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

NIELSEN DENTAL PC

and Case 19-CA-351178

SUZANNE KING, an Individual

Raymond Meyers IV, Esq.,
for the General Counsel.

Jami Rebsom, Esq.,
for the Respondent.

Decision

Eleanor Laws, Administrative Law Judge.

STATEMENT OF THE CASE

On September 22, 2024, and April 30, 2025, Suzanne King (King or the Charging Party), filed unfair labor practice charges against Nielsen Dental, PC (Nielsen Dental or the Respondent). docketed by Region 19 of the National Labor Relations Board (the Board) as case 19-CA-351178. The Region issued a complaint in this matter on June 11, 2025, and an amended complaint on January 22, 2026. The Respondent filed a timely answer to the amended complaint, denying all material allegations and setting forth defenses.

The complaint alleges the Respondent violated Section 8(a)(1) of the National Labor Relations Act (the Act) by telling Charging Party Suzanne King not to discuss a bonus related to bill collections, telling King she was being fired because she discussed the collections bonus with other employees, and discharging King for engaging in protected concerted activity.

A trial was conducted in this matter on February 13, 18, and 19, 2026, in Helena, Montana.[1] Counsel for the General Counsel and the Respondent filed post trial briefs in support of their respective positions, which I have read and considered.

[1] The record was opened remotely on February 13, 2026, to facilitate the exchange of documents. Due to inclement weather, I heard opening statements and dealt with some logistical matters remotely on February 18, 2026. All witness testimony occurred in person on February 19.

On the entire record, I make the following findings, conclusions of law, and recommendations.

FINDINGS OF FACT

JURISDICTION

At all material times, the Respondent has been a professional corporation with an office and place of business in Helena, Montana, and has been engaged in the practice of dentistry, deriving gross revenues in excess of $250,000 and purchasing and receiving, at its Helena, Montana office, goods valued in excess of $50,000 from directly outside the State of Montana. Based on the foregoing, I find that this dispute affects commerce and that the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

ALLEGED UNFAIR LABOR PRACTICES

A. Background and the Respondent's Operations

Nielsen Dental is owned by Dr. Michael Fife, one of its practicing dentists. It is a busy practice, typically treating more than 50 patients per day. There are 20 total employees. Four dentists, including Dr. Fife, work at Nielsen, with 2 usually working per day. Three hygienists work per day. The dentists see 2-3 patients per hour, and the hygienists see one patient per hour on the hour. In addition, Nielsen Dental employs 5 dental assistants. The dentists, hygienists, and dental assistants work in what is referred to as the back office.

In addition to the back-office staff, Nielsen Dental employs 4 dental receptionists, with 3 generally staffing the front desk. They work in what is referred to as the front office. Tammy Odegard was the office manager during the relevant time period and Kendra Paulson was the assistant office manager.[2] Odegard and Paulson shared a manager's office separate from the reception area. They both also worked at the front desk. Dr. Fife relied on Odegard for personnel matters involving front-office staff.[3] Charging Party Suzanne King worked as a dental receptionist at Nielsen Dental from June 13, 2023, to September 9, 2024, when her employment was terminated.[4] From May-August 2024, she also cleaned the office.[5] The 3 other front-desk employees during King's employment were Odegard, Paulson, and Mishel Stoval.

[2] There is no dispute that both Odegard and Paulson were supervisors under the Act. (Jt. Exh. 2.) Abbreviations used in this decision are as follows: "Tr." for transcript; "R Exh." for Respondent's exhibit; "GC Exh." for General Counsel's exhibit; and "Jt. Exh." for joint exhibit. Although I have included several citations to the record to highlight particular testimony or exhibits, I emphasize that my findings and conclusions are based not solely on the evidence specifically cited but rather are based my review and consideration of the entire record.

[3] Tr. 137. At the time of the hearing, Odegard had worked for Nielsen dental for more than 20 years.

[4] All dates are in 2024 unless otherwise indicated.

[5] Cleaning was an extra job King took on to supplement her income.

The office operates "like a family" (Tr. 108, 127.) As a small business, Nielsen Dental handles performance concerns and discipline through personal conversations, and does not keep disciplinary records or conduct written performance evaluations. (Tr. 89.)

B. Suzanne King's Employment and Relevant Incidents

Given the small staff and busy nature of the office, attendance was important at Nielsen Dental. King was absent more frequently than other employees. (Tr. 92.) When King was going to be late for work or miss work, she texted managers Odegard and Paulson. King tried to give sufficient notice when she would miss work. King often notified the office within a day if she was going to miss work, but sometimes it was the same day. (GC Exhs. 4-5; R Exh. A.) King's absences were a hardship because they caused extra work for the other employees who were already busy. (Tr. 109, 127.) During the last six months of her employment, King requested several days off, which put a strain on Paulson and Odegard. (Tr. 92.)

In early 2024, King spoke with Dr. Fife about pay. According to King, Dr. Fife mentioned a new way of paying bonuses to the receptionists, stating it would be a collections bonus rather than a Christmas bonus. The front-office staff would receive a $500 bonus for the first $2 million collected and then $500 for every $100,000 collected thereafter. The collections bonus would appear in the receptionist's next paycheck. In either this or another conversation in 2024, King recalled that Dr. Fife told her that the collections bonus would be in addition to the Christmas bonus.[6] (Tr. 36, 40.) The back-office staff, including the dental assistants and hygienists, were not eligible to receive the collections bonus.

Around the end of May 2024, while cleaning, King saw coworker Mishel Stoval's paycheck. King testified it was sitting face-up under Stoval's keyboard at the front desk, and she saw it when she lifted the keyboard to clean the surface underneath. King saw Stoval's hourly pay rate. After cleaning, King put the paycheck back where it had been. King told Paulson about seeing the paycheck the following day but there was no discussion about it. (Tr. 31-32, 91.) Odegard had placed Stoval's paycheck under the keyboard because Stoval was not at work that payday. She recalled that she closed it so that the information about Stoval's pay was on the inside. (Tr. 123.)

On September 5, 2024, Odegard informed King that they had reached $2 million in collections so King would receive a bonus in her next check. Odegard told King not to mention the bonus to anyone in the back, which included the dental assistants and hygienists. (Tr. 37, 130.)

[6] King's testimony on this point is somewhat confusing. She testified that in early 2024 Dr. Fife said they would get a collections bonus rather than a Christmas bonus. (Tr. 36.) She also testified that Dr. Fife, at some undetermined point in 2024, told her the collections bonus would be in addition to the Christmas bonus. (Tr. 40.) It is not clear when these comments were made, the context in which they were made, or whether they were parts of more than one conversation.

The collections bonus was not a newly established bonus but instead followed a formula, established by Dr. Fife, based on the revenue collected. It had previously been paid out at the end of the year to the front desk employees. (Tr. 35.) There had also been Christmas bonus in previous years, though it was not established whether it was discretionary or whether it was historically paid to all employees or just certain employees.

Later that day, King texted Dr. Fife, asking whether they (meaning the dental receptionists) would receive Christmas bonuses for 2024. Dr. Fife responded that Christmas bonuses were not guaranteed, and if she received a lot in her collection bonus, that should be enough. King then said she thought that when she spoke to him about a raise earlier in the year, Dr. Fife had told her that the collections bonus would be in addition to the Christmas bonus. King expressed that she was grateful for what she got, but mentioned that Dr. Fife had told her she would be getting less than everyone else, and she thought that was unfair. She asked him to consider that all 4 of the front office staff worked hard on collections. Dr. Fife responded that she and Michelle (sic) [Stoval] would receive the same, and stated, "You are riding on the shoulders of what's been set before you and you should know that without Tammy [Odegard] and Kendra [Paulson] you wouldn't have any chance. Collections come as the result of everything that happens not just that (sic) actual collections." Dr. Fife thanked King for the work she did and told her that Odegard has done more than she (King) knows. King responded, stating that Dr. Fife was probably right, and that Odegard and Paulson were both great. King expressed hope that they could teach her so that she could be ready to move into Paulson's position when Paulson moved into Odegard's the following winter. King ended by saying she planned to be at Nielsen for a long time, and asked him not to hesitate to tell her if there was anything she could do to "step it up." (GC Exh. 2.)

After this text exchange, King texted coworker Morgan Richardson, a dental assistant. She texted her the portion of her exchange with Dr. Fife where she had asked about whether the receptionists would receive Christmas bonuses, and Dr. Fife's response that they were not guaranteed, and that a high collections bonus should be good enough. She asked Richardson for her opinion on the exchange. Richardson responded that Dr. Fife seemed "very grouchy" in his answers. King responded, stating that was a nice way of putting it, calling Dr. Fife an "asshole" and expressing her concern that Dr. Fife considered King to be less valuable than her coworkers. King asked Richardson not to talk about the issue with anyone because Odegard was insistent that nobody in the back should know about the bonus. Richardson promised not to discuss it but said that all the employees in the back knew about the bonus for front-office staff. King then added, "We just have to give the guy 2mil to get a whopping $500." Richardson expressed that bonuses should be fair across the board. King agreed, and said she'd be happy if Dr. Fife just kept his word, and expressed that he didn't ever seem to do that. Richardson responded, noting that while Odegard and Paulson had more experience, they all did the same job. She then stated, "No and don't count on it. That's one thing I can say is I feel like it's harder to get a raise (I feel like) for the front because your (sic) not next to him working with him on a patient, you know? So he really doesn't see first hand what you do." King said maybe she should consider going somewhere she would be more appreciated, and expressed confusion as to why she was not being trained to take over Paulson's position for next year, when Odegard would be leaving.[7] King expressed her frustration again over working so hard and not being appreciated, stating, "We all deserve more." Richardson said she agreed, and expressed that she was sorry King was in a hard spot. (GC Exh. 3.)

Richardson shared her concerns about the text exchange with the lead dental assistant, who brought the issue to Odegard the morning of September 9. Richardson told Odegard the text exchange made her uncomfortable. (Tr. 124.)

[7] Paulson was slated to assume Odegard's position because she was planning to retire.

In mid to late August, King informed Odegard that one of the hygienists was looking for a new job, so they would probably need to hire a replacement. According to King, Odegard mentioned that a dental assistant, Payton Huff, was going to be fired for not taking criticism well and not getting along with coworkers. Odegard did not say to keep this confidential. (Tr. 34.) Odegard did not recall discussing Huff's performance issues with King. Odegard had not intended to fire Huff, who had been employed for around a couple of months at the time, but instead she was going to sit down with her and go over some areas for improvement. (Tr. 115, 121.)

King did not know Huff very well. On September 6, 2024, around mid-day, King told Huff she wanted to talk to her after work. They met in King's car in the parking lot outside the facility, and King told Huff that if she planned to stay at Nielsen, she needed to work on some things, such as taking criticism from her colleagues and the doctors. King stated she talked to Huff because she wanted her to stay, and felt sorry for the way she was being treated. King testified she did not explicitly tell Huff that Nielsen Dental was planning on firing her.[8] During this conversation, Paulson came out and got into her car, and rolled slowly by King's car. (Tr. 49-50, 69.) Paulson recalled King stating, during her termination meeting, that she did not tell Huff she was being fired out of malice. (Tr. 98-99.)

On Sunday September 8, Huff texted Odegard and the lead dental assistant, Britt Bartlett, her notice of resignation, stating that she knew there had been some discussion of letting her go. She initially gave 2 weeks' notice, but, before receiving any response, rescinded that and quit immediately, stating she wanted to avoid the tension she would feel knowing there had been talk of letting her go. (R Exh. B; Tr. 116.) Huff told Odegard about her meeting with King. Odegard asked Huff if she would reconsider resigning, and come back to work, but she declined. (Tr. 121, 125.)

C. Suzanne King's Discharge and Subsequent Events

The morning of September 9, a Monday, Odegard decided to terminate King's employment. (Tr. 125.) When King arrived to work that morning, she met with Odegard in the manager's office, where Paulson was also present. According to King, Odegard told her she was very disappointed that King had divulged their collection bonuses and told another employee she was going to be fired. (Tr. 52.) King was given a letter, drafted by Paulson and signed by Fife, stating in relevant part:

> This letter serves as a written confirmation that Nielsen Dental is terminating your employment, effective immediately, as of September 9, 2024.
>
> Earlier this year, you violated a co-workers privacy by looking at and reading the specifics of their paycheck. It has been brought to our attention that over the weekend you have also

[8] King did acknowledge that what she said may have caused Huff to perceive she was going to be terminated:

> Q But you knew that Payton would take what you told her as the fact that she was going to be terminated?
>
> A She may have perceived what I said that way, yes.

(Tr. 70.)

> shared information regarding the front desk employees' pay and bonuses. This is after both Tammy and Kendra have specifically told you on multiple occasions that the bonuses and each employee's pay is private information and not to be shared amongst other employees. You were encouraged to meet with Dr. Fife in person to discuss any concerns or questions regarding your pay.
>
> In addition to these two examples of breach of confidentiality. We were made aware that you also took it upon yourself to tell another employee that she was going to be fired. Which in turn led to her putting in her notice. You were not a part of any discussion or plan to let this employee go, and did not have any factual information regarding our plan and terms of employment with this employee.
>
> We have been extremely lenient and feel that we have gone above and beyond to work with you in regards to your schedule needing later starts for school drop offs, as well as covering for you during the times that you needed for medical reasons. We have always considered you to be more than just a co-worker to us and wanted to have your back in every way that we can. We have told you on numerous occasions that we have your back and are willing to offer you any support that we can.
>
> For the reasons above, and a loss of trust, we regret to inform you that we believe that you no longer are a good fit for the position that you are currently in at Nielsen Dental. We see and deal with a lot of confidential information such as: Patients' private information, Doctors' pay, and financial information.

(Jt. Exh. 1.)

Paulson, who drafted the termination notice, included King's viewing Stoval's paycheck because she perceived it as a breach of trust with another teammate. As to the sharing of bonus information, Paulson observed this caused confusion and inquiries from the back-office staff. (Tr. 92-94.) Odegard perceived discord between the front and the back-office staff because the bonus is completely different between the two groups. (Tr. 124.)

King's conversation with Huff was included because it led Huff to put in her immediate notice of resignation. This affected operations by leaving the dental assistants shorthanded. Paulson expressed that she and others valued King as a person and that was why they were so flexible with her schedule. According to Paulson, King would have been terminated even if she had not shared the collection bonus information with Richardson due to the lack of trust she created and not being a good fit for the role any longer. (Tr. 95-100.)

When asked why she included the paragraph explaining that they had been lenient with her scheduling, Paulson testified:

> Personally, I believe that it was important to acknowledge that because we did care for Suzanne as a person, and we did try really hard to work with her and be as helpful and flexible as we could in covering and allowing her to take more time off than maybe we

> would another employee or another maybe not so family-run business would have handled absences.

(Tr. 97.)

Odegard testified that the reason she terminated King's employment was because of her conversation with Huff which led Huff to believe they were letting her go. Huff's takeaway from her conversation with King, that she was going to be fired, was incorrect, and Odegard believed King impersonated management and spread false information, which was she was not authorized to do. This caused her and Paulson to talk about the other reasons they were unhappy with King, including her sharing the bonus information with Richardson. To Odegard this demonstrated lack of trust, but she would not have terminated King for just sharing the bonus information, though it was a contributing factor. Management was also unhappy with King's attendance, but it was not the reason she was terminated. (Tr. 125-126, 130-131.)

In her Board affidavit, Odegard's stated reasons for King's termination were looking at another employee's paycheck and telling another employee they were going to be fired. Odegard viewed the sharing of bonus information as an invasion of privacy, and ultimately said she was let go for invading people's privacy. (Tr. 133.)

In a response to the Montana Department of Labor & Industry request for information regarding what led to King's discharge, the Respondent stated, "The claimant was discharged due to insubordination and lapses in judgement resulting in multiple scenarios that ultimately led to a decision by management that she was unable to adhere to confidentiality and privacy guidelines and had proven an inability to perform the duties required of her position."[9] When asked if the actions or incident had a negative effect on the business, the Respondent said, "The actions of the claimant has led to one employee immediately putting in immediate notice of resignation in fear of 'being fired' based upon the claimant's remarks. The actions have also caused animosity and an unproductive work environment amongst the staff." (Jt. Exh. 3.)

On September 16, King returned to the office to pick up her final paycheck and talk with Odegard about her termination. She wanted to talk to Odegard because she did not believe the reasons listed in her termination letter were the real reasons she was fired.[10] According to King, Odegard said they lost trust in King because she talked about the collection bonus and that's why she was fired. Odegard did not mention King's viewing of a coworker's paycheck, telling Huff she was going to be fired, or any attendance issues. (Tr. 55-56.)

LEGAL STANDARDS AND ANALYSIS

A. The Amendments

[9] The response was due on September 18. The date it was filled out is not a matter of record.

[10] King testified, "I wanted to know why I was fired, because I knew it wasn't for looking at a paycheck or seeing a paycheck. And then no one had even asked me if I had, like, told Payton. So I didn't think that those were the reasons why I was fired." (Tr. 56.)

The January 22, 2026, amended complaint included the following allegations, at paragraphs 4(b) and 4(c), not present in the original complaint:

> On or about September 9, 2024, Respondent, through Dr. Michael Fife, told employees in a termination letter not to discuss the collections bonus and that Respondent was firing them because they discussed the collections bonus with other employees.
>
> On or about September 16, 2024, Respondent, through Tammy Odegard, told employees not to discuss the collections bonus and that Respondent fired them for discussing the collections bonus with other employees.

Section 10(b) of the Act provides, in relevant part, that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board. . ." A complaint may be amended to allege conduct outside the 10(b) period if the conduct occurred within 6 months of a timely filed charge and is "closely related" to the allegations of the charge. *Redd-I, Inc*., 290 NLRB 1115 (1988). In evaluating whether allegations are "closely related" under *Redd-I*, the Board considers whether:

1) the otherwise untimely allegations involve the same legal theory as the allegations in the timely charge;

2) the otherwise untimely allegations arise from the same factual situation or sequence of events as the allegations in the timely charge (i.e., the allegations involve similar conduct, usually during the same time period, and with a similar object); and

3) a respondent would raise the same or similar defenses to both the otherwise untimely allegation and timely allegations.

See *Starbucks Coffee Co.*, 372 NLRB No. 50, slip op. at 2 (2023), reconsideration denied 372 NLRB No. 102 (2023), enfd. in part 125 F.4th 78 (3d Cir. 2024).

Turning to the first factor, the otherwise untimely allegations, set forth in paragraphs 4(b) and (c) of the amended complaint, involve the same theory as the allegation raised in paragraph 4(a), which alleges the Respondent violated Section 8(a)(1) when, on September 5, 2024, Odegard instructed King not to discuss the collections bonus. This appears in the original complaint as paragraph 4, and was based on King's timely charge filed on September 22, 2024. As to the second factor, the otherwise timely allegations arise from the same sequence of events, which in this case are the events leading up to King's termination and her eventual termination. Finally, the defenses raised to each would be, and in fact were, similar. Accordingly, in accordance with *Redd-I*, I find the amended allegations are not barred by Section 10(b) of the Act.

B. The Verbal and Written Statements about the Collections Bonus

The Board's longstanding test to determine if there has been a violation of Section 8(a)(1) of the Act is whether the employer engaged in conduct which might reasonably tend to interfere with the free exercise of employee rights under Section 7. *American Freightways Co*., 124 NLRB

146 (1959). The rights guaranteed employees in Section 7 include the right "to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . . ." The Board considers the totality of the circumstances surrounding a statement alleged to have violated the Act from the viewpoint of its impact on an employee's exercise of their statutory rights. *KSM Industries, Inc*., 336 NLRB 133, 133 (2001). "It is well settled that the test of interference, restraint, and coercion under Section 8(a)(1) of the Act does not turn on the employer's motive or on whether the coercion succeeded or failed." *American Tissue Corp*., 336 NLRB 435, 441 (2001) (citing *NLRB v. Illinois Tool Works*, 153 F.2d 811, 814 (7th Cir. 1946)). It is the General Counsel's burden to prove an 8(a)(1) violation.

If it is determined that the employer's conduct interfered with Section 7 activity, the employer may escape a finding of violation by demonstrating a legitimate and substantial business justification that outweighs the employee's interests under Section 7. See, e.g., *Verizon Wireless*, 349 NLRB 640, 658 (2007); *Ang Newspapers*, 343 NLRB 564, 565 (2004); *Caesar's Palace*, 336 NLRB 271, 272 fn.6 (2001).

1. September 5 statement

Complaint paragraph 4(a) alleges the Respondent violated Section 8(a)(1) of the Act when, on or about September 5, 2024, the Respondent, through Tammy Odegard, told King not to discuss a bonus related to bill collections done by front desk employees ("the collections bonus").

There is no factual dispute that Odegard told King to keep their conversation about the collections bonus confidential, and King's termination letter states on its face her discussion of the collections bonus as a basis for her termination.

Prohibiting discussions about pay violates Section 8(a)(1). *Automatic Screw Products Co*., 306 NLRB 1072 (1992), enfd. mem. 977 F.2d 582 (6th Cir. 1992); see also *Hobson Bearing Intl., Inc*., 365 NLRB 704, 706-708 (2017) (Rule prohibiting employees from discussing their wages and bonuses with other employees violated the Act). In *Parexel International*, 356 NLRB 516 (2011), the Board stated that "wage discussions among employees are considered to be at the core of Section 7 rights because wages, probably the most critical element in employment, are the grist on which concerted activity feeds." The term "wages" must be "construed to include emoluments of value accruing to employees out of their employment relationship" such as regular bonuses. *Niles-Bement-Pond Co*., 97 NLRB 165 (1951).

Odegard's instruction not to discuss the collections bonus with the employees in the back was clearly an attempt to restrain King from discussing a topic protected by Section 7.

The Respondent argues that the narrow instruction concerning a single bonus program for one category of employees differs materially than cases involving a broader prohibition on wage discussions, such that a reasonable employee would not have understood it as a blanket restriction. This is unavailing, as any restriction of employees' Section 7 rights, not just broad or blanket restrictions, violates the Act unless supported by a business justification. See *NLRB v. Main Street Terrace Care Center*, 218 F.3d 531 (6th Cir. 2000). The Board has affirmed that an employer

interferes with Section 7 rights by prohibiting employees from discussing workplace concerns. *Verizon Wireless*, 349 NLRB at 658; *Westside Community Mental Health Center*, 327 NLRB 661, 666 (1999). Furthermore, an employer's restriction on employee communications is overbroad when that restriction is not limited by time or place. Id., See also *SNE Enterprises*, 347 NLRB 472, 492-493 (2006), enfd. 257 Fed. Appx. 642 (4th Cir. 2007). Here, the restriction was on sharing information about the collections bonus with the employees who were not eligible to receive it. It was not limited in time or place. As stated in King's termination letter, "[B]oth Tammy and Kendra have specifically told you on multiple occasions that the bonuses and each employee's pay is private information and not to be shared amongst other employees." Accordingly, this argument fails.

The Respondent also asserts that the instruction not to discuss the bonus involved the handling of sensitive internal financial matters. While it is true that the employees at Nielsen Dental were exposed to sensitive and confidential patient information (which would presumably include patient financial information), there is no evidence that King disclosed any patient information. At the hearing, the Respondent's witnesses testified that King sharing the bonus caused discord and confusion. As stated by the Third Circuit in *Jeannette Corp. v. NLRB*, 532 F.2d 916, 919 (3d Cir. 1976), "[t]he possibility that ordinary speech and discussions over wages on an employee's own time may cause 'jealousies and strife among employees' is not a justifiable business reason to inhibit the opportunity for an employee to exercise section 7 rights." [11]

Based on the foregoing, I find the General Counsel has proved this allegation.

2. September 9 and September 16 Statements

Complaint paragraph 4(b) alleges that the Respondent violated the Act by telling King she was being fired because she discussed the collections bonus with other employees. This allegation is based on the language of King's termination letter pertaining to sharing bonus information, replicated above. Complaint paragraph 4(c) alleges that Odegard, or about September 16, 2024, told King she was fired for discussing the collections bonus with other employees. This allegation is based on the post-termination conversation between King and Odegard, described above.[12]

[11] The internal quotation is from the employer's brief to the court.

[12] King's testimony regarding the conversation with Odegard on September 16 is unrefuted. At the hearing, Odegard did not testify about the conversation. That said, I do not find it entirely credible because it is inherently improbable given that, in every other context, including statements made at the termination meeting itself, the termination letter, the hearing, and the written explanations to the State of Montana, the Respondent's stated reasons for terminating King included multiple incidents. See *NLRB v. Howell Chevrolet Co*., 204 F.2d 79 (9th Cir. 1953); *NLRB v. Cutting, Inc*., 701 F.2d 659, 665 (7th Cir. 1983); *Operative Plasterers, Local 394*, 207 NLRB 147 (1973). Nonetheless, King's testimony that Odegard told her the collections bonus discussion was a reason for her termination is unchallenged and is corroborated throughout the record, and is therefore credited.

A credibility determination may rest on various 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." *Hills & Dales General Hospital*, 360 NLRB 611, 615 (2014), citing *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001). In making credibility resolutions, it is well established that the trier of fact may believe some, but not all, of a witness's testimony. *NLRB v.*

A statement linking an employee's discharge to protected activity independently violates the Act and is not subsumed by the discharge violation. *Benesight, Inc*., 337 NLRB 282, 283 (2001), citing *Sands Hotel & Casino*, 306 NLRB 172, 184 (1992), enfd. 993 F.2d 913 (D.C. Cir. 1993). Both the termination letter and Odegard's statement tie King's termination to her sharing of information about the bonus, which I have found to be protected. Accordingly, I find the General Counsel has met her burden to prove these complaint allegations.

C. King's Termination

Complaint paragraph 5 alleges that the Respondent violated Section 8(a)(1) by discharging King on September 9, 2024, for engaging in protected concerted activities.

1. Protected Concerted Activity

Before determining whether King's termination was because of her protected concerted activity, I must first determine whether she engaged in protected concerted activity under the Act, as defined by the Board's caselaw.

"To be protected under Section 7 of the Act, employee conduct must be both 'concerted' and engaged in for the purpose of 'mutual aid or protection.'" *Fresh & Easy Neighborhood Market*, 361 NLRB 151, 152 (2014). These two elements, concerted and protected, are closely related, but are "analytically distinct." Id. At 153.

The Board has held that activity is concerted if it is "engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself." *Meyers Industries (Meyers I)*, 268 NLRB 493 (1984), revd. sub nom *Prill v. NLRB*, 755 F. 2d 941 (D.C. Cir. 1985), cert. denied 474 U.S. 948 (1985), on remand *Meyers Industries (Meyers II)*, 281 NLRB 882 (1986), affd. sub nom *Prill v. NLRB*, 835 F. 2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988). Concerted activity also includes "circumstances where individual employees seek to initiate or to induce or to prepare for group action" and where an individual employee brings "truly group complaints to management's attention." *Meyers II*, 281 NLRB at 887. An individual employee's complaint is concerted if it is a "logical outgrowth of the concerns of the group." *Every Woman's Place*, 282 NLRB 413 (1986); *Mike Yurosek & Son, Inc.*, 306 NLRB 1037, 1038 (1992), after remand, 310 NLRB 831 (1993), enfd. 53 F.3d 261 (9th Cir. 1995). The Board in both *Meyers* cases emphasized that "the question of whether an employee has engaged in concerted activity is a factual one based on the totality of the record evidence." 281 NLRB at 886; 268 NLRB at 497.

In *Fresh & Easy Neighborhood Market*, 361 NLRB at 153, the Board stated:

> 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,

Universal Camera Corp., 179 F.2d 749 (2d Cir. 1950).

Any credibility determinations are provided and explained in context in this decision.

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." *Mushroom Transportation Co. v. NLRB*, 330 F.2d 683, 685 (3d Cir. 1964). In addition, it is well established that "the activity of a single employee in enlisting the support of his fellow employees for their mutual aid and protection is as much 'concerted activity' as is ordinary group activity." *Whittaker Corp*., 289 NLRB 933, 933 (1988), quoting *Owens-Corning Fiberglas Corp. v. NLRB*, 407 F.2d 1357, 1365 (4th Cir. 1969).

As discussed directly below, the Board has held that some workplace conduct is "inherently concerted."

a. The bonus discussion

The Board has long held that wage discussions are "inherently concerted" and therefore need not be engaged in with the express object of inducing group action. *Alternative Energy Applications*, 361 NLRB 1203, 1206 fn.10 (2014); see also *Automatic Screw Products Co*., 306 NLRB 1072 (1992), enfd. mem. 977 F.2d 582 (6th Cir. 1992). And, as explained above, wage discussions are protected. As such, I find King engaged in protected concerted activity in her text discussion with Richardson regarding compensation.

The General Counsel argues that King's September 8 text string with Richardson was concerted activity even it was not "inherently concerted" because the two employees discussed wages among all employees, not just King and the other front staff.[13] To that end, Richardson chimed in that she felt like bonuses should be fair across the board, to which King agreed. Richardson also stated her belief that it was harder for the receptionists to get raises because they did not work side-by-side with the dentists. Finally, King stated "We all deserve more!", to which Richardson agreed. Because King's discussion of terms and conditions of employment went beyond King's own interest, the General Counsel argues this conversation was concerted. I agree with the observation that the discussion concerned compensation more broadly than just a bonus for King herself and/or the front-office staff. What is missing, however, which existed in *Fresh & Easy*, where the employee solicited statements supporting a claim of harassment with a state agency, is any evidence King contemplated or was seeking to prepare for action about her or anyone else's compensation. She had already questioned Dr. Fife about the bonus, and the record is silent as to whether she planned further conversations or other action. It is difficult to untether this analytically from an "inherently concerted" theory.

The General Counsel cites to *St. Margaret Mercy Healthcare Ctrs*., 350 NLRB at 205, where the Board, quoting *NLRB v. Main Street Terrace Care Center*, 218 F.3d 531, 537 (6th Cir. 2000), enfg. 327 NLRB 522 (1999), which held, that "prohibiting employees from communicating with one another regarding wages, a key objective of organizational activity, undoubtedly tends to interfere with the employees' right to engage in protected concerted activity." That case as well involved group action, when the employee, serving as representative of the other employees, took

[13] See GC Br. 24-25.

their collective problems to management. The Board found her complaints were an outgrowth of concerns shared by other employees. As the Board held in *Meyers II*:

> It is not questioned that a conversation may constitute a concerted activity although it involves only a speaker and a listener, but to qualify as such, it must appear at the very least it was engaged in with the object of initiating or inducing or preparing for group action or that it had some relation to group action in the interest of the employees.

281 NLRB at 887, quoting *Root-Carlin, Inc*., 92 NLRB 1313, 1314 (1951).

In any event, regardless of whether King was setting the stage to prepare for group action, her conversation with Richardson about compensation was protected concerted activity under extant Board law.

The Respondent argues essentially that King's conduct lost the Act's protection. The Respondent bears the burden to prove an employee lost the Act's protection. See *NLRB v. Pier Sixty*, LLC, 855 F.3d 115, 125 (2d Cir. 2017). I find King and Richardson's text discussion about compensation did not lose the Act's protection even if it caused some jealousy and discord or even if Richardson was uncomfortable with it. See *Jeannette Corp. v. NLRB*, supra. The fact that an employee's statements annoy or disturb a coworker does not render the conversation unprotected. See also *Jhirmack Enterprises*, 283 NLRB 609 (1987) (finding protected employee's statements about a coworker's poor performance despite fact that statements upset coworker); *Ryder Transportations Services*, 341 NLRB 761, 761 (2004).[14]

Based on the foregoing, I find King engaged in protected concerted activity when she discussed pay with Richardson.

b. The discussion with Huff about job performance

In *Hoodview Vending Co*., 362 NLRB 690 (2015), the Board stated, "The rationale for finding wage discussions inherently concerted applies with equal force to discussions concerning job security."[15] While King testified she did not "explicitly" tell Huff she was going to be fired,

[14] I understand the Respondent's desire to keep the collections bonus, which is only available to one category of employees, confidential, particularly considering the small family-like nature of the office. I believe Odegard's explanation that her instruction to King not to disclose the bonus to the staff in the back was to prevent ill will, not to thwart collective action. She testified, "I had asked her not to because I didn't -- because we are like a family, and I didn't want to cause ill feelings with the back, you know? We earned a lot more bonus than they do." (Tr. 126.) This is understandable, and perhaps even seems like common sense, from a managerial standpoint, especially considering the context. The employer's motivation, however, does not negate the interference. See *American Tissue Corp*., supra.

[15] Member Miscimarra dissented in *Hoodview Vending* and other cases that rely on the "inherently concerted" doctrine, finding the notion that conversations about certain subjects are inherently concerted is irreconcilable with *Meyers Industries*. Some federal courts have agreed with this view. See A*roostook County Regional Ophthalmology Center v. NLRB*, 81 F.3d 209 (D.C. Cir. 1996) (rejecting the Board's notion that discussions of vital employment conditions are automatically concerted because they could "spawn collective action" as appearing "limitless and nonsensical."); *Ewing v. NLRB*, 861 F.2d 353 (2d Cir. 1988). Other federal courts have been more receptive, though they have largely avoided the

she told Huff that, if she wanted to stay at Nielsen Dental, she needed to work on things such as accepting criticism. This clearly led Huff to believe her job was at risk, prompting her resignation. Under current Board law, the discussion between King and Huff was inherently concerted.

Even if the discussion was not inherently concerted, the Board has repeatedly held that an employee's warning to another employee that the latter's job is at risk is both protected and concerted activity where its purpose is to encourage improvement in job performance. In *Component Bar Prods*., 364 NLRB 1901, 1901 fn. 1 (2016), the Board, when considering whether an employee's call to a coworker to warn him his job was in danger, stated:

> We additionally find that Stout acted concertedly under *Meyers Industries*, 281 NLRB 882 (1986) (*Meyers II*), affd. sub nom. *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988). Stout called his coworker to warn him that his job was in danger and to try to help him retain his employment. By his actions, Stout sought to join together with his coworker to help him avoid an adverse employment action and thus engaged in concerted activity under *Meyers II*.

The Board reached a similar conclusion *Jhirmack Enterprises*, 283 NLRB at 609 fn. 2, In *Jhirmack*, an employee told her coworker that other employees complained to management about his slow job performance. The Board found this was protected conduct that "was clearly undertaken for the mutual aid and protection of a fellow employee and therefore constituted actual concerted activity."[16] Here, King testified that her reasons for speaking with Huff were because she wanted her to stay and felt sorry for the way Huff was being treated.[17] As such, her conversation with Huff was protected concerted activity.

The Respondent contends that King's discussion with Huff was not protected because spreading false information is not contemplated by Section 7. On this point, I credit Odegard's testimony that her immediate plan was to discuss Huff's performance deficiencies with her and give her a chance to improve before discharging her.[18] I also credit King's testimony that she did not expressly tell Huff she was being terminated. The correspondence from Huff to Odegard and Paulson makes clear that Huff's understanding was that management was talking about letting her go.

"inherently concerted" label. See *Jeannette Corp. v. NLRB*, above. Regardless, a judge's duty is to apply Board precedent which the U.S. Supreme Court has not reversed. *Austin Fire Equipment, LLC*, 360 NLRB 1176, 1176 fn. 6 (2014); *Waco, Inc*., 273 NLRB 746, 749 fn. 14 (1984).

[16] Though my decision adheres to *Jhirmak* and *Component Bar*, the elements of "mutual aid and protection" and "concerted" strike me as largely conflated in this line of cases rather than analytically distinct.

The General Counsel also cites *to Food Services of America, Inc.*, 360 NLRB 1012, 1014 (2014), vacated on other grounds, 365 NLRB 820 (2017). The Board in that case, however, specifically found the employee who engaged in the protected activity contemplated group action.

[17] By the time of the conversation, it is clear King was angry at Dr. Fife, referring to him as an "asshole" and stating that he never kept his word. While I find there is some evidence to suggest King had become disgruntled by the time of this conversation, this had nothing to do with Huff. I therefore credit King's unrefuted testimony regarding her reasons for speaking with Huff.

[18] This testimony is supported by Odegard's unrefuted testimony that she asked Huff to reconsider her resignation.

Employee statements are unprotected if they are shown to be maliciously untrue, i.e., if they are knowingly false or made with reckless disregard for their truth or falsity. See, e.g., *Valley Hospital Medical Center*, 351 NLRB 1250, 1252 (2007), enfd. sub nom. *Nevada Service Employees Union, Local 1107, SEIU v. NLRB*, 358 Fed. Appx. 783 (9th Cir. 2009). "[T]he mere fact that statements are false, misleading or inaccurate is insufficient to demonstrate that they are maliciously untrue," *Miklin Enterprises, Inc*., 361 NLRB No. 27 (2014); *Wabeek Country Club*, 301 NLRB 694, 699 (1991) ("within the area of concerted activities, false and inaccurate employee statements are protected so long as they are not malicious.") Odegard's testimony that she had no imminent plan to discharge Huff shows at most that King's statements were inaccurate, not that they were maliciously untrue. See, e.g., *Sprint/United Management Co*., 339 NLRB 1012, 1018 (2003); *NLRB v. RELCO Locomotives, Inc*., 734 F.3d 764, (6th Cir. 2013)(spreading false rumor of an employee's termination was not maliciously untrue where based on honest belief). In the instant case, when Odegard was asked if she had any conversations with King about Huff's performance or other issues, she responded, "Not that I recall." Given King's more specific testimony about the conversation, which is unrefuted, I find the Respondent has not met its burden to prove the statement was maliciously untrue.

The fact that Huff quit her job in response to her conversation with King does not remove the conversation from the Act's protection.[19] The Board has made clear that the consequences of a job-security warning, including distress, job searching, or resignation by the warned employee, do not affect the protected status of the original communication. See *Jhirmack Enterprises*, 283 NLRB at 613; *Food Services of America*, 360 NLRB at 1015; see also *Five Star Transp., Inc. v. NLRB*, 522 F.3d 46, 53-54 (1st Cir. 2008) ("Indeed, were harm or potential harm to the employer to be the determining factor in the Court's § 7 protection analysis, it is doubtful that the legislative purposes of the Act would ever be realized.").

Based on the foregoing, I find King's conversation with Huff was protected concerted activity.

2. Wright Line Analysis

In mixed-motives cases, where an employer defends against an allegation that it has terminated an employee because of their protected concerted activity by asserting that the termination was for legitimate reasons, the Board applies the analysis set forth in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert denied 455 U.S. 989 (1982). Because the Respondent argues that reasons unrelated to King's protected concerted activity contributed to the decision to discharge her, I will apply *Wright Line*.[20] Under this framework, the General

[19] As with the bonus discussion, I understand the Respondent's view, especially considering the context. The consequences of King's conversation with Huff were felt by all of the staff because the small office was left shorthanded. Odegard's frustration with King's actions, particularly given that Odegard had not intended to imminently fire Huff, is wholly understandable. It was not, however, consistent with Board law. See *Jhirmack Enterprises*, supra.

[20] The General Counsel argues that, under *Phoenix Transit System*, 337 NLRB 510 (2002), a *Wright Line* analysis is not required. That case, however, found liability based on violating an unlawful confidentiality rule the employer had promulgated. In the instant case, there is no allegation that a rule

Counsel has the initial burden to provide evidence supporting the inference that union activity was a motivating factor in the employer's decision. See, e.g., *Intertape Polymer Corp*., 372 NLRB No. 133, slip op. at 6 (2023), enfd. 2024 WL 2764160 (6th Cir. 2024). The elements required to sustain the General Counsel's initial burden are: (1) protected activity by the employee, (2) employer knowledge of that activity, and (3) employer animus against protected activity. Id.; see also *Bannum Place of Saginaw, LLC*, 370 NLRB No. 117, slip op. at 3 (2021).

Once the General Counsel has established that the employee's protected conduct was a motivating factor in the employer's decision, the burden of persuasion shifts to the employer to demonstrate that it would have taken the same action even in the absence of the protected conduct. The employer cannot meet its burden merely by showing that it had a legitimate reason for the action; rather, it must demonstrate that it would have taken the same action even in the absence of the protected conduct. See, e.g., *NCRNC, LLC d/b/a Northeast Center for Rehabilitation*, 372 NLRB No. 35, slip op. at 1-2 fn. 5 (2022), and cases cited therein. As to weighing protected conduct, the Board has stated, "where, after all the evidence has been submitted, the employer has been unable to carry its burden, we will not seek to quantitatively analyze the effect of the unlawful cause once it has been found. It is enough that the employees' protected activities are causally related to the employer action which is the basis of the complaint. Whether that "cause" was the straw that broke the camel's back or a bullet between the eyes, if it were enough to determine events, it is enough to come within the proscription of the Act.'" *Intertape Polymer*, slip op. at 7 fn. 24, quoting *Wright Line* 251 NLRB at 1089 fn. 14; see also, e.g., *Igramo Enterprise*, Inc., 351 NLRB 1337, 1341 & fn. 18 (2007), enfd. 310 Fed. Appx. 452 (2d. Cir. 2009).

In the instant case, the Respondent's knowledge of King's protected discussions cannot be refuted. Both the discussion about the bonus with Richardson and the discussion with Huff about the risk to her job were cited as reasons for King's discharge on the termination letter itself.[21]

Evidence of the employer's animus toward protected concerted activity may be circumstantial, and may include, among other things: (1) the timing of the employer's adverse action in relationship to the employee's protected activity; (2) the presence of other unfair labor practices; (3) statements and actions showing the employer's general and specific animus; (4) disparate treatment of the discriminatees; (5) departure from past practice; and (6) evidence that an employer's proffered explanation for the adverse action is a pretext. See *Golden Day Schools v. NLRB*, 644 F.2d 834, 838 (9th Cir. 1981); *NLRB v. Rain-Ware, Inc*., 732 F.2d 1349, 1354 (7th Cir. 1984) (timing); *Mid-Mountain Foods, Inc*., 332 NLRB 251, 260 (2000), enfd. mem. 169 LRRM 2448 (4th Cir. 2001); *Richardson Bros. South*, 312 NLRB 534 (1993) (other unfair labor

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was promulgated. Indeed, any such allegation would be on shaky ground given the record in this case. See *Shamrock Foods Co*., 369 NLRB No. 5, slip op. at 4 (2020) ("[T]he Board has repeatedly held that a statement made to a single employee is not the promulgation of a rule for the entire work force."); *Costco Wholesale Corp.*, 366 NLRB No. 9, slip op. at 1 fn. 3 (2018)(instruction to one employee not to discuss investigation of alleged misconduct was unlawful, but was not the promulgation of an unlawful rule).

[21] The Respondent argues that the General Counsel failed to establish knowledge of the protected activity because management did not understand King's conduct to be concerted activity. This misconstrues the knowledge element, which requires knowledge of the conduct itself, not knowledge the conduct meets the legal definition of protected concerted activity under the law. *Pruitthealth Veteran Services - North Carolina, Inc*., 369 NLRB No. 22, slip op. at 18 (2020).

practices); *NLRB v. Vemco, Inc*., 989 F.2d 1468, 1473-1474 (6th Cir. 1993); *Affiliated Foods, Inc*., 328 NLRB 1107 (1999)(statements showing animus); *Naomi Knitting Plant*, 328 NLRB 1279, 1283 (1999)(disparate treatment); *JAMCO*, 294 NLRB 896, 905 (1989), affd. mem. 927 F.2d 614 (11th Cir. 1991), cert. denied 502 U.S. 814 (1991) (departure from past practice); *Wright Line*, 251 NLRB at 1089; *Roadway Express*, 327 NLRB 25, 26 (1998) (disparate treatment). Another indicator of unlawful motivation is shifting explanations for a personnel action. See *City Stationery, Inc*., 340 NLRB 523, 524 (2003) (nondiscriminatory reasons for discharge offered at the hearing were found to be pretextual where different from those set forth in the discharge letters); *GATX Logistics, Inc*., 323 NLRB 328, 335 (1997).

Here, the record reflects that the Respondent took a dim view of employees sharing information about their wages and working conditions with each other. King's termination letter expressly states that Odegard and Paulson had specifically told her on multiple occasions that the bonuses and each employee's pay is private information and not to be shared amongst other employees. The instruction not to discuss the bonus was an unfair labor practice, as detailed above.

Timing can be a strong indicator of animus. The Board has held that "[t]iming alone may suggest anti-union animus as a motivating factor in an employer's action." *Masland Industries*, 311 NLRB 184, 197 (1993), quoting *NLRB v. Rain-Ware, Inc*., above. Here, King's discharge, just days after management learned of the pay discussion with Richardson, and the first workday after management learned about King's discussion with Huff, both of which were protected concerted activity, raises a strong inference of animus.

In addition, the Respondent has offered shifting explanations for King's termination. For example, regarding attendance, in its posthearing brief the Respondent argues King's unreliability stemming from poor attendance and last-minute call outs was a primary reason for King's termination. In its amended answer, the Respondent asserted that "the primary reasons" for King's discharge were "missing work" and telling "another employee that the employee would be fired." However, King's termination letter listed specific conduct as reasons for her discharge, and referenced a loss of trust and believing King was no longer a "good fit." While the Respondent's flexibility in scheduling and covering for King was mentioned, attendance was not included as a reason for her termination. In the Respondent's submission to the Montana Department of Labor & Industry, attendance likewise was not referenced as a reason for King's termination. At the hearing, Odegard testified attendance was a disappointment, but not the reason King was discharged, and testified that King's discussion with Huff and its consequences was the primary reason.[22] See *MCPc Inc*., 367 NLRB No. 137, slip op. at 4 (2019) (shifting reasons for discharge are evidence of pretext).

For the reasons above, I find the General Counsel has met the initial *Wright Line* burden.

The burden now shifts to the Respondent to demonstrate that it would have taken the same action even in the absence of the protected conduct. The Respondent asserts that King's discharge resulted from her unreliability and her disruptive conduct, not her protected activity.

[22] Tr. 125-126, 130-131. Odegard also testified that viewing a coworker's paycheck was not the reason King was let go, but it showed a lack of trust. Tr. 131.

As to King's unreliability, as discussed above, I have found this to be pretextual. I have no reason to doubt the testimony that King's frequent absences were disruptive and caused hardship for her fellow employees. I likewise do not doubt testimony that Paulson and Odegard were lenient with King because they cared about her, and considered her a member of the work family. Whether Nielsen Dental *could* have terminated King for her unreliable attendance is, however, a different question than the one I must decide, i.e. whether it was the actual reason. A look at the timing shows that King's absences were tolerated until she engaged in protected concerted activity. This demonstrates that attendance alone was not the reason.

The Respondent's asserted loss of trust in King also fails, as it rests on King sharing "confidential" information about pay. This activity, however, is protected by Section 7, and cannot lawfully serve as the basis for King's termination. The termination letter references that employees at Nielsen Dental see confidential patient information in addition to confidential pay and financial information. While it is true that employees at Nielsen Dental have access to confidential patient information, there is no evidence that King ever disclosed anything of the sort. King's protected discussions cannot be extrapolated to include patient confidentiality matters and stay true to the Act. If this were the case, employers in healthcare settings could use any discussion about pay or other terms and conditions of employment it deems "confidential" to justify adverse action on a loss of trust based on speculation the employee might disclose legally protected confidential medical or other patient information.

Likewise, the evidence shows any disruptions King caused in the workplace stemmed from her protected activity. Paulson and Odegard both testified that fallout from King's discussion with Richardson regarding the bonus caused confusion and inquiries from the back-office staff. King's warning to Huff likewise caused disruption by causing Huff to resign, leaving the office short-staffed. Finally, as the record shows, any disruptions caused by King's attendance issues were tolerated until King's protected activity.[23]

Based on the foregoing, I find the Respondent would not have terminated King on September 9, 2024, but for her protected activity, and the General Counsel has established that King's discharge violated Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

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

2. The Respondent violated Section 8(a)(1) of the Act by, on or about September 5, 2024, telling Charging Party Suzanne King not to discuss a bonus related to bill collections; on September 9, 2024, telling King she was being fired because she discussed the collections bonus with other employees; and on September 9, 2024, discharging King for engaging in protected concerted activity.

[23] Dr. Fife testified that his "sense of things" as to why King was terminated was her "backbiting" by "talking shit about Tammy and Kendra" and being "gossipy." (Tr. 141-142.) It is clear, in line with his testimony that Odegard handled personnel matters, he delegated issues regarding the front-desk staff to Odegard.

3. The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

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

The Respondent, having unlawfully told Charging Party Suzanne King not to discuss a bonus related to bill collections, and having unlawfully told King she was being fired because she discussed the collections bonus with other employees, shall cease and desist from such conduct.

The Respondent, having unlawfully discharged Suzanne King, must offer her reinstatement to her former job or if that job no longer exists, to a substantially equivalent position without prejudice to her seniority and other rights and privileges she would have enjoyed absent the discrimination against her. The Respondent shall also make King 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), the Respondent shall also compensate Suzanne King for any other direct or foreseeable pecuniary harms incurred as a result of the unlawful discharges, 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, the Respondent shall compensate Suzanne King for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 19, 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 *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), the Respondent shall also be required to file with the Regional Director for Region 19 a copy of each backpay recipient's corresponding W–2 form reflecting the backpay award.

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

[24]If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the

ORDER

The Respondent, Nielsen Dental, Helena, Montana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

a) Instructing employees not to discuss pay or other terms and conditions of employment with others.

b) Telling employees they are discharged for engaging in Section 7 activities, including discussing their terms and conditions of employment with other employees.

c) Discharging or otherwise discriminating against employees because they engage in protected concerted activities.

d) 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.

a) Within 14 days from the date of this Order, offer Suzanne King full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

b) Make Suzanne King 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 her in the manner set forth in the remedy section of this decision.

c) Compensate Suzanne King for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 19, 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.

d) Within 14 days after service by the Region, post at its Helena, Montana, facility copies of the attached notice marked "Appendix."[25] Copies of the notice, on forms provided by the

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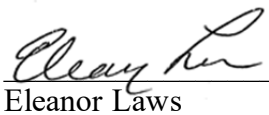
findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes due under the terms of this Order.

[25] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID–19) pandemic, the notice must be posted within 14 days after the facility reopens and a substantial complement of employees has returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, Respondent is communicating

Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 5, 2024.

Within 21 days after service by the Region, file with the Regional Director for Region 19 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 1, 2026



Eleanor Laws
U.S. Administrative Law Judge

with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]."

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

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 instruct you not to discuss pay or other terms and conditions of employment with others.

WE WILL NOT tell you that we are firing you because you discussed your wages, bonuses, job security, hours, or other working conditions with other employees.

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 Suzanne King full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Suzanne King whole for any loss of earnings and other benefits resulting from her discharge, less any net interim earnings, plus interest, and WE WILL also make them 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 Suzanne King for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 19 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.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Suzanne King, and WE WILL, within 3 days thereafter, notify

her in writing that this has been done and that the discharge will not be used against her in any way.

NIELSEN DENTAL PC
(Employer)

Dated: _____ By: _____
(Representative) (Title)

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

Region 19
National Labor Relations Board
915 2nd Avenue
Room 2948
Seattle, WA 98174-1078
Fax: (206) 220-6305
Telephone: (206) 220-6300, **Hours of Operation:** 8:15am - 4:45pm PT

The Administrative Law Judge's decision can be found at www.NLRB.gov/case/19-CA-351178 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 SE, Washington, DC 20570-0001, 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 (206) 220-6340.