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

AMERICAN AUTOMOBILE ASSOCIATION
OF NORTHERN CALIFORNIA, NEVADA AND UTAH

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL 665

32-CA-280838
32-CA-282213
32-CA-284409
32-CA-284659
32-CA-284664
32-CA-285247
32-CA-291041
32-CA-291138
32-CA-292625
32-CA-294216
32-CA-294816
32-CA-295908
32-CA-296162
32-CA-301979
32-CA-317752

D. Criss Parker, Amanda Brunt, and Leigh Davenport Esqs.
for the General Counsel.
Thomas Posey, Esq, (Buchalter Law Firm, Los Angeles, California) and Andrew Cohen, Esq.
for the Respondent.[1]
Thomas M. Woods, Business Agent, Teamsters Local 665 (Santa Rosa, California)
for the Charging Party.

DECISION

STATEMENT OF THE CASE

Arthur J. Amchan, Administrative Law Judge. This case was tried in Oakland, California, between May 23, 2023, and October 23, 2024, before Administrative Law Judge Lisa Ross. There are 50 volumes of transcript consisting of 6073 pages and over 250 exhibits. On December 12, 2025, Associate Chief Judge Eleanor Laws reassigned this matter to me pursuant to Board Rule 102.36(b) due to Judge Ross' retirement. Thus, she is unavailable for further

[1] At the time of this trial, both of Respondent's attorneys were lawyers at Seyfarth Shaw LLP.

action on this case. I have read and considered the entire record and the briefs filed by the General Counsel (217 pages, a redacted and unredacted version), and Respondent (redacted and unredacted, 116 pages).[2]

This case involves many allegations including 5 allegedly illegal discharges and unilateral changes. Virtually every material fact in the case is disputed. I have made credibility resolutions based on the weight of evidence, established facts, inherent probabilities, and reasonable inferences drawn from the record as a whole. However, since I did not and could not base such determinations on witness demeanor, the Board may make independent evaluations of credibility, *Storer Communications,* 297 NLRB 296, fn. 2 (1989). One particularly important factor in making credibility resolutions in this case is the interest of all or virtually all witnesses in the outcome of this case. There was not a single witness that I deem completely neutral. I also see little in the way of a material difference in the strength of each witnesses' interest in the outcome of this case. The testimony of a current employee, such as Samual Yoo, is entitled to considerable weight, but his current employment is not necessarily determinative. That must be weighed against his favorable attitude towards the Union and possible friendship with and interest in solidarity with the alleged discriminatees.

The General Counsel bears the burden of proving violations of the Act by a preponderance of evidence. If the evidence is in equipoise, the General Counsel does not satisfy that burden, *American, Inc.* 342 NLRB 768 (2004).

Each of the alleged violations must be analyzed independently; however, the context in which they occurred must also be considered. Related unfair labor practices are highly relevant in determining both the credibility of witnesses and Respondent's motive with regard to a particular allegation. Unlawful discrimination against one pro-union employee based on antiunion animus often supports an inference that the same animus motivated its actions against other employees, *Embassy Vacation Resorts,* 340 NLRB 846, 848 (2003); *NLRB v DBM,* 987 F.2d 540 (8th Cir. 1993*); Reeves Distribution Service,* 223 NLRB 995, 998 (1976).

Findings of Fact

The Charging Party Union began organizing Respondent's insurance agents in January 2021. Respondent was aware of the organizing drive no later than February 12, 2021. G.C. Exh. 309. The Union filed a representation petition on March 24, 2021. On June 11, 2021, the Union prevailed in a representation election and was certified as the exclusive collective bargaining representative of Respondent's employees in the following bargaining unit on June 22, 2021.

> All full-time and regular part-time Commissioned Insurance Sales Employees employed by Respondent at its 78 Northern and Central California branch offices; excluding all other employees, managers, guards, and supervisors as defined in the Act.

[2] The General Counsel's unopposed motion to correct the transcript and exhibits is granted. I will not revisit any rulings made by Judge Ross at trial. If any party believes it has been prejudiced by any of those rulings, they may address them in exceptions filed with the Board.

In addition to these bargaining unit members, Respondent employs Member Experience Associates (MEA) and Member Experience Generalists (MEG).[3] These positions are included in the description of "front line employees." They can sell memberships and provide travel and DMV (Department of Motor Vehicle) services.[4] They are generally not licensed to sell insurance. Tr. 114, 191, 1782, 1788-89. 1809.

Licensed Insurance Agents were divided into two groups. Those hired before August 5, 2015 receive substantial renewal commissions. Those hired after August 5, 2018, but prior to January 1, 2018, received a smaller commission, G.C. Exh. 2, pg. 2. Agents hired more recently apparently do not get renewal commissions, Tr. 94.

257 bargaining unit members voted to be represented by the Charging Party. Approximately 174 voted against representation.[5] Thus, about 60% of those who voted selected union representation.

Complaint paragraph 7: The General Counsel alleges that Respondent, through labor consultant Daniel Block violated Section 8(a)(1) by making threatening and coercive statements to employees on April 14, 2021, and May 6, 2021.

Block conducted 10-15 meetings at Respondent's branches over an 11-week period. 5 to 15 unit employees attended each meeting. On April 14, 2021, one of these meetings was held at Respondent's Stockton branch. Block discussed alleged union corruption, also that employees who cross picket lines can be fined by their union. He stated that a union could have a lien placed on an employee's home to collect such fines, Tr. 3338-40. Block denies saying anything about a specific NLRB charge filed against Respondent., Tr. 3282-89. He denies making any comment to Angie Matthews or even knowing who she was.

Block conducted a meeting for Fresno employees on about May 6. Block denied saying anything at this meeting about NLRB charges or making any of the statements testified to by Angie Matthews at Tr. 442-44 about an unfair labor practice charge filed on her behalf.

Corina Molina, a current employee of Respondent when she testified, said Block discussed a union rally in San Francisco and criticized an employee who spoke negatively about Respondent at the rally. Tr. 523-24. Block denied this as well.

I find the testimony of the General Counsel's witnesses in support of this allegation to be no more credible than Block's denials. I therefore dismiss this complaint allegation.

Complaint paragraph 13: On March 17, 2022, Respondent conducted an investigatory interview of unit employee Lielonnie Lewis. Lewis asked for a union representative. Business Agent Tom Woods attended the interview with Lewis. The General Counsel alleges Respondent

[3] MEA employees are also referred to as underwriters, Tr. 1788.

[4] A AAA member can avoid going to the California DMV by taking care of DMV business at a AAA branch.

[5] I take judicial notice of the tally of ballots in Case No. 20-RC-274587.

violated the Act by not telling Lewis prior to the outset of the interview the reason for the investigation. The General Counsel alleges Respondent also violated the Act in denying Lewis the opportunity to consult with Woods during the interview, after telling Lewis the investigation was about timekeeping practices.

When the meeting started, Woods asked what it was about. HR Manager Michelle Faas told Woods she was going to go through her introductions first, Tr. 4300. She also told Woods he could not meet with Lewis in the middle of the interview, Tr. 4309. Woods threatened to file an unfair labor practice charge. Then the interview continued. After the interview Lewis received a disciplinary notice. She was terminated later for other reasons.

The Board held in *Climax Molybdenum Co.*, 227 NLRB 1189 (1977), enf. denied 584 F. 2d 360 (10th Cir. 1978), that an employer violated the Act in prohibiting the employee from consulting with the union representative before the interview. Despite the Court of Appeals decision *Climax Molybdenum* is controlling Board law. The logic of the decision applies to consultation during the interview, so long as it does not interfere with the employer's investigation.

Postal Service, 371 NLRB No. 7 (2021), cited by Respondent, does not support its position. In fact, the case supports the General Counsel's position that AAA was required to give a general statement as to the subject matter of the interview at the outset, which it did not do.

I find Respondent violated the Act as alleged.

Complaint paragraph 8

The General Counsel contends that the following policy in its employee handbook is unlawful on its face, as well as applied to employee Pricilla Gaines-Holladay (complaint paragraph 9).

From at least March 4, 2021, and continuing to date, Respondent maintained the following confidentiality policies in its Standards of Conduct, Information Technology Policies, and Code of Conduct in the Team Member Handbook:

(a) Safeguarding Information: One of our most valuable assets is our Company's confidential information, and we protect against unauthorized disclosure or misuse. This information could reveal our technology, strategies and other ideas we have worked hard to create. It could also reveal information that our members or team members have entrusted to us.

(b) [The Company] is legally obligated to protect sensitive information pertaining to members, insureds, customers, and vendors. Unauthorized disclosure of confidential financial data, other non-public proprietary company information and confidential information regarding business partners, vendors or customers is prohibited, either during or after your employment. Such information and data are referred to as "protectable business information."

(c) What should I protect? Information about our team members' personal data or information about benefits, compensation or performance. Our members' personal identification, financial information or insurance or loan information. [emphasis added]

(d) [Employees may not engage in:]

(i) Misappropriation, theft, copying or unauthorized (including unsecured) disclosure of confidential information pertaining to members, insureds and team members, such as mailing addresses, email addresses, telephone numbers, Social Security numbers, driver license, credit card numbers, and insurance or similar policy information.

(ii) Misusing or disclosing trade secrets or confidential information.

(iii) Misconduct, including willful violations of company policy and/or exercise of poor judgment.

(iv) Unauthorized viewing, accessing, disclosing or influencing others to view, access, or disclose information pertaining to you, your family members, or other team members concerning their membership, insurance, travel, employment or any and all other data.

Complaint Paragraph 8; Respondent's Answer of February 27, 2024.

I find that subparagraph d(iv) violates the Act in that an employee would reasonably construe it to prohibit employees from discussing or disclosing their wage information to others, *Long Island Association for AIDS Care, Inc.*, 364 NLRB 209 (2016); *Lutheran Heritage Village-Lovonia,* 343 NLRB 646 (2004). This provision violates the Act under either *Boeing Co.,* 365 NLRB No. 154 (2017) or *Stericycle, Inc.,* 372 NLRB No. 113 (2023). I find the other portions of the policy do not violate the Act.

Respondent's subpoenas duces tecum to the alleged discriminatees and the Charging Party Union (March 5, 2024 amendment to complaint, Tr. 1982-88).

Respondent issued subpoenas to the Union and the alleged discriminatees. These subpoenas requested documents and recordings relating to the employees' assistance to the Union, the employees' union or other concerted activities, and documents and recordings provided to the NLRB during the investigation of unfair labor practice charges. The subpoena issued to alleged discriminatee Yasmin Weston also asked for documents and records relating to her contention that Respondent believed that Weston initiated or assisted in the filing of an unfair labor practice charge against Respondent and cooperated with the Board's investigation of the charge.

In *National Telephone Directory Corp.,* 319 NLRB 420, 421-22 (1995) the Board held that requests such as these violate the Act unless Respondent establishes that its need for the information outweighs the employees' rights to be free from such probes of their protected activity. In *Tracy Auto,* 372 NLRB No. 101 (2023), the Board made a similar ruling with regard to employees' right to provide information to the Board. Respondent failed to make any showing as required by the above-cited cases.

I find that Respondent violated the Act as alleged.

General Principles relating to the 5 Allegedly Illegal Terminations at issue in this case.

In order to establish a violation of Section 8(a) (3) and/or (1), the Board generally requires the General Counsel to make an initial showing sufficient to support an inference that the alleged discriminatee's protected conduct was a 'motivating factor' in the employer's decision. Then the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of protected conduct, *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 889 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399-403 (1983); *American Gardens Management Co.*, 338 NLRB 644 (2002); *General Motors,* 369 NLRB No. 127 (2022).

This generally requires the General Counsel to make an initial showing that an alleged discriminatee engaged in protected or union activity, that the Respondent was aware of the employee's protected conduct and bore animus towards the discriminatee as a result. The showing must be sufficient to create an inference that the adverse action was motivated by that animus. Once the General Counsel has met its burden, the burden shifts to the Respondent to prove that it would have taken the adverse action in the absence of the employee's protected conduct.

Although there is some dispute as to the extent of the union activity of the 5 discriminatees, each one engaged in union activity by invoking their *Weingarten* rights by having Business Representative Tom Woods attend their investigatory interview, *Southern Mail, Inc.* 345 NLRB 644, 645 fn. 7 (2005).[6] Respondent was obviously aware of this. Respondent was also aware that 257 or 60% of the unit employees voted for union representation.

What remains as to each of the 5 employees discharged is whether the evidence is sufficient to support an inference that the alleged discriminatee's protected conduct was a motivating factor in the termination decision and if so whether Respondent met its burden that it would have taken the same action even in the absence of the protected conduct.

If the burden shifts, Respondent must prove that it would have discharged the employee in the absence of his or her protected conduct, not simply that it could have discharged them or had a legitimate reason to do so, *W. F. Bolin Co.*, 311 NLRB 1118, 1119 (1983), *Consolidated Bus Transit,* 350 NLRB 1064. 1065 (2007).

When an employer begins to enforce rules it never enforced previously or starts enforcing them more strictly after learning of a union organizing campaign, the General Counsel establishes a prima case of discriminatory motive. Then the employer is required to show that enforcement was motivated by considerations unrelated to employees' union activities, *Jennie-O Foods,* 301 NLRB 305, 311 (1991). If it does not, it violates Section 8(a)(3) and (1) of the Act, *Dynamics Corp. of America,* 286 NLRB 920, 921 (1987) enfd. 928 F. 2 609 (2d Cir 1991); *Kitsap Tenant Support Services, Inc.* 366 NLRB No. 98, slip op. at 21 (2018).

[6] I find it significant that Woods, rather than a fellow employee, was the *Weingarten* representative for each of the alleged discriminatees. This indicates a greater identification with the Union than having a co-worker served as the *Weingarten* representative.

The General Counsel has the burden of establishing a prima facie case (or making an initial showing) sufficient to support an inference that protected or union conduct was a motivating factor in the decision to more strictly enforce its rules, *Southern Mail, Inc.,* 345 NLRB 645, 646 (2005). When the change affects many employees, the General Counsel need not show that Respondent knew of the union or protected activity of specific individuals affected by the change, Id. at 647. A Respondent cannot meet its burden of establishing a defense under Wright Line by relying on rules that it began to enforce more strictly after its awareness of union activity, *St. Johns Community Services of New Jersey,* 355 NLRB 414 (2010); Dynamics *Corp.*, 286 NLRB 920 (1987); 296 NLRB 1252 (1989) enfd. 928 F.2d 609 (2d Cir. 1991); *Upland Freight Lines, Inc*., 209 NLRB 165, 166, 173 (1974) enfd. 527 F. 2d 766 (9th Cir. 1976).

Direct Evidence of Anti-Union Animus

Pamela Felix worked for Respondent from 1988 until January 22, 2022, when Respondent terminated her employment. At the time of her termination, Felix was an Assistant Manager at Respondent's Redding branch. Felix testified that at a meeting for managers shortly after the election, in June 2021, Respondent's Vice President for Northern California, Michele Tracy Taylor (generally referred to in the transcript as Tracy Taylor) held a meeting with managers and assistant managers, including Scott Linn, the branch manager at Redding.

Felix testified that Taylor told the group that "we needed to pull back our support on the agents…and that we weren't to make it obvious," Tr. 2080-81. Felix testified that Scott Linn told her not to compliment sales agents in chats or give them their production goals any longer. Tracy Taylor, when testifying on October 22, 2024 (transcript volume 49), did not contradict Felix's testimony cited above, which I therefore credit.[7]

Felix testified via video. Taylor, who was one of Respondent's party representatives for this trial, was present in the courtroom when Felix testified, Tr. 2006, 2060. 2062. Thus, Taylor was aware of the substance of Felix's testimony.

Scott Linn did not testify and I also credit Felix's testimony as to what he said to her. I would also note that Respondent's brief attacks Felix's credibility on other matters, but not on her account of the statements made at the June meeting by Taylor, or by Linn.

The five discharges at issue

Termination of Frank Dollosso (Complaint paragraph 17): Frank Dollosso worked as an insurance agent at the AAA branch in Lakeport, California from 2005 until he was terminated on December 14, 2021, R. Exh. 78.

[7] At page 106 of its brief Respondent states that some of Felix's testimony was directly refuted by Taylor at Tr. 5973-75. Tracy did not mention Felix or the meeting about which Felix testified. Thus, Felix's testimony about what Tracy said at the meeting is uncontradicted and credited.

Tom O'Rourke, Lakeport Branch Director, made a complaint about Dollosso to the AAA Ethics Reporting line on September 27, 2021. David Craig conducted an investigatory interview with Dollosso on November 8, 2021, in the presence of Dollosso's *Weingarten* representative, business agent Tom Woods. Craig's investigation concluded that that on September 24, 2021, Dollosso purchased 5 associate memberships using his own credit card. Craig also concluded that Dollosso violated the terms of the agent compensation plan, which prohibits agents from paying memberships for a customer.

O'Rourke testified that on some unspecified date, he met virtually with Michele Tracy Taylor, Vice President of Respondent's Northern California Region.[8]and an unidentified representative from Human Resources.[9] According to O'Rourke, the HR representative recommended that Dollosso be given a DAF (disciplinary action form), Tr. 5961-63. O'Rourke testified that he mentioned that Dollosso had been placed on a PIP (performance improvement plan) for timecard fraud in 2018, Tr. 3799, 3826. Exh. R-77 indicates that Dollosso received a PIP for timecard fraud in 2018 and a DAF for timecard fraud on April 8, 2020. O'Rourke testified that a PIP lasts 30 days, Tr. 3826. According to O'Rourke, the HR representative then agreed (I assume with O'Rourke) that termination was appropriate, Tr. 3799. According to O'Rourke and Taylor, Taylor said little or nothing in the meeting, Tr. 3827. At Tr. 5963, Taylor testified that she agreed with the termination decision.

I decline to credit Respondent's witnesses as to when and how it was decided to terminate Dollosso, other than the initial recommendation from an unidentified HR representative was to give him a DAF. I also draw an adverse inference from Respondent's failure to identify that representative and to call her as a witness. I find that the record does not accurately reflect when, why and by whom Respondent decided to terminate Dollosso.

On December 12, 2021, Michelle Faas informed Justina Lambert that O'Rourke was recommending termination, R. Exh. 79. Faas' testimony about Dollosso is not consistent with that of O'Rourke or Tracy Taylor, Tr. 4368-73. She testified that she was involved in Dollosso's termination and that it was a group decision. She did not testify about a meeting with Taylor and O'Rourke in which the termination decision was made. I infer from this subterfuge that Respondent had a reason for discharging Dollosso that it wishes to conceal.

Pam Felix's uncontradicted testimony about Tracy Taylor's hostile remarks about the Union and the employees who selected it, is relevant to my findings as to the pretextual nature of the reasons Respondent gives for Dollosso's termination. It is also a factor in my analysis of the other 4 terminations.

[8] Generally referred to as Tracy Taylor throughout the hearing. Since April 2023, Taylor's title has been VPII, East Bay Region.

[9] It is not clear when this meeting took place.

Evidence of Disparate Treatment of Frank Dollosso:

G.C. Exh. 280: In 2019 Employee TR used personal funds to complete a membership upgrade from another employee with full knowledge that it would net TR additional compensation. She received a DAF. She was not terminated.

G.C. Eh. 244: In April 2021, EK was put on a PIP for soliciting other employees to give him credit for membership sales they completed in order to benefit himself.

G.C. Exh. 228: In 2019, employee AJ received 2 PIPs for failing to adequately document discounts and was not terminated.

G.C. Exh. 243: In 2020, EV received a DAF for cancelling 2 associate memberships and rewriting them with different names, thus receiving business credit. He also shared login and password information and workstations with multiple team members.

G.C. Exh: 251: In 2018, employee JMcC received a DAF after he had received 2 recent and prior PIPs. This establishes that Respondent did not have a uniformly enforced rule that a prior disciplinary record would result in termination.

I conclude that Respondent violated Section 8(a)(3) and (1) in discharging Frank Dollosso for the following reasons:

The General Counsel met its initial burden sufficient to raise an inference of discriminatory discharge (Protected Activity, Respondent's Knowledge of the Same and Animus towards employees' protected activity). Dollosso's invocation of his *Weingarten* rights at the investigatory interview establishes Respondent's knowledge of Dollosso's union activity, *Southern Mail, Inc.* 345 NLRB 644, 645 fn. 7 (2005).

Respondent failed to establish why it chose to terminate Dollosso rather than administer some lesser form of discipline. It treated him disparately from employees who committed similar offenses. It enforced its rules more stringently than it had prior to its awareness of the union campaign and it offered a pretextual reason for Dollosso's discharge. There is no evidence that prior to its awareness of the union campaign, that Respondent terminated a similarly situated employee for violating the rule, or a rule similar to that on which it relied upon in terminating Dollosso.

Complaint paragraph 9: termination of Priscilla Gaines-Holladay

Priscilla Gaines Holladay worked for Respondent as a commissioned insurance agent for 6 years. Prior to her termination, Gaines-Holladay worked at Respondent's Stockton, California branch. She appears to have been a stellar employee prior to the events leading to her termination in July 2021. Gaines-Holladay and Union Business Agent Tom Woods testified as to her support for the Union and Respondent's awareness of it. Respondent's agents, particularly her branch manager, Jon Berglund, deny that they knew she supported the Union.

On July 2, 2021, Jon Berglund emailed Tito Medeiros, Respondent's Director of Investigations, about a call he made to Respondent's ethics hotline, R Exh. 30. Berglund testified that he called the ethics hotline after an employee approached Team Lead Maria Ramos. Ramos went to Berglund. Berglund consulted with Ami Poncabare, a Senior Director of New Sales Agents. According to Berglund they agreed that Berglund should call the ethics hotline. Inspector David Craig testified that it was Tito Medeiros who called the ethics hotline.

Neither Ramos nor the DMV employee testified in this proceeding. Poncabare testified but not about Gaines-Holladay. Thus, the origins of Respondent's investigation of Gaines-Holladay rest solely on the testimony of Berglund. The only non-hearsay part of his testimony is that he called the ethics line about the number of associate memberships on Gaines-Holladay's primary membership.

On July 12, Tito Medeiros wrote Gaines-Holladay. He advised her that he was investigating a confidential matter. He did not tell her what the investigation concerned. His letter stated that "all components of this investigation remain as confidential as possible. **Despite this request you remain free to consult with an attorney, a doctor, a therapist, a priest, your spouse or other privileged advisor… (emphasis added).** Exh. R-88.

On July 13, 2021, approximately, a month after the representation election, Gaines-Holladay met with Berglund and Corporate Investigator Tito Medeiros. Medeiros told Gains-Holladay he was investigating an anonymous complaint made on Respondent's ethics hotline. Gaines-Holladay contacted Union Business Agent Tom Woods. On about July 15, Gaines-Holladay and Woods met with Medeiros and Berglund., Tr. 3447, 4754-55.

Medeiros was investigating the number of associate memberships connected to Gaines-Holladay's personal primary AAA membership account. In order to be eligible for an associate membership, an individual must live in the primary member's household. This requirement was not enforced uniformly, or possibly at all, prior to 2021, G.C. Exh. 300, pg. 2 & last page.

At the outset of the interview, Medeiros told Gaines-Holladay and Woods that they would be discussing confidential information. Medeiros had Gaines-Holladay type answers to 75 questions, G.C. Exh -6. Question 54 was "Do you know of any other team members who are doing this, adding people to their primary membership when they don't live in their household?

Gaines-Holladay answered question 54 negatively. Medeiros told Gaines-Holladay to call or email him within the next 48 hours if she had anything to add or had any other information Medeiros should be aware of, Tr. 281-82. Medeiros appears to deny this, Tr. 4766. However, the last page of G.C. Exh. 6 says the same thing. I credit Gaines-Holladay.

The next day Gaines-Holladay emailed Medeiros and Berglund about question 54. and copied Business Agent Woods. She stated:

I have done a little homework and come up with a list of managers who have 6, 7, 8 or 9 associates on their memberships. My question would be: has AAA or WILL AAA ask and question these team members about the associates on their accounts as well? Will

they be so thorough as to investigate and track each and every associates' history of addresses and whereabouts to ensure it is conjunctive with the time they were added AND removed from these managers' membership?

G.C. Exh. 8.

Attached to the email was a PDF with information about the other employees Gaines-Holladay was suggesting should be investigated.

After the interview Gaines-Holladay researched Respondent's Connect Suite system to find evidence that others also maintained associate memberships on their primary account for people who did not live with them. She made screenshots of several employees' memberships records and sent them as an attachment to Medeiros and Berglund. She sent a curtesy copy to union business agent Woods.

The information provided to Woods, G.C. Exh. 8 appears to involve the transactions of various supervisors, managers and other employees on their AAA account. As testified to by Berglund, the unredacted version of G.C. Exh. 8, which is not in this record, contains addresses, phone numbers, personal email addresses and dates of birth.[10]

The interview established that Gaines-Holladay had associate memberships attached to her primary AAA membership for individuals who did not reside with her.

Branch Manager Berglund testified that he called the ethics hot line to open up an investigation of Gaines' sharing of information with Woods. He testified that he did not recall who told him to do that, Tr. 3449. Inspector David Craig testified that Medeiros made the ethics hotline call, Tr. 5252. Medeiros testified that he wasn't sure who submitted the ethics complaint about Gaines-Holladay's email, Tr. 4949.

Assuming that the call was made by Berglund, the record strongly suggests that he did not make the call on his own volition. Osh O'Crowley Respondent's Chief Retail Officer, did not know who in management had the ability to direct Berglund to file an ethics hotline complaint; he did not think it was him, Tr. 4217.

Medeiros testified that after receiving G.C. 8, he called Ryan Webster, his manager. Ryan Webster is Respondent's Vice President of Business Integrity & Compliance, R. Exh. 61. Medeiros testified that Webster, who did not testify in this proceeding, decided that the individuals named by Gaines-Holladay should be investigated, Tr. 4771-72. It is unclear what, if any, role Webster had in the decision to terminate Gaines-Holladay.

On July 23, 2021, Respondent terminated Gaines-Holladay in a very brief letter for "willful disclosure of confidential Member information which violates MWG's[11] Standards of

[10] In response to an email inquiry from me, Respondent's counsel stated there was no dispute as to the information contained in the unredacted version of G.C. 8.

[11] Mountain West Group (MWG) is the parent company of Respondent.

Conduct, Information Technology Policies and Standards of Conduct, all of which were available to you in Team Member Handbook, G.C. Exh. 10.

At page 66 of its brief, Respondent states:

> The mere fact that the information was disclosed established the legitimate basis for disciplining Gaines-Holladay. Because Respondent has consistently enforced these rules against all employees, both before and after the Union arrived, there is no basis to alleged discriminatory or retaliatory motivations were at play. (Tr. 4767-76, 5251-58, GC Exhs. 7, 8, 103).

The evidence cited proves no such thing and certainly does not prove that an employee violating Respondent's confidentiality rules was automatically terminated. In fact, the record shows the contrary.

The record also does not show who made the decision to terminate Gaines-Holladay and what that person or persons considered. The termination decision was not made by Berglund, Medeiros, Craig or Michelle Faas, Tr. 3449, 4374, 4775, 5255-56. Poncabare did not testify to having any role in the termination decision.

Michelle Taylor's testimony indicates but does not establish that she was involved in the decision to terminate Gaines-Holladay, Tr. 5958-59. If she was involved, it would be very significant given her expressions of anti-union animus.

Investigation of other employees, including managers, for violating the Associate Member Rules

Respondent investigated Gaines-Holladay's allegations that others were violating the associate membership rules. At least some of the individuals mentioned by Gaines-Holladay had been violating this rule. Respondent did not take disciplinary action against any of them. Tr. 4374-76. The record also does not indicate anyone being investigated for violating this rule prior to Gaines-Holladay.

In an investigation of VP Tonya Pierce in August 2021. Pierce told Corporate Investigator David Craig that AAA had not traditionally enforced the membership eligibility requirements. She knew since the start of her employment in 2005, that an associate member must be living in the household of the primary member. In August 2021 VP Pierce continued to violate the membership rules by listing her nanny as an associate member on her primary account. G.C. Exh. 300. In the past, Pierce had other associate members other than her nanny, on her primary membership who were not living with her.

Craig concluded:

> While Ms. Pierce violated the Terms and Conditions regarding Associate Membership Eligibility, the investigation found that she did so in keeping with what was accepted at

the time and did not do so for personal financial gain or with malicious intent. G.C. Exh. 300, at pg. 4.

This establishes that the rule for which Gaines-Holladay was initially investigated was not enforced until Respondent became aware of the Union.

Respondent investigated Pierce only because Gaines-Holladay asked it to do so, due to its investigation of Gaines-Holladay's memberships.

On July 21, Berglund placed Gaines-Holladay on administrative leave. 2 days later, Berglund called Gaines-Holladay and informed her that Respondent was terminating her for willful disclosure of private company information. Later Respondent's counsel Tom Posey informed Woods that Respondent terminated Gaines-Holladay because she attached confidential employee information to Woods in her email. There is no evidence that Gaines-Holladay disclosed this information to anyone else who was not an employee of Respondent.

Gaines-Holladay was not terminated for violations related to policy sales and management, but only for her violation of confidentiality in disclosing personal information from Respondent's database to Woods, G.C. Exh. 10, R. Brief at 64-65. However, her violation of Respondent's confidentiality rules was provoked by Respondent's investigation of violations of rules Respondent did not enforce against others. Her violation of confidentiality also was arguably consistent with the instructions Medeiros gave to Gaines-Holliday in his July 1 letter, R. Exh. 12. That letter strongly suggests that Respondent's confidentiality rules would not apply to the people listed in that letter. Business Agent Woods was a "privileged advisor" within the meaning of the letter.

Judge Ross rejected a number of exhibits alleging disparate treatment of Gaines-Holladay, Tr. 3037-38, 3197-98: Tr. 5698-5704.[12] I am not revisiting her rulings. However, she received other exhibits that show that Gaines-Holladay was treated disparately—particularly with regard to employees who violated Respondent's confidentiality rules before the Union came on the scene.

At Tr. 4930, Judge Ross received Exhibit G.C. 246, which she had rejected earlier. That exhibit establishes that in 2020, GP received a DAF for breaching AAA's contract with the Department of Motor Vehicles and disclosed confidential information. GP divulged the name of the registered owner of a vehicle and its non-operating status to another person.

Judge Ross received exhibit G.C. 270, which also establishes that Respondent did not automatically terminate an employee for violating its confidentiality rules. In February 2020, RS received a DAF for giving a vehicle registration to a member which was not in that person's name.

Another employee who violated Respondent's confidentiality rules without being fired was Ernesto V. G.C. Exh. 243: In 2020, Ernesto V received a disciplinary warning (DAF) for

[12] The General Counsel made an offer of proof regarding these exhibits. .

cancelling 2 associate memberships and changing the names so that he would receive credit for them. He also shared login, password information and workstations with other employees on multiple instances.

There is no evidence that the confidential information disclosed by Gaines-Holladay went further than Woods, or that Respondent had any reason to believe that it did. Further, Respondent took no steps to ensure that it did not. For example, there is no evidence that Respondent asked Woods to sign a confidentiality agreement or even to delete the email from his computer, Tr. 2198. This is all the more reason to conclude that Respondent was seizing upon Gaines-Holladay's misconduct to retaliate against union supporters, as opposed to having a legitimate concern regarding the dissemination of confidential information.

Analysis

For starters, I conclude that Gaines-Holladay's violation of the Respondent's confidentiality policy was part and parcel of her union activity in seeking Business Agent Woods' assistance in representing her in the investigation of associate memberships. As a result, there is a question as to whether her discharge should be evaluated under *Atlantic Steel Co.*, 245 NLRB 814 (1979) or *Wright Line* and *General Motors,* 369 NLRB No. 127 (2020). My conclusion would be the same under either standard.[13]

To prove a violation of Section 8(a)(3) and (1) under *Wright Line*, the General Counsel bears the burden of proving by a preponderance of the evidence that animus against protected conduct was a motivating factor in the adverse employment action. If the General Counsel makes a showing of discriminatory motivation by proving protected activity, the employer's knowledge of that activity, and animus against protected activity, then the burden of persuasion shifts to the employer to prove that it would have taken the same action even in the absence of the protected activity.

One issue in this case is whether Gaines-Holladay's conduct was of such a nature that she forfeited the protection of the Act. The criteria for evaluating whether an employee's conduct while engaging in protected activity forfeits the protection of the Act depends in part on when and where the allegedly protected conduct occurred. In the case of direct communications between an employee and manager or supervisor, the criteria are set forth in *Atlantic Steel Co*., 245 NLRB 814 (1979). In making this determination the Board balances four factors: 1) the place of discussion; 2) the subject matter of the discussion; 3) the nature of the employee's outburst and 4) whether the outburst was provoked by an employer's unfair labor practice; Also see *Overnite Transportation Co.*, 343 NLRB 1431, 1437 (2004).

While Gaines-Holladay did not have an outburst, she shared confidential information with Woods. I conclude that she did not forfeit the protection of the Act, in that her conduct was the result of discriminatory acts by Respondent in investigating her associate memberships (she

[13] At the moment *Atlantic Steel* is the controlling Board precedent, *Lion Elastomers, LLC,* 372 NLRB No. 83 (2023).

was provoked), that her sharing her information with Woods is arguably consistent with the instructions she received from Respondent before the interview and because there is no evidence that she intended the information to go beyond Woods, or that it did so.

Pursuant to the *Wright Line/General Motors* analysis, Respondent failed to rebut the General Counsel's initial showing of discrimination. That is because it fired Gaines-Holladay for conduct which it had not discharged employees prior to the union campaign. This fact establishes Respondent's discriminatory motive in terminating her.

Complaint paragraph 16: termination of Patrick Stallone

Patrick Stallone worked for AAA from 1998 until he was terminated on February 3, 2022. As far as this record shows, Stallone was a stellar employee. On September 23, 2021, Stallone was working in Respondent's San Rafael branch office.

That day he provided service, registering an automobile with the California Department of Motor Vehicles, (DMV) to a woman named Eileen whose AAA primary membership had lapsed. Eileen had an associate membership on her daughter's primary membership. According to Stallone, he told Eileen that she needed to reinstate her primary membership. He testified that Eileen insisted she wanted to remain an associate member on her daughter's primary account.

Stallone generated a new associate membership for Eileen. Assistant Branch Manager Melissa Albanese-Brugett emailed Stallone, asking why he did not reinstate Eileen's primary membership and asking whether Stallone received the permission of Eileen's daughter to add Eileen to the daughter's primary membership, G.C. Exh.37. Stallone's testimony indicates that he believed that either Albanese-Burgett misunderstood Eileen or that Eileen told Albanese-Burgett something different than what Eileen told him, Tr. 692-97.

On September 24, Albanese-Burgett emailed Stallone a documented coaching summarizing a conversation she had with Stallone. She copied Michelle Karagianes, the Branch Director in charge of the San Rafael Branch, and Trami Pham, a branch manager covering for Karagianes, while she was on vacation, G.C. Exh. 38. Albanese-Burgett indicated that Stallone should not have added Eileen to her daughter's membership.

On September 25, 2021, Karagianes called the AAA ethics hotline.[14] Her complaint was assigned to corporate investigator David Craig on October 6. On October 28, Craig contacted Stallone. On October 29, Albanese-Burgett forwarded to Craig her September emails regarding this matter, R-Exh. 76.

On October 29, Craig conducted an investigatory interview of Stallone. Craig participated remotely. The other participants, Stallone, Tom Woods, the Union business agent and Stallone's *Weingarten* representative, and manager Trami Pham were in a room together. Pham supervised Stallone while he answered a list of questions from Craig. During the interview Pham exchanged texts with Albanese-Burgett, which was contrary to AAA's

[14] The transcript at Tr. 4635, line 14 is obviously incorrect in referring to September 4 emails.

investigation protocol. Craig prepared an Executive Summary Findings Report on November 30, 2021. He submitted it to Ryan Webster, Vice President of Business Integrity and Compliance, Antoinette James, VP of Sales, Golden Gate Region, Karagianes, Michelle Faas, Director of Human Resources and Megan Rhea, VP, Legal, R-68.

Craig concluded that Stallone wrote 15 memberships as new memberships, when he should have reinstated prior memberships and that this violated the insurance agent's compensation plan. Craig did not make any recommendation regarding discipline for Stallone and played no role in the matter after submitting his report., Tr. 5277.

Sometime between November 30, 2021, and February 3, 2022, Karagianes met with other managers to discuss what to do about Stallone, Tr. 4638. While one might assume that the individuals involved were those listed on Craig's report, Karagianes did not say so. She testified that the group decided to terminate Stallone because he violated Respondent's code of ethics and committed fraud.

Michelle Faas, then Respondent's HR Director, testified that the team that made the Stallone termination decision consisted of herself, Karagianes and Antoinette James. Faas testified that Stallone was terminated because he was taking credit for memberships he was not entitled to, that he falsified information and breached a customer's trust by adding an associate member to a membership without the primary member's permission., Tr. 4340, Exh. R-70.

Respondent terminated Stallone's employment on February 3, 2022, R-Exh. 74. Faas testified that Stallone's termination was delayed due to the fact that she had just returned to work for Respondent in September 2021 and was saddled with many different tasks.

Evidence of Disparate Treatment

G.C. Exh 260: Employee Maria B received a Performance Improvement Plan in May 2021. One of the things she was disciplined for was writing new memberships instead of reinstating existing memberships "a lot," resulting in a financial benefit to her.

G.C. Exh. 243: Ernesto V received a disciplinary warning (DAF) for cancelling 2 associate memberships and changing the names so that he would receive credit for them. He also shared login, password information and workstations with other employees on multiple instances.

G.C. Exh. 147 & 176: Employee Joan P received a last chance agreement in 2023. He wrote numerous insurance policies that did not accurately reflect annual mileage or follow underwriting guidelines when rating individuals on insurance policies. He also failed to use a company-provided phone, creating a potential for PCI (which I assume stands for personal confidential information) compliance concerns. The last chance agreement was signed by Teamster Business Agent Woods. Tr. 2576-82.

I conclude that Respondent violated Section 8(a)(3) and (1) in terminating Stallone. It was aware of his union support via his selection of Union Business Agent Woods as his *Weingarten* representative. This record establishes animus towards employees' union activities at the highest level of Respondent's management structure. The record establishes that Stallone was treated disparately and that Respondent enforced rules against him which it did not enforce or did not enforce as stringently prior to the union campaign.

Complaint paragraph 18: Termination of Jason Ortiz

Jason Ortiz worked for AAA from August 2018 until October 2021 at the Pinole, California branch. Ortiz sold insurance.

On September 24, 2021, Ortiz participated in an investigatory interview with investigator David Craig and Paul Mulig, his branch manager. Ortiz asked that Business Agent Woods be present as his *Weingarten* representative. The meeting was rescheduled to September 28. At the second meeting Tito Medeiros was present with Craig participating virtually. Woods, Ortiz and another branch manager from Oakland were in the same room. Medeiros had asked Mulig to leave the room at the start of the interview.

Respondent fired Ortiz for 66 instances in which he took leads (potential business) that were not assigned to him. Mulig testified that taking business from the online call center, by searching for it through Respondent's data systems, is an offense always resulting in an employee's termination, Tr. 5689.[15] Osh O'Crowley, Respondent's Chief Retail Officer, sent California sales and life insurance agents an email on August 6, 2021.

> Leads
> 7. Ethical behavior
> AAA has zero tolerance for misconduct, misrepresentation and unethical behavior by Sales Agent, Retail, who are at all times, held to the highest professional standards. No Sales Agent, Retail shall enter into any agreement, plan, or understanding, express or implied, with any competitor with regard to prices, terms, conditions of sales, or customers, nor exchange or discuss in any manner with a competitor prices or terms or conditions of sale or engage in any other conduct which violates any anti-trust laws, other laws, or AAA's ethical standards, policies or practices. A Sales Agent, Retail shall not pay, offer to pay, assign or give any part of their Compensation, or anything else of value to any Member, third party insurer or representative of any Member or third-party insurer, or to any other person as an inducement or reward for assistance in making a sale. A Sales Agent, Retail, is not permitted to work Quotes, leads, opportunities, House Accounts, or other various forms of Member records that they did not originate or that have not been assigned to them by their manager. A violation of this policy or an act of

[15] Some witnesses referred to this as fishing or phishing for leads. I am more familiar with the use of the term phishing to mean an attempt by email, for example, by someone trying to gain access to confidential information, such as bank accounts or credit cards or identity theft, generally.

unethical behavior may result in disciplinary action, up to and including termination, and will mean that a Sales Agent, Retail is Not in Good Standing.

G.C. Exh. 73.

Ortiz testified that he did not read the O'Crowley email prior to the September 27 investigatory interview. Respondent's policy is that sales agents in the branches are not to work on business coming in through the online call center until 5 days have elapsed since the call came in. Of the leads Ortiz worked prematurely 4 occurred after August 6. None occurred after September 27.

Paul Mulig, the Pinole Branch Manager, testified that he made the decision to terminate Ortiz, Tr. 5715. Ortiz had complained to Mulig and at company meetings about clawbacks, which are cutbacks in agents' commissions, Tr. 1141-42. Mulig denied that this had anything to do with Ortiz's termination, Tr. 5717.

Evidence of Disparate Treatment of Ortiz

Samuel Yoo: In August 2021, Samuel Yoo received a disciplinary action form (DAF) for assigning call center leads to himself before the expiration of the 5 day "protected period," in which the call center has exclusive rights. Yoo apparently searched leads and took business assigned to him 30 times in 2021. He told investigators Tito Medeiros and David Craig that he learned that this violated AAA's Code of Behavior at the investigatory interview conducted on June 3, 2021, Tr. 4807-4894, G.C. Exhs. 93, 94, 220. Yoo was still working for AAA as of November 9, 2023, when he testified. The General Counsel suggests that Yoo was not terminated because Respondent may not have been aware that he supported the Union or did do so conspicuously. Yoo, did not, as did the alleged discriminatees in this case, request a *Weingarten* representative at the interview. On the other hand, Yoo told the Board Agent during the investigation of the charge that he supported the Union and that he thought his branch manager, Susan Valladares, may have known that he supported the Union. 1657.

Yoo's violations of Respondent's policies predated the August 6, 2021, email from Osh O'Crowley. In November 2014, Investigator Tito Medeiros had warned Respondent's Chief Risk Officer about the prevalence of "phishing", e.g., marketing their business outside of their branch's assigned zip codes., G.C. Exh. 315.[16]

Patty R: Patty R was an anti-union bargaining unit member in Fresno, G.C. Exh. 85. She apparently attempted to have coworkers sign a decertification petition, Tr. 4965. A member of the Union's in-house organizing committee made a complaint on the Ethics hotline that Patty R was violating Respondent's policies regarding call center calls. AAA investigator Chris Jones responded that the allegations were fully investigated, and no company guidelines were broken, G.C. Exhs. 84, 319.

[16] Regardless, of whether G.C. 315 is a final copy or was sent to the addressee, it establishes that phishing was prevalent amongst AAA employees in 2014.

Jones' supervisor Tito Medeiros noted that the branch manager believed that complaints were being made against Patty R due to her lack of support for the Union and a vendetta pro-union employees had against her, G.C. Exh. 174. Pg. 4. Patty R apparently had multiple extended family members on her primary membership between 2016 and October 2021, Tr. 4966., G.C. Exh. 173. There is no evidence that Respondent subjected her to an investigatory interview. G.C. Exh. 320.

G.C. Exh. 250: JT received a DAF in February 2021 for unauthorized solicitation of business and/or making calls to inflate his performance statistics.

Alleged phishing by call center agents: Samuel Yoo testified that he discovered that some call center agents were inputting the call center phone number into Respondent's computer systems to prevent branch insurance agents from contacting customers after the 5-day protected period had expired. [17].

Business Agent Woods asked Respondent's VP Karen Williams to investigate these allegations. David Craig, a Senior Corporate Investigator, testified that he made such an investigation and found no intentional phishing or redirecting of leads, Tr. 5320-23.

Respondent violated Section 8(a)(3) and (1) by terminating Ortiz by strictly enforcing a rule it had not strictly enforced until after it knew about union activity and the Union was certified. It also violated Section 8(a)(5) by more consistently and more strictly enforcing this rule.

Respondent's reliance on O'Crowley's August 6, email in distinguishing Ortiz from Yoo establishes that the policy for which Ortiz was discharged was not uniformly or consistently enforced prior to that date, Tr. 1660. When an employer begins to enforce rules it never or rarely enforced previously or starts enforcing them more strictly after learning of a union organizing campaign, the General Counsel establishes a prima case of discriminatory motive. Then the employer is required to show that enforcement was motivated by considerations unrelated to employees' union activities, *Jennie-O Foods,* 301 NLRB 305, 311 (1991) and other cases previously cited. If it does not, it violates Section 8(a)(3) and (1) of the Act.

In sum, it is clear that a policy of consistent and uniform enforcement of the "phishing" rule only manifested itself after Respondent was aware of the union organizing campaign, if then, *Hyatt Regency Memphis*, 296 NLRB 259, 262 (1989) enfd. 944 F.2d 904 (6th Cir. 1991). As a result, I find that Jason Ortiz was terminated in violation of Section 8(a)(3) and (1), *Dynamics Corp*., 286 NLRB 920 (1987); 296 NLRB 1252 (1989) enfd. 928 F.2d 609 (2d Cir. 1991). Respondent has failed to satisfy the burden imposed by *Wright Line,* that even absent its knowledge of the union campaign, it would have discharged Ortiz. There is no evidence that

[17] AAA insurance agents use several databases to access membership and policy information, Connect Suite, which is similar to an intranet site and PAS (Policy Administration System), Tr 96-97. An agent would type in a customer's membership number into Connect Suite to get information about that member . One could access a particular policy by typing the policy number into PAS.

Respondent ever discharged an employee for "phishing" prior to the union campaign, or prior to August 6, 2021.

Moreover, the fact that O'Crowley issued the August 6, 2021, email establishes that Respondent was aware of, or suspected violations of its rules and policies, including the rule against phishing. Giving Yoo a break in July establishes that Respondent knew that this rule was not being enforced.

Termination of Yasmin Weston: Yasmin Weston worked at Respondent's Capitola branch from February 2017 to September 23, 2022, when she was discharged. She was a sales agent associate.

Weston, the Union and the General Counsel contend that Respondent terminated Weston for her union activity and complaining that she was not allowed to use paid time off without a week's notice. Respondent introduced exhibit R-Exh. 91 in which all the agents at Capitola, including Weston, agreed to the advance notice requirement in 2019, R. Exh 91. Humberto "Chucky" De Luna, the Capitola Branch Manager, knew Weston was a union supporter from the pro-union sign in her cubicle. [18]

Veronica Gallo, the manager at the Watsonville Branch, notified De Luna about a conversation she had with Sarah Morales, an agent at the Watsonville Branch. Gallo testified that a member/customer, Araceli H, complained to Morales that Weston activated an insurance policy without her knowledge and that the policy contained errors, R. Exh. 101. De Luna testified that he and Gallo listened to a recording of Araceli's phone call on July 11, 2022, with Sarah Morales in which Araceli spoke mainly in Spanish. R-Exh. 89 purports to be an accurate transcription and translation of the phone call in English.

Gallo testified that Morales filed a complaint on AAA's ethics hotline that led to an investigation and ultimately Weston's termination.[19] Morales did not testify in this proceeding.

Weston testified that Sergio Angeles, the owner of a lender, referred Araceli to her. She further testified that Angeles told her that Araceli needed an insurance quote to refinance a home in which she was not living, but in which she would be living in the future. Weston called Araceli. According to Weston, Araceli did not raise any issue about doing business with her rather than Morales. Weston completed (bound) the policy and testified that she sent a copy to Araceli to sign electronically. Weston testified that she received the policy back with Araceli's signature. Respondent contends that Weston did not send the document to Araceli but sent it to the lender, Angeles, instead.

Later, Angeles called Weston and told her that Araceli wanted to cancel the policy and work with Morales, with whom she had worked with previously. On July 15, 2022, De Luna

[18] I find De Luna's testimony that the sign did not indicate to him Weston's support for the Union, not to be credible, Tr. 5155.

[19] I find that this has not been established. Gallo does not appear to have firsthand knowledge that Morales filed the complaint.

emailed Weston stating that Araceli was saying that the policy was activated without her knowledge and was inaccurate, G.C. Exh. 50.

The insurer, Angeles solicited a letter from Araceli asking if she had "put a former (sic) complaint at the Watsonville branch about Yasmin?" On July 19, 2022, Araceli responded to him that she did not file a complaint.

There is no evidence that Araceli **filed** a complaint or had any role in the events leading to Weston's termination, other than talking to Morales.[20]

On August 18, 2022, Tito Medeiros notified Weston that she was being investigated. Medeiros interviewed Weston on August 25 or 28, 2022. Business Agent Woods served as Weston's *Weingarten* representative. Medeiros also interviewed DeLuna and Gallo. He did not interview Araceli, Morales or Angeles, the lender. None of these 3 individuals testified in this hearing.

Respondent terminated Weston on September 23, 2022, without specifying the reasons for her discharge in writing. 5 days after Weston was terminated, Araceli may have submitted a letter to Respondent stating that there had been a misunderstanding and that she had never filed a complaint against Weston, G.C. Exh. 59.[21]

Medeiros submitted an Executive Summary Report to Karen Williams and others on September 7, 2022. R. Exh. 49. He found that Weston had written and completed Araceli's homeowner policy without speaking to Araceli H or submitting the policy to Araceli for signature on July 7, 2002. He also found that the policy was full of mistakes. Medeiros concluded that Weston violated Respondent's handbook standards of conduct. Medeiros does not recommend or render an opinion as to whether an employee should be disciplined, Tr. 4733.

HR Manager Michelle Faas testified that a group consisting of herself, Karen Willliams, DeLuna and David Rouhani, Vice President for Central California, made the decision to terminate Weston, Tr. 4266-67. She testified that the group decided on termination because binding a policy without the insured's permission is a serious offense.[22] Moreover, the incorrect

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[20] Karen Williams informed business agent Woods that, "We do have information that, in fact, this Member called to discuss the matter….The fact of the matter was that the complaint was made, and the Manager appropriately contacted the agent to learn the details, G. C. Exh. 53. This is hearsay and not credited.

[21] Respondent challenged the authenticity of G..C. Exh. 59, Tr. 924-28. I find that the General Counsel has not established its authenticity.

The General Counsel faults Respondent for failing to call Araceli as a witness, Brief at 110. The G.C. could have subpoenaed Araceli just as easily as Respondent. I accord no weight to the unemployment insurance determination in Weston's favor. The General Counsel places far too much significance on DeLuna's response to his question at Tr. 5156 that DeLuna did not recall telling Weston to come to him rather than the Union. At the outset of the inquiry DeLuna denied recalling any conversation with Weston on or about September 15, 2022,

[22] An insurance policy is bound when its terms are effective, regardless of whether all the documentation has been completed or exchanged.

information in Araceli's policy could have put Araceli at risk for having a claim denied, Tr. 4267-68. Rouhani cleared the decision with Osh O'Crowley.

I find that Respondent violated Section 8(a)(3) and (1). There is no evidence that Respondent ever terminated anybody for violating the rules violated by Weston prior to the union campaign. Moreover, Weston's discharge cannot be viewed in isolation. It was part and parcel of Respondent's "cracking down" on the enforcement of its rules after it discovered employees were organizing, *Texas Industries, Inc.,* 170 NLRB 563 (1969).

Alleged Illegal Unilateral Changes

Failure to hire: (Complaint Para. 14(a)): The General Counsel alleges that Respondent violated the Act in refusing to hire any bargaining unit insurance agents between February 2021 and October 2024.

The General Counsel submits that the fact that Respondent stopped hiring at the time it learned of the organizing drive, coupled with the termination of 5 employees and the lay-off of others establishes this violation. The General Counsel also relies on Respondent's hiring of over 20 bargaining unit insurance agents each year in 2015, 2017, 2019 and 2020.

The General Counsel also relies on the exit of rival insurance companies from the California market, Respondent's hiring of non-unit sales agents and employees at its Arizona and Utah call centers.

Given that Respondent geared up its unit employee staffing considerably in the years just prior to the union campaign, I am unable to draw an inference that unit hiring ceased due to that campaign. I dismiss this complaint allegation.

Closure of the Stockton Branch (Complaint paragraphs 15(b), and (15(d)

This was pled as a Section 8(a)(5) and (1) violation; not a Section 8(a)(3) violation, G.C. brief at 155. However, the General Counsel's brief appears to suggest that the closure of the Stockton branch was a violation of both sections. The starting point for analysis of a plant closure under Section 8(a)(3) is the U.S. Supreme Court decision in *Textile Workers Union of America v. Darlington Manufacturing Co.*, 380 U.S. 263 (1965). The Court held that closing an entire business does not violate the Act, even if done for discriminatory reasons. However, a partial closing may violate the Act if motivated by a desire to chill unionism in the remaining parts of the enterprise and if the employer may reasonably have foreseen that such closing would likely have that effect. The record herein does not establish a violation under *Darlington*.

Undermining the Effects Bargaining over the Closure of the Stockton Branch by failing to engage in decisional bargaining

On May 5, 2022, Respondent announced the closure of the Stockton Branch Office effective June 30. This was done in person and via an email which included union

representatives, G.C. Exh. 180. The record establishes that Respondent lost its lease on the building housing the Stockton Branch.

Upon being notified of the closing, the Union immediately inquired about available dates for effects bargaining. Proposals and Counter proposals were exchanged, and the Union ultimately accepted the last company proposal, Tr. 5982.

Bargaining unit employees had to apply for vacant positions and were not permitted to transfer to a nearby branch. None of the displaced agents were hired as sales agents. No sales agent positions were available to them. The 11 Stockton sales agents were offered MEA and MEG positions, G.C. Exh. 212. The General Counsel submits that these positions earn 80% of what a commissioned sales agent earns.

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The General Counsel contends these employees were treated disparately compared to employees of the Mill Valley Branch who were allowed to transfer to San Rafael and Petaluma in December 2020, Tr. 4656. Like Stockton, the Mill Valley Branch appears to have closed because AAA lost its lease.

When the Ukiah branch closed in November 2020, Insurance Agent Neils Larsen, a current employee of Respondent, testified that he was able to transfer to the Lakeport Branch and he was allowed to work from home until June 2021. Justin McCray, a senior director with responsibility over Ukiah and Lakeport denies this, Tr. 5057-59.

The General Counsel's contention that Respondent was obligated to engage in decisional bargaining over the closure of the Stockton branch appears to me somewhat of an afterthought, G.C. brief, pg. 150, fn. 212.

On the record before me, I conclude that closure of the Branch is governed by *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 686 (1981). I find that the closure of the Stockton branch was a significant change in AAA's operations that was not a mandatory subject of bargaining. Respondent violated neither Section 8(a)(3) or 8(a)(5) with respect to bargaining over the Stockton closure. Moreover, by accepting Respondent's last proposal, the Union waived its right to challenge the outcome of effects bargaining negotiations.

Unilateral and Discretionary Modification to Bonus Quota, (Complaint paragraph 15(a)

Complaint paragraph 15(a) and 23 allege that Respondent violated Section 8(a)(5)and (1) of the Act in announcing an increase in quotas used to determine when unit employees are eligible for a bonus and made changes to those quotas. On December 21, 2021, VP Karen Williams notified the Union that there would be an increase in bonus quotas for regular sales agents beginning in the first quarter of 2022, G. C. Exh. 190.

Insurance agents' compensation depends in part on how many memberships and insurance policies they sell. Sometime prior to December 2021, an Agent had to sell 10 memberships to qualify for a bonus. After December 2021, Agents had to sell 15 memberships during a specified period to receive a new business sales bonus, if otherwise in good standing

with Respondent. It is not clear whether this change occurred before or after the Union was certified.

There is a lot of evidence in this record as to how Respondent used its formula to compute the bonus. I find that the General Counsel has not established that Respondent used its pre-existing formula in any way it did not use it prior to the Union's certification. Since the record also does not establish that Respondent increased the number of sales to qualify for a bonus after the Union's certification, I dismiss complaint paragraph 15(a).

Unilateral Change to Counter Duty Policy (Complaint paragraphs 11 a & b, 21 and 23) PTO policies at Stockton (complaint paragraph 11 (j)

The General Counsel alleges that Respondent violated Section 8(a)(5), (a)(3) and (1) by implementing new rules on July 9, 2021 denying "counter " work to unit employees who are tardy to work and referring walk-in customers to any available employee if the counter unit employee does not assist the customer within 3 minutes of the customer's arrival.

Agents assigned counter duty have an opportunity to earn significant compensation from new business from walk-in customers.

The record contains 2 emails from management at the now closed Stockton branch regarding this subject. Maria Ramos, the Assistant Branch Manager,[23] sent an email to agents on April 25, 2019, well before the Union appeared on the scene. The essence of the email regarding counter duty is that an agent assigned to the counter loses counter duty if they show up for work more than 5 minutes late. It also states that the best business practice for New Business is not to have a member wait more than 5 minutes., R. Exh. 1.

With regard to Paid Time Off, Ramos stated that (complaint paragraph 11 j) PTO must be approved in advance. Then, "when using PTO for unscheduled and unforeseeable absences you should provide as much notice as possible. For unforeseeable absences (such as illness or emergency, you should provide notice as soon as practicable."

"We prefer a two-week advance notice for scheduled PTO requests. We understand last minute things come up, so scheduled PTO should be no less than a 24 [hour] notice. Same day pto is considered unscheduled."

Jon Berglund became branch manager at Stockton in about December 2020. He met with all the agents at the Stockton branch on July 7, 2021. On July 9, 2021, Berglund followed this up with an email informing Stockton agents that if they were late, they would lose counter duty for the day. Also, when on counter duty, an agent had 3 minutes to assist a member and then the walk in business would be free to any agent who was available. G.C. Exh. 3. Priscilla Gaines-Holladay asked Berglund when it became a rule that she forfeited counter duty by being 2 minutes late. Berglund responded, "since our meetings," G.C. Exh. 4. This on its face indicates that Berglund was changing the rule. Moreover, the language of G.C. Exh. 3 and Berglund's

[23] Tr. 3408.

testimony establishes that whatever issues he was correcting in July had existed for months without Berglund doing anything to correct them until after the Union was certified.

Berglund testified that he did not make any changes to the counter duty rules after December 2020. I do not credit this testimony, The credible evidence in this record indicates there were no changes to the counter duty rules between April 2019 and July 2021. The testimony to the contrary by Berglund at Tr. 3433 is unsupported by any first-hand testimony or exhibit.

Berglund's testimony at Tr. 3407, as what rules his predecessor had in place is hearsay and I do not credit it. It is unsupported by any documents. Maria Ramos did not testify. Finally, Respondent concedes that Berglund was lenient in enforcing company policies prior to July 2021, G.C. Exh. 302, pg. 2.

Respondent did not offer the Union an opportunity to bargain over this change, thus violating Section 8(a)(5) and (1). I infer from the proximity of the July "cracking down" meetings to the Union's certification, that enhanced enforcement of rules was also motivated by the Union's certification and thus violated Section 8(a)(3). Since the Stockton Office has now been closed for several years, the only remedy for this violation would be a notice posting. The PTO issues at Stockton are moot.

Unilateral cessation of Work from Home policy at the Tracy and Turlock Branches

Respondent closed its branch offices with the advent of the COVID pandemic in March or April 2020. Branch employees worked remotely for a month or 2 and then worked in shifts so that only half of the employees worked int the branch office, while half worked at home on any given day. Employees were allowed to work from home under certain conditions, G.C. Exhs. 87-89, R. Exh. 36. Employees signed a work at home agreement in March or April 2020 and another amended agreement in November 2020. Jane Drymon, Branch Director of the Tracy and Turlock Branches sent agents who worked for her an email on July 20, 2021, pausing (permanently as it turns out) the work from home program. This email was sent a little over a month after the Union was certified. Respondent neither notified the Union of the cessation of the work at home program nor offered it an opportunity to bargain over it.

Respondent contends the work at home program was intended to be temporary and therefore it was not required to bargain over its cessation. The General Counsel notes that G.C. Exhs 87-89 initiating the program do not indicate that it was temporary or related to COVID. R. Exh 37 states that the WFH arrangements are expected to be short-term, not permanent. Jane Drymon testified that the policies stated in the document were put in place later than the work at home agreements signed by her employees, Tr. 3963. She did not know when R. Exh. 37 was issued or that it was disseminated to employees, Tr. 3983-86. She appears to have been unaware of it in July 2021, Tr. 3993-95.

Daniece Atencio, who has been an insurance agent at the Tracy branch since 2012, testified that she worked from home and was able to work flexible hours from 2012 until July 2021, Tr. 1454-55. Drymon testified that other than working at car dealerships about once a

month, employees were not allowed to work outside the branch offices at Tracy or Turlock or outside of the hours of 9 to 6, Tr. 3996-97. I credit Atencio, noting that Respondent did not cross-examine her and that Drymon did not mention her when Drymon testified. Thus, Atencio's testimony is uncontradicted. Therefore, I find that Respondent made a unilateral change to the working conditions of employees at the Tracy and Turlock branches by eliminating its work at home and flextime practices. Additionally, I find that timing of Drymon's July 20 email establishes an 8(a)(3) violation as well. So far as this record stands, there is no evidence that the problems that caused Drymon to issue her email did not exist before the Union's certification and there is no indication that Drymon took any steps to rectify them until after the Union's certification.

Unilateral Change in refusing agents the ability to work from home at the Santa Rosa and Lakeport Branches. (complaint paragraph 11(h)

Santa Rosa, Farmers Lane Branch

Crystal Javier was still employed by Respondent as an insurance agent at the Santa Rosa, Farmers Lane branch when she testified. The official branch hours are 9 a.m. to 6 p.m. Javier testified that she worked a flexible schedule without prior approval for years prior to 2021. If Javier had a non-work appointment, she did not take PTO, but made up the time she was not working, outside of the normal branch hours, Tr 2017-2041. Javier's timesheets, G.C. Exh. 123 corroborate her testimony, as does G.C. Exh. 122, a series of instant messages with Kent Evans, her manager.

In September 2021, Evans held an impromptu meeting in the branch, informing employees that they would not be allowed to work outside the 9-6 branch hours. Evans announced that there would be no working flexible hours or work from home. Javier was allowed to continue to attend a Friday morning networking meeting on company time. [24]

Javier's testimony is uncontradicted and therefore credited.[25] It is not addressed in Respondent's brief. The cessation of work at home and flextime at Santa Rosa, Farmer's Lane was an illegal unilateral change in violation of Section 8(a)(5).

Lakeport Branch

At the time of trial, Neils Larsen worked as an insurance agent at the Lakeport AAA office. Prior to that he worked at Respondent's office in Ukiah, which closed on November 20, 2020. When looking for a new position in 2020, Larsen interviewed with Kent Evans, the

[24] Respondent did not cross examine Javier, other than to introduce additional timesheets, R. Exh. 5.

[25] VP Michelle Tracy Taylor testified that she was unaware that employees at Santa Rosa, Farmers Lane were not exclusively working between 9 and 6 prior to September 2021,Tr. 5989. She has no first-hand knowledge regarding this.

manager at Santa Rosa Farmers Lane. Evans told Larsen that he could work from home as long as it did not interfere with his production, Tr. 1394.[26]

Larsen testified that Cathy Schaus, the assistant branch manager at Ukiah and then Lakeport told him several times that he could work from home so long as there was coverage for counter duties, Tr. 1394. He testified that Justin McCray told him the same thing. After transferring to Lakeport, Larsen continued working from home at least on occasion, until 2 other employees left the office. Larsen testified that about a month or 2 before the union election, he asked Cathy Schaus if he could start working at home again. She told him Respondent was not allowing that anymore. Soon afterwards, he had a similar conversation with Tom O'Rourke, the branch manager at Lakeport and got a similar response.

Frank Dollosso testified that he overheard the conversation between Larsen and O'Rourke but testified that it occurred after the June representation election, Tr. 1005. Thomas O'Rourke testified that Larsen never worked from home while employed at Lakeport—"other than COVID,", Tr. 3820. Justin McCray testified that apart from the COVID period, agents working at Ukiah were not allowed to work from home. McCray testified that Neils Larsen never worked from home while at Ukiah, Tr. 5058. Cathy Schaus apparently no longer worked for Respondent at the time of this trial. Neither party subpoenaed her; the General Counsel could have done so just as easily as Respondent. There are no timesheets corroborating Larsen's testimony as there are for Crystal Javier. Thus, I dismiss the complaint allegation insofar as it pertains to Larsen and Lakeport.

Eliminating the Circle of Excellence Reward (Complaint paragraph 11(d)[27]

Respondent had, for at least 15 years prior to 2020, rewarded high-performing employees with benefits related to a "Circle of Excellence" acknowledgement. The benefit included watches, paid travel, certificates and plaques. Tr. 4044. Witness Neils Larsen had taken 15 trips paid for by Respondent between 2003 and 2019 pursuant to this program. Larsen had travelled to Australia, Hawaii, Spain, New York and D.C. on these trips. G.C. Exh. 75. The Circle of Excellence trips for 2019 productivity (to be taken in 2020) and the trip for 2020 productivity (to be taken in 2021) were cancelled due to COVID, Tr. 1236, G.C. Exh. 77.

When the 2020 trip was cancelled, Respondent paid sales agents in the top 10% in productivity, $1,000 instead. On February 11, 2021, Respondent informed employees, including unit sales agents, that they would be getting $10,000 for their 2020 productivity, in lieu of the $1,000 payment. By this time Respondent was aware of the union organizing campaign. Witnesses, Leticia Hanna, Neils Larsen and Octavia McBride were among those receiving G.C. Exh. 77, which informed agents that they would be paid $10,000 for their 2020 productivity.

[26] This testimony is uncontradicted and therefore credited. The driving distance between Ukiah and Lakeport appears to be about 36 miles.

[27] This is pled as a violation of both Section 8(a)(3) and (5) and (1).

On February 16, 2021, Chief Sales Officer Osh O'Crowley informed California Sales Agents that "The Circle of Excellence trip is back! The top 10% Sales Agents this year will be traveling in 2022. The dates and location are still being determined." G.C. Exh. 80.

The 2021 Sales Agent, Retail Compensation and Incentive Plan, was silent about the Circle of Excellence award.[28] It is undisputed that bargaining unit sales agents were excluded from the award in 2021, Tr. 4064, 5983. Non-unit MEG and MEA employees were eligible for the trip as were non-unit Mountain West Group sales agents in other states, Tr. 4064-66. Respondent contends that it was entitled to exclude bargaining unit members because the decision to move forward with the trip was not made until after the employees had selected union representation and Respondent and the Union had started collective bargaining negotiations. That assertion is false. O'Crowley's February 16, 2021, communication, G.C. Exh. 80, establishes that the decision to restore the Circle of Excellence trip was made by then. Only the dates and location remained to be worked out.

The Circle of Excellence benefit was a regular and long-standing practice which could not be altered without offering the Union an opportunity to bargain over its cessation or alteration. It occurred with such regularity and frequency that employees could reasonably expect the practice to continue on a regular and consistent basis once the COVID pandemic had passed or sufficiently ameliorated, *Sunoco, Inc,* 349 NLRB 240, 244 (2007); *Wendt Corp.,* 372 NLRB No. 135, slip op. at 4 (2023). In fact, O'Crowley told them in February it would continue. The Circle of Excellence benefit had become an established past practice, and hence a term and condition of employment by its regularity and frequency over an extended period of time. Employees could reasonably view it as part of their wage structure and expected it to continue once the COVID emergency passed since the pause in the program was directly tied to COVID, G.C. Exh. 77. Thus, Respondent violated Section 8(a)(5) and (1) by failing to give the Union notice and an opportunity to bargain over the Circle of Excellence program before terminating it for unit employees.

Respondent, by excluding unit employees from the Circle of Excellence Program in 2021 also violated Section 8(a)(3) and (1). Once an employer engages in discriminatory conduct which could have adversely affected employee rights to a material extent, the employer must establish that it was motivated by legitimate objectives, *NLRB v. Great Dane Trailers, Inc.* 388 U.S..26 (1967) [vacation benefits paid to non-striking employees; withheld from strikers]; *United Steel, Paper and Forestry* Workers, 179 Fed. Appx. 61 D.C. Cir. 2006; *Bunting Bearings Corp.* 349 NLRB 1070 (2007) [Employer locked out union-represented non-probationary employees, while not locking out non-union probationary employees]; United *Aircraft Corp.,* 199 NLRB 658, 652 (1972) , enfd. in relevant part, 490 F.2d 1105 (2d Cir. 1973); *Eastern Maine Medical Center,* 253 NLRB 224, 241-243 (1980).

Respondent failed to establish a legitimate objective for discriminating against unit members. The Circle of Excellence is an established past practice, which Respondent had promised unit employees for 2021. Like the Employer in *Great Dane Trailers,* Respondent

[28] Michele Tracy Taylor testified that the Circle of Excellence trip was listed in agent compensation plans prior to 2021. No documents corroborating this are in the record.

discouraged present and future union activity by excluding unit employees from a benefit offered to non-unit employees. Thus, Respondent's conduct was "inherently destructive, "and no proof of antiunion motivation is required to prove a Section 8(a)(3) violation.

Unilateral change to Clocking in Policies at Stockton (Complaint paragraph 11(g)

On July 9, 2021, a few weeks after the Union was certified, Jon Berglund, the Stockton branch manager emailed all the branch agents. He was following up on a meeting or meetings he had with them on July 7. Berglund wrote he wanted everyone to understand that if an employee was tardy while on counter duty, they would lose counter duty for that session. He also told them that when on counter, an employee had 3 minutes to start serving the member/customer and that on the 4th minute, the assignment would be free to any available agent. G.C. Exh. 3.

Berglund continued, "Over the last few months we have had over 10 members walk out of the branch without being helped due to excessive wait times." This sentence establishes that whatever servicing problems existed at the Stockton branch predate the union certification. There is no credible evidence that Respondent took steps to correct these problems prior to July.

To the contrary, the record establishes that Respondent's rules were not consistently enforced throughout Berglund's stewardship at Stockton, Tr. 3525 and G.C. Exh. 302 [in which Respondent admits that Berglund took steps in July 2021 to enforce rules that were not being consistently enforced previously].

Berglund testified that his predecessor had a rule that employees had 2 minutes to be able to help a member. Berglund testified that he gave employees an extra minute when he took over Stockton in December 2000. Putting aside the absence of any evidence as to how Berglund knew of this rule, there is absolutely no evidence as to how, or if it was enforced. I do not credit Berglund's self-serving, uncorroborated and undocumented assertions that these problems got significantly worse after the union election.[29]

I find Respondent violated the Act as alleged.

Unilateral Change to Flexible Hours Policy (Complaint paragraph 11(i)

The evidence concerning this allegation is substantially the same as that which supports Complaint paragraph 11 (h) on page 27 of this decision.

Crystal Javier was still employed by Respondent when she testified, as an insurance agent at the Santa Rosa, Farmers Lane branch. The official branch hours are 9 a.m. to 6 p.m. Javier testified that she worked a flexible schedule without prior approval for years prior to 2021. If Javier had a non-work appointment, she did not take PTO, but made up the time she was not working, outside of the normal branch hours. Tr 2017-2041. Javier's timesheets, G.C. Exh. 123

[29] Neither Desiree Navasro, whom Berglund testified he consulted, nor Assistant Manager Maria Ramos testified in this proceeding. Assuming Berglund consulted Navarro, he did not testify when he did so or what else they discussed.

corroborate her testimony, as does G.C. Exh. 122, a series of instant messages with Kent Evans, her manager.

Lori Acocella also worked a flexible schedule at that branch prior to the Union's certification, Tr. 1101.

In September 2021, Evans held an impromptu meeting in the branch informing employees that they would not be allowed to work outside the 9-6 branch hours. Evans announced that there would be no working flexible hours or work from home. Javier and Acocella were allowed to continue to attend a Friday morning networking meeting on company time. Acocella testified that Evans stated that he was communicating a company-wide policy communicated to him by Tracy Taylor, Tr. 1105.

This comports with Taylor's testimony. However, the record establishes that the prohibition or restrictions on flex time were not enforced until after the Union's certification.

Javier's and Acocella's testimony is uncontradicted and is therefore credited. Neither is addressed in Respondent's brief. The cessation of work at home and flextime at Santa Rosa, Farmer's Lane and elsewhere was an illegal unilateral change in violation of Section 8(a)(5).

Paid Time Off at Folsom (Complaint paragraph 11 (j), (k)

Christine Escamilla was an insurance agent at the AAA Folsom branch at the time of trial. She testified that she often worked a flexible schedule and made up time missed during the branch's regular office hours. If she could not make up the hours, she applied for paid time off (PTO). She did not have to get prior approval to use flex time or be in the office to makeup time.[30]

On August 30, 2021, Steve Garcia, the assistant branch manager or team lead, sent an email to branch employees stating that PTO requests should be made at least 2 days in advance.

Escamilla responded by telling Garcia that she needed to leave work 5 minutes early to take her son to his confirmation class. She stated that in the past she would make up the time at lunch or by working earlier or later. Garcia replied by telling Escamilla that she could not be in the office before 8:45; she would have to use PTO.

Escamilla then emailed Ami Poncabare, a AAA senior director and interim branch manager for Folsom.[31] She told Poncabare that for years, she had never had to put in for PTO when working at home to make up time but had used flex time instead. She asked Poncabare to approve 45 minutes to 1:15 of flex time so that she did not have to take PTO each week.

[30] Manager Ami Poncabare testified that she could not contradict Escamilla on these points, Tr. 3925-26.

[31] Poncabare assumed responsibility for Folsom after the representation election, Tr. 3928. She testified that members had to wait for 10-15 minutes to get service at Folsom. There is no indication that Poncabare had any personal knowledge or other basis for this assertion, Tr. 3912-13, 3933

Escamilla offered to work from home in the evening, take a shorter lunch or come into the office earlier. G.C. Exh. 102.

Poncabare emailed the entire Folsom staff on September 7. She told employees that they must receive approval prior to taking PTO, G.C. Exh. 14. Ultimately, Escamilla's request for flex time and/or working remotely was approved by Poncabare and HR Manager Michelle Faas. Then it was denied by Osh O'Crowley, G.C. Exh. 96.

Delores Hill, a sales agent at Folson, similarly testified that prior to the union campaign if she suddenly needed to take time off, she would inform her manager, sometimes on the same day. Hill testified that for many years until September 7, 2021, there were no restrictions on using PTO so long as 2 agents were covering the front counter, Tr. 577-78. In September, Hill's request for PTO was denied and she was charged with unscheduled leave.

Ami Poncabare admitted that the supervisors at Folsom, Steve Garcia and June Bragg were not insisting that time off be pre-approved prior to September 2021, Tr. 3892, 3897.[32] As to the 20% rule [only 20% of employees at the branch could be off the same day], I credit Hill that prior to September 2021, that wasn't being enforced at Folsom, either.[33]

I conclude that Respondent violated section 8(a)(5) and (1) by unilaterally changing the paid time off and flex time policies at the Folsom branch.[34]

Walk-In Policies at Folsom (Complaint paragraph 11(k)

Diverting Work to Non-Unit Employees (Complaint paragraph 11(l)

Delores Hill testified that starting in September 2021, supervisors started referring new membership customers to employees who were not sales agents. This change was memorialized in an email memo dated September 30, 2021, Tr. 561-774, G.C. Exh. 12. Christine Escamailla testified similarly, Tr. 1775-82. The sale of memberships is a part of the unit employees' compensation.

The General Counsel also contends that AAA at Folsom responded to the union organizing by eliminating non-unit employee support to the bargaining unit employees. This allegation also rests on the testimony of Delores Hill and Cristine Escamilla. For years unit

[32] Jon Berglund became branch manager at Folsom in October 2021, after the Union was certified. Thus, he has no first-hand knowledge as to how AAA policies were being enforced before then.

[33] Poncabare was shown a document marked R-Exh. - 32, Tr. 3899. It is in my file, but I do not see any evidence that Judge Ross received it. Poncabare testified that R-Exh. 32 is the PTO guidelines for 2021. The document in my file is entitled PTO Guidelines-2023. Assuming that this document applies to 2021, there is no evidence as to when in 2021 it was promulgated, and certainly no evidence that it predates the union organizing campaign.

[34] Contrary to Respondent's suggestion at page 99 of its brief, the General Counsel need not prove animus, discriminatory intent or disparate treatment to establish a violation of Section 8(a)(5). It must only establish a unilateral change in a subject of mandatory bargaining.

agents were encouraged to send emails to a particular email inbox to ask MEAs for help on tasks other than those that a sales agent was required to perform.

In August and September 2021, unit agents were directed not to send requests for MEA help to that inbox, G.C. Exhs. 20, 24-27. The exhibits indicate that this change was made because the MEAs were overwhelmed with MEA tasks. Nevertheless, Respondent has not shown or even argued why it could not have notified the Union and given it the opportunity to bargain before making this unilateral change.

Respondent did not directly contradict Hill and Escamilla. I credit their testimony and conclude that Respondent, at the Folsom branch, violated Section 8(a)(5) and (1) as alleged.[35]

PTO and Flex Policy at Roseville (Complaint paragraph 11 (m)

I dismiss this complaint paragraph. There isn't any first-hand evidence to support it. If the alleged changes occurred, the General Counsel should have been able to find a witness with first-hand evidence other than former sales agent Laura Volz, who was unavailable, to so testify. G.C. Brief fn. 270 at page 199.[36]

PTO at Capitola (Complaint paragraph 11(n)

Yasmin Weston testified that in 2021, she asked for PTO with a day or less notice and was granted PTO, Tr. 822-25. In April 2022, Respondent required 2 weeks' notice and informed Weston that she would have to take unpaid PTO, G.C. Exhs. 43, 45 and 46. Kenneth Everett, a current Capitola sales agent when he testified, also testified that there was no 2-week advance notice requirement for PTO prior to April 2022, Tr. 1566-70.[37] Everett testified that the new PTO rule in 2022 was only applied to Yasmin Weston.

Respondent introduced a document, R. Exh. 91, in which sales agents appear to have agreed to 1-week notice for PTO. Chucky DeLuna denied that the 1-week advance notice was not enforced. His testimony appears inconsistent with G.C. Exhs. 45 and 46. I credit Weston and Everett. Assuming that the 1-week advance notice was enforced, Respondent violated Section 8(a)(5) and (1) by imposing a 2-week notice requirement in April 2022. G.C. Exh. 43, Tr. 813.

Changing the allocation of incoming calls and substantially increasing the volume of non-revenue generating service calls to unit employees. Complaint paragraph 11(e)

[35] The record does not support the General Counsel's allegation that these changes were motivated by anti-union animus. Thus, these changes did not violate Section 8(a)(3).

[36] Respondent cites the testimony of witness Delores Hill at page 41 of its brief. Hill never worked at Roseville and did not testify about anything pertaining to that branch office.

[37] On cross-examination, Everett testified that other employees used Unpaid PTO besides Weston, prior to her termination, Tr. 1597-99. It is not clear when that occurred. Everett testified on November 8, 2023. He executed an affidavit for the Board Agent in January 2023. Weston was terminated in September 2022. Nothing in Everett's testimony is inconsistent with his assertion that employees were not required to use UPTO prior to 2022.

Patrick Stallone testified that in about 2021 he stopped getting new business calls, only calls for non-revenue generating service, Tr. 669. Octavia McBride, at the time of the hearing a current insurance agent at Mountain View, testified that after the union campaign there was a change in the type of call sales agents received, service calls instead of sales calls, Tr. 1511. Then current employee Carolyn Brown, an insurance agent in the AAA Antioch District office, also testified that after the union drive, the types of calls she received changed from being primarily revenue-generating new business calls to non-revenue generating calls. Tr. 1533-35.

Jeremy Hanna worked for Respondent as an employee and independent contractor until he was terminated in January 2023. He is also the husband of witness Leticia Hanna, who voluntarily resigned her employment in October 2022. Hanna testified that Lisa Revier, Director of Call Center Operations, told him to redirect certain calls from the California branches to the non-union call center. Revier contradicted Hanna on every material point, Tr. Volume 48.

I find that the General Counsel did not prove the allegations in complaint paragraph 11(e). I do not credit the impressionistic testimony of its witnesses in the absence of sufficient documentation. Additionally, Lisa Revier's testimony is at least as credible as that of Jeremy Hanna. The only credible evidence of an increase of service calls for unit employees was that this occurred temporarily during COVID, ostensibly because new business calls decreased, Tr. 4495-96, 4523.

Reduction in unit employees' ability to obtain support from non-unit employees with customer service requests (complaint paragraph 14(c)).

I find the evidence supporting this allegation to be too impressionistic and self-serving to be credited. I dismiss this complaint allegation.

Elimination of Unit Employees' Access to Productivity Information (Complaint paragraph 11(f)

As late as November or December 2020, unit employees were able to view their productivity numbers on Tableau, a computer software program. G.C. Exh. 78. Complaint paragraph 11(f) alleges that about the summer or fall of 2021, Respondent failed to restore unit employee access to productivity information, while restoring it to similarly situated non-represented employees, and denied unit employees' requests for productivity information.

At some point, unit employees could no longer track their productivity numbers easily in Tableau, while at least some non-unit employees were able to do so, Tr. 1400-11. G.C. Exh. 79.

I credit the General Counsel's witnesses that there were changes to their access to productivity information, which non-unit employees either acquired or continued to have. However, the record does not satisfactorily establish whether these changes occurred before or after Respondent knew of the union campaign. I therefore dismiss this allegation.

Respondent, American Automobile Association of Northern California, Nevada and Utah, violated Section 8(a)(1) and/or Section 8(a)(3) and or Section 8(a)(5) as set forth above, by;

Enforcing and/or more strictly enforcing its rules and policies unilaterally after being aware of union organizing activity or other union activity;

Maintaining a rule that prevents employees from discussing wage information with each other;

Issuing subpoenas to employees that seek information from employees regarding their assistance to the Union, other union or concerted activities and information provided to the NLRB;

Terminating Priscilla Gaines-Holladay, Patrick Stallone, Frank Dollosso, Jason Ortiz and Yasmin Weston;

Implementing a rule denying counter work to unit employees who are tardy to work at the Stockton branch, implementing a new rule regarding servicing customers at Stockton;

Terminating employees' ability to work from home at the Tracy and Turlock branches; and the Santa Rosa, Farmers Lane branch;

Terminating employees' ability to work flexible hours at the Santa Rosa, Farmers Lane and Folsom branches;

Diverting unit work to non-unit employees at the Folsom branch;

Changing its PTO policies at the Folsom and Capitola branches;

Eliminating unit employees' eligibility for Circle of Excellence awards;

Implementing a one-minute tardy rule at the Stockton branch;

Prohibiting employees from working flexible hours at the Stockton branch;

Implementing a rule that required 2 weeks advance notice to take Personal Time Off (PTO);

Forbidding employees to consult with their *Weingarten* representative during an investigative interview;

Refusing to tell employees the subject of a disciplinary interview at the outset of the interview.

Remedy of the Unfair Labor Practices

The Respondent, having illegally discharged Priscilla Gaines-Holladay, Patrick Stallone, Frank Dollosso, Jason Ortiz and Yasmin Weston, must offer them reinstatement and make each of them whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with F. W. Woolworth Co., 90 NLRB 289 (1950), with interest at the rate prescribed in New Horizons, 283 NLRB 1173 (1987), compounded daily as prescribed in Kentucky River Medical Center, 356 NLRB No. 8 (2010). Respondent shall compensate each of them for their search-for-work and interim employment expenses regardless of whether those expenses exceed their interim earnings, computed as described above.

Respondent shall file a report with the Regional Director for Region 32 allocating backpay to the appropriate calendar quarters. Respondent shall also compensate Priscilla Gaines-Holladay, Patrick Stallone, Frank Dollosso, Jason Ortiz and Yasmin Weston; for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year, AdvoServ of New Jersey, 363 NLRB No. 143 (2016). Also, within 21 days of the date the amount of backpay is fixed either by agreement or Board order, or such additional time as the Regional Director may allow for good cause shown, file with the Regional Director for Region 32 a copy of the corresponding W-2 form for each of these employees reflecting the backpay award.

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

Order

Respondent, American Automobile Association of Northern California, Nevada and Utah, its officers, agents, successors, and assigns, shall

1. Cease and desist from
   a) Enforcing and/or more strictly enforcing its rules and policies unilaterally after being aware of union organizing activity or other union activity;
   b) Terminating and/or disciplining employees as the result of its illegal stricter enforcement of its rules and policies or enforcing rules and policies that it did not enforce prior to its awareness of union activity;
   c) Terminating and/or disciplining employees or otherwise discriminating against employees because they support a union or engage in union activity;
   d) Maintaining a rule that prohibits employees from discussing wage information with each other;
   e) Implementing new rules unilaterally with regard to such subjects as Paid Time Off, flexible work hours, working from home, clocking-in and counter duty, once it becomes aware of union activity;
   f) Issuing subpoenas to employees that seek information regarding their union activities and communications with the National Labor Relations Board;
   g) Unilaterally diverting bargaining unit work to non-unit employees;

h) Unilaterally and discriminatorily eliminating unit employees' eligibility for Circle of Excellence awards;
i) Refusing to allow employees to consult with their *Weingarten* representative during an investigative interview and refusing to inform an employee of the subject of the interview at its outset.
j) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.
a) Within 14 days from the date of the Board's Order, offer Priscilla Gaines-Holladay, Patrick Stallone, Frank Dollosso, Jason Ortiz and Yasmin Weston full reinstatement to their former jobs or, if that job no longer exists, to a substantially equivalent position, without prejudice to seniority or any other rights or privileges previously enjoyed.
b) Make Priscilla Gaines-Holladay, Patrick Stallone, Frank Dollosso, Jason Ortiz and Yasmin Weston whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.
c) Compensate Priscilla Gaines-Holladay, Patrick Stallone, Frank Dollosso, Jason Ortiz and Yasmin Weston for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 32, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years
d) Compensate Priscilla Gaines-Holladay, Patrick Stallone, Frank Dollosso, Jason Ortiz and Yasmin Weston for their search-for-work and interim employment expenses regardless of whether those expenses exceed their interim earnings.
e) Compensate all unit employees for the benefits they would have received had not Respondent illegally terminated their eligibility for Circle of Excellence awards since 2021;
f) Adequately repudiate its rule against employee discussion of employee wage information in accordance with Passavant Memorial Area Hospital 237 NLRB 138 (1978).
g) Re-establish the status quo as it existed prior to February 2021, at all branches with regards to rules and policies that were illegally and unilaterally altered regarding such subjects as PTO, work from home, flexible working hours, clocking-in and counter duty;
h) File with the Regional Director for Region 32 a copy of Priscilla Gaines-Holladay, Patrick Stallone, Frank Dollosso, Jason Ortiz and Yasmin Weston's corresponding W-2 form(s) reflecting the backpay award as set forth in the remedy section of this decision.
i) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including

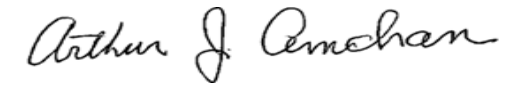
an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

j) Rescind and expunge from employee personnel records all discipline imposed as the result of its new or enhanced enforcement of its rules and policies which occurred after it became aware of union activity in February 2021; including any reference to the unlawful discipline and discharge of Priscilla Gaines-Holladay, Patrick Stallone, Frank Dollosso, Jason Ortiz and Yasmin Weston and notify them in writing that this has been done and that the discipline and discharge will not be used against them in any way.

k) Within 14 days after service by the Region, post at all of its branches the attached notice marked "Appendix". The notice shall be in English and in additional languages if the Regional Director determines that a significant number of employees are unable to read English well. Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Electronic notices must also be in languages other than English if the Regional Director reasonably so determines. 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 any facility involved in these proceedings (e.g., Stockton), the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at the closed facility, at any time since February 11, 2021;

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

Dated, Washington, D.C., March 4, 2026



Arthur J. Amchan
Administrative Law Judge

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 begin to enforce or more strictly enforce our rules and policies as the result of discovering union activity.

WE WILL NOT discipline or discharge you based on new or stricter enforcement of our rules and policies which began after our awareness of union activity.

WE WILL NOT discharge, suspend or otherwise discriminate against any of you for engaging in union or other protected concerted activity.

WE WILL NOT refuse to allow employees to consult with their *Weingarten* representative during an investigative interview and WILL NOT refuse to inform an employee of the subject of the interview at its outset.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Priscilla Gaines-Holladay, Patrick Stallone, Frank Dollosso, Jason Ortiz and Yasmin Weston full reinstatement to their former jobs or, if that job no longer exists, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Priscilla Gaines-Holladay, Patrick Stallone, Frank Dollosso, Jason Ortiz and Yasmin Weston whole for any loss of earnings and other benefits resulting from their discharges, less any net interim earnings, plus interest compounded daily.

WE WILL compensate Priscilla Gaines-Holladay, Patrick Stallone, Frank Dollosso, Jason Ortiz and Yasmin Weston for the adverse tax consequences, if any, of receiving a lumpsum backpay award, and WE WILL file a report with the Regional Director for Region 9 allocating the backpay award to the appropriate calendar quarters.

WE WILL compensate Priscilla Gaines-Holladay, Patrick Stallone, Frank Dollosso, Jason Ortiz and Yasmin Weston for their search-for-work and interim employment expenses regardless of whether those expenses exceed their interim earnings.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discipline and discharge of Priscilla Gaines-Holladay, Patrick Stallone, Frank Dollosso, Jason Ortiz and Yasmin Weston and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the discipline and discharge will not be used against them in any way.

WE WILL Compensate all employees for the loss of benefits they may have received but for our illegal cessation of the eligibility of unit employees for Circle of Excellence awards and benefits since February 2021.

WE WILL rescind and adequately repudiate our rules prohibiting employees from discussing their wage information with each other.

WE WILL Re-establish the status quo as it existed prior to February 2021, at all branches with regards to rules and policies that were illegally and unilaterally altered regarding such subjects as PTO, work from home, flexible working hours, clocking-in and counter duty;

WE WILL file with the Regional Director for Region 32, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may for good cause shown, a copy of Priscilla Gaines-Holladay, Patrick Stallone, Frank Dollosso, Jason Ortiz and Yasmin Weston's corresponding W-2 form(s) reflecting the back pay award.

American Automobile Association of Northern California, Nevada and Utah
(Employer)

Dated_____ By_____
(Representative) (Title)

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

If you wish to contact an NLRB agent, you may call the Board's toll-free number 1-844-762-6572 or contact the Board's Region 32 office at 1301 Clay Street, Suite 1510 N, Oakland, CA 94612-5224 Hours 8:30-5:00 p.m. 510-637-7000

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/32-CA-280838 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

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

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (510) 671-3034.