>
> Zachary – 17:18:22 – agreed, it's definitely not appropriate for VOA and probably violates the solicitation policy
>
> Zachary – 17:18:22 – next comment from random AA will be "please come see me if you want to buy my ____" or support my business etc
>
> HR Manager Anna Leonardi – 17:18:50 – Yeahh. After reading the user guide too it def falls under that category

On July 12, Miller was called into a meeting with Human Resources Business Partner John Tanelli. (Tr. 137–142) (GC Exh. 28.) The conversation was recorded and entered into evidence. (GC Exh. 52.) During the conversation, Tanelli told Miller that her July 9 post would be removed from the VOA because it violated the Respondent's solicitation policy. The exchange included the following comments (GC Exh. 52—[2:47–3:20]):[6]

> Tanelli: Just on one of the comments made on the VOA board regarding the ALU and going… going to the tent to sign up for holiday pay, things like that.
>
> Miller: Yea for the petition, yea.
>
> Tanelli: So Amazon solicitation policy clearly is defined that you can have every right to do that on nonworking time, in break areas. The VOA board is actually not a mechanism you can use that on.
>
> Miller: But why not?
>
> Tanelli: That's a mechanism for you to talk directly to management, right?

Tanelli later made the following additional comments regarding VOA posts that violate the solicitation policy (GC Exh. 52 - [3:38–4:02]):

> Tanelli: Anything related, like, to the ALU, and the tent, things like that like for going and signing up, unfortunately, that's something that we cannot have on the board. . . . It's against the policy, but this is not like . . . you're not in trouble or anything like that, right? I just did want to follow up with you, let you know that the comment will be removed. And that that's not something that you can leverage for the VOA board, right?

Tanelli assured Miller she could communicate with her peers on nonworking time in break areas. Miller asked for a written copy of the solicitation policy, indicated that she believed the policy was illegal, and said she would contact her attorney. Tanelli stated that "the VOA board is not something that you can leverage for that specific comment that you made, right,

[6] Herein, references to time ranges within audio recordings are in brackets (e.g. [2:47–3:20]).

asking people to go there to sign up like for additional holiday pay, that's unfortunately, something that is not going to be able to be on the board." (GC Exh.—[4:50–5:02]) Miller denied that the post was an invitation to sign up for additional holiday pay and said she originally posted the message on her break. Miller also said she would repost it. Tanelli responded as follows (GC Exh. 52 - [5:22–5:37]):

> Tanelli: Okay, well, I'm telling you now, like, this is not a conversation for you to be reprimanded. Right? This is me to educate you on the solicitation policy. You cannot put that on the board, unfortunately. And there will be additional follow up if a comment like that goes back up again.

After Miller met with Tanelli, on July 12, the Union organizing committee advised her to repost the Juneteenth message and she did so. The Respondent removed that post as well. At 5:59 p.m., after her shift ended, Miller tried to repost her message, but was unable to access the VOA. (Tr. 141–143, 418–421, 437, 441–446, 450–452) (GC Exh. 23).

On July 13, Miller was able to gain access to the VOA and reposted the message soliciting signatures for the Juneteenth petition. Again, the Respondent removed it. (Tr. 437.) Miller also posted the following message, which was not removed (GC Exh. 24) (Tr. 143–145):

> I put a petition up and was told it was solicitation and against policy. It wasn't. I wasn't shown that in writing (though requested), I was unfairly targeted and disciplined (as a black woman; they apologized to my white male comrade), and I wasn't made aware of the illegal repercussions they enforced (I tried to post it again and my permissions were taken away). HR silences voices, not the ALU.

That same day, July 13, Leonardi posted the following response (GC Exh. 25) (Tr. 143–145):

> Hi Dana. The VOA Board is available for employees to communicate with site leadership to ask questions and raise concerns. It is not a forum for solicitation. We support employees' right to solicit in according with Amazon policy, which prohibits solicitation via Company electronic communication methods. This includes the VOA boards. A copy of the policy can be found within the Amazon.com Owner's Manual accessed through the Code of Conduct link or Inside Amazon. Leadership explained this to you in person on July 12th. We have not and will not revoke anyone's ability to post on the VOA board however, we will continue to ensure that comments comply with Company policy. If you have additional questions about this we would [happy to] discuss.

The Respondent did not discipline Miller for her VOA Juneteenth posts. (Tr. 176.)

The evidence did not indicate that, before Miller's July 9 post, the VOA had been used by an employee to solicit signatures. (Tr. 104.)

The Respondent has not maintained a practice, before and after Miller's Juneteenth petition posts, of removing messages from the VOA.[7] Thus, the Respondent has not removed posts in favor of a paid Juneteenth holiday or posts encouraging employees to vote for or against the Union. In March 2022, the Respondent did not remove a post announcing that an employee had given out "VOTE NO" T-shirts and another post encouraging employees to "come get one" in the break room. (GC Exh. 20.) Likewise, the Respondent has not removed employee posts concerning their terms and conditions of employment, including concerns about health and safety. (Tr. 81–88, 103, 122–131, 163–168) (GC Exhs. 17–20, 22, 24–25, 27).

The Respondent's Response to the Union Organizing Campaign

Distribution of Materials

The Respondent initially campaigned against union organizing by distributing materials on breakroom tables, in bathrooms, and in electronic formats. In May or June, the Respondent left flyers on JFK8 breakroom tables which stated, in part (GC 10, 16) (72–75, 119–122):

> What does signing a card mean?
> Union authorization cards are legally binding and authorize the union to act as your exclusive representative. You may be asked to physically sign a card or click a link that asks for your signature online. This means you give up the right to speak for yourself. Signing a union authorization card may also obligate you to pay the union a monthly fee.

In May or June, the Respondent sent JFK8 employees a message on the A to Z app which stated, in part (GC 11) (Tr. 76–77):

> Speak For Yourself: Union authorization cards are legally binding and authorize the union to act as your exclusive representative. This means you give up the right to speak for yourself.
>
> Don't Sign Away Your Choices: Signing a union authorization card may also obligate you to pay the union a monthly fee out of your paycheck.
>
> Protect Your Signature and Your Privacy**:** Ask questions, do the research, and don't sign anything without reading it closely.

Statements in Mandatory Meetings

The Respondent stipulated, for this case only, that it required employees to attend meetings in which its admitted agents made statements in opposition to union representation and the Union. (Tr. 339.)[8] Managers generally went in person to notify employees that they were scheduled to attend mandatory meetings and escorted them to the meeting rooms. Managers also scanned the ID badges of employees in order to digitally record that those employees attended the meeting. Some of the managers who performed these functions worked at the Staten Island facilities (JFK8 or LDJ5) and some managers were brought in from other facilities. (Tr. 78–81, 103–105, 114–119, 179, 190–195, 204, 214–216, 229–230, 237–247, 250, 255–260, 278–279, 292, 296, 305, 315, 369–371, 385–396, 401–404) Certain employees recorded the meetings in which the

[7] Miller initially testified that the Respondent removed a VOA post from someone at the ALU who was offering services to employees with questions, but later testified that she was only aware of her own post being removed. (Tr. 166–167.) Edwards testified that she never heard of a VOA post being removed before Miller's Juneteenth posts. (Tr. 428–429.) I find that no posts other than Miller's were removed from the VOA.

[8] The transcript incorrectly transcribed the stipulation as referring to statements in opposition to the "Union by presentation." The actual stipulation referred to "Union representation."

Respondent allegedly made unlawful statements and those recordings were entered into evidence. (GC Exh. 2–7)

November 10 Meeting at JFK8

On November 10, Michael Williams held a mandatory meeting with employees at JFK8. (Tr. 10–11, 231–232, 305–310) (GC Exh. 2) During the meeting, Williams made the following comments regarding the CCP (GC Exh. 2):

> [1:00–2:15] - At JFK8 we have an amazing team, and we truly believe that by working together with our associates and direct interaction with our associates, allows us to make rapid improvement, course correct, and improve our workplace. And we are able to do that because of our relationship we have formed with our associates. Having your voice, alright, listening to you, responding to you, what you say, when you express your concerns about whatever issue may be. . . . Again, we value that relationship. That relationship also allows us . . . to provide programs and create opportunities for you guys. . . . And that is important because it's not all about work. We have to have your best interest at hand as well, in terms of your development. And that's why Amazon, effective January 1st, we will be paying 100% tuition, college tuition, education tuition. You guys have heard of that? If you haven't, if you don't have a social degree or you don't have bachelor's degree, and that's what you want, that's at your disposal. That is something Amazon is going to implement because we have listened to our associates.

Williams also made the following comments regarding the open door policy and the right of employees to raise concerns to the attention of management (GC Exh. 2 - [2:15–3:42]):

> [2:15–3:42] - That Open door policy we talk about all the time. It gives you direct access not just to your AM, but also to your DM, right? Even if you have an issue and someone in HR is not resolving your issue, don't settle for that. Take it to the next level. Go see a VP. If that VP is not resolving your issue, go see the HRM, and so on and so forth. That's the freedom of having open door direct communication and that relationship that we have. Here are some of the mechanisms that we utilize, which affords you the opportunity to voice your concerns, and these are no strangers to you. You know all of these. But I want to focus on the one - connections. I realize that some people don't get an answer the connections questions because they feel that leadership, management knows who answers what question and how they answer that question. I'm here to tell you that that's not true. I will tell you though, we rely on your feedback, through connections, to make adjustments, to make modifications to improve the workplace. That is one mechanism where you have direct access to tell your leadership team what issues, what concerns you have.
>
> [3:42–4:29] - I've been in meetings, where the entire meeting is focused on connections. Yes, the associate that's wondering what are we doing . . . to improve the workplace based on the feedback that we've received. So, I say all that to tell you that the leadership team takes connections very seriously. So, when it pops up on your screens, I encourage you to take the time out to answer the questions. Be honest. Be totally honest. Be brutally honest. If you see something that you believe is unsafe, answer the question that way. If you think you have a fantastic manager, answer the question that way. We can't make improvements, if we don't know what you're thinking, if we don't know your concerns.
>
> [4:30–5:52] - GEMBA walks. You've seen leadership walking around doing GEMBA walks. Tell your manager – "Hey, I want to be a part of that because, I want them know what I have to say." Yeah, I've seen you all including Michael. Michael is not going to really tell them what's going on. I'm going to tell them what's going on, so be a part of that. Okay? And, again, if you put something on the VOA board because your AM or your OM has not responded, before you put it up there, the first thing I would do is say, "Hey, I need to see the GM or I need to see Senior Ops." It's the open door communication. Yeah, you can put it on the VOA board, but some people don't like using the VOA board because they don't want everyone to know they're thinking, right? So escalate. That's the truth. Escalate. There's nothing wrong with that. You have a voice, we want you to use that voice. Okay. We respect your opinions. I've said this and I'm going to say it again, I truly believe this and I'm not up here just speaking the company line. I truly believe this. I've been with Amazon for nine years, I truly believe this. We have a dynamic workforce and that direct relationship that we have with our associates allows us to take care of customers globally, worldwide.
>
> [7:48–8:35] - So I want to make sure that there is no confusion about where Amazon stands and where that group stands. Two opposing sides, and like I said earlier, that's okay … that's okay. But, we're really here to make sure you understand and have the facts, right? Because it's your choice. Regardless of what you decide to do or don't do, it is your choice, it is your right. I'm not here to tell you what to do. Okay? But, I will tell you that that group may promise you anything and they may. I won't, I can't, I'm not allowed [inaudible].
>
> [15:51–15:58] - Our job, every day, yea, our job every day is to listen to associates' concerns and try to remove barriers. That's our job.

Williams made the following statements regarding the Union and employees' decisions to unionize (GC Exh. 2):

> [7:02–7:13] - Some third parties don't agree with our goings on, our relationship, that direct relationships with our associates, right, and one of those third parties is ALU.
>
> [10:18–11:16] - So, what should you do if you're approached? I'm going to be totally transparent, totally honest with you. That's entirely up to you. I'm not here to tell you what to do. That's up to you. It is your right. Okay. I just want you to make an informed decision. That's it. I'm not telling you to go this way or that way. Again, that is your right, your decision, and we respect that. We're only here to provide you with the facts, as we see it. We're not promising you anything. We're not telling you to go left or go right. That's up to you. But, if you don't have all of the information, you can make the wrong decision. Okay? If you've got questions, talk to your leadership, speak with HR. Just gain as much insight into the process as you possibly can. Okay?
>
> [11:25–12:23] - Protecting your rights is important to us. Right? Protecting your signature is important to us. Make sure you understand what it is you're signing and what does that means, because signing something you can potentially be ob-

> ligated to that. Okay? Listen, I'm a tell you, we're not perfect. [inaudible]. Some things we do right and some things we do wrong, and sometimes we don't always get that totally right. Listen careful now, right. It doesn't mean you stop talking. It doesn't mean you stop trying to get your voice across. Respect you more than anything. That's what I told you from the beginning. It is your decision, your opinion. We just want you to have and make an informed decision.

November 11 Meeting at JFK8

On November 11, Mike Rebell and Ron Edison held a mandatory meeting with employees at JFK8. (Tr. 191–202) (GC Exh. 3). During the meeting, Rebell made the following comments regarding the CCP (GC Exh. 3):

> [2:35–3:46] - So who here has heard of the Career Choice Program? A couple right? So you have a lot of benefits right now. I'm just going to dive in a little bit to that one because we're constantly looking at ways to improve those type of programs. For instance, Career Choice today, you have to be employed with Amazon for a year and then it would pay roughly about 80% of that tuition. Come January that benefit is getting better. It's going to go down to only being here 90 days before you can take advantage of that and it's going to pay 100% of that tuition. And that's for programs . . . that help you stay here with Amazon or something that's just needed in the community. I've seen things like from CDL licensing that maybe you stay with Amazon and work with the transportation or the TOM team or maybe you could go to an outside business or heck even start your own business for trucking but also things like medical billing and coding and into the health field. From IT different things and getting those certificates or degrees. I've seen HVAC. Many different programs that are offered at that. And again that's a benefit that you have right now for free that is also getting better come January. So that's just one thing.

Edison and Rebell also made the following comments about employees raising concerns to the attention of management and "open door avenues" (GC Exh. 3):

> Edison - [1:53–2:23] - We have an amazing team and we believe working directly together is the best way to improve the workplace and respond to your feedback. Working directly together allows us to focus on our one team approach because it makes improvement happen quickly. Providing the programs and opportunities you care about most. Open door avenues that give you direct access to management and HR.
>
> Rebell - [4:43–5:11] - That open door avenue, directly access management. That's kind of that direct working relationship that open door policy. We continue to strive that if you are going to your AM or maybe on the floor HR, if they are not able to answer your questions and get it resolved, escalate that up, go to the next level. Maybe it's the Ops Manager, maybe it's an HR Manager. But currently you have that direct working relationship all the way up to the GM and honestly even above and outside of the building if you choose to do that.
>
> Edison - [5:15–7:30] - Alright let's talk about the ways we work directly together. We want to hear from you. Here's how we can help make our team better. Speak with your manager. There should be an open door of communication with you and your manager so feel free first line to talk directly to your direct process path manager. If there is ever a barrier with your managers you immediately have operations managers that are in the process path as well and then it goes up from there. But that should be your direct line of contact, is directly with your direct process path manager. Connections. Is everybody familiar with the connections system? So as you go into your process path, you work or log onto your machines and computers if you have tasks that require that. You get the daily connections. It's asking you about your experiences, asking you things about the safety of the building, et cetera. And these are the opportunities for us to really get some true feedback that take those as opportunities for job improvements or find out what we are doing really well at and continue that on. GEMBA walks. So the senior team comes around on a weekly basis. You will see them coming through your process path and they are talking to the leadership and they are talking to associates to find out what are the barriers in those process paths? You are working those jobs every single day. You are putting your hands on the process. What are the barriers in those processes and how can we correct those when we go back in action against those so GEMBA walks are another. Birthday roundtables. Birthday roundtables is another way that we pull associates in during your birthday month and it's your chance to get a nice treat, do a fun activity, but it's also a communication time where we can talk about hey, again, what's going well? What are some opportunities? What do you want to see some more of? What can we do to create a good culture? So again birthday roundtables is something we also will continue.
>
> Edison - [8:01–8:33] - Then the last part is the VOA or the voice of the associate board. Is everybody familiar with the VOA board? Have you seen it before? If you have an electronic board you can go in through your A to Z app, find my voice and this is where you can enter feedback if you like. It's used for something you can seek opportunities with but I've also seen it where people use it to point out some things that they think are going well. But again, this is your voice. This is another opportunity for you to speak and….
>
> Rebell - [8:37–9:19] - And on the VOA board I just want to add to what Ron is saying. Obviously you can access it through your A to Z app, you can access it on some kiosks around, but also if you feel that you are not getting the response that you want or feel that you deserve, you can also escalate that, if you are not getting that response you can go request a meeting with…whether it's a senior leader that responded to that…depending on what it is, like if it's a safety thing, maybe it's you're requesting a meeting with the safety manager to get more information. If it's operations, maybe it's requesting a meeting with the AGM, Assistant General Manager or maybe an Ops Manager. But if you are not getting that response you want currently you have that direct working relationship with all the way to the GM, get the answer, continue to escalate that so you can get the answer.

Rebell made the following comments about the Union as a third party unfamiliar with the Respondent's philosophy (GC Exh. 3):

> [9:22–9:50] - So let's talk about Amazon and third parties. You have an amazing workforce and our direct relationship with Associates like you has been a key factor to our ability to deliver the best possible services globally to our customers. We continue to be a target for third parties that do not under-

stand our pro-employee philosophy, and seek to disrupt the direct relationship between Amazon and our Associates.

An employee interjected and argued that the Union is not a third party because it was created by and consists exclusively of the Respondent's employees. Rebell maintained that the Union is a third party organization which would be representing employees and is not affiliated with Amazon. (GC Exh. 3—[9:53–13:55]) Later, Rebell and Edison made the following comments (GC Exh. 3):

> Edison - [17:20–18:03] - So let's talk about our commitment to you. We are proud of the relationship that we have established at JFK8 and we don't believe the ALU would make us more successful or stronger as a team so here is what we are committing. Protecting your rights, listening to you, respecting your opinions and being open and honest with you. Take the time to check facts, keep an open mind, ask questions of your leadership and do your own research.
>
> Rebell – [18:03–18:56] - I want to hit a little bit more on the do your own research, alright? Ron and I, you have heard us for a half hour, you don't know us from anybody. Right? Who are we? Nobody to you right? When we say do your own research that also goes with if you are hearing something outside from whoever, maybe a coworker, make sure you are doing your own research as well and going to like unbiased type of websites. Go straight to the National Labor Relation Board's website is a great one. Unionfacts.org is a great one to go to where you can make a decision for yourself whether before or after you sign the card, whatever it is. Just do some research so that you can help inform and if we do go to a vote you can make the best decision for you and your family. Alright? That's really…the purpose of it is make sure you are doing your own research. That's the most important thing that you can do.

Rebell made the following comments regarding money the Union would charge employees (GC Exh. 3):

> [13:32–15:12] - Alright just to further clarify that ALU is not part of Amazon, it is not authorized to speak for Amazon. The ALU is a newly formed third party group that wants to represent all Associates at all four Staten Island campuses even though it has no experience. It will charge its members dues, fees, fines and assessments in exchange for their representation. So we will dive into some of the cards that may have been signed, maybe Associates asked about the cards. Whether it's a physical card like the right side or an electronic card right? And the purpose of this slide is really to make sure that you are protecting your signature. Before you sign something just read the fine print. You have every legal right to sign it, to listen to what's being said. 100%. But make sure that you are reading the fine print of what is on that card alright? You may be approached by an ALU organizer or an associate wearing a vest who is going to ask you to sign something. That's perfectly fine. They are legally able to do that but make sure that you are just reading the fine print of what that authorization card is applying. By signing either you could be authorizing the ALU to speak on your behalf or you could also be obligated to pay union dues and it's important you read everything closely but just make sure that you are reading the fine print whether it's on a QR code that you click, just make sure that you are reading what you are putting your information on first.

February 16 Meeting at JFK8

On February 16, Charlotte Bowers held a mandatory meeting with employees at JFK8. (Tr. 191–202) (GC Exh. 4). During the meeting, Bowers made the following comments regarding union dues (GC Exh. 4):

> [0:50–1:41] - There could be a hundred people on this site vote, and 51 vote yes, all 8,000 plus associates will then be represented by the union. So what that means is everyone's terms and conditions of employment will be up for negotiation, and you will also be liable to pay what's called "union dues" which are a representation fee that will be taken straight out of your paycheck and given to the ALU. They haven't told us how much they're going to charge yet and they haven't told us how often they're going to take that out, but, in New York, there is no cap as to how much they can charge. So that's why it's incredibly important that you go out and have your voice heard and make sure that you vote. Because this election has significant and binding consequences and if the union wins, not just for yourselves, but for future associates, for your co-workers and potentially for your family if the paycheck and your budget is going to change.
>
> [10:05–10:31] - If the ALU wins, they'll represent you whether you voted for them or not or whether you voted at all. Even if you didn't vote they will be your representative, and as I mentioned before, you will be liable to pay union dues or another representation fee, even if you voted no or you didn't vote at all, everyone is liable to pay those union fees. You can't opt out and everyone will follow a contract once it gets negotiated even if you don't like what's in it. So, electing a union is not like trying out my Netflix subscription for thirty days. It's very difficult to unelect the union once you elected them. You have to go through the transfer but in reverse. That's why it's really, really important that you have all the facts and, you consult various resources before you make a decision. So what I would recommend, consult Amazon, consult the ALU, go on the NLRB government website. You make sure you're doing all that due diligence to make a decision that's right for you. It can have binding consequences.

Bowers also had the following exchange with JFK8 employee and Union Vice Present Derrick Palmer regarding terms and conditions of employment potentially getting worse as a result of negotiations (GC Exh. 4):

> Bowers - [12:18–12:53] - So, with a union, terms and conditions of employment must be negotiated before changes can be made and they must be negotiated in good faith. Now good faith means that neither party can come to the table and say, "I want this or it's nothing." Both parties have to compromise, both parties have to give and take and… until changes can be made. So, the negotiations process is called collective bargaining and, in negotiations, there are no guarantees. Nobody can predict these results from the good faith bargaining process. And you can end up with better, the same, or worse than you currently have. There are no guarantees as to what the outcome will be.
>
> Palmer – [12:53–12:58] - So, wait, you're saying we could end up with worse? What does that mean by that?
>
> Bowers – [12:58–13:19] So, there are no guarantees as to what will happen, right? So, we can't make any promises that things will get better or stay the same. Cause it could get

> worse. We can't promise what's going to happen. Amazon can't promise you that they're going to walk into negotiations and the negotiations will start from the same. It could start from minimum wage for instance. I'm not saying that that will happen but it is a possibility.

At the time these statements were made, all JFK8 and LDJ5 employees earned more than minimum wage. (Tr. 384–385.)

March 15 Meeting at JFK8

On March 15, Eric Warrior held a mandatory meeting with employees at JFK8. (Tr. 191–202) (GC Exh. 5). During the meeting, Warrior made the following comments regarding employees' terms of employment during negotiations (GC Exh. 5):

> [3:45–3:58] - You have to keep the status quo. That means we have to keep everything the same during the election and during negotiations if the union is voted in, pay… benefits, and work rules.
>
> [5:05– 5:17] - There is no time limit to negotiations. Sometimes it could take months, even years, to complete this process. Sometimes the two sides can never agree.
>
> [9:22–9:40] - Negotiating a contract, particularly the first contract, can take a long time, months and sometimes years. And during negotiations there are typically no changes to wages, benefits, or work rules, and what happens if the parties can't agree to a contract?

Warrior also made the following comments regarding union shop clauses (GC Exh. 5):

> [5:17–5:51] - The union comes to the table with things that it wants. Union shop clauses. Clause. The union shop clause is not a check-off clause. So, when a union shop clause… and why do unions ask for it? A union shop clause would require Amazon to fire you if you don't want to join the union and pay union dues. I'll repeat that again. So, a union shop clause would require Amazon to fire you if you do not want to join the union.

April 10 Meeting at LDJ5

On April 10, Rebecca Smith held a meeting with employees at LDJ5. Smith made the following comments (GC Exh. 6):

> Smith - [9:40–10:27] - The sticking point about all of this though is there is nothing in federal law that is gonna force the employer or the union into an agreement they don't want to make. Okay? Nothing in federal law forces either the employer or the union into an agreement they do not want to make, and that's very important. There is no time limit on this process. Okay? The federal law doesn't say "Hey, you could get a contract in six months. Hey, you'll get a contract in a year." Federal law says, "however long it takes." Okay. "We're not putting a time limit on it." So, while you're going through this process though, does everybody understand what status quo is? No? Okay. You know what status quo is, don't you?
>
> Employee - [10:27–10:32] - Yeah, status quo means everything remains the same.
>
> Smith - [10:32–11:36] - Okay, so once the union files a petition, and she's correct, once the union files a petition, okay, everything must remain the same. I can't give you anything and I can't take anything away. There's actually a logic behind it although a lot of times employees don't like the law. . . . This law was written in 1935. Logic behind it was if you guys have a union election coming up and I give you things, I might be bribing you into voting no or if I take things away from you, I might be punishing you for bringing in a union, right? Neither of those things are legal. So you stay at status quo. The problem comes in with status quo, a lot of employees feel, is that when they vote a union in and they expect changes to happen right away, status quo says nothing can change until and if you reach an agreement, and I use the word "if" because actually there is nothing in federal law that guarantees you a contract at the end of the process. Okay. So that's why this law is important, and I know we didn't push it enough and I'm sure nobody in here is saying "oh yeah I can't wait to go home and read this thing" Right? But it dictates how this thing is gonna go down.

April 18 Meeting at LDJ5

On April 18, Katie Lev held a mandatory meeting with employees at LDJ5. (Tr. 293–294) (GC Exh. 7). During the meeting, Lev talked extensively about union dues, union security clauses, and dues check off. Lev's comments including the following statements regarding union security clauses (GC Exh. 7).

> [14:45–16:58] - So the parties are going to ask for different things that they want. The union has things that they want that are different from what you guys want. For example, union shop clause. Anybody know what happens if you don't pay dues in the State of New York, you're covered by the union contract with a shop clause. So I've been in a union. If I didn't pay my dues I was terminated. Not paying your dues isn't an option, you are fired. So when I was in the union, I didn't think the union… I was in a union here as a room service girl for a large hotel, when I was a room service girl, if I didn't pay my dues I was terminated, so I paid my dues. My frustration with that and it's part of my opinion this is an organization that's supposed to be helping me, I did not think they were helping me but I still had to pay. So my little way of thinking about things is if I hire a plumber to fix my toilet and he doesn't fix my toilet, I don't want to pay him. So if they're not fixing things for me, they're making things worse for me, I don't want to pay them. If I didn't pay them, I would be terminated. That didn't make sense to me in the whole hiring someone to do something for you and not having to pay them if they don't actually do anything. So that's what union shop clause is. It is not an option not to pay your dues, you are terminated. If you are having this conversation in Florida, I'd be like, don't worry about it. If you don't like the contract, if the union is not helping you, just don't pay them. The State of Florida said, that is not okay to fire someone for something that has nothing to do with your performance at your job. They're not allowed to fire people because of that. Michigan, Florida, Texas, 28 states have said that's illegal. But in the State of New York to pay dues is a condition of employment, that's the law permits that. So that's the union shop clause.

Lev also made the following comments regarding employee increases and improvements while a contract is being negotiated with a union representative (GC Exh. 7):

> Lev - [27:20–28:04] - Okay, so, less I be accused again of being a liar, this is from Bloomberg law. So they did a study. The average contract takes 409 days to reach an agreement. So over at JFK8, a year goes by and other places have gotten

increases, and other changes and improvements have been made at other buildings, but JFK8, they're in a collective bargaining process, that's frozen, and if employees are standing up going, "it's been a year, we haven't gotten anything, I thought we were going to do this." Maybe their picture gets taken, maybe they dig up something in their past, this is what they do if you disagree with them. They put a little "wanted" poster out for you. Yes?

Employee - [28:04–28:06] - Is that why I can't change my schedule?

Lev - [28:10–28:49] - Yeah, they are not allowed to make any changes. You guys are in the same status quo as they are. The difference is, you guys are in the preelection status quo, they are in the pre-collective bargaining status quo. Exactly the same impact. So if you ask to make a change now, your managers is like "Oh, I can't, we'll talk to you about it later." Because while this process is going on, everything is frozen. So, 409 days, if they're on average, they will not have a contract a year from now. … I would expect 8,000 would be longer, but maybe it's shorter, nobody knows.

Employee - [28:49–28:54] - If the Union is voted in, I would have to wait the average, like that much days to fix my schedule?

Lev - [28:54–30:22] - Yeah. That's the average but again, it could be much shorter, it could be much shorter. Like I'm trying to say, like, both sides. I know I sound so negative, but it could be more, it could be less, it could be the same. That's not negative. I know reading this sounds negative, but like I'm sorry but it's raining outside. That's negative. But that's not fear mongering. I've never said anything that's fear mongering. This is just a fact. If this frightens you, then you should vote no, if it doesn't frighten you, then you could vote yes. But telling someone the truth shouldn't be scary. I'm not saying anyone's going to lose anything, but I'm also saying I don't know if anyone is going to gain anything. You can decide whether you want to roll the dice and be bound by this. So, 409 days on average, some other data, this comes from the Economic Policy Institute, this is from 2021, more than half of all workers who vote to form a union are still without a collective bargaining agreement a year later, 37% are without an agreement over two years later. Does that mean you should vote no? Of course not, it just means that expect to be really, really patient because it's a long process. That doesn't mean the ALU is bad, it doesn't mean unions are bad, it just means this is the data on how long it takes.

Analysis

Discriminatory Enforcement of the Solicitation Policy

The complaint alleges that the Respondent violated Section 8(a)(1) by discriminatorily enforcing its solicitation policy when it removed messages that Miller posted on the VOA inviting employees to sign a Juneteenth petition at the Union tent and by threatening Miller with discipline for those postings. (Complaint ¶ 11) The General Counsel concedes that "an employer does not violate the Act by restricting the nonbusiness use of its IT resources absent proof that employees would otherwise be deprived of any reasonable means of communicating with each other, or proof of discrimination." *Caesars Entertainment*,368 NLRB No. 143, slip op. 8 (2019). Nevertheless, the General Counsel, relying exclusively on *Guard Publishing Co. d/b/a The Register Guard*, 351 NLRB 1110 (2007), contends that the Respondent discriminatory enforced its solicitation policy along Section 7 lines.

Removal of Miller's Post

In *Register Guard*, the Board found lawful an employer's enforcement of a policy prohibiting the use of its email system for "non-job related solicitations" by issuing written warnings to an employee for emails urging other employees to support the union by wearing green and participating in a union entry in a parade. Id. at 1119–1120. The Board refused to find the warnings discriminatory even though the employer allowed employees to send personal e-mail messages (i.e., emails concerning social gatherings, jokes, baby announcements, offers of sports tickets, and requests for services such as dog walking) because the employer did not have a practice of permitting emails which solicited support for groups, causes, or organizations. Id. at 1117, 1119. The union-related emails were found to be "unprotected" because they violated a lawful solicitation policy in the absence of evidence that other email "solicitations" were allowed. Conversely, the Board found unlawful a warning issued to an employee that simply clarified facts about the union rally and "was not a solicitation." Id. 1119. Since the Respondent allowed other non-solicitation emails, the only difference between the prohibited and permitted emails "was union-related." Id. 1119.

In describing the appropriate analysis regarding the alleged discriminatory enforcement of a solicitation policy, the Board stated as follows:

> We find that the Seventh Circuit's analysis, rather than existing Board precedent, better reflects the principle that discrimination means the unequal treatment of equals. Thus, in order to be unlawful, discrimination must be along Section 7 lines. In other words, unlawful discrimination consists of disparate treatment of activities or communications of a similar character because of their union or other Section 7-protected status. See, e.g., *Fleming, supra, 349 F.3d at 975* ("[C]ourts should look for disparate treatment of union postings before finding that an employer violated *Sec. 8(a)(1)*."); *Lucile Salter Packard Children's Hospital at Stanford v. NLRB, 321 U.S. App. D.C. 126, 97 F.3d 583, 587 (D.C. Cir. 1996)* (charging party must demonstrate that "the employer treated nonunion solicitations differently than union solicitations").
>
> For example, an employer clearly would violate the Act if it permitted employees to use e-mail to solicit for one union but not another, or if it permitted solicitation by antiunion employees but not by prounion employees. In either case, the employer has drawn a line between permitted and prohibited activities on Section 7 grounds. However, nothing in the Act prohibits an employer from drawing lines on a non-Section 7 basis. That is, an employer may draw a line between charitable solicitations and noncharitable solicitations, between solicitations of a personal nature (e.g., a car for sale) and solicitations for the commercial sale of a product (e.g., Avon products), between invitations for an organization and invitations of a personal nature, between solicitations and mere talk, and between business-related use and nonbusiness-related use. In each of these examples, the fact that union solicitation would fall on the prohibited side of the line does not establish that the rule discriminates along Section 7 lines. For example, a rule that permitted charitable solicitations but not noncharita-

> ble solicitations would permit solicitations for the Red Cross and the Salvation Army, but it would prohibit solicitations for Avon and the union.

Id. at 1117–1118

Here, the General Counsel initially contends that all "Section 7-protected" VOA posts are of a similar character and, therefore, once the Respondent permits some Section 7-protected posts it must allow all Section 7-protected posts, including Miller's messages inviting employees to sign a Juneteenth petition at the Union tent. However, in *Register Guard*, the Board found that an employer may prohibit solicitation while permitting communications that do not rise to the level of solicitation. Id. at 1119. Thus, currently, the Board does not consider a solicitation versus non-solicitation distinction to be the "unequal treatment of equals" or the disparate treatment of communications of a "similar character." This rationale would logically apply even if the prohibited solicitation and allowed non-solicitation were both union-related or concertedly related to wages, hours, and other terms and conditions of employment.[9]

The General Counsel does identify as "solicitation" certain VOA messages which were not removed by the Respondent even though they were posted in support of a group, cause, or organization. Employees routinely posted VOA messages which sought other employees to "vote yes" or "vote no" in the union election. One employee posted a message asking other employees to "come get" a "VOTE NO" shirt in the breakroom. Employees posted concerted messages about safety and health concerns. Employees posted concerted messages in support of Juneteenth as a paid holiday, including this post by Miller on June 18:

> Since Juneteenth is now a federal Holiday shouldn't we get holiday pay as we do for all the other holidays. It's all over every news channel and in the papers as well that June 19 is now a federal holiday.

The Respondent argues that it did not discriminatorily enforce its solicitation policy along Section 7 lines, but simply enforced a Section 7-neutral policy which prohibits solicitation for "signatures on petitions." As noted in *Register Guard*, "an employer clearly would violate the Act if it permitted employees to use e-mail to solicit for one union but not another, or if it permitted solicitation by antiunion employees but not by prounion employees." Id. at 1118. Although such posts are all union-related, by enforcing a policy in a manner that takes the side of one union over another or one union over no union, "the employer has drawn a line between permitted and prohibited activities on Section 7 grounds." Id. Until July, the Respondent did not remove union-related posts and did not remove posts promoting Juneteenth as a paid holiday. Accordingly, it is not so obvious that the Respondent drew a line between prohibited and permitted solicitations along Section 7 lines.

The issue presented here is a difficult one and I look to the totality of the circumstances to answer it. The Respondent essentially maintained the VOA as an open forum and did not, until July, remove any posts. In a Chime exchange, Edwards said, "I'm shocked Stephanie is suggesting to remove a VOA comment but I'm aligned 100%" because "[i]t is not asking any type of question and instead antagonizing and trying to rally a group of people."[10] The VOA post which sticks out as particularly similar to Miller's message inviting employees to sign a Juneteenth petition at the Union tent is another VOA post which invited employees to come get a "VOTE NO" shirt in the breakroom. The post regarding "vote no" shirts appears to violate the solicitation policy (as clarified by FAQ number 1) against distribution in the same way Miller's post violated the policy against the solicitation of signatures for petitions. The Respondent removed posts from the VOA for the first time during a union organizing campaign it opposed and the removed posts referenced a petition available for signing at the Union tent. At the time, the Respondent was already circulating literature designed to dissuade employees from signing union authorization cards which were available at the Union tent. On July 12, when Tanelli told Miller her post would be removed as a violation of the solicitation policy, he said the policy prohibited "anything related, like, to the ALU, and the tent, things like that like for going and signing up." Although it is a close question under current law, the context could reasonably cause an employee to believe that the Respondent was discriminatorily enforcing its solicitation policy by prohibiting posts regarding the signing of documents at the Union tent along Section 7 lines while allowing other solicitations of a similar character to remain.

Accordingly, I find that the Respondent violated Section 8(a)(1) of the Act by discriminatorily enforcing its solicitation policy when it removed Miller's VOA messages inviting employees to sign a Juneteenth petition at the Union tent. (Complaint ¶ 11(a).)

Threat of Discipline

The General Counsel contends that Tanelli unlawfully threated Miller with discipline for reposting the VOA message which invited employees to sign a Juneteenth petition at the Union tent. (Complaint ¶ 11(b).)

I do not find the alleged violation because Tanelli did not threaten Miller with discipline during their July12 meeting. Tanelli specifically told Miller she was not in trouble and was not being disciplined for violating the solicitation policy. Tanelli told Miller the meeting was just for the purpose of educating her about the solicitation policy. Tanelli did tell Miller that there would be "additional follow up" if she reposted the message. However, "additional follow up" does not necessarily imply anything more than another educational meeting. Tanelli's comment did not dissuade Miller from reposting the message and Miller was not disciplined for doing so. The lack of an disciplinary "follow up" would tend to confirm that there had been no threat of discipline in the first place.[11] According-

[9] The General Counsel also claims that the Respondent's application of its solicitation policy to remove Miller's post is "fallacious" because the policy exempts communication that "relates to terms and conditions of employment." However, solicitation policy FAQ number 4 echoes the law in *Register Guard* by prominently noting that solicitation is legally protected only if it "**Does NOT**" use company electronic equipment "*and*" relates to terms and conditions of employment. The VOA is an electronic system and, therefore, VOA posts are not exempt from the solicitation policy.

[10] The General Counsel did not allege that the employer's enforcement of the solicitation policy was motivated by a discriminatory purpose and I do not address the same herein. (Tr. 428–430) See *Kroger Ltd. Partnership*, 368 NLRB No. 64 slip op. 11–12 (2019).

[11] The General Counsel relies on certain evidence that the Respondent did, in fact, consider disciplining Miller. (G.C. Exhs. 55–56) However, the General Counsel concedes that the 8(a)(1) threat analysis is an objective one from the perspective of a "reasonable employee." The

ly, I will dismiss the allegation that the Respondent violated Section 8(a)(1) of the Act by threatening Miller with discipline for reposting her July 9 VOA message. (Complaint ¶ 11(b).)

Promises to Improve the Career Choice Program

The General Counsel contends that, on November10 and 11, the Respondent violated Section 8(a)(1) by promising employees improved benefits for rejecting the Union. (Complaint ¶¶ 15(a), 16(a)) More specifically, the General Counsel contends that the Respondent unlawfully promised to improve the CCP.

"An employer violates Section 8(a)(1) when it promises, either explicitly or impliedly, improved benefits contingent on employees giving up union representation." *Unifirst Corp.*, 346 NLRB 591, 593 (2006), citing *Bakersfield Memorial Hospital*, 315 NLRB 596, 600 (1994). However, employers may make truthful statements to employees concerning benefits available to their unrepresented employees and ask those employees not to unionize on that basis. *Unifirst Corp.*, 346 NLRB at 593 (2006), citing *TCI Cablevision of Washington*, 329 NLRB 700 (1999). Further, an employer may reference, during an organizing campaign, a benefit which was announced before the union campaign as a reason for employees not to unionize. *Horseshoe Bossier City Hotel & Casino*, 369 NLRB No. 80 (2020), citing *Hampton Inn NY-JFK Airport*, 348 NLRB 16, 17–18 (2006). Thus, the Board makes a distinction between (1) an employer referencing its existing or lawfully announced benefits as a reason not to unionize and (2) the promise of new benefits as a reason not to unionize. Only the latter is unlawful.

Here, in about April, the Union conspicuously began its organizing campaign at JFK8. In September, the Respondent announced company-wide improvements to the CCP. At a mandatory meeting held on November 10, Williams made the following comments:

> At JFK8, we have an amazing team, and we truly believe that by working together with our associates and direct interaction with our associates, allows us to make rapid improvement, course correct, and improve our work place.
>
> ...
>
> And that's why Amazon, effective January 1, we will be paying 100% tuition, college tuition, education tuition. You guys have heard of that? [unidentified voice answers "yea."] Yeah? If you haven't, if you don't have an associate degree or bachelor's degree, and that's what you want, that's at your disposal. That is something that Amazon is going to implement because we've listened to our associated.

At a mandatory meeting held on November 11, Rebell made the following comments regarding changes to the CCP:

> So who here has heard of the Career Choice program? A couple right? So you have a lot of benefits right now. I'm just going to dive in a little bit to that one because we're constantly looking at ways to improve those type of programs. For instance, Career Choice today, you have to be employed with Amazon for a year and then it would pay roughly about 80% of that tuition. Come January that benefit is getting better. It's going to go down to only being here 90 days before you can take advantage of that and it's going to pay 100% of that tuition. And that's for programs . . . that help you stay here with Amazon or something that's just needed in the community. I've seen things like from CDL licensing that maybe you stay with Amazon and work with the transportation or the TOM team or maybe you could go to an outside business or heck even start your own business for trucking but also things like medical billing and coding and into the health field. From IT different things and getting those certificates or degrees. I've seen HVAC. Many different programs that are offered at that. And again that's a benefit that you have right now for free that is also getting better come January. So that's just one thing.

The General Counsel cites *Manor Care Health Services-Easton*, 356 NLRB 202, 219–223 (2010) and *MEMC Electronic Materials, Inc.*, 342 NLRB 1172, 1175 (2004), for the proposition that the Board will presumptively infer interference with Section 7 rights when an employer announces or grants benefits during a union organizing campaign, unless the employer can show it had a legitimate business reason for the change.

In *Manor Care*, 356 NLRB 202, 219–223 (2010), a union began a multistate organizing campaign of an employer's facilities in September 2007. In October 2007, the employer unlawfully solicited employee grievances regarding pay and promised to remedy them "without a second party involved." 356 NLRB at 220–221. In November 2007, the employer granted employee wage increases and lump sum payments. Id. at 222. The Board affirmed the judge's ruling that the pay increases violated Section 8(a)(1). Id. at 202, fn. 3. The complaint alleged that the wage increases also violated Section 8(a)(3), but the judge found it unnecessary to reach that allegation as the remedy would be the same as the 8(a)(1) violation. Id. at 223.

In *MEMC Electronic Materials, Inc.*, 342 NLRB 1172, 1174–1176 (2004), wage cuts became a key issue in a union campaign. Just 4 days after the employer and union entered into a stipulated election agreement, the employer reversed course and announced to employees that half the wage cuts would be restored shortly before the scheduled election and the other half would be paid out thereafter in monthly lump payments. Id. at 1173. The employer made subsequent remarks to employees implying that the pay restoration was intended to quell worker anger which caused the union campaign. The Board found that the employer violated Section 8(a)(1)[12] by announcing and implementing the wage restorations, and stated:

> In conferral-of-benefits cases, the board has consistently inferred a violation of Section 8(a)(1) from nothing more than conferral itself during the pendency of an election, leaving it to the employer to make an affirmative showing that the grant of benefits was governed by factors other than the impending election. See, e.g., *Speco Corp.,* 298 NLRB 439, 443 (1990); *Brooks Bros.,* 261 NLRB 876, 882 (1982); *Gordonsville Industries,* 252 NLRB 563, 575 (1980).
>
> ...
>
> One way in which an employer may explain the conferral of benefits during the pendency of an election is to establish that the grant of benefits "had been conceived and implemented prior to the union's arrival, and that the preelection announcement simply made known to employees a predetermined and existing benefit, legitimately processed and unveiled in accordance with the dictates of business constraints, not union considerations." *Gordonsville Industries*, 252 NLRB at 575.

Respondent's disciplinary deliberations are irrelevant because they were not communicated to Miller.

[12] The Board found it unnecessary to pass on an 8(a)(3) allegation in the complaint.

The instant case is significantly different than *Manor Care* and *MEMC Electronic Materials* in that the complaint does not allege that the Respondent unlawfully, as a violation of Section 8(a)(1) or 8(a)(3), announced changes to the CCP program in September or implemented unlawful CCP changes in January 2022. Unlike in those cases, here, the September company-wide announcement was not made at a time or in a manner which would dissuade employees' from supporting the Union.[13] Absent such an allegation, the Respondent's references in November to CCP changes legally announced two months earlier effectively functioned as a reminder of a lawful predetermined benefit. As noted above, employers may ask employees not to unionize based upon their current benefits. It would make little sense if an employer's decision and announcement of a change in benefits was lawful but a subsequent reference to that change was not.[14] Accordingly, I will dismiss the allegations that the Respondent violated Section 8(a)(1) of the Act by promising employees improvements to the CCP to discourage them from electing a union representative. (Complaint ¶¶ 15(a), 16(a).)

Solicitation of Grievances and Implied Promises to Remedy Them

The General Counsel contends that, on November 10 and 11, the Respondent violated Section 8(a)(1) by soliciting the grievances of employees and impliedly promising to remedy them to discourage Union support. (Complaint ¶¶ 15(b), 16(b).)

The Board has held that the solicitation of employee grievances during a union organizing campaign "raises an inference that the employer is promising to remedy the campaign," particularly when "an employer has not previously had a practice of soliciting employee grievances." *Garda CL Great Lakes, Inc.*, 359 NLRB 1334 (2013), citing *Amptech Inc.*, 342 NLRB 1131, 1137 (2004). However, "an employer with a past practice of soliciting employee grievances through an open door or similar-type policy may continue such a policy during a union's organizational campaign." *Wal-Mart Stores, Inc.*, 340 NLRB 637, 640 (2003) citing *Kingsboro Medical Group*, 270 NLRB 962, 963 (1984). Ultimately, "it is not the solicitation of grievances itself that violates the Act, but rather the employer's explicit or implicit promise to remedy the solicited grievances that impresses upon employees the notion that representation is unnecessary." *Wal-Mart Stores, Inc.*, 340 NLRB 637, 640 (2003) citing *Maple Grove Health Care Center*, 330 NLRB 775 (2000) and *Uarco, Inc.*, 216 NLRB 1, 2 (1974). Thus, an employer's statement to employees that it can make no promises tends to work against the finding of a violation. See *Southern Monterey County Hospital*, 348 NLRB 327, 329 (2006) citing *Uarco, Inc.*, 216 NLRB 1, 2 (1974). Likewise, an employer's failure to offer any solution to a grievance tends to work against the finding of a violation. Id.

Here, I do not find that the Respondent, by Williams on November 10, violated the Act. Williams twice told employees he could not promise them anything.[15] Williams did not actually solicit employee grievances at the meeting and, therefore, was not in a position to offer any specific solutions.[16] Rather, Williams urged employees to direct their complaints to management at various levels pursuant to an open door policy and in forums that were already available.[17] These factors tend to diminish any inference of coercion and weigh against the finding of a violation. See *Southern Monterey County Hospital*, 348 NLRB 327, 329 (2006).

The General Counsel asserts that the Respondent failed to present evidence of an open door policy or establish that employees had an existing right to escalate complaints to higher management if those complaints were not remedied at a lower level. However, the Owner's Manual which was entered into evidence includes a provision titled "Open Door Policy and Conflict Resolution."[18] That policy indicates that employees "are welcome to discuss any suggestion, concern, or other feedback with any member of the company's management. Associates are encouraged to bring their ideas to the attention of management." (GC Exh. 58 p. 7.) The policy further states (GC Exh. 58 p. 7):

> The majority of misunderstandings are satisfactorily resolved by a thorough discussion and mutual understanding between the parties involved. In general, it is best to discuss any concerns with your immediate supervisor first. If you are unable to reach a satisfactory resolution with your supervisor or are not comfortable discussing the issue with your supervisor, you are welcome to discuss the matter with the next level of management, with Human Resources, or with any member of senior management.

The remainder of Williams' comments did not establish a context which implied that he was soliciting grievances and promising to remedy them if employees rejected the Union. Williams stated that it is "our job every day to listen to associates' concerns and try to remove barriers." In so stating, Williams gave no indication that the Respondent would do less for employees if they unionized or more for employees if they did not. Williams said he was "not here to bash anybody, I'm just giving you my opinion," and there are "two opposing sides"

[13] That CCP changes were announced 5 months after organizing began and before representation petitions were filed on a company-wide basis without any reference to union organizing would tend to negate an inference that it was a coercive promise to convince employees not to unionize. See *Nalco Chemical Co.*, 163 NLRB 68, 70–71 (1967).

[14] As the General Counsel did not allege that the September announcement of CCP changes was unlawful, I do not believe it is appropriate to initially infer that the announcement interfered with employees' Section 7 rights (even though it occurred during an organizing campaign). Regardless, the Respondent had a legitimate business reason to reference the predetermined changes in opposition to union organizing.

[15] Compare *ManorCare Health Services-Easton*, 356 NLRB 202, 220 (2010), cited by the General Counsel, in which the employer specifically told employees that they "had heard there was a lot of complaints and concern. And that they're here to try to fix it without a second party involved."

[16] Compare *Aldworth Company, Inc.*, 338 NLRB 137, 179 (2002), cited by the General Counsel, in which the employer made notes of employee grievances during a meeting and responded by issuing a letter with specific remedies.

[17] Compare *Edward A. Utlaut Foundation, Inc.*, 249 NLRB 1153, 1156 (1980), cited by the General Counsel, in which the employer changed its method of solicitating grievances from a generally neglected suggestion box to an announcement that complaints about sick leave policy could be changed and "taken care of."

[18] Although not entirely clear, the General Counsel perhaps asserts that the Respondent presented no evidence about its open door policy because the 2019 Owner's Manual was entered into evidence and the 2021 version was not. However, Edwards testified that she believed the 2019 Owner's Manual was not changed. Further, we are concerned, here, with the Respondent's policy that has historically been in effect. There was an open door policy in effect in 2019 and there is no evidence that it changed before the Respondent's agents made reference to it in November.

and "that's okay." Williams assured employees that, "regardless of what you decide to do or don't do, it is your choice, it is your right." In talking about what employees should do if they were approached by the Union, Williams stated:

> I'm going to be totally transparent, totally honest with you. That's entirely up to you. I'm not here to tell you what to do. That's up to you. It is your right. Okay. I just want you to make an informed decision. That's it. I'm not telling you to go this way or that way. Again, that is your right, your decision, and we respect that. We're only here to provide you with the facts, as we see it. We're not promising you anything. We're not telling you to go left or go right. That's up to you. But, if you don't have all of the information, you can make the wrong decision.

In my opinion, Williams' comments never spilled over into an implied promise that, if employees did not unionize, their complaints would be presented in new forums, processed in a different way, be taken more seriously, or be remedied more favorably than they had been in the past. Under current law, the Respondent was not forbidden from campaigning against unionization by asserting that employees already have the ability to approach management at all levels and in various forums to present their grievances. Under current law, the Respondent is entitled to tell employees that it wants to maintain a direct relationship with employees that does not include what it perceives to be the intervention of a third party union. Certainly, employees might not agree with the Respondent and take issue with a characterization of a union as a "third party," but that does not render the comments unlawful.

Similarly, I do not find that the comments of Rebell and Edison, on November 11, were unlawful. Their presentation largely concerned an explanation of existing policies and forums for employees to express and resolve complaints. Like Williams, Rebell and Edison did not solicit particular grievances or offer to resolve them. While Rebell and Edison did not expressly state that the Respondent could not promise employees anything, Rebell did suggest that employees do research and "go straight to the National Labor Relations Board's website." I do not find that Rebell and Edison ever moved beyond a recitation of the Respondent's existing policies and practices, and into an implied promise to remedy complaints in a new or different way.

Based upon the foregoing, I will dismiss the allegations that the Respondent violated Section 8(a)(1) of the Act by soliciting employee grievances and impliedly promising to remedy them to discourage union support. (Complaint ¶¶ 15(b), 16(b))

Threats to Reduce Employees' Wages as a Result of Union Dues

The General Counsel contends that in anti-union literature and in mandatory meetings held on November 11, February 16, and April 18, the Respondent violated Section 8(a)(1) by threatening to withhold employees' wages if they chose to be represented by the Union. (Complaint ¶¶ 7(b), 8(b), 16(c), 17(a), 19(a).) More specifically, the General Counsel contends that the Respondent unlawfully threatened employees with reduced wages by stating that the Union would charge them certain monetary amounts, including dues and fees.

In *Office Depot*, 330 NLRB 640, 642 (2000), the Board stated as follows in rejecting an allegation that the employer violated Section 8(a)(1) by telling employees they would need to pay union dues if the union were elected:

> We find nothing unlawful in the Respondent's statement that the employees would have to pay [u]nion dues if they selected the [u]nion. It is an economic reality that unions may collect dues from the employees they represent. The Respondent's statement about dues simply conveys to employees this reality. It does not convey any explicit or implicit threat of reprisal against employees for exercising their statutory right to select a union as their exclusive collective-bargaining representative. Even if the Respondent's statement could be considered untruthful, in that not all employees in union-represented units "have" to pay union dues, it is still nothing more than a misrepresentation about unions' ability to enforce payment of dues and not a threat of adverse action by the Respondent. We, therefore, find that the Respondent's statement about Union dues does not violate Section 8(a)(1) of the Act. *New Process Co.*, 290 NLRB 704, 707 enfd. Mem. 872 F.2d 413 (3d Cir. 1989).

Similarly, in *Syncor International Corp.*, 324 NLRB 8, 8 (1997), the Board found lawful the statement, "if the Union should come in, then [employees] would be making less money after [they] paid dues to the Union." The Board explained:

> Viewed in context, [the employer's] remark about ''making less money'' cannot reasonably be interpreted as a threat to reduce employees' wages because of their union support. Rather, the clear implication of his remark was to serve as a reminder that the payment of union dues would result in an expense not currently borne by the employees.

Id. See also *Southern Monterey County Hospital*, 348 NLRB 327, 328 (2006) (supervisor's statement that unions just want employees' money and that employees would have to pay union dues without a guarantee of receiving benefits in return is lawful).

Here, in distributed literature, the Respondent advised employees that signing a union authorization card may obligate them to pay the Union a monthly fee out of their paychecks. On November 11, Rebell told employees the Union "will charge it's members dues, fees, fines, and assessments in exchange for representation." Rebell also told employees that, by signing an authorization card, "you could be authorizing the ALU to speak on your behalf or you could also be obligated to pay the union dues." On February 16, Bowers told employees that, if the Union is elected, "everyone's terms of employment will be up for negotiation and you will also be liable or payable for union does which are a representation fee that they take straight out of your pay check and give it to the ALU." Bowers also said that, as a result, employees' paychecks and budgets would change. On April 18, Lev told employees that, as an employee previously represented by a union, "if I didn't pay may dues, I was terminated. Not paying your dues isn't an option, you are fired." These statements are no more unlawful as threats of reduced wages than employer statements deemed legal in the cases cited above.

The cases relied upon by the General Counsel are inapposite.[19] In *Shamrock Foods*, 366 NLRB No. 17 (2018), and *Reno Hilton*, 319 NLRB 154 (1995), the employers made generalized assertions that employees would suffer harm as a result of

[19] In their brief, the General Counsel essentially concedes that statements regarding the payment of union dues, alone in isolation, might not be unlawful. (GC Br. pp. 41, 82.)

organizing in the context of other unlawful threats of plant closure, termination, and the reduction of benefits. As noted by the Board in *Shamrock Foods*, while discussing the decision in *Reno Hilton*, the "numerous other unfair labor practices, including threats of closure, discharge, and loss of benefits, . . . gave the [general] assertion 'both specificity and force.'" *Shamrock Foods*, 366 NLRB at slip op. 14. The statements at issue here were not generalized threats, but specific statements about the impact of union dues, which the Board has found to be lawful.[20] Further, the alleged unlawful statements were not made in a context rife with unfair labor practices.

Based upon the foregoing, I will dismiss the allegations that the Respondent violated Section 8(a)(1) of the Act by threatening the reduction of employees' wages as a result of the assessment of union dues or fees. (Complaint ¶¶ 7(b), 8(b), 16(c), 17(a), 19(a).)

Threats of Loss of Existing Wages and Benefits as a Result of Bargaining

The General Counsel contends that, on February 16, the Respondent violated Section 8(a)(1) by threatening to withhold employees' existing wages if they chose to be represented by the Union. (Complaint ¶ 17(b).)

The Board has noted that "[a]n employer can tell employees that bargaining will begin from 'scratch' or 'zero' but the statements cannot be made in a coercive context or in a manner designed to convey to employees a threat that they will be deprived of existing benefits if they vote for the union." *Somerset Welding & Steel, Inc.*, 314 NLRB 829, 832 (1994), citing *Belcher Towing Co.*, 265 NLRB 1258 (1982). "Additionally, employees can be told that bargaining will start from zero but they cannot be threatened with the loss of benefits and left with the impression that all they will 'get' is what the union can restore to them." *Somerset Welding & Steel, Inc.*, 314 NLRB at 832, citing *Plastronics, Inc.*, 233 NLRB 155 (1977). Thus, the Board distinguishes "between (1) a lawful statement that benefits could be lost through the bargaining process and (2) an unlawful threat that benefits will be taken away and the union will have to bargain to get them back." *So-Lo Foods, Inc.*, 303 NLRB 749, 750 (1991).

The Board has recognized that "'bargaining from scratch' is a dangerous phrase which carries within it the seed of a threat that the employer will become punitively intransigent in the event the union wins the election." *Coach and Equipment Sales Corp.*, 228 NLRB 440, 440 (1977). In *Coach and Equipment Sales*, 228 NLRB at 440–441, the Board explained the evaluation of such statements as follows:

> [W]here a bargaining-from-scratch statement can reasonably be read in context as a threat by the employer either to unilaterally discontinue existing benefits prior to negotiations, or to adopt a regressive bargaining posture designed to force a reduction of existing benefits for the purpose of penalizing employees for choosing collective represent, the Board will find a violation. Where, on the other hand, the clearly articulated thrust of the bargaining-from-scratch statement is that the mere designation of a union will not automatically secure increases in wages and benefits, and that all such items are subject to bargaining, no violation will be found. A close question sometimes exists whether bargaining-from-scratch statements constitute a threat of economic reprisal or instead constitute an attempt to portray the possible pitfalls of the collective bargaining process. The presence of contemporaneous threats or unfair labor practices is often a critical factor in determining whether there is a threatening color to employer's remarks.

In *Tufts Brothers Inc.*, 235 NLRB 808, 808 (1978), an employer was found to have unlawfully told employees that the law required him to freeze all benefits and start from scratch if the union were elected. The Board observed as follows in finding the comments unlawful:

> It is permissible to inform employees of the realities of collective bargaining, which include the possibility the Union, in order to secure some other benefits, might trade away some existing benefits. However, in this case the totality of the circumstances surrounding the bargaining-from-scratch statements demonstrated that the risk of loss stems not from the give and take of good-faith bargaining, but from a regressive bargaining posture predetermined by the employer.

Id.

On February 16, Bowers had the following exchange with a JFK8 employee:

> Bowers: So, with a union, terms and conditions of employment must be negotiated before changes can be made and they must be negotiated in good faith. Now good faith means that neither party can come to the table and say, "I want this or it's nothing." Both parties have to compromise, both parties have to give and take and… until changes can be made. So, the negotiations process is called collective bargaining and, in negotiations, there are no guarantees. Nobody can predict these results from the good faith bargaining process. And you can end up with better, the same, or worse than you currently have. There are no guarantees as to what the outcome will be.
>
> Palmer: So, wait, you're saying we could end up with worse? What does that mean by that?
>
> Bowers: So, there are no guarantees as to what will happen, right? So, we can't make any promises that things will get better or stay the same. Cause it could get worse. We can't promise what's going to happen. Amazon can't promise you that they're going to walk into negotiations and the negotiations will start from the same. It could start from minimum wage for instance. I'm not saying that that will happen but it is a possibility.

I note first that this is not clearly a case, like those cited by the General Counsel,[21] in which the Respondent unlawfully threatened to reduce employees' wages and require the union to bargain to get them back. Bowers initially noted that "terms and conditions of employment must be negotiated before

[20] In *Clements Wire & Mfg. Co.*, 257 NLRB 206, 213 (1981), cited by the General Counsel, the employer unlawfully told employees they would be "making less money, not more." Although the employer also discussed union dues, the employer did not tell employees they would make less money *because* they paid union dues. The statement about making less money and paying dues were separate. The General Counsel also relies on the dissent in *Tesla, Inc.*, 370 NLRB No. 101 (2021), but I am bound to apply current Board law, including majority opinions.

[21] *Taylor-Dunn Mfg. Co.*, 252 NLRB 799, 800 (1980); *Noah's New York Bagels*, 324 NLRB 266, 266–267 (1997); *Noah's Bay Area Bagels, LLC*, 331 NLRB 188, 188 (2000); *Coach and Equipment Sales Corp.*, 228 NLRB 440 (1977).

changes can be made and they must be negotiated in good faith." From that premise (i.e., wages would not be reduced before negotiations occur), although perhaps stated somewhat clumsily, Bowers indicated that the Respondent might start with the bargaining position that employees should receive a pay reduction to the minimum wage (employees currently earn more than the minimum wage).

Bowers did, however, raise the possibility that the Respondent would take a regressive bargaining posture. Presumably, the Respondent has an economic reason (i.e., hiring and keeping employees) for paying employees their current wages and benefits. The Board has tended to find employer statements lawful when they include at least some indication that wages or benefits might be reduced as a result of "trading" or the give-and-take of negotiations. See e.g., *Sunbelt Mfg., Inc.*, 308 NLRB 780, 791 (1992) aff'd 996 F.2d 305 (5th Cir. 1993); *Lear-Siegler Management Service*, 306 NLRB 393 (1992); *Bi-Lo*, 303 NLRB 749, 750 (1991); *Uarco*, 286 NLRB 55 (1987). Bowers did so in telling employees, "[b]oth parties have to compromise, both parties have to give and take . . . until changes can be made." In *Mediplex of Connecticut, Inc.*, 319 NLRB 281, 281 (1995), the Board stated that employees are "capable of evaluating" such "campaign propaganda" that union representation "might result in less desirable benefits." The comments by Bowers seem to fall within the scope of precedent finding such comments to be lawful. Finally, as noted above, Bowers did not make her comments in a context rife with other unfair labor practices.[22]

Accordingly, I will dismiss the allegation that the Respondent violated Section 8(a)(1) of the Act by threatening employees with the loss of existing wages as a result of collective bargaining. (Complaint ¶ 17(b))

Threat of Unlawful Discharge Pursuant to a Union Security Clause

The General Counsel contends that, on March 15, the Respondent violated Section 8(a)(1) by threatening employees with discharge if they chose to be represented by the Union. (Complaint ¶ 18(A)(a).) More specifically, the General Counsel contends that the Respondent unlawfully threatened employees with discharge pursuant to a union security clause.

On March 15, Warrior told JFK8 employees that a "union shop clause would require Amazon to fire you if you don't want to join the union and pay union dues."

The General Counsel and Respondent both cite *Didlake, Inc.*, 367 NLRB No. 125 (2019). In that case, an employer told employees that, if the union wins, "[f]irst thing they will require you to do is join the union. . . . And if you don't, you will not be able to work here." Id. slip op. at 2. The employer also told employees that, if the union wins, "you have to join as a condition of your employment to be here, and you will be paying the union dues." The Board majority acknowledged that the employer's comments "misstated the law when they characterized union membership and the payment of dues as a 'condition of employment if the [u]nion won the election." Nevertheless, the Board majority found that "the employer's statements to employees respecting their dues obligation are not coercive . . . even if they contain misstatements of law." Id. slip op. at 2, citing *Midland National Life Insurance Co.*, 263 NLRB 127 (1982).

The General Counsel invites me to rely on the dissent in *Didlake* rather than the majority decision. The dissent reasoned that the employer's misstatements of law were objectionable because they "threatened employees that if they chose the [u]nion, the [e]mployer certainly would require them to join the [u]nion and pay dues or be fired." Id. at 5. While this reasoning might command a majority in the instant case, I must apply current Board law, including majority decisions. Accordingly, I will dismiss the allegation that the Respondent violated Section 8(a)(1) of the Act by threatening employees with unlawful discharge pursuant to a union security clause if they chose to be represented by the Union. (Complaint ¶ 18(A)(a).)

Threats to Withhold Improved Wage and Benefits while Bargaining Takes Place

The General Counsel contends that on March 15, April 10, and April 18, the Respondent violated Section 8(a)(1) by threatening to withhold improvements in wage and benefits from employees if they chose to be represented by the Union. (Complaint ¶¶ 18(A)(b), 18(B), 19(b).) More specifically, the General Counsel contends that the Respondent told employees their terms of employment would be frozen and not improve while lengthy bargaining takes place.

The Board has found that an employer violates Section 8(a)(1) by advising employees that their wages would be frozen or put on hold during negotiations and that they would not share in traditional wage increases which may be received by nonunion employees. *DHL Express, Inc.*, 355 NLRB 1399, 1399–1400 (2010); *California Gas Transport, Inc.*, 347 NLRB 1314, 1314, 1349 (2006); *Jensen Enterprises*, 339 NLRB 877, 877–878 (2003); *Teksid Aluminum Foundry, Inc.*, 311 NLRB 711, 717 (1993). In *DHL Express*, the Board distinguished certain cases—*Mantrose-Haeuser Co*., 306 NLRB 377 (1992) and *Uarco*, 286 NLRB 55 (1987)[23] – in which the employer lawfully referenced a potential freeze in employees' terms of employment while contemporaneously assuring them that the status quo would require that union represented employees share in wage increases of a type they previously enjoyed.

The Respondent has a practice of granting regular wage increases based upon time of service. On April 18, Lev told LDJ5 employees, "[t]he average time to reach an agreement is 409 days. A year goes buy and other guys have received increases and improvements." Threats that the pay of unionized employees would be frozen in place during lengthy negotiations while nonunion employees receive regular increases and improvements is a violation of Section 8(a)(1). *DHL Express, Inc.*, 355 NLRB 1399, 1399-1400 (2010); *California Gas Transport, Inc.*, 347 NLRB 1314, 1314, 1349 (2006); *Superior Emerald Park Landfill, LLC*, 340 NLRB 449, 261 (2003); Jensen *Enterprises*, 339 NLRB 877, 877-878 (2003); *Teksid Aluminum Foundry, Inc.*, 311 NLRB 711, 717 (1993).

Conversely, I do not find Smith's April 10 comments to LDJ5 unlawful. Smith told employees that federal law imposes no time limit on collective bargaining or guarantee that union represented employees would obtain a contract in 6 months or year. Smith also explained the law as it pertains to the "status quo" as follows:

> Okay, so once the union files a petition, and she's correct, once the union files a petition, okay, everything must remain

[22] In so finding, I note that the statements I have found to be unlawful were not made by Bowers on February 16.

[23] Both cases are relied upon by the Respondent.

> the same. I can't give you anything and I can't take anything away. This law was written in 1935. Logic behind it was if you guys have a union election coming up and I give you things, I might be bribing you into voting no or if I take things away from you, I might be punishing you for bringing in a union, right? Neither of those things are legal. So you stay at status quo. The problem comes in with status quo, a lot of employees feel, is that when they vote a union in and they expect changes to happen right away, status quo says nothing can change until and if you reach an agreement, and I use the word "if" because actually there is nothing in federal law that guarantees you a contract at the end of the process.

Although Smith did not expressly tell employees they would continue to receive regular wage increases, she did assure them that they would not be punished for unionizing. In my opinion, Smith's comments fall within the scope of statements the Board has found to be lawful. See *Mantrose-Haeuser Co*., 306 NLRB 377 (1992); *Uarco*, 286 NLRB 55 (1987).

Warrior's March 15 comments to JFK8 employees fall between those of Lev and Smith. Warrior told employees that "contracts typically take months or years and typically there are no changes in wages or benefits, and what happens if the parties can't agree to a contract?" Warrior did not expressly state that union represented employees would not share in improvements of unrepresented employees, but impliedly raised the prospect without offering any contemporaneous reassurance to the contrary. Thus, Warrior's comments come within the scope of cases the Board finds unlawful. *DHL Express, Inc.*, 355 NLRB 1399, 1399–1400 (2010); *California Gas Transport, Inc.*, 347 NLRB 1314, 1314, 1349 (2006); *Jensen Enterprises*, 339 NLRB 877, 877–878 (2003); *Teksid Aluminum Foundry, Inc.*, 311 NLRB 711, 717 (1993).

Based upon the foregoing, I find that the Respondent, by Warrior and Lev, on March 15 and April 18, respectively, violated Section 8(a)(1) of the Act by threatening to withhold improvements in employees' wages and benefits during negotiations. (Complaint ¶¶ 18(A)(b), 19(b)) I will dismiss the allegation that the Respondent, by Smith on April 10, did the same. (Complaint ¶ 18(B))

CONCLUSIONS OF LAW

1. The Respondent, Amazon.Com Services LLC, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union, Amazon Labor Union, is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent violated Section 8(a)(1) of the Act by discriminatorily enforcing its solicitation policy along Section 7 lines.
4. The Respondent violated Section 8(a)(1) of the Act by threatening to withhold employee improvements in wages and benefits while collective bargaining takes place.
5. The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.
6. The remainder of the complaint allegations are dismissed.

The Remedy

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

The Respondent will be ordered to post, in English and Spanish, at its Staten Island JFK8 and LDJ5 facilities, the notice attached hereto as "Appendix."

As a remedy to the unlawful disparate enforcement of the Respondent's solicitation policy, the General Counsel argues that *AT&T Mobility*, 370 NLRB No. 121 (2021) be overruled and the solicitation policy be rescinded. However, I am not at liberty to overrule Board precedent.

The General Counsel has requested certain atypical remedies, including a notice reading and supervisor training by a Board agent. I deny these requests. I have not found many unfair labor practices and the ones I did find were not entirely obvious or clear cut. Accordingly, I find that the Board's traditional remedies are sufficient to effectuate the policies of the Act in this matter.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended order[24]

ORDER

The Respondent, Amazon.Com Services LLC, Staten Island, New York, its officers, agents, successors, and assigns, shall

1 Cease and desist from

(a) Discriminatorily enforcing its solicitation policy along Section 7 lines.

(b) threatening to withhold employee improvements in wages and benefits while collective bargaining takes place.

(c) In any like or related manner interfering, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Within 14 days after service by the Region, post in English and Spanish at its JFK8 and LDJ5 facilities in Staten Island, New York, copies of the attached notice marked "Appendix."[25] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on

[24] If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order 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.

[25] If the facilities involved in these proceedings are open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facilities involved in these proceedings are closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facilities reopen and a substantial complement of employees have returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed one or both of the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, copies of the notice to all current employees and former employees employed by the Respondent at any time since July 12, 2021.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 29 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., January 30, 2023

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discriminatorily enforce our solicitation policy by removing messages posted on the Voice of Associates Board which are protected under Section 7 of the National Labor Relations Act.

WE WILL NOT threaten to withhold employee improvements in wages and benefits while collective bargaining takes place.

AMAZON.COM SERVICES LLC

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/29-CA-280153 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.