NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Korean Resource Center, Inc. ***and*** **International Association of Machinists and Aerospace Workers, District Lodge 947.** Cases 31–CA–282645 and 31–CA–287920

April 9, 2026

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY AND MAYER

On June 30, 2023, Administrative Law Judge Mara-Louise Anzalone issued the attached decision. The General Counsel[1] filed exceptions and a supporting brief,[2] the Respondent filed an answering brief, and the General Counsel filed a reply brief. The Charging Party also filed exceptions with supporting argument, and the Respondent filed an answering brief. In addition, the Respondent filed cross-exceptions and a supporting brief, the General Counsel filed an answering brief, which the Charging Party joined, and the Respondent filed a reply brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[3] and conclusions[4] and to adopt the recommended Order.[5]

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Dated, Washington, D.C. April 9, 2026

____
James R. Murphy, Chairman

____
David M. Prouty, Member

____
Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Lynn Ta and *Marissa Dagdagan, Esqs.,* for the General Counsel.
Charles H. W. Foster, Esq. (Ballard Rosenberg Golper and *Savitt, LLP),* for the Respondent.
David Fujimoto, Esq. (Weinberg Roger and *Rosenfeld*), for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARA-LOUISE ANZALONE, Administrative Law Judge. I heard this case on September 6–9, 2022, in Los Angeles, California. Based on charges filed by International Association of Machinists and Aerospace Workers, District Lodge 947 (Charging

[1] "General Counsel" refers to former General Counsel Abruzzo.

[2] On March 21, 2025, Acting General Counsel Cowen filed a motion to withdraw Exception 7, which asks the Board to overrule *Electrolux Home Products*, 368 NLRB No. 34 (2019); *Tschiggfrie Properties, LTD.*, 368 NLRB No. 120 (2019); and *800 River Road Operating Company, LLC d/b/a Care One at New Milford*, 369 NLRB No. 109 (2020) (herein "*Care One*"). After the General Counsel filed exceptions in this case, the Board issued its decision in *Intertape Polymer Corp*., 372 NLRB No. 133 (2023), enfd. 2024 WL 2764160 (6th Cir. 2024), where the Board explained that *Tschiggfrie* "did not add to or change the General Counsel's burden under *Wright Line*[, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982)]." 372 NLRB No. 133, slip op. at 2. Because we decline to revisit the holdings in *Electrolux* and *Care One,* we deny the Acting General Counsel's motion to withdraw Exception 7 as moot.

Member Prouty notes that he was not a member of the Board when *Care One* was decided, and he would be open to reconsidering that decision in a future appropriate case.

[3] The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. In addition, some of the General Counsel's exceptions imply that the judge's rulings, findings, and conclusions demonstrate bias and prejudice. On careful examination of the judge's decision and the entire record, we are satisfied that the General Counsel's contentions are without merit.

We correct certain errors in the judge's Findings of Fact. The judge incorrectly found that employee Isabel Kang was one of the members of the Respondent's internal mural project team. Because Kang was in fact not one of the team members, she was not copied on any of the emails regarding the mural design until Hwang cc'd her on his August 31, 2021 email to Diane Ujiiye. The judge also incorrectly stated that Kang attended a regular staff meeting on August 27, 2021, to discuss the mural design. Finally, the judge inadvertently referred to Eric Yang as Eric Young. These errors do not affect our disposition of the case.

[4] No party excepts to the judge's finding that Hwang's August 31, 2021 email to Ujiiye, a third party with whom the Respondent was collaborating to design a mural project, was a logical outgrowth of prior concerted activity. We nonetheless agree with the judge that Hwang did not send that email for the purpose of the mutual aid and protection. We therefore agree with the judge's conclusion that the Respondent did not violate Sec. 8(a)(1) when it discharged Hwang. We find it unnecessary to pass on the judge's analysis under *NLRB v. Electrical Workers Local 1229 (Jefferson Standard),* 346 U.S. 464 (1953).

[5] Our dismissal of the complaint moots the Charging Party's exceptions, which request several extraordinary remedies.

Party, the Union or Local 947) in the above-captioned cases, the Regional Director for Region 31 issued a consolidated complaint on June 23, 2022. The General Counsel alleges that Respondent Korean Resource Center, Inc. (Respondent or KRC) violated the National Labor Relations Act (the Act) by discharging employee Sangho Hwang (Hwang) in retaliation for his protected, concerted activity, and additionally failed to bargain over this action with his exclusive bargaining representative, Local 947. As set forth below, I find no merit to the complaint and recommend that it be dismissed.

At trial, all parties were afforded the right to call, examine, and cross-examine witnesses, to present any relevant documentary evidence, to argue their respective legal positions orally, and to file posthearing briefs. On October 14, 2022, posthearing briefs were filed by the parties and have been carefully considered.[1] Accordingly, based upon the entire record herein, including the posthearing briefs and my observation of the credibility of the witnesses, I make the following.

FINDINGS OF FACT

JURISDICTION

Respondent admits, and I find, that it is a nonprofit corporation with offices and places of business located in Los Angeles and Fullerton, California, where it is engaged in community organizing and empowerment of low-income, limited or monolingual immigrants, Asian American and Pacific Islander, and people of color communities in Southern California by providing integrative services, education, culture, and coalition building. In conducting its operations immediately preceding the issuance of the complaint, Respondent had gross annual revenue in excess of $250,000 and purchased and received at its Los Angeles, California, facility goods valued in excess of $5000 directly from points outside the State of California. Accordingly, I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. At hearing, the parties stipulated that the Union is a labor organization within the meaning of Section 2(5) of the Act.

Based on the foregoing, I find that this dispute affects commerce and that the National Labor Relations Board (the Board) has jurisdiction of this case, pursuant to Section 10(a) of the Act.

THE ALLEGED UNFAIR LABOR PRACTICES

KRC is a community-based not-for-profit created to serve the Korean immigrant community of Los Angeles. (Tr. 235.) On September 3, 2021,[2] Hwang was discharged after complaining to a prominent community activist about a mural project in which KRC was participating.

The complaint contains two allegations. First, it is alleged that Respondent violated Section 8(a)(5) of the Act by its refusal to bargain over Hwang's discharge. It is undisputed that Respondent failed to bargain with Local 947 over the discharge decision; the parties, however, disagree over whether it had an obligation, under the Board's decision in *800 River Road*,[3] to do so. Second, the discharge decision is alleged to have violated Section 8(a)(1); in this regard, the General Counsel contends that Hwang's complaint was aimed to protect his coworkers from being exposed to racist and offensive imagery contained in the mural's design and that his discharge therefore violated the Act. Respondent counters that Hwang's conduct was unprotected because it was not undertaken for "mutual aid and protection" as required by Section 7, and that, even if it were initially protected, Hwang's complaint lost the Act's protection because it failed to communicate that it was related to an ongoing labor dispute at KRC.

For the reasons discussed below, I agree with Respondent and find that Hwang's discharge violated neither Section 8(a)(1) or (5).

Factual Background

A. Respondent's Operations and Management Team

Respondent KRC is a 501(c)(3) nonprofit organization with offices in Los Angeles, California, and Fullerton, California, engaged in community organizing and empowerment of low-income, immigrant, Asian American, Pacific Islander, and people of color communities in Southern California. KRC accomplishes its mission of by providing a variety of services, including cultural and educational programs, assistance in obtaining affordable housing, healthcare, and legal services, as well as community organizing and coalition building via partnerships within local communities.

During the relevant time period, Bilen Fraye (Fraye) was KRC's development & programs director; Bethany Leal (Leal) was its finance director and human resources representative, and Youngram Kim was its operations director. Until his departure at the end of May 2021, KRC's executive director was Tong Cho Kim (T.C. Kim). (Tr. 325, 420, 477.)

B. Respondent's Funding and Financial Struggles

KRC funds its operations almost exclusively through grants and contracts with the Federal government, although it does receive some individual donations. Historically, much of KRC's funding has been driven by its civic engagement and community organizing activities. One of its largest sources of funding was The California Endowment, a large private health foundation that awards grants to community-based organizations throughout the state. (Tr. 422–424, 469; GC Exh. 11.)

In 2020, KRC experienced a dramatic funding shortfall that continued into the following year. Despite it requesting more financial support from The California Endowment during the

[1] Abbreviations used in this decision are as follows: "Tr." for transcript; "GC Exh. __" for General Counsel's Exhibit; "R. Exh. __" for Respondent's Exhibit; "CP Exh. __" for Charging Party's Exhibit and "Jt. Exh. __" for Joint Exhibit. The transcript is hereby corrected as follows: p. 191, l. 7 & p. 189, l. 18, "9026" is corrected to read "902(6)"; p. 203, l. 7, "auto-box" is corrected to read "honor box"; p. 273, l. 16, "rust" is corrected to read "rush"; p. 330, l. 21 "it don't have an 883" is corrected to read "I don't have an 8(a)(3)"; p. 436, l. 5 "was served" is corrected to read "occurred"; p. 466, l. 13–14, "pull any of the" is corrected to read, "participate in the"; p. 466, l. 16, "this charge" is corrected to read, "discharge"; and p. 500, l. 20, "reflect" is corrected to read, "refresh."

[2] Unless otherwise indicated, all dates herein refer to the year 2021.

[3] 369 NLRB No. 109, slip op. at 7 (2020), enfd. 848 F. Appx. 443 (D.C. Cir. 2021) (unpublished).

spring of 2021, KRC's funding, according to Leal and Fraye, had "dried up" by August 2021, when Hwang was discharged; its net income was between negative $500,000 and negative $600,000, and its chief funding engine—its civic engagement and community organizing program—had been "reduced almost to nothing..." (Tr. 440, 454, 482, 518, 545–546.)

C. The KRC Workforce and Hwang's Role as Communication Director

KRC employed approximately 17 workers during the time period relevant to this case. According to Hwang, with the exception of one or two, all of his coworkers were of Korean descent. Most of the KRC workers were monolingual Korean speakers and the main language spoken in the workplace was Korean. (Tr. 63, 70, 423.)

Hwang was hired as KRC's communications manager in January 2020. As communications manager, he was responsible for developing public relations strategies to promote KRC's programs and campaigns, developing relationships with outside organizations and coalitions, and speaking on behalf of KRC at conferences and events. He was also responsible for communicating with the media, as well as creating content on YouTube, Facebook, and other social media platforms. As Leal and Frame explained, his role was to be KRC's "public relations ambassador" and to promote a positive image of the organization "in the eyes of the public and the eyes of the donors" responsible for its funding. (R. Exh. 1; Tr. 24–25, 176, 441–442, 482.)

At hearing, Hwang agreed with this description of his job duties and additionally agreed that having strong interpersonal and communication skills and effectiveness at "relationship building" were important aspects of his former position. He also agreed that, as communications manager, he was admittedly tasked with promoting KRC's official agenda, regardless of whether he personally disagreed with it. (Tr. 78–79, 81–83, 150.)

D. Respondent's Disciplinary Policy

During 2021, Respondent maintained a written disciplinary policy that provides for progressive discipline including the following steps: issuance of written warning, disciplinary probation, suspension and discharge. The policy also reserves to KRC the discretion to diverge from the progressive steps of discipline based on the severity of the employee conduct at issue. In this regard, the policy lists "standards of conduct," the violation of which may result in immediate discharge; one of the circumstances so specified is engaging in "any kind of action or behavior that would impair KRC's operations or reflect adversely upon KRC or its operations." (GC Exh. 13; Tr. 473–474, 567.)

At hearing, Respondent did not adduce any evidence of discipline issued to any employee other than Hwang.

E. The Union Organizing Campaign, Certification And First-Contract Bargaining

On March 11, the Union was certified as the bargaining representative of a Unit of KRC employees, including Hwang. Hwang had been active in the organizing campaign, and, despite his job duties as Respondent's communications manager, there was no objection to his eligibility to vote in the election.[4] Following the Union's certification, Hwang served as a "corepresentative" of the Union, along with Isabel Kang (Kang); the two attended the parties' first bargaining session in August. Present for Respondent at that session was Leal, as well as KRC Board Member Hee Gong Kim. As of September 3 (the date of Hwang's discharge), it is undisputed that the parties were still engaged in bargaining and no impasse had been declared. (Tr. 26–28, 247–248, 363, 366–368, 565.)

F. Hwang's Prior Discipline, Suspension, Non-Board Settlement and Reinstatement

On the day of the ballot count in the Union's certification election (March 3), Hwang was issued a written warning by T.C. Kim, accusing him of making KRC "look bad" to the media. No witness with first-hand knowledge testified as to what precipitated this warning, but, according to Respondent's witnesses, Hwang was thereafter required to submit his communications with the media to management for preapproval before release. Hwang did not, however, agree that he was so limited; as he testified, the very nature of his job (i.e., communicating with outside parties, including the media), made it "virtually impossible" for him to submit every communication for approval, and in practice, he was only expected to submit "important" communications. (R. Exh. 2; Tr. 101, 104–105, 446, 485.)

Indeed, a month later, Hwang again reached out to a local newspaper to speak not on behalf of KRC but instead as a representative of Local 947. He was quoted in an article in *Korea Times*[5] about Union's organizing campaign at KRC, much to the consternation of then-Executive Director T.C. Kim. On April 25, Respondent placed Hwang on administrative leave. The Union subsequently filed an unfair labor practice charge on his behalf, and he was returned to work on July 1, pursuant to a non-Board settlement (Settlement). Paragraph 8 of the Settlement states:

> Hwang understands and acknowledges that community goodwill and public perception are essential business interests of [KRC] as a non-profit community organization. Hwang further understands and acknowledges that an essential function and duty of the Communications Manager is to portray [KRC] in a positive light to the public. As such, if Hwang communicates with third parties outside of his role as Communications Manager about [KRC], and not on behalf of [KRC], he shall explicitly state that he is neither speaking on behalf of [KRC] nor in his role as Communications Manager.

Paragraph 9 of the Settlement requires Hwang to "continue to obtain approval before sending out public communications on behalf of [KRC]." (GC Exh. 6; R. Exh. 3; Tr. 111–113, 181–182, 188–192, 204–207, 218, 309, 351, 532–534.)

[4] Cf. *Progress Indus.*, 285 NLRB 694, 743–744 (1987) (individual charged with promoting employer's business to the public constituted managerial employee properly excluded from unit).

[5] *Korea Times* is a hard-copy newspaper widely distributed and delivered throughout Koreatown; it is also available online. (Tr. 203.)

Events Leading to Hwang's Discharge

A. The Solidarity Youth Mural Project

KRC's two Los Angeles locations are located in the city's Koreatown neighborhood. One of these locations, known as the "Crenshaw location," is considered the organization's main location. The Crenshaw office is situated within a mixed-use building that also contains apartments for (mainly Korean) senior citizens. Hwang did not work primarily in the Crenshaw office but visited there for meetings on a weekly basis. KRC's staff regularly interacted with the Crenshaw building's residents; it was not uncommon for the residents to seek assistance from KRC staff to address problems they faced. (Tr. 29, 41, 68–69, 423–424.)

Beginning in May, KRC became involved in a collaboration with a coalition of other organizations known as Black and Asian Pacific Islander Solidarity ("Black and API Solidarity"). The project, which was created and ultimately controlled by a third organization known as "API RISE,"[6] had the goal of enlisting Black and Korean youth from the community to learn art skills, study Korean culture and the history of the United States civil rights movement and ultimately paint a mural expressing the message of Asian and Black solidarity on KRC's Crenshaw office in celebration of racial unity and togetherness. Initially Mike Norice (Norice) was the artist commissioned to create the design for the mural; the plan was for the youth to color in the outline he sketched on the Crenshaw building. (Tr. 28, 34, 38, 504, 531.)

Prominent local activist and API RISE codirector Minister Diane Ujiiye (Ujiiye), was in charge of the mural project; she is Japanese American. Among the stakeholders involved in the project was The California Endowment. While the project provided KRC with only a small stipend ($1000), KRC management hoped to leverage the project into rebuilding their reputation for civic engagement and organizing program work, which, as discussed, had suffered a precipitous funding decline in recent years. As Fraye testified, the public-facing mural project on the Crenshaw building was meant to be a "coming out" for KRC in terms of generating good publicity for its organizing work. It is undisputed that KRC employees working at the Crenshaw building would have a view of the mural as they approached the office on their way to work. (Tr. 127, 249, 453–454, 457, 465, 469, 490, 492, 540.)

The mural project got underway in earnest in July and weekly meetings were held to guide its progress. KRC personnel involved in the project included employees Hwang, Kang, Caroline Kim (Kim), Christine Park (Park),[7] Eric Young (Young), and Development & Programs Director Fraye (KRC's internal mural team). According to Hwang, his responsibility with respect to the mural project was to promote it to the Korean community through various media outlets, as well as to recruit local youth to be involved. At least initially, Kim served as KRC's "point person" on the project and communicated the position of the KRC internal team to the larger, external mural group. (Tr. 27–28, 30, 120, 121, 123, 249, 274–275, 493, 521.) Neither Kim, Park, nor Young testified.

1. The original design proposal

On July 26, Norice provided Uijue, via email, with a proposed mural design, copying Kim. The image was a large peace symbol (made up of a collage of smaller images, including sushi rolls, panda, and fortune cookies) surrounded by the African and Asian continents on either side. Kim, in turn, forwarded it the design to Fraye, Kang, and Hwang; asking for their feedback, she noted, "I don't really like it as is" and "I'm going to ask him to add Korean drummers." Hwang chimed in shortly thereafter, warning that a mural based on the proposal could cause controversy in Koreatown because the images within the peace-sign collage mainly invoked Chinese and Japanese, as opposed to Korean, culture. In addition, he noted, the design featured the color red—typically understood in South Asian American culture to represent South Korea's historical Communist foes. (GC Exh. 2; Tr. 40.)

Hwang reminded the group that, the prior year, a mural in Koreatown had sparked outrage and threats of litigation by community activists (and was eventually painted over) because it contained "sun rays" reminiscent of the Japanese imperial battle flag, a symbol of Japan's oppression of Korea during World War II. He attached to his email several images of items representing Korean culture. Finally, he stated that "[w]e have a responsibility to fully explain the mural[] like a docent if someone visits KRC." (GC Exh. 2, citing https://www.latimes.com/localhanow/la-me-edu-koreatown-school-mural-dispute-20190529-story.html; Tr. 43.)

The following day, Kim emailed Norice, copying Hwang, Park and Fraye, as well as non-KRC mural project participants, including the project leader, Ujiiye. Stating that she was "a little concerned about the design of the mural," Kim opined that its layout looked "divisive" and that "some of the images representing Asian culture are too generic and stereotypical." Attaching Hwang's Korean culture images, she qualified her remarks as her own "personal thoughts" and invited the KRC personnel copied on the email to share their input as well. (GC Exh. 3.)

There is no evidence that Hwang or any other KRC employee responded to Kim's email. It does appear, however, that there was agreement among the employees on KRC's internal mural team that the design needed revamping. Kang testified that she observed Park become frustrated in her attempts to revise the design herself on her computer because it contained so many non-Korean themed symbols and images, and additionally that she and Kim discussed their frustration about the design not adequately representing Korean culture.[8] According to Hwang, both

[6] API RISE stands for "Asian Pacific Islander Reentry & Inclusion Through Support & Empowerment," a nonprofit organization that focuses on empowering the Asian, Native Hawaiian, and Pacific Islander American communities, with an emphasis on civic engagement with API individuals impacted by the criminal justice system and at-risk youth. See https://www.api-rise.org/.

[7] Park is alternately referred to in the record as Geurim Park.

[8] Although, as noted below, I credit portions of Kang's testimony, I found other aspects of it unreliable. Obviously passionate about how the various mural designs might offend and even traumatize Koreatown residents who had survived war with Japan, her objective recollection of events appeared to have been somewhat blurred at times. Contrary to

Kim and Park told him that they did not like the design and felt that it inadequately expressed the concept of "solidarity" between the African American and Asian American communities. (Tr. 64–65, 270–272.)

In early August, Kim retreated from her point-person role on the project, and Fraye stepped in to replace her as the KRC liaison to the outside mural team. The conflicting hearsay testimony as to why Kim stepped down is inherently unreliable and therefore I decline to credit any of it; I do, however, believe that her hand-off to Fraye occurred early August.[9] This is significant, because Kang specifically testified that her discussions with Kim and Park about the mural design not appropriately reflecting Korean culture took place before, and in fact culminated in, Kim's stepping down from the liaison role. (Tr. 268–276.)

2. The additional design proposals

Although the record is somewhat limited in detail, it appears that, during the month of August, the mural design went through multiple "revamps" and the original design (including its multiple non-Korean symbols) was ultimately abandoned.[10] By late August, the choice had come down to at least three designs, although only two of them were offered into the record.

One of the three finalist designs featured two children playing on a surface covered with a peace sign, surrounded by the term "Solidarity," outlines of the Asian and African continents, and various flowers (the two children design). One of the flowers depicted was the Sakura flower (commonly known in the West as a cherry blossom), which is heavily associated with Japanese culture and history. Kang described the significance of the flower's appearance in the design:

> Sakura is related to the Japanese imperial—well, Japanese culture. But because of the historical background of our nation of having been occupied 35 years by the Imperial Army of Japan, and it was recent enough where most of our elders who are still alive remember very vividly what happened during the occupation. So this is immediately recognizable as Japanese, not Korean. And had no reason to be in that mural, because 99 percent of the occupancy of the building was done—was occupied by Korean elders.

(Tr. 256–257.)

Another finalist design also featured the word, "Solidarity" above the profile image of three young children (the profile design); this design did not incorporate any flowers or other symbols. On August 24, Ujiiye emailed the external mural team—including Fraye, Park and Kim—this design, noting that incorporating symbols fairly representing "the diaspora" in this design had been deemed "unrealistic." (Tr. 500; R. Exh. 9.) Fraye forwarded the profile design sketch to Hwang, Park and another KRC individual, Eric Yang (Yang), stating that she personally liked it much more than the two children design. She then asked the group for their thoughts, which she said she would share with the mural team, which was meeting later that day. (GC Exh. 3 at 2; R. Exhs. 4, 9).

Within minutes, Hwang responded, "Looks great! Much much better!" Kim followed, stating, "Agreed. It's OK." The following day, however, she added, "I like this one much better, but feel like the kids look sad in the picture. Can we ask them to have happy faces?" Fraye did not directly respond to this comment but emailed back that the mural team had decided to let the elementary and middle school-aged children involved in the mural project have the final say and that they would be choosing between 3 designs, one of which was the two children design. Hopefully, she stated, the vote would be for the profile design, which was, as she stated, "our favorite." (R. Exh. 4; Tr. 163.)

Contrary to the hopes of the internal mural team, the profile design was ultimately not selected. Instead, on August 26, the children voted for the two children design, but with the proviso that the Sakura flower would be replaced with a hibiscus flower, the national flower of the Republic of Korea.[11] That day, Ujiiye emailed Fraye and Park (copying Kim) with this news and specifically noted the change in the flower image. She then suggested that the painting begin the following weekend (August 28). (GC Exh. 3.)

B. Response to the Final Mural Design within KRC

KRC officially "signed off" on the final design later that day, albeit with reservations. Fray forwarded Ujiiye's email to Kim, Hwang, Park and Yang, stating:

> Unfortunately, it has come down to this mural. At this point, it really seems like it's a done deal but they still want our final approval. What do you all say?

Hwang did not respond. Kang—who was on leave at the time—was not copied on the announcement that the final design would not contain the controversial Sakura flower image. (GC Exh. 3.)

A half-hour later, Park replied to the group that she thought the design would "be okay" assuming that the flowers were changed and noted that "it's hard to go against the mural as the youth are the one[s] who are voting [for] it." Kim's only response was to recommend placing a plaque next to the mural to make it clear that the children had chosen the design. Fraye relayed KRC's disappointment in the final mural design to Ujiiye in a video call later that evening and also emailed her, noting that the "KRC team" had "really" preferred the profile design, but that, since the youth had voted for the two children design, "we're okay with moving forward with it." She then passed along Kim's suggestion for an explanatory plaque. Ujiiye

other witnesses, for example, that all three of the mural designs included the peace symbol image; she also claimed that the final design included offensive "sushi roll" and "Japanese fan" images, which the record shows were actually contained in the first, rejected design.

[9] Fraye credibly testified that she replaced Kim as KRC's liaison in early August, which is consistent with Hwang's recollection that she did so around the time that Norice's mural design had gotten rejected for a second or third time. I do not, however, credit Hwang's somewhat histrionic testimony that, after Kim stepped down, "it was chaos, confusion" and nobody clearly took her place as point person. (Tr. 121, 123, 492.)

[10] It also appears that Norice was at some point replaced as the muralist by two individuals, Nhut Vo and "Jovi" (last name unknown). (Tr. 500; R. Exh. 9 at 1.)

[11] See https://en.wikipedia.org/wiki/Hibiscus_syriacus.

responded that the plaque was a "great idea." (Tr. 538–539; GC Exh. 3.)

The following day (August 27), KRC held a staff meeting at which Fraye informed the group the youth had voted to proceed with the two children design.[12] Approximately 80 percent of KRC's staff was in attendance, including Kang, Park, Young, and Hwang himself. Despite the broad attendance at the meeting, the General Counsel relies solely on Hwang's account of the meeting, which I found largely vague and scripted. Kang denied Hwang's claim that she attended the event. (Tr. 266, 331–332.)

Hwang testified that Fraye's announcement of the winning design was met with an outcry of "enraged" employees who "strongly expressed" their concern that the design did not properly represent Korean culture or the "solidarity" message. Asked which employees spoke up against the design, Hwang named employees Young and Park, but provided no specifics as to their remarks.[13] In fact, the only material detail he did relate was that an individual named "Hee Gong Kim"[14] had quipped that the mural design reminded him of "some kind of daycare center." Other than Hwang, the only witness who testified about the meeting was Fraye. She admitted that "[m]ost of the staff were not excited" about the design but, after she explained that it was important to respect the children's choice, that the work was scheduled to begin the next day, and that the mural could eventually be painted over, "everybody was onboard," albeit reluctantly. Fraye specifically and credibly denied that any employees complained about the design's lack of Korean cultural representation; like Hwang, the only negative comment she recalled hearing was that the design invoked a child care center of some sort. (Tr. 51, 53, 66–67, 134–136, 139, 536.)

I credit Fraye's account; she listened carefully to questions, did not embellish or editorialize and notably related aspects of the meeting that were not necessarily favorable to Respondent's case (such as the fact that more than one person may have raised the "child care center" comment). (Tr. 501–502, 526, 535–536.) By contrast, I got the impression that Hwang heavily embellished and editorialized his account of the meeting in order to buttress his case. This, to my mind, explains the conspicuous lack of witnesses offered to corroborate his testimony.

C. Hwang's August 28 Email

On August 28, as planned, the muralists sketched a chalk outline of the mural on the Crenshaw building. Kang returned from leave around this time and learned from Fraye that the two children design had been chosen. Apparently under the belief that the final design would incorporate the Sakura image, which she considered racist, she complained to Hwang specifically about this issue, telling him, "we've got to oppose this. We've got to stop this" and emphatically exhorted him to "do something." There is no evidence that Hwang disabused her of her misimpression that the KRC building was to be adorned with the Sakura image. Although Kang also testified that she felt the design's peace symbol image was also Eurocentric and racist, there is no evidence that she discussed this with Hwang. (Tr. 276–278.)

On August 31 at 7:09 p.m. Hwang emailed Ujiiye from his KRC email account, copying Kang, Kim, Park, Yang, and Fraye, as well as two other non-KRC individuals involved in the mural project. (Tr. 158, 339, 458, 503–504.) Hwang's email stated follows:

> Hi, My name is sangho hwang, a communication manager of KRC, I want to share my concerns about the mural project, so let me point out some critical problems. I am not representing KRC's opinion.
>
> First, it is the peace symbol. I do not understand why you are obsessed with a peace symbol, which represents eurocentric ideas, not Asian or African. It was created by a British guy and spread in the U.S. with hippies. The peace sign had a good idea. but did not include any Asian ideologies or African philosophy. Should we borrow something Eurocentric when we talk about solidarity here? Why? (Do we want to be white?) Asian and African have a rich idea that describes peace or solidarity.
>
> Second, it is a picture of the Asian continent, which does not represent Asians. Each Asian country has its own culture and history. So, when we see a picture, we can't come up with Asia. Rather, this indicates that we do not know much about the authenticity of Asia. It feels rather rude and gets rid of their identities.
>
> Third, when we select the topic of murals, we should take a characteristic of a place into account. The place you want to paint is in Koreatown and the Korean Resource Center. We can not find anything Korean. Please look at the video of what KAFLA did. They drew Korean traditional clothing. https://youtube.com/waT.C.h?v=PoPMDzVMxtw[15]
>
> Fourth, to be honest, some of our staff are very worried that KRC will look like a Child Care Center.
>
> We need to look back on what we have taught our children enough for the Black API Solidarity. So, if you feel something's wrong, it's courageous to stop quickly. No one is

[12] While, in response to a leading question, Fraye initially testified that she only told Ujiiye that KRC approved of the peace symbol design following this staff meeting, her subsequent, more credible testimony made it clear that the meeting actually took place the following day. See Tr. 501–502.

[13] While the General Counsel asserts that, according to Hwang, Park also complained to him about the mural *following* the staff meeting, I do not read the record to support such a finding. Hwang provided no details about any such exchange with Park following the meeting, but rather appears to have claimed that she was one of the individuals who was upset *at* the staff meeting. See Tr. 138–139 ("at the staff meeting, Christine Park expressed, like, serious unhappiness with that mural").

[14] As noted earlier, an individual named Hee Gong Kim was, according to both Hwang and Kang, a member of KRC's Board of Directors and engaged in collective bargaining on its behalf as of August 4. No party at hearing addressed whether this was the same individual who made the "child care center" comment.

[15] As of the time of this writing, this link led to a page on YouTube's website that states, "This video isn't available anymore."

> rushing us. This process also means a lot.

(GC Exh. 4; R. Exh. 6.)

According to Hwang, his email simply "relayed what other staff members" thought of the two children design, explaining that "at the staff meeting a lot of team members—staff members were—strongly disagreed with that design. So I had no choice but to relay how they feel about that mural." He later expanded on this rationale, adding "it was just my mere attempt to—to express or relay how we feel inside among our KRC staff members since the management team didn't do anything about relaying how we feel regarding that" to the "outside people." (Tr. 152, 155, 162.)

D. Hwang's Discharge

Fraye read Hwang's email that evening and was, in her words, "really shocked." She called Ujiiye early the next morning to apologize and left a voice mail. (Tr. 505–506.) Later that day, Ujiiye responded to Hwang's email, copying Kim, Kang, and Fraye, as well as other, non-KRC participants in the mural project:

> I appreciate these important points and wished you would have communicated them closer to August 5th, when we began reviewing draft mural art concepts.
>
> The muralists won't be coming by KRC today.
>
> Just to be clear—we are not obsessed with the peace sign, nor are we trying to be white.
>
> The mural team is meeting this afternoon to process your email.

Id. That evening, Ujiiye sent another email (to the same group), announcing that the Black and API Solidarity Youth Mural team had determined to find a different (non-KRC) site for the mural, and that she would be notifying the various "stakeholders" in the project, including The California Endowment, of this change. "Again," she noted, "we believe it would have been more fruitful if concerns had been communicated in early August, but that is water under the bridge." Id. It is undisputed that KRC was subsequently removed from the mural project. (Tr. 173.)

The discharge decision was made by Leal, Fraye, and Operations Director Youngran Kim. Leal testified that, like Fraye, she was "shocked" and "blindsided" by what had occurred. She and Fraye consistently and credibly testified that Hwang's comments, and in particular his insinuation that Ujiiye was "obsessed" with the Western-based peace symbol and was "trying to be white" were, in Leal's words, "hostile," "unprofessional," "inappropriate" and "inflammatory." While the loss of the mural project did not involve an immediate financial harm to KRC, Leal and Fraye considered Ujiiye's pledge to alert the project's stakeholders of KRC's role being eliminated especially highly concerning and potentially "devastating" to its reputation for civic engagement and community organizing. This was especially so given that KRC was, at the time, in discussions with donors about new funding. (Tr. 460, 468–469, 505–506, 509.)

On September 3, Hwang was directed to meet with Leal and Fraye. Kang accompanied him as his interpreter. According to Kang, Leal took the lead, told Hwang that he was terminated effective immediately and demanded his keys and laptop. Kang then accused KRC of retaliating against Hwang based on his union activities, but the managers refused to engage with her on this subject. Hwang himself was largely silent during the meeting. His discharge notice (which KRC sent him a few days later) cites "substandard performance" as the reason for the decision. (Tr. 58–59, 293–294, 349; GC Exhs. 5, 8.)

It is undisputed that Local 947 first received notice that Hwang had been discharged later on September 3 when Hwang and Kang telephoned its business representative with the news. (Tr. 368–369.)

Analysis[16]

Hwang's Discharge Under Section 8(A)(1)

Section 8(a)(1) prohibits interference with the promise of Section 7 that employees shall have the right "to engage in other concerted activities for the purpose of . . . other mutual aid or protection." The General Counsel alleges that Hwang's discharge violated Section 8(a)(1) because it was based on his engaging in conduct protected by the Act, namely, his August 31 email.[17] Specifically, the General Counsel (joined by the Union) argues that Hwang complained about the mural in order to protect his coworkers from being exposed to imagery that they had communicated to him to be offensive and racist. Respondent, by contrast, argues that Hwang's email was primarily designed not to advance employees' terms and conditions of employment, removing it from the protection of Section 7. In addition, relying on NLRB v. Electrical Workers Local 1229 (Jefferson Standard), 346 U.S. 464 (1953), and Mountain Shadows Golf Resort, 330 NLRB 1238 (2000), Respondent argues that, even assuming Hwang's email was initially protected under Section 7, it did not retain the protection of the Act because he failed to adequately apprise its third-party recipient, Ujiiye, of the existence of an ongoing labor dispute related to employees' terms and conditions of employment.

Hwang's Email Constituted Concerted Conduct.

It is undisputed that, during the months of July and August, Hwang, and his coworkers Kang, Kim and Park took issue with

[16] I have based my credibility resolutions on consideration of a witness' opportunity to be familiar with the subjects covered by the testimony given; established or admitted facts; the impact of bias on the witness' testimony; the quality of the witness' recollection; testimonial consistency; the presence or absence of corroboration; the strength of rebuttal evidence, if any; the weight of the evidence and witness demeanor while testifying.

[17] While both his prior conduct in support of the Union, including the interview he granted to *Korea Times*, are also arguably protected by Section 7, the parties appear to agree, and I find that the preponderance of the evidence establishes that Respondent did not "seize on" his email to Ujuie in order to punish him for this prior conduct but rather that, had he not sent the August 31 email, Hwang would still be employed by KRC.

KRC's participation in the mural project and, in particular, raised concerns about various design iterations they deemed offensive to and/or insufficiently representative of Korean culture. While I have not credited Hwang's claim that he drafted his August 31 letter following a broader outcry at the August 27 staff meeting, it does appear that his email did constitute an outgrowth of complaints voiced concertedly by Kang, Kim and Park about the mural project's shortcomings. Moreover, his email specifically related the concern voiced by at least one—and possibly two—other individuals that the final mural design threatened to make KRC look like a child care center.

Because Hwang's email logically grew out of prior concerted activity, it qualifies as "concerted" conduct under the Act. See *NLRB v. Mike Yurosek & Son, Inc.*, 53 F.3d 261, 265 (9th Cir. 1995) (where evidence supports a finding that an employee's "lone" conduct "'stems from' or 'logically grew' out of prior concerted activity," it will be deemed concerted); *Gold Coast Restaurant Corp.*, 304 NLRB 750, 752–753 (1991) (finding concerted complaint where single employee, acting without authority from other employees, reported to management the group's dissatisfaction with their pay); *Every Woman's Place, Inc.*, 282 NLRB 413, 413 (1986) (once there has been established the existence of a common complaint or concern which transcends the interests of that employee alone, *an employee's individual conduct will be deemed* concerted as a continuation of the employees' protected activity), enfd. 833 F.2d 1012 (1987).[18]

Hwang's Email was not Undertaken for Mutual Aid and Protection.

While the KRC employees' mural critiques—as manifested in Hwang's email to Ujiiye—were concerted, I do not believe they are properly viewed as having been undertaken for the purpose mutual aid and protection, as required by the Act.

When evaluating whether employee action meets the "mutual aid and protection" standard, the critical inquiry is "whether there is a link between the activity and matters concerning the workplace or employees' interests as employees." *Fresh & Easy Neighborhood Market, Inc.*, 361 NLRB 151, 153 (2014). The Board, which applies an objective standard to this analysis, has found employees' efforts to address racial discrimination in the workplace to meet this standard. See, e.g., *Vought Corp.*, 273 NLRB 1290, 1294 (1984), enfd. 788 F.2d 1378 (8th Cir. 1986); *Honeywell, Inc.*, 250 NLRB 160, 160–161, 161 fn. 6 (1980), enfd. mem., 659 F.2d 1069 (3d Cir. 1981); see also *Dearborn Big Boy No. 3*, 328 NLRB 705, 705, 710 & fn. 33 (1999). As the General Counsel points out, the Board has also specifically found Section 7 to protect "employees' common interest in eliminating offensive remarks from their workplace." *Ellison Media Co.*, 344 NLRB 1112, 1114 (2005).

The scope of Section 7's "mutual aid or protection" clause, however, is not unlimited. As the Supreme Court has noted, at some point, the relationship of an employee's conduct to employees' interests *as* employees "becomes so attenuated that (the) activity cannot fairly be deemed to come within the . . . clause." *Eastex, Inc. v. NLRB*, 437 U.S. 556, 567–568 (1978). Following this principle, the Board has found that, when employees take action to protest or otherwise change the direction, scope or management of their employer's business (such as its business practices, policies, and strategy), their efforts may lose the Act's protection. See *Lutheran Social Services of Minnesota*, 250 NLRB 35, 38–39 (1980) ("On the periphery of the clause. . .there appears to be a tacit assumption that employee efforts to affect the ultimate direction and managerial policies of the business are beyond the scope of the clause.").

The ultimate test is whether an employee's challenge to a recognized "entrepreneurial" aspect of her employer's operations would, if successful, directly impact her and her coworkers as employees. See, e.g., id. (counselor's concerns regarding employer's treatment of program participants not protected since there was no showing of effect on employee terms and conditions); *Damon House, Inc.*, 270 NLRB 143, 147 (1984) ("overall thrust" of letter was attack on quality of living conditions of residents enrolled in employer's treatment program, not its employees' working conditions); *N.Y. Chinatown Senior Citizens Coalition Center, Inc.*, 239 NLRB 614, 617 (1978) (employees' critique was of manner in which employer provided services, not employees' working conditions). Compare *Mitchell Manuals, Inc.*, 280 NLRB 230 (1986) (letter to corporate chairman regarding proposed creation of new department within company's business structure was protected where letter also addressed changes in employees' terms and conditions that would be appropriate under new structure).

Based on these standards, I find the concerns raised by KRC employees, as set forth in Hwang's August 31 email, to be unprotected. As a preliminary matter, I find highly dubious the claim, asserted by both the General Counsel and Charging Party, that Hwang's email was principally aimed at protecting his *coworkers* from being subjected to racially discriminatory or otherwise offensive imagery. At hearing, Hwang—who struck me as a highly intelligent and sophisticated witness—appeared to "oversell" this angle (albeit in generalities). When specifically asked to identify what he considered inappropriate about the mural design, however, his standard response was to invoke the cultural sensitivities of the constituency KRC serves—not sentiments related by coworkers about their work environment. This was in keeping with the prior critiques of the internal KRC mural team, which had been framed in terms of the image's reception by the Koreatown community, leading to the muralist being replaced and the design revamped to ensure the KRC building was adorned with an image tailored to the sensibilities of it senior Korean American clientele.

The language of Hwang's email itself reflects this client-based focus. Without mention of KRC employees' working

[18] The General Counsel and Charging Party alternately argue that the concerns raised by Hwang and his coworkers should be recognized as "inherently concerted" (i.e., presumed concerted absent a showing that employees were in fact acting in concert). Indeed, while the Board has recognized this to be the case in certain circumstances in which employee activity is deemed to vital to employee efforts to improve terms and conditions of employment, it has not yet spoken on whether employee concerns about racism should be deemed as such. It is therefore not my place to do so. See *Pathmark Stores,* 342 NLRB 378, 378 fn. 1 (2004); *Waco, Inc.*, 273 NLRB 746, 749 fn. 14 (1984) ("It is for the Board, not the judge, to determine whether precedent should be varied.").

conditions, Hwang echoed the mural team's prior critiques by deriding the mural design as "Eurocentric" and lacking in Korea-specific features. Rather than promoting the interests of KRC employees as employees, the email reads as (albeit unsolicited) advice from a public relations consultant retained to ensure that the mural design struck the right tone with its intended audience: KRC's clients and neighbors in Koreatown. Indeed, the "thrust" of Hwang's message was what both Hwang and Kang testified to as their primary concern: that the mural would offend KRC's clientele, make the organization appear ignorant of the variations and nuances of Asian culture and, at worst, potentially make KRC appear to be operating a daycare center. While certainly a laudable endeavor, casting KRC in a good light with its clientele while simultaneously maintaining beneficial relationships with its community partners (and potential funding sources) was KRC's entrepreneurial prerogative. As such, Hwang's disastrous effort to reclaim the authority of his prior public relations role—in the absence of a connection KRC employees' interests as employees—acted to usurp that prerogative and thereby exceeded Section 7's protection. See *Lutheran Social Services of Minnesota*, 250 NLRB at 41 (employee concerns about "quality of care" for program participants, while "wholly professional and commendable," is confided by the Act to management and thus unprotected).

The General Counsel nonetheless suggests that the very presence of the mural—visible to KRC employees as they reported to work—would have necessarily subjected them to "iconography that they deemed racially discriminatory." But the record is devoid of credible proof that KRC employees actually considered the final design to be racially offensive, nor did Hwang state as much in his August 31 email. Indeed, the entire evidentiary basis for this argument's assumption is based on the testimony of Kang, who mistakenly believed that the KRC building was to be adorned with the Sakura image. It is also argued that KRC employees could have been impacted by clients unhappy with the mural. Such evidence of an indirect impact on employees' terms and conditions, however, is insufficient to deem Hwang's message to Ujiiye protected. See *Damon House*, 270 NLRB at 20–21 (potential for employer's client-care policies to cause "undue burden" on its employees too attenuated to establish goal of "mutual aid and protection").

Hwang's Email Lost the Act's Protection Under Jefferson Standard

Even assuming, arguendo, that Hwang's email was undertaken for the purpose mutual aid and protection, I agree with Respondent that it lost Section 7 protection when it was transmitted to a third party, Ujiiye.

The Act protects "efforts by employees 'to improve terms and conditions of employment' through appeals to third parties standing 'outside the immediate employee-employer relationship.'" *DirecTV, Inc. v. NLRB*, 837 F.3d 25, 33 (D.C. Cir. 2016) (quoting *Eastex, Inc. v. NLRB*, 437 U.S. 556, 565 (1978)). This includes concertedly appealing to third parties for their support in a labor dispute with their employer. See, e.g., *Xcel Protective Servs.*, 371 NLRB No. 134 (2022), enfd. 2023 U.S App. LEXIS 16066 (Jun. 23, 2023); see also *Trinity Protection Services*, 357 NLRB 1382, 1383 (2011); *Kinder-Care Learning Centers*, 299 NLRB 1171, 1171–1172 (1990); *Allied Aviation Service Co. of New Jersey*, 248 NLRB 229, 230 (1980), enfd. mem. 636 F.2d 1210 (3d Cir. 1980). In the *Jefferson Standard* case, however, the Supreme Court recognized that such third-party appeals, depending on their content and tone, may be nonetheless deemed sufficiently "disloyal" to the employer as to render the communicating employee(s) discharge "for cause" within the meaning of Section 10(c) of the Act, entitling the employer to refrain from reinstating the employee. *NLRB v. Electrical Workers Local 1229 (Jefferson Standard)*, 346 U.S. 464, 472 (1953) (finding that, under Section 10(c), "[t]here is no more elemental cause for discharge of an employee than disloyalty to his employer").

Accordingly, where concerted activity entails communications with a third party, the Board balances these competing interests, finding such activity protected if it meets a two-part test: (1) the communication indicates to the third party that it is related to an ongoing dispute between an employer and employees; and (2) the communication itself is not "so disloyal, reckless or maliciously untrue as to lose the Act's protection." *In re Am. Golf Corp. (Mountain Shadows)*, 330 NLRB 1238, 1240 (2000), enfd. sub nom. *Jensen v. NLRB*, 86 Fed. Appx. 305 (9th Cir. 2004); accord *Endicott Interconnect Techs., Inc. v. NLRB*, 453 F.3d 532, 537 (D.C. Cir. 2006). Respondent contends that Hwang's August 31 email lost the Act's protection under this standard, and I agree. As a preliminary matter, I do not find that Respondent has shown Hwang's email to have been reckless or maliciously untrue, or intentionally disloyal to KRC's interests. Indeed, as discussed above, his effort (which clearly failed) appears to have been in furtherance of those interests. Rather, I find that the email lost protection because, from the perspective of the reader (Ujiiye), it failed to disclose the existence of an ongoing labor dispute.

To retain the Act's protection, an appeals such as Hwang's is not required to contain "particular words or phrases." Rather, the communication must provide enough information about the nature of the dispute and "sufficient context" to allow the third party to "'filter the information critically'" to assess the nature of the support they are being asked to provide and must not require the reader to make an "inferential leap" to apprehend that employees' terms and conditions are at issue. *Xcel Protective Servs.*, 371 NLRB No. 134, slip op. at 17–18 & 22 n. 13 (citing *Sierra Publishing Co. v. NLRB*, 889 F.2d 210, 217 (9th Cir. 1989). In this regard, while it appears that Ujiiye knew that KRC's internal mural team had preferred a different mural design, Hwang's email and its context cannot reasonably be viewed as putting her on notice that KRC employees were at odds with its management over how the selected design would impact working conditions.

Hwang—who explicitly framed his criticism as "my concerns"—provided Ujiiye with no indication that any individual at KRC—other than he—believed the final design to be inappropriately "Eurocentric" or otherwise unrepresentative of Korean culture. Rather, by introducing himself as a "communications manager" who had identified "critical issues" with the design, he laid out his personal case that mural design that Fraye had just

endorsed was not in *KRC's* best interest.[19] Accusing Ujiiye of having overseen the selection of an insufficiently Korean-influenced final design and thereby being insensitive to the nuances of Asian culture did not enlist her support in convincing KRC to accede to his demands. Instead, speaking as KRC's representative, Hwang took Ujiiye herself to task for threatening its reputation within the Koreatown community, suggesting that KRC was in the midst of a management rift, not a labor dispute.[20] Despite the fact that KRC had already signed off on the final design, which was scheduled to be painted within days, Hwang mentioned, in closing, "no one is rushing us," suggesting that there was a minority position within KRC management to be dealt with. Given this context, for Ujiiye to interpret the August 31 email as requesting her support on behalf of KRC employees seeking to improve their terms and conditions of employment would require the type of "inferential leap" the Board has indicated it will not endorse. See *Xcel Protective Services*, 371 NLRB No. 134, slip op. at 4.

Accordingly, I find that Hwang's August 31 email did not constitute activity protected by the Act.

Hwang's Discharge Under Section 8(A)(5)

The General Counsel further alleges that Respondent violated Section 8(a)(5) of the Act by failing to give the Union notice and the opportunity to bargain over Hwang's discharge decision. The parties agree that, because Hwang was discharged prior to the parties reaching a first contract, this case is controlled by the Board's 2020 *800 River Road* decision. In that decision, the Board held that, upon commencement of a collective-bargaining relationship, employers do not have an obligation to bargain prior to disciplining unit employees in accordance with an established disciplinary policy or practice.[21]

As noted, Respondent failed at hearing to adduce evidence that, prior to discharging Hwang, it had previously disciplined an employee for similar misconduct. Based on this, the General Counsel argues Respondent was obligated to bargain over Hwang's discipline because the Board in *800 River Road* excused employers only from bargaining over precontract disciplinary decisions that are "similar in kind or degree to what the employer did in the past within the structure of established policy or practice." I do not read the decision so narrowly. The language relied on by the General Counsel was used by the Board in *800 River Road* to take issue with *Total Security Management*'s interpretation of the seminal decision in *NLRB v. Katz*.[22] In so doing, I do not understand the Board to have established a standard whereby an employer is free from bargaining over a precontract, discretionary discipline decision only where it has prior, consistent discipline for similar misconduct. This is evidenced by the Board's application of the *800 River Road* standard to disciplinary actions taking place in the absence of such "past discipline" evidence. See, e.g., *Triumph Aerostructures*, 369 NLRB No. 123 (2020).

Accordingly, I find that, under current Board law, Respondent had no duty to bargain over Hwang's discharge.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[23]

ORDER

It is recommended that the complaint be dismissed in its entirety.

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

---

[19] In this context, Hwang's use of the first person, "we" (as in, "Do we want to be white?"), would be reasonably understood to refer to KRC and its partners in the mural coalition, not workers within KRC itself.

[20] Considering Hwang's position that the selected design was not in KRC's best interest, I find that his mention that "some of our staff" (i.e., KRC employees) also considered it 'bad look' for the Crenshaw building (i.e., the "child care center" concern), served not to alert Ujiiye of a labor-management dispute but rather to demonstrate that rank-and-file KRC employees were also concerned about the project's effect on KRC's image.

[21] *800 River Road Operating Co.*, 369 NLRB No. 109, slip op. at 7 (2020), enfd., 848 F. Appx. 443 (D.C. Cir. 2021) (unpublished). The General Counsel argues that this case should be used by the Board as a vehicle to overrule this holding; I am bound to follow and apply existing Board law. *Pathmark Stores, Inc.*, 342 NLRB 378 fn. 1 (2004); see also *Gas Spring Co.*, 296 NLRB 84, 97–98 (1989), enfd. 908 F.2d 966 (4th Cir. 1990).

[22] 369 U.S. 736 (1962).

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