

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

SOLERA HOLDINGS, LLC and its subsidiary,  
IDENTIFIX, LLC, as Joint Employers

and

Cases 16-CA-311941  
16-CA-311959

JULIUS STRICKLAND, an Individual

*Alex Romo and David Routt, Esqs.,*  
for the General Counsel.

*Mike Birrer and Shelby K. Taylor, Esqs.,*  
for the Respondent.

*Jamie Gilmore, Esq.,*  
for the Charging Party.

**Decision**

GEOFFREY CARTER, Administrative Law Judge. The General Counsel contends that Solera Holdings, LLC and its subsidiary, Identifix, LLC, as joint employers (Respondents) violated Section 8(a)(1) of the National Labor Relations Act (the Act) by discharging employee Julius Strickland in January 2023, and by maintaining several overly broad work rules since about August 2022. As explained below, while the General Counsel fell short on some complaint allegations, I have determined that Respondents violated the Act by unlawfully discharging Strickland and by maintaining certain overly broad work rules.

STATEMENT OF THE CASE

The trial in this case was held in person on February 24, 2026, in Fort Worth, Texas. Charging party Julius Strickland filed the unfair labor practice charges in this case on the following dates:

<b>Case</b>	<b>Filing Date</b>	<b>Amendment Date(s)</b>
16-CA-311941	February 8, 2023	May 16, 2024
16-CA-311959	February 8, 2023	March 24, 2025

In an “order consolidating cases, consolidated complaint, and notice of hearing” issued on June 4, 2025 (hereafter referred to as the complaint), and in further amendments to the

complaint during trial,<sup>1</sup> the General Counsel alleged that Respondents violated Section 8(a)(1) of the Act by: since about August 8, 2022, maintaining the following rules:

- 5                   - an Outside Employment/Conflicting Outside Activities provision in its Code of Conduct that prohibits employees from engaging in “outside work or conflicting outside activities that . . . adversely affect the reputation of the [Respondents]” and requires employees to “submit a request containing pertinent information about the outside employment or activity and obtain the prior written approval”;
- 10                   - a Solicitation on Work Premises provision in its Code of Conduct that states, “Solicitation not related to the business of the [Respondents] in its workplace is prohibited without the prior written consent of the Chief Executive Officer, President, Executive Vice President or Chief Financial Officer. Sites may have bulletin boards or other procedures for distributing general interest, local information at work sites. Use of these resources are authorized when related to charitable or like efforts, are limited to the designated bulletin boards or other areas, and result in no personal solicitation (i.e., posting of a sign-up sheet). Consult with your supervisor or facility manager for local bulletin board and e-mail procedures.”;
- 15                   - a Confidentiality provision in its Code of Conduct that states, “Parties to an investigation shall not discuss the matter with other employees”;
- 20                   - a Confidential Information provision in its Employee Proprietary Information Agreement, Exhibit A to Offer of Employment, that defines compensation and personnel information as confidential information;
- 25                   - a Confidential Information provision in its Non-Competition and Non-Solicitation Agreement, Exhibit B to Offer of Employment, that defines compensation and personnel information, including payroll, as confidential information;
- 30                   - a Non-Disparagement and Solicitation of Employees provision in its Non-Competition and Non-Solicitation Agreement, Exhibit B to Offer of Employment, that requires employees “not disparage or speak negatively about the [Respondents’] employees, products or services”;
- 35                   - a Non-Disparagement and Solicitation of Employees provision in its Non-Competition and Non-Solicitation Agreement, Exhibit B to Offer of Employment, that requires employees not “solicit, suggest, induce, encourage, or facilitate any employees of the [Respondents] to resign his or her
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<sup>1</sup> On the first day of trial, the General Counsel amended the complaint to allege that Solera Holdings and Identifix are joint employers (instead of a single employer). Respondent did not object to that amendment since it is consistent with the parties’ stipulation of facts. (See Tr. 9–10; Jt. Exh. 1.)

employment with the [Respondents] or to become employed in competition with the [Respondents]; and

- language in its Termination Certification that requires employees to “preserve as confidential . . . financial information or other subject matter pertaining to any business of the [Respondents] or any of its employees”; and

- (a) on about January 5, 2023, discharging Julius Strickland because he engaged in protected concerted activities and/or because he violated the Code of Conduct provisions listed in the complaint.

Respondents filed a timely answer denying these alleged violations in the complaint.

On the entire record,<sup>2</sup> including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondents,<sup>3</sup> I make the following

#### FINDINGS OF FACT

##### I. JURISDICTION

Respondent Solera Holdings, LLC (Solera), a Delaware corporation with an office and place of business in Westlake, Texas, has been operating as a holding company. On an annual basis, Solera purchased and received goods at its Westlake, Texas facility that are valued in excess of \$50,000 and came directly from points outside the State of Texas. Respondent Solera admits, and I find, that Respondent Solera is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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<sup>2</sup> The transcript and exhibits in this case generally are accurate, but I hereby make the following corrections to the record: p. 67, l. 11: “pit” should be “PIP”; p. 73, l. 21: “lead” should be “leave”; and p. 112, l. 3: “Respondent” should be “General Counsel.”

<sup>3</sup> Respondents challenged these proceedings as a whole, contending that the Board’s adjudication structure violates the U.S. Constitution. (Tr. 21; R. Posttrial Br. at 1; see also Tr. 125 (overruling Respondents’ objection to the proceedings but permitting the parties to raise the issue in posttrial briefs).) In *Commonwealth Flats Development Corp. d/b/a Seaport Hotel Boston*, the Board rejected several constitutional challenges to agency proceedings. 373 NLRB No. 142, slip op. at 1 fn. 1 (2024) (rejecting arguments that board proceedings violated the employer’s right to a jury trial, and that removal protections for Board members and administrative law judges violate Article II of the Constitution). I find that the Board would similarly reject Respondents’ challenge to the agency’s structure. Further, since ruling on Respondents’ constitutional challenge could entail halting (at least in part) the operation of the agency, and such a step would be in tension with my duty to faithfully administer the Act, I deny Respondents’ constitutional challenge with the understanding that federal courts will likely address the issue at some point in the future. See *National Association of Broadcast Employees & Technicians – Broadcasting & Cable Television Workers Sector of the CWA, AFL–CIO, Local 51 (NABET)*, 370 NLRB No. 114, slip op. at 1–2 (2021) (setting forth similar reasoning in declining to rule on a challenge to the constitutionality of the President’s removal of the General Counsel and the appointment of an Acting General Counsel).

Respondent Identifix, LLC (Identifix), a Minnesota corporation with an office and place of business in Westlake, Texas, has been engaged in providing certain products to auto repair shops and is a wholly owned subsidiary of Solera Holdings. On an annual basis, Identifix purchased and received goods at its Westlake, Texas facility that are valued in excess of \$50,000 and came directly from points outside the State of Texas. Respondent Identifix admits, and I find, that Respondent Identifix is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondents admit that Solera and Identifix are related corporate entities wherein Identifix is a wholly owned indirect subsidiary of Solera. Solera and Identifix jointly control wages, hours, and terms and conditions of employees who worked for Solera or Identifix, and are joint employers under the Act and would be jointly and severally liable for any judgment, directive, or order arising out of this case. (Jt. Exh. 1 (par. 2).) Globally in 2023, Respondents had around 8800 employees in 40 countries (with just over 3700 employees in the United States). (Tr. 127–128.)

## II. ALLEGED UNFAIR LABOR PRACTICES

### *A. Background*

In about May 2021, Julius Strickland began working for Respondents as a sales development representative. Respondents subsequently promoted Strickland to an account executive position in about December 2021. As an account executive, Strickland contacted mechanic shops and other businesses to bring in revenue for Respondents. (Tr. 27–28, 102; see also Jt. Exh. 6 (offer of employment).)

By June 2022, Strickland was unhappy working for Respondents and was looking for an opportunity to leave for another job. Among other concerns (which persisted into fall 2022), Strickland’s compensation with Respondents was declining and he was having to rely heavily on cold calls instead of active leads to generate sales. (Tr. 51–52, 97, 102; Jt. Exhs. 16–17 (emails that Strickland sent in October 2022 to express concerns that he and other employees had about these issues).)

### *B. November/December 2022 – Strickland Applies for and Goes on Leave and Respondents Place Strickland on a Corrective Action Plan*

On about November 18, Strickland learned that he was being evaluated by supervisor Andrew Miller for performance and attitude. Believing that he was at risk of either being placed on a performance improvement plan or being terminated, Strickland continued searching for another job and also asked human resources and a coworker about the procedure for going on leave. (Jt. Exhs. 9 (Bates 270–271), 12 (Bates 420–421), 18–20, 21 (Bates 472–473); R. Exh. 1; Tr. 52–55, 61–65, 67–70, 74–75; see also Tr. 65–66 and R. Exh. 2 (showing that on about November 21, a coworker told Strickland that he saw Strickland’s name on a report on Miller’s laptop).) In communications with coworker K.P. about going on leave, Strickland indicated that he (Strickland) was “trying to pull a [M.],” a reference to a former coworker who went on leave under the Family and Medical Leave Act (FMLA) and then resigned to take another job. (Tr.

69–70; Jt. Exh. 12 (Bates 420) (showing that Strickland included a laughing/crying emoji when he told K.P. he was trying to take medical leave).)

5 On about November 22, Strickland submitted a request to Respondents’ insurance provider (Prudential) for FMLA leave from December 1, 2022, through February 28, 2023, asserting that he had a serious health condition. In about the same time period, Respondents placed Strickland on a corrective action plan (synonymous with a performance improvement plan) for lack of performance and attitude. Though his FMLA leave application was still pending, on about December 1, Strickland began a period of medical leave and stopped coming  
10 in to the office.<sup>4</sup> (Tr. 36–37, 70–72, 167–168; R. Exh. 3; GC Exh. 4 (referring to the corrective action plan (CAP)); see also Jt. Exh. 9 (Bates 273) (Strickland text message referring to his request for FMLA leave); GC Exh. 4 (Strickland’s manager did not see Strickland in the office after November).)

15 *C. December 21, 2022 – Prudential Denies Strickland’s FMLA Leave Request*

In a letter dated December 21, Prudential notified Strickland that it was denying his request for FMLA leave because Strickland did not submit supporting medical documentation. Prudential also noted that “because you are not approved for these benefits, you do not have job  
20 protection under any programs and may be subject to your employer’s absenteeism policy.” Notwithstanding the denial of his request for FMLA leave, Strickland did not return to work and did not intend to not return before March 1 unless Respondents specifically asked him to do so. In the meantime, Strickland’s search for another job continued. (R. Exh. 3; Tr. 72–74, 76–78, 80; see also Tr. 71–72 (noting that Strickland was aware that he had to provide medical  
25 documentation showing that he had a serious medical condition, and indicating that both Strickland’s primary care physician and therapist refused to certify that he needed leave for such a condition).)

Also in December, a Prudential representative advised one of Respondents’ benefits  
30 analysts that, on December 16, Strickland expressed interest in also pursuing a short term disability claim. Prudential accordingly opened a short term disability claim and set January 15, 2023 as the deadline for Strickland to submit medical records to support that claim. (GC Exh. 5 (pp. 1, 3); Tr. 95–96, 103–104, 112.)

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<sup>4</sup> Text messages in the record indicate that Strickland applied to use paid time off (PTO) to cover the time period where he was on medical leave in December 2022 but still waiting to hear from Prudential about eligibility for FMLA leave. (See Jt. Exh. 12 (Bates 425–426).) The parties did not explore this issue further during the trial, but in any event, any ambiguity about whether Strickland used PTO in December 2022 is moot since there is no evidence that Respondents objected in that time period to Strickland not coming to work.

*D. January 5, 2023 – Respondents Terminate Strickland*

1. Strickland shares message about layoffs with coworkers

5 At about 12:45 p.m. on January 5, former employee D.T.<sup>5</sup> sent the following text message to Strickland in response to a “Merry Christmas” greeting that Strickland sent on Christmas day:

10 So clearly I am an ass for not responding to [emoji showing finger pointing upward towards Strickland’s “Merry Christmas” message]!

I hope you had a great Christmas and NYE!

15 Little info I thought you would need. My VERY TRUSTED sources let me know that a 25% global reduction in forces will be enacted for Solera very soon. [Chief administrative officer] Jing [Liao] drove y’all into the ground enough that layoffs are coming. Whoever says anything different doesn’t know shit.

20 Spread that shit like wildfire . . . people are gonna start losing their jobs real soon. Not sure who or from what department but it’s coming.

(Jt. Exh. 9 (Bates 273–274); Tr. 37–38; see also Tr. at 134 (providing Liao’s job title).)

25 Starting at about 12:54 p.m., Strickland, who was not in the office, forwarded D.T.’s message verbatim to eight coworkers to alert them of what might be coming so they could start looking for new jobs if they were not already doing so. Strickland, who trusted D.T. as a reliable source of information, did not believe that D.T.’s message about layoffs was false and did not take any steps to verify the accuracy of D.T.’s message before forwarding it. (Jt. Exhs. 10 (Bates 284), 11; GC Exh. 8; Tr. 37–39, 46, 81–84, 87, 91–92, 95, 99, 102–103; see also Tr. 51–52, 103  
30 (Strickland believed that the coworkers he sent D.T.’s message to were already searching for other jobs).)

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<sup>5</sup> D.T. worked as a human resources recruiting coordinator for Respondents until about September 2022. Strickland viewed D.T. as very trustworthy and believed that D.T. had insight into high level issues and meetings at the company. While D.T. did not always answer Strickland’s questions, occasionally D.T. provided information to Strickland about events involving Respondents’ executives, including providing information about an incident at a staff meeting in about August/September 2022 (Strickland also heard about the incident from other employees). (Tr. 31–35, 86–87, 141–142; Jt. Exh. 9 (Bates 266–267).)

After leaving the company, D.T. told Strickland that D.T. continued to be in contact with various high level officials with Respondents. Strickland admitted that D.T., like many other employees, harbored hostility towards Respondents’ leadership. (Tr. 84–86, 93–94, 141–142; Jt. Exh. 9 (Bates 270–271) (text messages that D.T. sent in November 2022 that refer to D.T. communicating with sources who still worked for Respondents); see also Jt. Exh. 9 (Bates 265–266) (text messages that D.T. sent to Strickland when D.T. ended employment with Respondents in September 2022).)

After receiving Strickland’s message about potential layoffs, several employees began discussing the issue in the office and/or asked supervisors directly if layoffs were coming. When coworker B.N. sent an Instagram message to see if Strickland was just starting a rumor about layoffs, Strickland replied that he “heard it from a former Solera person with high up connections.” Strickland also told at least two other coworkers that he did not write the message about layoffs and instead received it from a source that he trusted. (Jt. Exhs. 10 (Bates 285), 13; GC Exh. 8; Tr. 39–46, 90; see also Tr. 98 (Strickland assumed that coworkers who received the forwarded message would understand, based on the first line of the message, that Strickland did not write it).)

It was not true that Respondents were planning a 25 percent layoff as stated in D.T.’s message.<sup>6</sup> (Tr. 130–131, 133, 136, 144.)

2. Respondents decide to terminate Strickland

As employees continued to discuss the message that Strickland forwarded about upcoming layoffs, a “panic” about the issue spread on the sales floor with employees asking managers and human resources about potential layoffs. (Tr. 89, 132, 134–135; see also Tr. 155–156 (noting that managers worked to control the “chaos” on the sales floor after employees received or heard about the message about potential layoffs).) Director of inside sales Karen Chagnon accordingly sent the following messages to director of human resources Evangelia Tsipas between 2:36 and 2:38 p.m.:

Just an FYI [employee L.] just came up to me and said [Strickland] told him that HR told him [] that we’re doing a 25% layoff. I told [L.] not to listen to him. 15 minutes later [supervisor] Miller just came up to me saying [employee J.W.] asked him about a 25% layoff and said someone told him that. Seems like [Strickland] is trying to start some stuff before he finally leaves. Wanted to keep you updated

...

I don’t think anyone in HR said it. I think he is causing trouble but I will ask

...

[Strickland] is an [Identifix] rep that got put on a [corrective action] plan and then immediately applied for a leave that from what I understand has never been actually approved

(Jt. Exh. 15; Tr. 128–129, 131–132, 149–150, 163; see also Tr. 119–120, 129, 137, 146 (discussing Chagnon’s and Tsipas’ job titles).) Tsipas immediately (starting at 2:36 p.m.) forwarded Chagnon’s messages to chief administrative officer Liao and vice president of human resources Tom Coffey. (Jt. Exh. 14; Tr. 132–134.)

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<sup>6</sup> Respondents stated in their opening statement that they did have a “small layoff” at some point in January 2023, but the evidentiary record does not establish how many of Respondents’ employees were laid off at that time. (Tr. 17.)

Starting at 2:41 p.m., Tsipas, Liao, and Coffey exchanged the following messages regarding Strickland:

- 5 Liao (2:41 p.m.): Confront him and term
- Tsipas (2:53 p.m.): k. insubordination. we'll term him. I'll have [human resources business partner J.H.] get with [Chagnon]
- 10 Coffey (2:56 p.m.): violation of the company's code of conduct is the generic description

(Jt. Exh. 14 (pp. 1–2); Tr. 138–139, 147–148, 152–154.)

15 During trial, Tsipas testified that between 2:41 and 2:53 p.m., she continued her investigation, including speaking to Chagnon, who reiterated what she shared in her written messages regarding Strickland. Tsipas also spoke to representatives in the human resources department, who advised that in December 2022, Prudential denied Strickland's request for leave and that Strickland had not reported to work from December 2022 through January 5, 2023. Tsipas also learned that Respondents placed Strickland on a corrective action plan for  
 20 performance before he went on leave, and that Strickland previously had an outburst in the office that included slamming his headset down and breaking a company laptop. Finally, Tsipas reviewed a copy of the Instagram message that Strickland sent to employee B.N. about layoffs and determined that: Strickland did not attempt to validate the information about layoffs before sending the message; Strickland wrote the message (as opposed to forwarding a message written  
 25 by someone else); and Strickland's message about layoffs was false, malicious, and intended to create chaos. Considering all of that information, Tsipas sent her 2:53 p.m. message to Liao and Coffey to agree that Strickland should be terminated.<sup>7</sup> Respondents did not contact Strickland as part of their investigation. (Tr. 133–134, 136–140, 143, 145–146, 150–154, 156–158, 166–168, 170, 174–175; Jt. Exh. 13 (Strickland's Instagram message to B.N., which stated that Strickland  
 30 heard about layoffs from a former employee, and included a verbatim copy of D.T.'s message about layoffs); see also Tr. 146 (Tsipas did not know why Respondents did not terminate Strickland for absenteeism before January 5, 2023), 159 (Tsipas testimony that she verbally informed Liao and Coffey about the incident<sup>8</sup> when Strickland damaged a company laptop).)

35 3. Respondents notify Strickland of his termination

Following director of human resources Tsipas' instructions to terminate Strickland for violating Respondents' code of conduct, director of inside sales Chagnon and human resources partner J.H. called Strickland by telephone in the afternoon on January 5, 2023. Chagnon and  
 40 Strickland stated as follows during the call, in pertinent part:

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<sup>7</sup> In their posttrial brief, Respondents admit that they terminated Strickland for sending the message about layoffs, and offer Tsipas' testimony as an explanation for why she concluded that Strickland acted with malicious intent when he sent the message. (See R. Posttrial Br. at 10–11, 13.)

<sup>8</sup> The laptop incident occurred in about November 2022. (See GC Exh. 4.)

Chagnon: Your employment today for violation of code of conduct. I’ve seen a couple of examples of you texting reps today telling them that you’ve heard from HR or a source that um, that you that we’re going to be doing a 25% layoff, which is certainly not true. [ ] So based on that, we will be terminating your employment. I’m going to hand it over to [J.H.] now [to] let you know what the next steps are and what you need to do. But as of today you will be terminated.

...

Strickland: Just to let y’all know, this was a former employee of Solera that sent me this information

Chagnon: The fact that you’re sharing it with the team and it’s unfounded and you don’t know the truth to that, that doesn’t it make something you should be sharing with the team

(Jt. Exh. 7 (0:00–0:32, 2:19–2:38); Tr. 37, 46–47, 80, 161; see also Jt. Exh. 8 (transcript of call);<sup>9</sup> GC Exhs. 2–3 (letter and memorandum describing the phone call); Tr. 107–109, 120–122.)

Respondents did not terminate any other employees who discussed or asked management or human resources about Strickland’s message about layoffs. (Tr. 145, 168–170.)

During trial, Tsipas explained that Respondents did not rely on a specific provision in the code of conduct as their basis for terminating Strickland. Instead, Tsipas described Strickland’s alleged misconduct between November 2022 and January 2023 as a violation of Respondents’ overall code of conduct. (Tr. 160–162; see also Tr. 50 (Respondents did not tell Strickland that he violated a specific provision in the code of conduct).)

*E. Events After Strickland’s Termination*

1. Followup communications about the layoff message

On January 6, 2023, director of inside sales Chagnon messaged director of human resources Tsipas that it was former employee D.T. who told Strickland (and one other employee) that Respondents were planning layoffs. This additional information did not affect Respondents’ prior decision to terminate Strickland, and the evidentiary record does not show that Respondents investigated whether the other employee who received D.T.’s message shared it with any coworkers. (Tr. 113–114, 141–142, 151–152, 172–173; GC Exh. 6; see also Tr. 152 (noting that Tsipas attempted to contact D.T. on January 6 but was not successful).)

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<sup>9</sup> To the extent that the transcript of the call differed from the audio recording, I have given weight to the audio recording. (See Tr. 48.)

## 2. Chagnon's memorandum regarding Strickland

On an unspecified date after Strickland's termination, director of inside sales Chagnon wrote a memorandum about Strickland's employment with Respondents. Chagnon stated as follows in the memorandum:

I have been the Director of the Identifix team since April 1, 2022. Julius was always a capable member of the team but also always challenging his manager and not showing the respect he should be. He would come to me when he didn't agree with a decision the manager made trying to get me to change the decision. Generally we go along but he was always in the middle of drama and rumors, said he said he wanted to be a leader but was not showing the traits we need to see in a rep to move in that direction though he was given opportunities to step up.

When pay plans were sent out Julius went around telling the other reps not to sign them and this ended up being address[ed] in a meeting with Meredith.

His performance started dropping in Sept and his attitude was getting worse, November he was given a verbal warning that [his] performance and attitude needed to improve otherwise he would be on a [corrective action plan] in December

During Nov he had a couple of outbursts in the office where he was very frustrated that he couldn't close a deal and threw his headset and computer down breaking the computer screen. Solera had to provide him with a new laptop.

Very soon after [that] he got very frustrated again at not being able to close a deal and I had to tell him to calm down. I ended up sending him home to work that day to get himself together.

End of Nov we ended up putting him on a [corrective action plan] for his lack of performance and attitude and immediately after he put in for [FMLA], the reason for which I was not aware. I was not aware that Julius was suffering from any kind of anxiety or depression and had not seen any sign of either in the office. He was always chatting with everyone, in fact too much so that I was always having to tell him to sit down and make calls.

Have not seen him in the office since Nov and my only interaction with him since then is the day we termed him after I was alerted to the fact that Julius was sending text messages to reps telling them that the company was about to do a major layoff. This affected the productivity of the team who were more focused on the message from Julius than they were on working.

(GC Exh. 4; Tr. 118–120.)

## DISCUSSION AND ANALYSIS

*A. Credibility Findings*

5           A credibility determination may rely on a variety of factors, including the context of the  
witness' testimony, the witness' demeanor, the weight of the respective evidence, established or  
admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the  
record as a whole. Credibility findings need not be all-or-nothing propositions — indeed,  
nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a  
10       witness' testimony. *Starbucks Corp.*, 372 NLRB No. 122, slip op. at 17–18 (2023) (noting that  
an administrative law judge may draw an adverse inference from a party's failure to call a  
witness who may reasonably be assumed to be favorably disposed to a party, and who could  
reasonably be expected to corroborate its version of events, particularly when the witness is the  
party's agent), enfd. in pertinent part, 159 F.4th 455 (6th Cir. 2025). To the extent that  
15       credibility issues arose in this case, my credibility findings are reflected in the analysis below.

*B. Did Respondent Unlawfully Discharge Strickland?*

## 1. Complaint allegations

20           The General Counsel alleges that on about January 5, 2023, Respondents discharged  
Julius Strickland because he engaged in protected concerted activities and/or because he violated  
the code of conduct provisions listed in the complaint.

## 2. Applicable legal standard

25           In most cases, to prove that an adverse employment action violates Section 8(a)(1) of the  
Act, the General Counsel must demonstrate that: the employee engaged in activity that is  
“concerted” within the meaning of Section 7 of the Act; the employer knew of the concerted  
30       nature of the employee's activity; the concerted activity was protected by the Act; and the  
employer's adverse action against the employee was motivated by the employee's protected,  
concerted activity. *Mitsubishi Hitachi Power Systems Americas, Inc.*, 366 NLRB No. 108, slip  
op. at 15 (2018); *Lou's Transport, Inc.*, 361 NLRB 1446, 1447 (2014), enfd. 644 Fed. Appx. 690  
(6th Cir. 2016); *Correctional Medical Services*, 356 NLRB 277, 278 (2010). Proof of  
35       discriminatory motivation (animus) can be based on direct evidence or can be inferred from  
circumstantial evidence based on the record as a whole. Circumstantial evidence of  
discriminatory motivation may include, among other factors: the timing of the action in relation  
to the union or other protected conduct; contemporaneous unfair labor practices; shifting, false,  
or exaggerated reasons offered for the action; failure to conduct a meaningful investigation;  
40       departures from past practices; and disparate treatment of the employee. *Intertape Polymer  
Corp.*, 372 NLRB No. 133, slip op. at 6–7 (2023), enfd. 2024 WL 2764160 (6th Cir. 2024);  
*Medic One, Inc.*, 331 NLRB 464, 475 (2000). If the General Counsel satisfies the initial burden  
of showing of discrimination, then the burden shifts to Respondent to present evidence, as an  
affirmative defense, demonstrating that it would have taken the same action even in the absence

of the employee’s protected activity. See *Mitsubishi Hitachi Power Systems Americas, Inc.*, 366 NLRB No. 108, slip op. at 15; *Timekeeping Systems, Inc.*, 323 NLRB 244, 244 (1997).

5 In a case where it is undisputed that the employer took action against an employee for engaging in protected activity, the burden shifting framework described above does not apply. Instead, the employer may contend that the employee engaged in misconduct during the activity that caused the employee to lose the protection of the Act. If the employer fails to prove that contention, then a violation of the Act is established. See *Lion Elastomers LLC*, 372 NLRB No. 83, slip op. at 6 (2023), vacated on other grounds, 108 F.4th 252 (5th Cir. 2024); *Nor-Cal Beverage Co.*, 330 NLRB 610, 611–612 (2000).

15 The Board has held that “discipline imposed pursuant to an unlawfully overbroad rule violates the Act in those situations in which an employee violated the rule by (1) engaging in protected conduct or (2) engaging in conduct that otherwise implicates the concerns underlying Section 7 of the Act. Nevertheless, an employer will avoid liability for discipline imposed pursuant to an overbroad rule if it can establish that the employee’s conduct actually interfered with the employee’s own work or that of other employees or actually interfered with the employer’s operations, and that the interference, rather than the violation of the rule, was the reason for the discipline.” The employer bears the burden of asserting the affirmative defense set forth in this legal standard, and bears the burden of establishing that the employee’s interference with production or operations was the actual reason for the discipline. *Continental Group, Inc.*, 357 NLRB 409, 412 (2011); see also *Flex Frac Logistics, Inc.*, 360 NLRB 1004, 1005 (2014) (upholding the employer’s decision to terminate an employee because, even though the employer relied in part on an overly broad work rule, the employee engaged in gross misconduct and any chilling impact that the termination would have on employees’ section 7 rights would be minimal).

### 3. Analysis – did Respondents terminate Strickland for discriminatory reasons?

30 In their posttrial brief, Respondents concede that they terminated Strickland because he sent the January 5, 2023 text message to his coworkers regarding potential layoffs. (R. Posttrial Br. at 13; see also Findings of Fact (FOF), sec. II(D) (showing that Respondents were motivated to terminate Strickland at least in part because of the January 5 text message). Respondents, however, contend that they lawfully terminated Strickland because: Strickland’s text message did not constitute concerted activity; and alternatively, even if the text message constituted concerted activity, the message was not protected by the Act because it was knowingly and maliciously false. (R. Posttrial Br. at 5–13.)

40 To address Respondents’ first argument, it is useful to review the Board’s definition of “concerted activity,” which must be analyzed under an objective standard (such that an employee’s subjective motive for taking action is irrelevant). *Fresh & Easy Neighborhood Market*, 361 NLRB 151, 153 (2014). “Concerted” activity includes not only activity that is engaged in with or on the authority of other employees, but also activity where individual employees seek to initiate or to induce or to prepare for group action (including preliminary discussions towards that end), as well as individual employees bringing truly group complaints to the attention of management. The Board has recognized that the activity of a single employee in

enlisting the support of their fellow employees for their mutual aid and protection is as much ‘concerted activity’ as is ordinary group activity. *Id.* at 153; see also *Miller Plastic Products, Inc.*, 372 NLRB No. 134, slip op. at 6–7 (2023) (noting that the question of whether an employee engaged in concerted activity is a factual one based on the totality of the record evidence), *enfd.* in pertinent part, 141 F.4th 492 (3d Cir. 2025).<sup>10</sup>

Here, Respondents contend that Strickland’s text message was not concerted activity because the message was not an effort to engage in group action. In connection with that point, Respondents observe that the coworkers that Strickland texted were already looking for other employment, and thus no group action would result from notifying them about potential layoffs. (See R. Posttrial Br. at 5–6.) I do not find that argument to be persuasive. The Board has explained that:

The requirement that, to be concerted, activity must be engaged in with the object of initiating or inducing group action does not disqualify merely preliminary discussion from protection under Section 7. In this regard, “inasmuch as almost any concerted activity for mutual aid or protection has to start with some kind of communication between individuals, it would come very near to nullifying the rights of organization and collective bargaining guaranteed by Section 7 of the Act if such communications are denied protection because of lack of fruition.”

*Fresh & Easy Neighborhood Market*, 361 NLRB at 153 (quoting *Mushroom Transportation Co. v. NLRB*, 330 F.2d 683, 685 (3d Cir. 1964)); see also *Miller Plastic Products*, 372 NLRB No. 134, slip op. at 7 (“Section 7 protects employees who bring a group complaint to the attention of management or make an explicit or implicit call to group action. It does not impose artificial limits on when and how employees engage in concerted activity.”) Based on that guidance, Strickland’s text message to his coworkers was concerted activity because the message was, at a minimum, a preliminary communication seeking to induce group action about potential layoffs. Indeed, some of the employees who received Strickland’s text message did take followup group action by asking managers directly about whether layoffs were forthcoming.<sup>11</sup> *Salisbury Hotel*,

<sup>10</sup> The Board in *Fresh & Easy Neighborhood Market* also defined the term “mutual aid or protection,” a separate element for conduct to be protected under the Act. The concept of “mutual aid or protection” focuses on the goal of concerted activity; chiefly, whether the employee or employees involved are seeking to improve terms and conditions of employment or otherwise improve their lot as employees. Proof that an employee action inures to the benefit of all is proof that the action comes within the ‘mutual aid or protection’ clause of Sec. 7, even if the employee who asks for support from coworkers in addressing an issue with management would receive the most immediate benefit from a favorable resolution of the issue. 361 NLRB at 153, 155–156. Respondents have not argued that Strickland’s text message was not for mutual aid or protection, and thus I find that the message satisfied that element.

<sup>11</sup> The inquiries (after Strickland’s text message) to managers about layoffs and job security were also concerted activities, since the coworkers who asked managers about layoffs were bringing group concerns to management (even if the coworkers approached the managers one-on-one). See *Meyers Industries*, 281 NLRB 882, 887 (1986) (protected concerted activity includes circumstances “where individual employees seek to initiate or to induce or to prepare for group action, as well as individual employees bringing truly group complaints to the attention of management”), *affd.* sub nom. *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988). I also note that if layoffs were planned, any number of additional protected concerted activities could have followed (from both employees who were already job

283 NLRB 685, 686–687, 694 (1987) (complaints that employees exchanged among themselves were concerted where they led to group protest to management); see also *Miller Plastic Products*, 372 NLRB No. 134, slip op. at 6 & fn. 16 (explaining that subsequent events can be “relevant objective evidence of whether an employee’s conduct sought to initiate, induce, or prepare for group action, or was related to group action”). But even without those additional activities, I find that Strickland’s text message to his coworkers was a preliminary communication about working conditions that qualifies as concerted activity under the Act. I decline to endorse a rule that would enable employers to discipline or terminate employees for communicating with each other about terms and conditions of employment if the employer takes action before openly concerted activity occurs (i.e., before an employee or employees bring group concerns to management). Concerted activity often begins with private discussions between employees about working conditions, and a rule allowing an employer to take adverse action against employees for engaging in such discussions cannot be reconciled with the Act. See *Fresh & Easy Neighborhood Market*, 361 NLRB at 153; see also *Miller Plastic Products v. NLRB*, 141 F.4th 492, 510 (3d Cir. 2025) (“[C]oncerted activity should not be limited to activities in which multiple employees directly participate, for lone employees can inspire or otherwise contribute to group action in ways that vindicate the goals of the NLRA. And employers should not be free to get rid of employees before they have had a chance to bring their group concerns to the attention of others.”)

Regarding Respondents’ alternative argument that Strickland lost the protection of the Act, the Board has held that certain employee conduct can be so egregious that the employee forfeits protection of the Act, including if the employer demonstrates that the employee’s communications were deliberately or maliciously false. *International Longshore and Warehouse Union*, 373 NLRB No. 133, slip op. at 5 (2024); *Central Security Services*, 315 NLRB 239, 243 (1994) (noting that false and inaccurate employee statements are protected so long as they are not knowingly false and therefore malicious); *El San Juan Hotel*, 289 NLRB 1453, 1455 (1988) (explaining that “although the Act protects statements that are false, misleading, or inaccurate, as well as rhetorical hyperbole that is likely to be recognized for what it is, the Act does not protect information that is ‘deliberately or maliciously false’ or made with ‘reckless disregard for the truth’”).

Here, Respondents argue that Strickland knew that the text message about layoffs was false. Specifically, Respondents contend that Strickland despised working for the company and sent the text message to cause chaos and inflict harm, without regard to whether the assertions in the text message were true or false. (R. Posttrial Br. at 7–12.) There is certainly ample evidence that Strickland disliked working for Respondents.<sup>12</sup> It does not follow, however, that Strickland

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searching and from employees who hoped to continue working for the company), including, for example, communications with Respondents about: the timing and scope of layoffs; severance pay, benefits, and other support for employees who would be laid off; and workloads for employees who would continue to work for the company.

<sup>12</sup> The evidence of Strickland’s disdain for Respondents includes the following testimony during cross examination (which I allowed as evidence of bias):

Q: Even if the text was wrong and no other document showed a 25 percent global workforce reduction, you would have still sent that text, right?

knew former employee D.T.'s message about potential layoffs was incorrect. To the contrary, Strickland trusted D.T. as a reliable source of information about Respondents and had previously received information from D.T. about a workplace incident that Strickland corroborated with other employees. Further, D.T. reported maintaining connections with reliable high level-  
 5 sources who worked for Respondents and provided information to D.T. even after D.T. left the company for other employment. (FOF, sec. II(D)(1).) Given that context, I find that Strickland reasonably relied on D.T. for the (incorrect) information about layoffs. To be sure, Strickland could have attempted to fact-check the information that D.T. provided about layoffs before sharing the information with coworkers. I do not find, however, that Strickland's failure to do so  
 10 under these circumstances (including D.T.'s track record of providing accurate information) results in Strickland's conduct losing the protection of the Act. See *Valley Hosp. Medical Center*, 351 NLRB 1250, 1252–1253 (2007) (“Where an employee relays in good faith what he or she has been told by another employee, reasonably believing the report to be true, the fact that the report may have been inaccurate does not remove the relayed remark from the protection of  
 15 the Act.”), *enfd.* 358 Fed. Appx. 783 (9th Cir. 2009).<sup>13</sup>

In sum, Respondents admit that they terminated Strickland because he messaged his coworkers about potential layoffs, and I have found that Strickland's actions are protected by the Act. As a result, I find that Respondents violated Section 8(a)(1) when they terminated  
 20 Strickland on January 5, 2023.

4. Analysis – was Strickland's termination unlawful because Respondents' relied on an unlawful work rule?

25 I now turn to the General Counsel's theory that Strickland's termination is (also) unlawful because Respondents relied on an unlawful code of conduct provision when they terminated Strickland. In the complaint, the General Counsel contended that in terminating

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A: Yes.

(Tr. 89.) Respondents argue that this testimony demonstrates that Strickland did not care whether the text message was false (see R. Posttrial Br. at 8), but I disagree. The testimony that Respondents highlight at most demonstrates that Strickland has bias against the company. I credit and give more weight, however, to Strickland's testimony that he did not believe that the information in D.T.'s message was false when he forwarded the message to coworkers. That testimony is corroborated by evidence that Strickland trusted D.T. as a reliable source of information about Respondents both before and after D.T. left the company in September 2022. (Tr. 38, 99; FOF, sec. II(D)(1).)

<sup>13</sup> Additionally, I note that Respondents' decision to terminate Strickland was tainted by animus. Respondents decided to terminate Strickland within 20 minutes of learning that he messaged coworkers about potential layoffs. Further, instead of contacting Strickland to hear his side of the story (e.g., what information he relied on when sending the message), Respondents simply assumed that Strickland was intentionally seeking to cause chaos in the workplace. Those circumstances indicate that Respondents were intent on terminating Strickland regardless of the context and circumstances of his incorrect message about layoffs. See Discussion and Analysis, sec B(2), *supra* (both suspicious timing of a disciplinary decision and failure to conduct a meaningful investigation can be circumstantial evidence that an employer acted with a discriminatory motive).

Strickland, Respondents relied on one of the following three provisions in their Code of Conduct:

- 5 an Outside Employment/Conflicting Outside Activities provision in its Code of Conduct that prohibits employees from engaging in “outside work or conflicting outside activities that . . . adversely affect the reputation of the [Respondents]” and requires employees to “submit a request containing pertinent information about the outside employment or activity and obtain the prior written approval”;
- 10 a Solicitation on Work Premises provision in its Code of Conduct that states, “Solicitation not related to the business of the [Respondents] in its workplace is prohibited without the prior written consent of the Chief Executive Officer, President, Executive Vice President or Chief Financial Officer. Sites may have bulletin boards or other procedures for distributing general interest, local information at work sites. Use of
- 15 these resources are authorized when related to charitable or like efforts, are limited to the designated bulletin boards or other areas, and result in no personal solicitation (i.e., posting of a sign-up sheet). Consult with your supervisor or facility manager for local bulletin board and e-mail procedures.”; and/or
- 20 a Confidentiality provision in its Code of Conduct that states, “Parties to an investigation shall not discuss the matter with other employees”;

The evidentiary record, however, does not show that Respondents relied on any of those provisions as their basis for terminating Strickland. Instead, Respondents used the term “code of conduct” in a general sense to indicate that Strickland’s workplace behavior was not acceptable. (FOF, sec. II(D)(3).) Since the General Counsel did not show that Respondents terminated Strickland based on any of the code of conduct provisions listed in the complaint, I recommend that the complaint allegations setting forth this alternate termination theory be dismissed. I will address the facial lawfulness of certain code of conduct provisions and other work rules in the

25 discussion below.

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### *C. Did Respondents Maintain Unlawful Work Rules?*

#### 1. Complaint allegations

35 The General Counsel alleges that since about August 8, 2022, Respondents have maintained the following rules that interfere with, restrain, and coerce employees in the exercise of their Section 7 rights:

- 40 an Outside Employment/Conflicting Outside Activities provision in its Code of Conduct that prohibits employees from engaging in “outside work or conflicting outside activities that . . . adversely affect the reputation of the [Respondents]” and requires employees to “submit a request containing pertinent information about the outside employment or activity and obtain the prior written approval”;
- 45

a Solicitation on Work Premises provision in its Code of Conduct that states, “Solicitation not related to the business of the [Respondents] in its workplace is prohibited without the prior written consent of the Chief Executive Officer, President, Executive Vice President or Chief Financial Officer. Sites may have bulletin boards or other procedures for distributing general interest, local information at work sites. Use of these resources are authorized when related to charitable or like efforts, are limited to the designated bulletin boards or other areas, and result in no personal solicitation (i.e., posting of a sign-up sheet). Consult with your supervisor or facility manager for local bulletin board and e-mail procedures.”;

a Confidentiality provision in its Code of Conduct that states, “Parties to an investigation shall not discuss the matter with other employees”;

a Confidential Information provision in its Employee Proprietary Information Agreement, Exhibit A to Offer of Employment, that defines compensation and personnel information as confidential information;

a Confidential Information provision in its Non-Competition and Non-Solicitation Agreement, Exhibit B to Offer of Employment, that defines compensation and personnel information, including payroll, as confidential information;

a Non-Disparagement and Solicitation of Employees provision in its Non-Competition and Non-Solicitation Agreement, Exhibit B to Offer of Employment, that requires employees “not disparage or speak negatively about the [Respondents’] employees, products or services”;

a Non-Disparagement and Solicitation of Employees provision in its Non-Competition and Non-Solicitation Agreement, Exhibit B to Offer of Employment, that requires employees not “solicit, suggest, induce, encourage, or facilitate any employees of the [Respondents] to resign his or her employment with the [Respondents] or to become employed in competition with the [Respondents]; and

language in its Termination Certification that requires employees to “preserve as confidential . . . financial information or other subject matter pertaining to any business of the [Respondents] or any of its employees”

## 2. Applicable legal standard

The Board requires the General Counsel to prove that a challenged rule has a reasonable tendency to chill employees from exercising their Section 7 rights. The Board interprets the rule from the perspective of an employee who is subject to the rule and economically dependent on the employer, and who also contemplates engaging in protected concerted activity. The employer’s intent in maintaining the rule is immaterial. Instead, if an employee could reasonably interpret the rule to have a coercive meaning, the General Counsel will carry their burden, even if a contrary, noncoercive interpretation of the rule is also reasonable. If the General Counsel carries their burden, the rule is presumptively unlawful, but the employer may rebut that

presumption by proving that the rule advances a legitimate and substantial business interest and that the employer is unable to advance that interest with a more narrowly tailored rule. If the employer proves its defense, then the work rule will be found lawful to maintain. *Stericycle, Inc.*, 372 NLRB No. 113, slip op. at 2 (2023).

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### 3. Analysis – Section 10(b)

As their primary defense to the complaint allegations regarding work rules, Respondents argue that the complaint allegations concerning work rules must be dismissed because those  
10 allegations are time-barred by the 6-month limitations period in Section 10(b) of the Act.<sup>14</sup> In short, Respondents object that Strickland did not file an unfair labor practice charge regarding work rules until more than 6 months after his termination, and thus after the 10(b) period.

Strickland filed unfair labor practice charges in Cases 16-CA-311941 and 16-CA-311959 on February 8, 2023. In each of those charges, Strickland asserted that Respondents committed the following unfair labor practices:

Mr. Strickland was terminated for allegedly violating the company code of conduct for discussing amongst his fellow employees potential layoffs and the effect the layoffs  
20 would have with the employees. This termination conversation is recorded and the reason given was Mr. Strickland discussing potential layoffs with his fellow employees.

(GC Exh. 1(a)–(b); see also Jt. Exh. 1 (par. 5).)

Strickland subsequently, on May 16, 2024, filed an amended unfair labor practice charge in Case 16-CA-311941 that added the following allegations about Respondents' work rules:

Within the past six months the Employer has maintained the following unlawfully overly broad rules: [code of conduct; employee proprietary information agreement; non-  
30 competition and non-solicitation agreement; and termination certification].

(GC Exh. 1(e); see also Jt. Exh. 1 (par. 5).)

For purposes of timeliness under section 10(b), the Board has held that an otherwise  
35 untimely allegation in an unfair labor practice charge may be included in the complaint if the allegation is “closely related” to allegations in a prior timely filed charge. To determine whether an otherwise untimely allegation is sufficiently closely related, the Board applies the three-prong test set forth in *Redd-I, Inc.*, 290 NLRB 1115 (1988), under which the Board: (1) considers whether the timely and untimely allegations involve the same legal theory; (2) considers whether  
40 the otherwise untimely allegations arise from the same factual situation or sequence of events as the allegations in the untimely charge; and (3) “may look” at whether a respondent would raise

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<sup>14</sup> Respondents also contend that the General Counsel forfeit the complaint allegations regarding Respondents' work rules because the General Counsel did not question any witnesses about the rules. (See R. Posttrial Br. at 14, 17–18.) I am not persuaded by that argument. The parties admitted the disputed work rules into the evidentiary record as joint exhibits. (See Jt. Exhs. 1–5.) That is sufficient for the General Counsel to maintain its facial challenges to the work rules.

the same or similar defenses to both the timely and untimely allegations.<sup>15</sup> *Earthgrains Co.*, 351 NLRB 733, 734 (2007); see also *Redd-I*, 290 NLRB at 1116.

5 Having considered the legal standard that the Board described in *Redd-I*, I find that the complaint allegations about three work rules that are part of Respondents' code of conduct are closely related to the allegations in Strickland's original unfair labor practice charges. In the February 8, 2023 charges, Strickland explicitly alleged that Respondents unlawfully terminated him for violating the company's code of conduct. The complaint allegations about the code of conduct involve the same legal theory insofar as if Respondents relied on unlawful provisions in  
10 the code of conduct as their basis for terminating Strickland then that would also establish that Strickland's termination was unlawful (i.e., as noted above, an adverse employment action based on an unlawful rule is also unlawful).

15 The complaint allegations about Respondents' code of conduct also arise from the same sequence of events as the allegations in Strickland's February 8, 2023 charges. Specifically, the allegations in the charges that Respondents unlawfully terminated Strickland for violating the code of conduct naturally raise questions about the content of the code of conduct and what Respondents relied on therein for Strickland's termination.

20 As for whether Respondents would raise the same or similar defenses to the allegations in the February 8, 2023 charges about Strickland's termination as it would to the allegations about the code of conduct, there is significant overlap in Respondents' defenses. As part of their defense of Strickland's termination, Respondents would be expected to contend that the code of conduct is lawful and therefore did not taint Strickland's termination (in addition to contending  
25 that Respondents only used the term "code of conduct" in a general sense and did not rely on a specific code provision). That aspect of Respondents' defense relies on the same legal standard that applies to the allegations that specific parts of the code of conduct are unlawful.

30 Viewing these factors as a whole, I find the three complaint allegations about Respondents' code of conduct are closely related to the unfair labor practice charges that Strickland timely filed on February 8, 2023.<sup>16</sup>

Regarding the remaining complaint allegations about work rules, I agree with Respondents that those allegations are not closely related to Strickland's February 8, 2023

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<sup>15</sup> In some cases, the Board has indicated that "closely related" complaint allegations traditionally must also have occurred within 6 months before the filing of the timely unfair labor practice charge. See, e.g., *Redd-I*, 290 NLRB at 1116 (discussing *NLRB v. Dinion Coil Co.*, 201 F.2d 484, 491 (2d Cir. 1952).) As I understand it, this rule is intended to limit aged allegations from finding their way into a complaint and does not bar "closely related" complaint allegations that arise *after* an unfair labor practice charge has been filed. In any event, the allegations in this case regarding the code of conduct occurred within 6 months of the unfair labor practice charge that Strickland filed on February 8, 2023.

<sup>16</sup> I pause here to note that there is a distinction between whether the complaint allegations concerning Respondents' code of conduct are closely related to Strickland's February 8, 2023 unfair labor practice charge (yes, as explained in this section), and whether the General Counsel prevails on the merits of its complaint allegation that Respondent relied on specific unlawful code of conduct provisions when it discharged Strickland (no, see Discussion and Analysis, sec. B(4), *supra*).

charges insofar as there is no connection between Strickland’s termination and work rules that are not part of the code of conduct. Strickland did, however, explicitly allege in his May 16, 2024 amended unfair labor practice charge in Case 16–CA–311941 that several additional work rules besides the code of conduct were unlawful. Since Respondents maintained those work rules throughout 2023, 2024, and beyond, the complaint allegations about the work rules are supported by the timely May 16, 2024 amended charge, which allows the General Counsel to contest the rules dating back to November 16, 2023 (6 months before the May 16, 2024 charge). (See GC Exh. 1(l) (par. 6) (Respondents’ amended answer, admitting that they have maintained the work rules listed in the complaint since at least April 17, 2021, and noting that the code of conduct was amended on July 13, 2022).)

4. Analysis – code of conduct provision regarding outside employment and conflicting outside activities

As alleged in the complaint, Respondents’ code of conduct includes an “Outside Employment/Conflicting Outside Activities” provision that states as follows:

Employees are not to engage in outside work or conflicting outside activities that have, or could have a material effect on the employee’s duties for the Company; imply sponsorship or support by the Company; adversely affect the reputation of the Company or otherwise compete with the Company. This prohibition also extends to the unauthorized use or application of resources and of any proprietary, confidential or trade secret information or intellectual property. If you wish to accept outside employment or engage in a conflicting outside activity . . . you must submit a request containing pertinent information about the outside employment or activity and obtain prior written approval of your supervisor. Employees who have been authorized to engage in, and have accepted, outside work or an outside activity may not use paid time off to pursue that effort.

(Jt. Exh. 2 (p. 956); see also *id.* (p. 962) (form that employees sign to acknowledge that they have read and understand the code of conduct); Jt. Exh. 1 (par. 6) (Respondents maintained the code of conduct as of January 5, 2023); GC Exh. 1(l) (par. 6) (admitting that Respondents have maintained the current version of the code of conduct since July 13, 2022).)

The General Counsel contends that this portion of the code of conduct improperly prohibits employees from engaging in outside activities that adversely affect the reputation of the Respondents, and further requires employees to obtain company approval of their outside activities.

I agree with the General Counsel that this portion of Respondents’ code of conduct has a reasonable tendency to chill employees from exercising their Section 7 rights. Specifically, an employee could reasonably interpret the language in the rule to include union and/or protected concerted activities, as those activities could adversely affect Respondents’ reputation if employees (for example) publicized working conditions that cast the company in a negative light. In addition, the code of conduct arguably requires employees to obtain prior approval for union and/or protected concerted activities, which further chills employees from engaging in

protected labor activity. The Outside Employment/Conflicting Outside Activities provision in the code of conduct is therefore presumptively unlawful, and since Respondents did not present evidence that the provision advances a legitimate and substantial business interest that could not be advanced with a more narrowly tailored rule, I find that Respondent violated Section 8(a)(1) of the Act by maintaining the provision.

5. Analysis – code of conduct provision regarding solicitation on work premises

Respondents’ code of conduct includes a “Solicitation on Work Premises” provision that states as follows:

Solicitation not related to the business of the Company in its workplace is prohibited without the prior consent of the Chief Executive Officer, President, Executive Vice President or Chief Financial Officer.

Sites may have bulletin boards or other procedures for distributing general interest, local information at work sites. Use of these resources are authorized when related to charitable or like efforts, are limited to the designated bulletin boards or other areas, and result in no personal solicitation (i.e., posting of a sign-up sheet). Consult with your supervisor or facility manager for local bulletin board and e-mail procedures.

(Jt. Exh. 2 (p. 957); see also *id.* (p. 962) (form that employees sign to acknowledge that they have read and understand the code of conduct); Jt. Exh. 1 (par. 6) (Respondents maintained the code of conduct as of January 5, 2023); GC Exh. 1(l) (par. 6) (admitting that Respondents have maintained the current version of the code of conduct since July 13, 2022).)

“The Board has long held that a no-solicitation rule that prohibits union solicitation on company property only during working time is presumptively lawful in the absence of evidence that it was promulgated for a discriminatory purpose, while a no-solicitation rule that prohibits union solicitation on company property during nonworking time is unlawful in the absence of proof that special circumstances make such a rule necessary to maintain production or discipline.” *Harbor Freight Tools, U.S.A., Inc.*, 373 NLRB No. 2, slip op. at 2 (2023); see also *Stericycle*, 372 NLRB No. 113, slip op. at 3 (explaining that the Board’s decision in *Stericycle* “does not disturb the Board’s long-established doctrines covering work rules that address union (or other protected) solicitation, distribution, or insignia”).

Respondents’ no-solicitation rule broadly prohibits all types of solicitation not related to company business, without exceptions for nonwork areas or nonwork times. Further, as written, the no-solicitation rule here is so broad that it prohibits solicitation that would be covered by the Act, including union solicitation and protected concerted activities that involve solicitation. Respondents have not presented proof that special circumstances make it necessary to maintain such a broad no-solicitation rule. Accordingly, I find that Respondents’ “Solicitation on Work Premises” provision in the code of conduct imposes unlawful restrictions on solicitation, and I find that Respondents violated Section 8(a)(1) of the Act by maintaining the no-solicitation provision. See *Starbucks Corp.*, 373 NLRB No. 105, slip op. at 2 (2024); *Garten Trucking LC*,

373 NLRB No. 94, slip op. at 2 (2024), enfd. 2026 WL 458394 (4th Cir. 2026); *Harbor Freight Tools, U.S.A., Inc.*, 373 NLRB No. 2, slip op. at 1–3.

I reach a different result as to the language in the “Solicitation on Work Premises”  
 5 provision that sets forth guidelines for when employees may use company bulletin boards or  
 other procedures for distributing information. The Board has held that employees have no  
 statutory right to use employer-owned equipment, including bulletin boards, for Section 7  
 purposes, except in rare cases where the equipment in question furnishes the only reasonable  
 10 means for employees to communicate with one another. *Caesars Entertainment d/b/a Rio All-  
 Suites Hotel and Casino*, 368 NLRB No. 143, slip op. at 1, 6, 8 (2019); see also *id.* at 12  
 (explaining that facially neutral restrictions on the use of employer IT resources are generally  
 lawful to maintain, provided that they are not applied discriminatorily); *Pro Residential Services,  
 Inc.*, 373 NLRB No. 100, slip op. at 2–3 (2024); *Intertape Polymer Corp.*, 373 NLRB No. 82,  
 15 slip op. at 2 (2024).<sup>17</sup> Since Respondents’ bulletin board policy is consistent with that precedent  
 and there is no evidence that Respondents applied the policy in a discriminatory fashion or that  
 employees lack other means to communicate with each other, I find that the bulletin board policy  
 is lawful and recommend that the General Counsel’s challenge to that aspect of the “Solicitation  
 on Work Premises” provision (to the extent that the General Counsel still maintains the  
 challenge) be dismissed.<sup>18</sup>

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#### 6. Analysis - code of conduct provision regarding confidentiality with investigations

“As part of the commitment to ethical and legal conduct,” Respondents state in the code  
 of conduct that “we expect employees to report to the Company information about suspected  
 25 violations of the [code of conduct].” (Jt. Exh. 2 (p. 960).) If such a report/complaint about a  
 suspected code of conduct violation arises, the code of conduct states as follows regarding  
 confidentiality:

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Investigations will be conducted discreetly, as appropriate under the circumstances.  
 Those investigating do not act as personal representatives or lawyers for employees.  
 Parties to an investigation shall not discuss the matter with other employees.

(Jt. Exh. 2 (p. 960); see also *id.* (p. 962) (form that employees sign to acknowledge that they have  
 read and understand the code of conduct); Jt. Exh. 1 (par. 6) (Respondents maintained the code

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<sup>17</sup> The legal theory that an employer disparately applied its equipment policies to discriminate against  
 union or protected concerted activities is limited by the Board’s decision in *Register Guard*, which holds  
 that personal employee communications (e.g., jokes, occasional offers of personal items, messages about  
 social gatherings) are not similar to communications that solicit employees to support a group or  
 organization. 351 NLRB 1110, 1117–1119 (2007), enfd. in pertinent part 571 F.3d 53 (D.C. Cir. 2009).  
 Thus, an employee seeking to show disparate enforcement of a bulletin board policy would need to  
 present evidence that, for example, the employer prohibited employee bulletin board postings seeking  
 support for unions but allowed employee postings seeking support for other groups. There is no such  
 disparate enforcement evidence in this case.

<sup>18</sup> Although the General Counsel included Respondents’ bulletin board provision in the complaint,  
 the General Counsel did not argue in its posttrial brief that the bulletin board provision is unlawful. (See  
 GC Posttrial Br. at 17–18.)

of conduct as of January 5, 2023); GC Exh. 1(l) (par. 6) (admitting that Respondents have maintained the current version of the code of conduct since July 13, 2022).)

5 The code of conduct explicitly prohibits employees who are parties to an investigation about a suspected code of conduct violation from discussing the matter with other employees. An employee could therefore reasonably interpret the rule as precluding discussions with a union or coworkers about workplace concerns implicated by the investigation even though such discussions are protected by the Act. The confidentiality provision regarding investigations is accordingly presumptively unlawful. Since Respondents did not attempt to prove that the rule  
10 advances a legitimate and substantial business interest and that they cannot advance that interest with a more narrowly tailored rule, I find that the confidentiality with investigations provision in Respondents' code of conduct violates Section 8(a)(1) of the Act.

15 7. Analysis – confidential information under Respondents' Employee Proprietary Information Agreement

As a condition of employment, Respondents require employees to sign an Employee Proprietary Information Agreement (EPIA). That document includes a “confidential information” provision that generally prohibits employees from disclosing a wide range of  
20 information that the company deems confidential,<sup>19</sup> including compensation and personnel information. (Jt. Exhs. 1 (par. 6), 3 (Exhibit A to Employee Proprietary Information Agreement, Section 2(a)); see also Jt. Exh. 6 (offer of employment to Strickland, with instructions to sign the EPIA).) By signing the EPIA, employees agree that if they breach the confidential information provision, Respondents “will have available, in addition to any other right or remedy available,  
25 the right to obtain an injunction from a court of competent jurisdiction restraining such breach or threatened breach and to specific performance . . .” (Jt. Exh. 3 (sec. 9).) Respondents have maintained the EPIA as one of their policies since at least April 17, 2021. (GC Exh. 1(l) (par. 6); see also Jt. Exh. 1 (par. 6).)

30 I find that the General Counsel demonstrated that the language in the EPIA prohibiting employees from disclosing compensation and personnel information has a reasonable tendency to chill employees from exercising their rights under the Act. It is well established that the Act protects employees' right to discuss wages, hours, and other terms and conditions of employment with each other and with third parties. See, e.g., *SW Design School, LLC*, 370 NLRB No. 77,  
35 slip op. at 2 (2021); *Cordua Restaurants, Inc.*, 368 NLRB No. 43, slip op. at 4–5 (2019), affd. 985 F.3d 415 (5th Cir. 2021); *Rocky Mountain Eye Center, P.C.*, 363 NLRB 325, 325 fn. 1, 331 (2015); *Alternative Energy Applications, Inc.*, 361 NLRB 1203, 1203 (2014). The confidential information section of the EPIA, however, explicitly directs that employees will not disclose compensation and personnel information, and does not identify any exceptions to that broad rule.  
40 As a result, an employee could reasonably interpret the confidential information provision in the EPIA to have a coercive meaning that employees may not discuss their wages, hours, or terms and conditions of employment with each other or third parties. The EPIA's confidential information policy is therefore presumptively unlawful, and since Respondents did not present evidence that the policy advances a legitimate and substantial business interest that could not be

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<sup>19</sup> The confidential information section of the Employee Proprietary Information Agreement lists over forty examples of what Respondents define as “confidential information.” (Jt. Exh. 3 (sec. 2(a).)

advanced with a more narrowly tailored rule, I find that Respondents violated Section 8(a)(1) of the Act by maintaining the EPIA confidentiality provision. *Rocky Mountain Eye Center, P.C.*, 363 NLRB at 325 fn. 1, 331 (employer violated the Act by maintaining an overly broad confidentiality agreement that prohibited disclosure of information about physicians, other employees, or the internal affairs of the company); *Automatic Screw Products Co.*, 306 NLRB 1072, 1072 (1992) (employer violated the Act by maintaining a rule that prohibited employees from discussing their salaries), *enfd.* 977 F.2d 582 (6th Cir. 1992).

#### 8. Analysis – confidential information under Respondents’ Non-Competition and Non-Solicitation Agreement

As a condition of employment, Respondents also require employees to sign a Non-Competition and Non-Solicitation Agreement (NCNSA). That document includes a “confidential information” provision that informs employees that the company will provide employees with a wide range of confidential information related to the company’s business,<sup>20</sup> including compensation and personnel information. The NCNSA does not set forth any directives for employees regarding confidential information, but does state directives regarding noncompetition, nondisparagement and solicitation of employees, and nonsolicitation of customers. The NCNSA also includes language setting forth remedies that the company may seek if an employee breaches the agreement. (Jt. Exh. 4 (secs. 1(a), 2–3); see also Jt. Exh. 6 (offer of employment to Strickland, with instructions to sign the NCNSA).) Respondents have maintained the NCNSA as one of their policies since at least April 17, 2021. (GC Exh. 1(l) (par. 6); see also Jt. Exh. 1 (par. 6).)

I have considered the NCNSA and the parties’ arguments and I do not find that a reasonable employee could interpret the confidentiality provision in the NCNSA as having a coercive meaning. (To the extent that the General Counsel challenges other provisions of the NCNSA, I address those later in this decision.) Unlike the EPIA, the NCNSA does not state any directives to employees about not disclosing compensation and personnel information. Instead, the NCNSA merely states that employees may receive that type of information as part of their work with the company. Since the NCNSA does not include a directive to employees about disclosing confidential information, I do not find that the language in the policy about remedies for breaches is coercive. I therefore find that the General Counsel failed to show that the confidential information provision in the NCNSA has a reasonable tendency to chill employees from exercising their Section 7 rights, and I recommend that the complaint allegation regarding this aspect of the NCNSA be dismissed.

#### 9. Analysis – nondisparagement and solicitation of employees provisions in Respondents’ Non-Competition and Non-Solicitation Agreement

As stated above, Respondents require employees to sign a Non-Competition and Non-Solicitation Agreement (NCNSA) as a condition of employment. In addition to the confidential information provision discussed above, the NCNSA includes a nondisparagement and solicitation of employees provision that states as follows:

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<sup>20</sup> The confidential information section of the NCNSA lists over forty examples of what Respondents define as “confidential information.” (Jt. Exh. 4 (sec. 1(a).))

5 I agree that during my employment and for a period of two (2) years immediately following the termination thereof, regardless of the reason, I will not disparage or speak negatively about the Solera Group's employees, products or services. [Hereafter, the nondisparagement provision in the NCNSA.]

10 I agree that during and for a period of one (1) year immediately following the termination of my employment, I will not, directly or indirectly, solicit, suggest, induce, encourage, or facilitate any employee of the Solera Group to resign his or her employment with the Solera Group or to become employed in competition with the Solera Group. [Hereafter, the nonsolicitation provision in the NCNSA.]

15 (Jt. Exh. 4 (par. 2(b)); see also Jt. Exh. 6 (offer of employment to Strickland, with instructions to sign the NCNSA).) The NCNSA also includes language setting forth remedies that the company may seek if an employee breaches the agreement. (Id. (par. 3).) Respondents have maintained the NCNSA as one of their policies since at least April 17, 2021. (GC Exh. 1(l) (par. 6); see also Jt. Exh. 1 (par. 6).)

20 I agree with the General Counsel that an employee could reasonably interpret the nondisparagement provision in the NCNSA as prohibiting employees from engaging in union and/or protected concerted activities, and therefore having a coercive meaning. The provision explicitly prohibits employees from disparaging or speaking negatively about Respondents' employees, and thus can reasonably be interpreted to prohibit (for example) employees discussing complaints with each other or with a third party about Respondents' managers. Such  
25 conversations qualify as classic Section 7 activity. This aspect of the NCNSA is therefore presumptively unlawful, and since Respondents did not present evidence to rebut that presumption I find that Respondents violated Section 8(a)(1) of the Act by maintaining the non-disparagement provision in the NCNSA. Cf. *Prime Communications, LP*, 374 NLRB No. 88, slip op. at 1 fn. 1, 5 (2026) (affirming judge's finding that the employer violated the Act by  
30 issuing and maintaining severance agreements that included overly broad nondisparagement provisions).

35 I also agree with the General Counsel that an employee could reasonably interpret the nonsolicitation provision in the NCNSA as prohibiting Section 7 activity and therefore being coercive. The nonsolicitation provision is broadly written, such that it prohibits employees from even indirectly suggesting or inducing any employee to resign their employment with Respondents. Given that broad scope, an employees could run afoul of the nonsolicitation clause by (for example) speaking with each other about working conditions they viewed as  
40 unsatisfactory and discussing and whether to seek to change the company from within or instead look for other employment. Once again, such a conversation is protected under Section 7 of the Act, yet Respondents' policy seeks to prohibit it with no exceptions for labor activity. The nonsolicitation provision in the NCNSA is therefore also presumptively unlawful, and since Respondents did not present evidence to rebut that presumption I find that Respondents violated  
45 Section 8(a)(1) of the Act by maintaining the nonsolicitation provision in the NCNSA.

## 10. Analysis – confidentiality provisions in termination certification

5 Last, Respondent maintains a “termination certification” policy that employees are required to sign. The termination certification states as follows, in pertinent part as to confidentiality:

10 I further agree that, in compliance with the Employee Proprietary Information Agreement, I will preserve as confidential all . . . financial information or other subject matter pertaining to any business of the Company or any of its employees, clients, consultants or licensees.

(Jt. Exh. 5.) Respondents have maintained the termination certification as one of their policies since at least April 17, 2021. (GC Exh. 1(l) (par. 6); see also Jt. Exh. 1 (par. 6).)

15 For the same reasons that I described regarding confidentiality provisions in the Employee Proprietary Information Agreement (EPIA), I find that the confidentiality provision in Respondents’ termination certification policy is presumptively unlawful. As a preliminary matter, the termination certification explicitly references the EPIA and confidentiality, thereby incorporating the EPIA’s coercive language. Beyond that, the termination certification explicitly  
20 calls on employees to preserve the confidentiality of “financial information” relating to Respondents’ employees, which an employee could reasonably interpret as precluding discussions about employee compensation notwithstanding the fact that discussions about that subject are normally protected under the Act. Since Respondents did not present evidence to rebut the presumption that the termination certification is unlawful, I find that Respondents  
25 violated Section 8(a)(1) of the Act by maintaining the termination certification as one of their policies.

## CONCLUSIONS OF LAW

- 30 1. Respondents are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
- 35 2. By, on January 5, 2023, terminating employee Julius Strickland because he engaged in protected concerted activities, and to discourage employees from engaging in those or other concerted activities, Respondents violated Section 8(a)(1) of the Act.
- 40 3. By, since about August 8, 2022, maintaining an overly broad “Outside Employment/Conflicting Outside Activities” provision in their code of conduct, Respondents violated Section 8(a)(1) of the Act.
4. By, since about August 8, 2022, maintaining an overly broad “Solicitation on Work Premises” provision in their code of conduct, Respondents violated Section 8(a)(1) of the Act.
- 45 5. By, since about August 8, 2022, maintaining an overly broad confidentiality provision in their code of conduct, Respondents violated Section 8(a)(1) of the Act.

6. By, since about November 16, 2023, maintaining an overly broad “Confidential Information” provision in their Employee Proprietary Information Agreement, Respondents violated Section 8(a)(1) of the Act.
7. By, since about November 16, 2023, maintaining an overly broad “Non-Disparagement and Solicitation of Employees” provision in their Non-Competition and Non-Solicitation Agreement, Respondents violated Section 8(a)(1) of the Act.<sup>21</sup>
8. By, since about November 16, 2023, maintaining overly broad confidentiality language in their termination certification, Respondents violated Section 8(a)(1) of the Act.
9. The unfair labor practices stated in Conclusions of Law 2–8, above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that Respondents have engaged in certain unfair labor practices, I shall order them to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Respondents, having unlawfully discharged Julius Strickland, must offer him reinstatement to his former job or if that job no longer exists, to a substantially equivalent position without prejudice to his seniority and other rights and privileges he would have enjoyed absent the discrimination against him. Respondents shall also make Strickland 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 6 (2010). Consistent with *Thryv, Inc.*, 372 NLRB No. 22, slip op. at 14 (2022), enf. denied in part on other grounds, 102 F.4th 727 (5th Cir. 2024), Respondents shall also compensate Strickland for any other direct or foreseeable pecuniary harms incurred as a result of the unlawful discharge, including reasonable search-for-work and interim employment expenses, if any, regardless of whether these expenses exceed interim earnings. Compensation for those harms shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

In addition, Respondents shall compensate Strickland for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 16, 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, in accordance with

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<sup>21</sup> The complaint includes two separate allegations regarding the Non-Disparagement and Solicitation of Employees provision in Respondent’s Non-Competition and Non-Solicitation Agreement. This conclusion of law covers both complaint allegations.

*AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016). In accordance with *Cascades Containerboard Packaging–Niagara*, 370 NLRB No. 76 (2021), as modified in 371 NLRB No. 25 (2021), Respondents shall also be required to file with the Regional Director for Region 16 a copy of Strickland’s corresponding W–2 form(s) reflecting the backpay award.<sup>22</sup>

5 Respondents shall also be required to remove from their files any references to the unlawful discharge of Julius Strickland and to notify him in writing that this has been done and that the discharge will not be used against him in any way.

10 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>23</sup>

#### ORDER

15 Respondents, Solera Holdings, LLC and its subsidiary, Identifix, LLC, as joint employers, Westlake, Texas, their officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

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<sup>22</sup> Respondents request that I limit Strickland’s backpay award by finding that: Strickland did not intend to return to work (from being on leave in late 2022 and early 2023); Strickland had been absent without leave for several weeks leading up to January 5, 2023; and Respondents would have terminated Strickland for attendance after his leave request was denied. (R. Posttrial Br. at 14.) I decline Respondents’ request.

First, the evidentiary record does not establish that Strickland would not have returned to work. While Strickland hoped to secure leave and find another job, he also planned to continue working for Respondents until he had another job in hand. (See Tr. 53-54, 77–80, 98; see also FOF, sec. II(A)–(C) (noting that Strickland began looking for another job in July 2022 but continued his employment with Respondents until he was terminated on January 5, 2023).)

Second, the evidentiary record does not conclusively establish that Strickland was absent without leave in the weeks before he was terminated. To the contrary, there is evidence that Strickland applied for and used paid time off while he awaited a decision on his FMLA request. (See FOF, sec. II(B).) Since the parties did not explore that issue further during trial, I do not have a basis to conclude that Strickland was absent without leave in the time period in question.

Third, Respondents cannot rely on Strickland’s attendance record before his termination as a basis for limiting Strickland’s backpay award. Under Board precedent, it is possible to limit a backpay award (and preclude reinstatement as a remedy) based on an employee’s misconduct that occurred before the unlawful discharge but was not discovered by the employer until after the discharge. See, e.g., *United Parcel Service, Inc.*, 372 NLRB No. 158, slip op. at 17 (2023); *Tel Data Corp.*, 315 NLRB 364, 366–367 (1994), revd. in part on other grounds, 90 F.3d 1195 (6th Cir. 1996). This “after-acquired” evidence theory, however, is not applicable here, because Respondents knew about Strickland’s attendance issues when they arose but took no action before unlawfully terminating Strickland for other (unlawful) reasons in January 2023. (See, e.g., FOF, sec. II(B), (D)(2) (Strickland applied for leave under the FMLA in November 2022, and director of inside sales Chagnon was aware of that fact and that Strickland had not been in the office since then).)

<sup>23</sup> 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 due under the terms of this Order.

- 5 (a) Maintaining the following overly broad work rules: code of conduct provisions regarding outside employment/conflicting outside activities, solicitation on work premises, and confidentiality during investigations; Employee Proprietary Information Agreement provision regarding confidential information; Non-Competition and Non-Solicitation Agreement provisions regarding nondisparagement and solicitation of employees; and Termination Certification language regarding confidential information.
- 10 (b) Discharging or otherwise discriminating against employees for engaging in protected concerted activities.
- 15 (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
- 20 (a) Within 14 days from the date of this Order, offer Julius Strickland full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.
- 25 (b) Make Julius Strickland whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms, suffered as a result of the discrimination against him in the manner set forth in the remedy section of this decision.
- 30 (c) Compensate Julius Strickland for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 16 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 year(s).
- 35 (d) Within 14 days from the date of this Order, remove from their files any reference to the unlawful discharge of Julius Strickland and, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.
- 40 (e) Within 14 days of the date that this order becomes final, rescind the following overly broad provisions/language: code of conduct provisions regarding outside employment/conflicting outside activities, solicitation on work premises, and confidentiality during investigations; Employee Proprietary Information Agreement provision regarding confidential information; Non-Competition and Non-Solicitation Agreement provisions regarding nondisparagement and solicitation of employees; and Termination Certification language regarding confidential information.
- 45 (f) For each of the following provisions/language, furnish all current employees with inserts for the current provisions/language that (1) advise that the unlawful provisions/language have been rescinded, or (2) provide lawfully worded

provisions/language on adhesive backing that will cover the unlawful provisions/language; or publish and distribute to employees revised employee policies that (1) do not contain the unlawful provisions/language, or (2) provide lawfully worded provision/language:

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code of conduct provisions regarding outside employment/conflicting outside activities, solicitation on work premises, and confidentiality during investigations; Employee Proprietary Information Agreement provision regarding confidential information; Non-Competition and Non-Solicitation Agreement provisions regarding non-disparagement and solicitation of employees; and Termination Certification language regarding confidential information.

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(g) 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 amounts due under the terms of this Order.

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(h) Within 14 days after service by the Region, post at its Westlake, Texas facility copies of the attached notice marked “Appendix.”<sup>24</sup> Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by Respondents’ authorized representative(s), shall be posted by Respondents and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondents customarily communicate with their employees by such means. Reasonable steps shall be taken by Respondents to ensure that the notices are not altered, defaced, or covered by any other material. If Respondents have gone out of business or closed the facility involved in these proceedings, Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by Respondents at any time since August 8, 2022.

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(i) Within 21 days after service by the Region, file with the Regional Director for Region 16 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondents have taken to comply.

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<sup>24</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. April 23, 2026

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A handwritten signature in black ink that reads "Geoffrey Carter". The signature is written in a cursive style.

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Geoffrey Carter  
Administrative Law Judge

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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 a representative 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 maintain overly broad work rules, provisions, or language in our code of conduct, Employee Proprietary Information Agreement, Non-Competition and Non-Solicitation Agreement, and Termination Certification.

WE WILL NOT discharge or otherwise discriminate against any of you for engaging in protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer Julius Strickland full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Julius Strickland whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest, and WE WILL also make him whole for any other direct or foreseeable pecuniary harms, suffered as a result of the unlawful discharge, including reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Julius Strickland for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 16 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 year(s).

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Julius Strickland, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

Solera Holdings, LLC and its subsidiary, Identifix, LLC,  
as joint employers  
\_\_\_\_\_  
(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.nlr.gov](http://www.nlr.gov).*

819 Taylor Street, Room 8A24, Fort Worth, TX 76102-6107  
(817) 978-2921, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at <https://www.nlr.gov/case/16-CA-311941> 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 (682) 703-7489.