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

LIBERTY AUTO CITY, INC.,

Respondent

and 13-CA-330556

RYAN EDWARD GANNON,

an Individual

Kevin McCormick and *Lesly Josary Iglesias, Esqs.,* for General Counsel.

Alex Marks and *Brittany Martin, Esqs*., for Respondent.

Decision

STATEMENT OF THE CASE

LISA FRIEDHEIM-WEIS, Administrative Law Judge.

On November 22, 2023, Ryan Edward Gannon (Charging Party or Gannon) filed an unfair labor practice charge against Liberty Auto City, Inc. (Respondent), docketed by Region 13 of the Board as Case 13–CA–330556. Counsel for the General Counsel (General Counsel) alleged that Respondent violated Section 8(a)(1) of the Act by:

(1) Threatening Gannon around September 25, 2023,[1] about his protected concerted activities, namely, his discussion of wages, bonus structure, and other terms and conditions of employment with another employee that day;

(2) Discharging Gannon around October 18 because he complained to management on September 26 about his September 25 protected concerted activities and the threats made against him by management that day in response to those protected concerted activities.

[1] Unless noted otherwise, all dates hereinafter refer to 2023.

Respondent, through a timely filed answer and arguments presented during the trial, has denied the allegations that it violated the Act.

The trial was conducted in this matter in person on January 28, 2026, in Chicago, Illinois. The General Counsel and the Respondent filed posttrial briefs in support of their position on March 18, 2026.

On the entire record, including my observation of the demeanor of the witnesses and after considering the briefs filed by the General Counsel and the Respondent, I make the following findings, conclusions of law, and recommendations.

FINDINGS OF FACT[2]

I. JURISDICTION

Respondent, a corporation with an office and place of business in Libertyville, Illinois, has been engaged in the business of retail sales and service of new and used automobiles. During the calendar year ending on December 31, 2023, Respondent derived gross revenues in excess of $500,000 and purchased and received goods at its Libertyville, Illinois facility that are valued in excess of $5000 and came directly from points outside the State of Illinois. (GC Exh. 1(e).)[3] Based on these admitted facts, I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Respondent's Management and Operations and Gannon's Pre-Discharge Employment History

Respondent operates a car dealership in Libertyville, Illinois. Gannon worked for Respondent as a full-time salesperson beginning in approximately August 2020. He generally worked 40-plus hours per week and testified that he was paid a weekly salary plus commission. Gannon worked with clients to sell and lease vehicles for Respondent and to go over financing options with clients. (Tr. 18–20.)

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[2] Although I have included several citations in this decision to highlight particular testimony or exhibits in the evidentiary record, I emphasize that my findings and conclusions are not based solely on those specific citations, but rather are based on my review and consideration of the entire record for this case.

[3] References throughout the decision shall read as: Tr. is transcript; GC Exh. is General Counsel's exhibit; and R. Exh. is Respondent's exhibit. The Act refers to the National Labor Relations Act. The Board refers to the National Labor Relations Board.

During the relevant period, Patrick O'Donnell was Respondent's sales manager, Mario Gentry was the general sales manager, and Tony Anzelmo was the general manager. Pam Burke served as Respondent's director of human resources and testified she was the only human resources employee at the dealership; she reported to Comptroller Lori Gray. (Tr. 20–21, 26–27, 129–131; GC Exh. 1(e).) Gannon reported directed to O'Donnell and Gentry, who in turn reported to Anzelmo. (Tr. 21, 161.)

According to General Manager Anzelmo, Gannon was a good salesperson but did "not [have] a great attitude." (Tr. 161.)

B. Events of September 25

On September 25, Gannon worked at Respondent's dealership and had a conversation with newly hired salesperson Chris Evans (Evans). Gannon testified that Evans was unfamiliar with Respondent's pay structure, so Gannon explained the Respondent's commission percentage and salary structure, including that salary could be negotiated with management. The conversation occurred in the front of the dealership while they were waiting for customers and lasted approximately 20 to 30 minutes. (Tr. 21–23.)

C. Events of September 26

On September 26, Gannon reported to work at approximately 9 a.m. and testified that at approximately 2 p.m., while he was at the managers' desk area in front of the showroom (called the tower), O'Donnell confronted him. Gannon testified that Anzelmo and Gentry were also present at the tower, seated at their desks nearby and all just one arm's length away from the other. (Tr. 24–25.) According to Gannon, O'Donnell asked why it was "always" Gannon who discussed pay with other employees, told him he was not allowed to discuss pay with other employees, and stated that if Gannon discussed pay again, O'Donnell would take away Gannon's salary or fire him. (Tr. 26.)

Respondent did not produce O'Donnell as a witness, and none of Respondent's witnesses challenged that O'Donnell made this statement to Gannon on September 25. Moreover, Respondent acknowledges that O'Donnell did make this statement to Gannon in its posttrial brief. (R. Br., pp. 2–3.)

Immediately after this September 26 interaction, Gannon went to speak with Burke. Gannon testified that Burke brought Gray into the meeting as a witness and that the meeting occurred in Gray's office with only Gannon, Burke, and Gray present. Gannon testified he asked Burke whether he was allowed to discuss pay with coworkers, and Burke confirmed he could and stated it was a protected act. (Tr. 26–28.) Gannon further testified Burke characterized O'Donnell's conduct as a serious matter and stated she would speak with O'Donnell. Gannon testified that Burke took detailed notes during their meeting. (Tr. 27–28.)

Burke testified consistently with Gannon's version of events from their meeting on September 26, that her practice when receiving employee complaints was to meet in Gray's office for privacy and to have a witness, and acknowledged that she takes notes during such meetings. (Tr. 135.) Burke prepared a written HR document dated September 26, reflecting

Gannon's complaint and noting that Burke and Gray informed Anzelmo about the incident on September 28. (Tr. 136–137, 139; R. Exh. 2.) Notably, Burke took the following notes on September 26 while meeting with Gannon:

> On Monday, 09–25–03 around 1:30 p.m., Ryan [Gannon] was explaining the sales pay plan and monthly bonus pay plan to new employee, Chris Evans. Patrick [O'Donnell] overheard the discussion and threatened to fire Ryan Gannon for discussing his pay with another employee. Patrick O'Donnell's behavior is unacceptable and will be brought to the attention of General manager, Tony Anzelmo.
>
> Lori Gray and Pam Burke informed Tony Anzelmo on Thursday, 09–28–23 about the incident between Ryan Gannon and Partick O'Donnell. Tony assured us that he would speak to Patrick O'Donnell about making unlawful threats; employees are within their rights to discuss their pay.
>
> Ryan is concerned about possible retaliation from Patrick O'Donnell due to his bringing this incident to our attention. Ryan will keep us informed if he experiences any retaliation from manager Patrick O'Donnell in the future. (R. Exh. 2).

Anzelmo testified that Burke informed him of Gannon's complaint and he subsequently had a conversation[4] with O'Donnell that O'Donnell could not prohibit employees from discussing wages. (Tr. 164.) Respondent maintained an employee handbook in 2023 that included anti-discrimination and antiretaliation policies and an open-door procedure. Burke testified that employees (including Gannon) receive the handbook at hire and sign an acknowledgment, and that employees are informed they may bring concerns to human resources. (Tr. 133–134; R. Exh. 1.)

D. October 16 Dealer Trade and Verbal Discharge

On October 16, Gannon testified that O'Donnell instructed him to perform something called a dealer trade. A dealer trade takes place when a customer wants to purchase a car that the dealership does not have on the lot, so the dealership enters into a trade with another dealership so it can then turn around and sell the car to its customer. (Tr. 165.)

Gannon testified he had not previously performed a dealer trade for Respondent, had not received any dealer-trade training from Respondent, and that he was instructed to go pick up the trade vehicle that day because no porters were available. (Tr. 30.) Anzelmo testified that either a porter or a salesperson could and did pick up trade cars from other dealerships depending on who was available that day. (Tr. 165.)

Gannon testified O'Donnell provided him with an envelope containing the title and a check and instructed him to (1) ensure the vehicle identification number matched the vehicle he was picking up and that (2) the mileage on the vehicle was not too high. (Tr. 31.)

[4] Though Anzelmo referred to their conversation as a "reprimand," no record of any discipline of O'Donnell was offered into evidence at hearing.

Gannon drove to Bettenhausen Chrysler Dodge Jeep Ram in Orland Park, Illinois, to pick up a new 2023 Jeep Grand Cherokee 4XE (the Jeep). Gannon conducted a walk-around inspection and noticed no major damage. Gannon did notice that two wheel center caps were Dodge-branded rather than Jeep-branded; he raised this with the other dealership's manager and was told it could be addressed under warranty. Gannon testified that the center caps are the plastic pieces that pop into the center of each wheel and identifies the logo of the vehicle (i.e. Jeep vs. Dodge). (Tr. 32–34.)

Gannon returned to Respondent's dealership with the Jeep that afternoon and informed O'Donnell immediately that the vehicle was missing the correct center caps. Gannon testified O'Donnell responded that Gannon should not have accepted the Jeep in that condition, which Gannon thought was odd given how inexpensive the plastic wheel caps are. (Tr. 35–36.)

The Jeep was cleaned and prepared for a customer who arrived around 5 p.m. that evening for a test drive. After the test drive, the customer noticed a scuff or gouge in the rocker panel/skid plate area (which is a plastic part under the door) and two small black dots under the clear coat above the passenger-side wheel well. Gannon testified he believed those issues could be addressed under the manufacturer's paint warranty and brought the concerns to O'Donnell. (Tr. 38, 43.) O'Donnell declined to guarantee the repair and walked into the dealership to consult the body shop manager for 15 minutes, after which he returned to the service area and told Gannon and the customer that Respondent would not guarantee the repair. The customer did not take the vehicle that evening and left the dealership. (Tr. 43–45.)

Gannon testified that later that evening, toward closing time (around 8 p.m.), he spoke with Anzelmo at the tower, and that O'Donnell and Gentry were also present for the conversation. According to Gannon, he asked Anzelmo if he wanted him to stock the Jeep back in, and Anzelmo told him, "I think we should just part ways," stating the vehicle would cost the dealership "$6,000-plus dollars" to fix. Gannon testified Anzelmo attempted to have him sign a termination paper citing damage to the vehicle as the reason for termination, and Gannon refused to sign. (Tr. 45–47.)

Anzelmo testified that he was not present at the dealership on the night of October 16 when Gannon brought the Jeep back for the customer test drive and inspection, and that it was his habit to leave between 4–5 p.m. each night when he was working. (Tr. 168–169.) According to Anzelmo, he received a call from one of the managers (O'Donnell or Gentry)[5] stating that the car had damage. Anzelmo responded to the manager to fire Gannon. Specifically, Anzelmo recalled the entirety of the phone conversation with the manager as:

> "He brought the car back, and one of the managers went out and looked at the car and saw the damage on the car. I got a phone call, and I told the manager to let him go." (Tr. 168.)

According to Anzelmo, the following things are expected when picking up a trade vehicle: bring a check and a certificate of origin for the car the dealership is trading; receive the

[5] It objectively tracks that the manager would have been O'Donnell, since he is the one to whom Gannon reported the condition of the Jeep when he returned from making the dealer trade.

certificate of origin for car the dealership is taking in trade; inspect the car, make sure the keys are there; and make sure the books for the vehicle are there. Anzelmo testified that a manager would tell the salesperson or porter to do these things during a trade, but also that anyone in the car business for even 5 weeks would not need to be told to do these things. (Tr. 167.)

Whoever picks up the car during a dealer trade is responsible for making sure the car is in a new condition. (Tr. 166.) Anzelmo testified that the car was missing some center caps, had at least one or two big gouges on the side of the car and did not have proper mats in it.[6] Anzelmo made the decision over the phone with the manager to fire Gannon because bringing back a vehicle in damaged condition was very costly. According to Anzelmo, "It wasn't an accident. It was just lack of effort to look at the car. Insubordination." (Tr. 170.)

Anzelmo further testified that during his 4-year tenure as the general manager of Respondent, he had never fired any other salesman other than Gannon for failure to properly inspect a vehicle. Moreover, Anzelmo testified at length as to the damage that was found on the Jeep[7] and that it cost $1425 in profit for the lost sale of the Jeep in October. (Tr. 168, 174, R. Exh. 4.) However, Respondent and the General Counsel stipulated that Anzelmo did not rely on the estimate Respondent created to repair the Jeep at any time before or while firing Gannon. Anzelmo had no idea how much repairs would cost when he made the decision to terminate Gannon on October 16. (Tr. 203.)

E. October 17 or October 18[8] Post-discharge

Gannon met with Burke and Gray on either October 17 or 18 following Anzelmo's verbal discharge of Gannon on the evening of October 16.

According to Gannon, he returned to Respondent's dealership the next morning, October 17, and spoke with Burke and Gray in Gray's office. In that meeting, Gannon stated he was fired in retaliation for reporting that O'Donnell threatened him. According to Gannon, Burke said that the discharge had nothing to do with O'Donnell and it was unrelated. Gannon asked for his discharge paperwork, and testified that Burke handed him separation documents consisting of her notes from October 16, an October 18 discharge paper (stating "It is clear Ryan did not inspect the vehicle when he picked it up."), and two other pages of notes from his personnel file. (Tr. 47–50; GC Exh. 2.) Gannon stated the conversation lasted about 20 minutes, after which he gathered his belongings and left Respondent's dealership.

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[6] I note that the customer did make a complaint about the floor mats in the Jeep.

[7] Anzelmo admitted that he did not have the sheet about which he testified at length (detailing all the flaws on the Jeep) when he fired Gannon in October, and further that the Jeep sat in an open uncovered lot unprotected from inclement weather in the suburbs of Chicago, Illinois, from October through December before the Jeep was then examined by the dealership's body shop. (Tr. 176–178, 187–197, 208, 211–219, R. Exh. 5.)

[8] As discussed below and in the Credibility section of this decision, Gannon is fairly sure that he was discharged on paper the day after the trade in incident—on October 17. Burke and Anzelmo testified that the discharge conversation at Respondent's dealership took place on October 18. Regardless of the exact date, there is no dispute that Anzelmo verbally discharged Gannon on October 16 and that his discharge paperwork is dated October 18. (Tr. 46, 168; GC Exh. 2; R. Exh. 3.)

Burke testified to the contrary that she did not meet with Gannon on Tuesday, October 17 (or any other day after September 26) and that she prepared the separation report on Wednesday, October 18, after learning of the incident and after Anzelmo had been off on Tuesday.[9] Burke testified she wrote the handwritten portions on the separation report and typed the narrative based on Anzelmo's account after they spoke on October 18, and that she later mailed the separation documents to Gannon after he requested it by voicemail. Burke also testified that the signature on the separation report in the witness signature box was Anzelmo's. (Tr.140–143, 145–146; GC Exh. 2; R. Exh. 3.)

Anzelmo testified that he made the decision to terminate Gannon on October 16 based on the vehicle being returned in damaged condition and Gannon being insubordinate because he failed to inspect the car, and that he did not consider Gannon's earlier complaint about O'Donnell when making the termination decision. (Tr. 170–172.)

III. DISCUSSION AND ANALYSIS

A. Credibility Findings

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 witness' testimony. *Farm Fresh Co., Target One, LLC*, 361 NLRB 848, 860 (2014) (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). Where the testimony of witnesses conflicted, I have resolved those conflicts based on the foregoing factors.

Gannon testified in a generally straightforward manner regarding the sequence of events surrounding his September 25 wage discussion with coworker Evans, his September 26 interaction with Sales Manager O'Donnell, and his immediate report to Human Resources Director Burke and Comptroller Gray. Gannon's testimony about the content of O'Donnell's statements was specific and internally consistent, including his (Gannon's) description that O'Donnell told him he was not allowed to discuss pay and threatened to take away his salary or fire him if he did so again, and that this occurred at the manager's tower in the showroom with General Manager Anzelmo and General Sales Manager Gentry nearby. Moreover, Respondent's only witness to the September 26 conversation corroborated Gannon's testimony about the September 25 and 26 conversations, as seen in Burke's notes from September 26. I therefore credit Gannon's testimony as to what O'Donnell said on September 25 and what Gannon reported to Burke on September 26.

[9] Anzelmo testified that Tuesdays and Sundays were his days off. (Tr. 171.)

However, I do not credit Gannon's testimony to the extent he asserted that Anzelmo was present to verbally fire him in person at the dealership on the night of October 16, or that Burke met with him the next morning (October 17) to personally hand him the separation report. Gannon's account on these points was uncertain and shifted in response to cross-examination, including his testimony that Anzelmo attempted to hand him a handwritten separation document on the night of October 16, that he refused to take it, and that Burke provided documents while meeting with him the following morning. I find it inherently improbable that Anzelmo was present at the dealership after 8 p.m. or that he would have been able to create a separation document so quickly in the moment on that evening of October 16.

Burke, by contrast, testified clearly and with supporting detail about her work schedule, her practice of taking notes whenever employees meet with her behind closed doors, and that she did not see Gannon on October 17; she further testified that she prepared the separation report on Wednesday, October 18 after learning of the incident and after Anzelmo had been off on Tuesday, October 17. Burke's testimony on this point was also consistent with the separation report's narrative, Anzelmo's signature on October 18, and the date references discussed at hearing. I therefore credit Burke's testimony that she did not meet with Gannon on October 17 and that the separation report was prepared and signed on October 18.

Anzelmo testified credibly that, after being informed of Gannon's September 26 complaint, he spoke to O'Donnell because O'Donnell could not prohibit wage discussions. Anzelmo also testified that he was not physically present at the dealership when the dealer-trade vehicle was returned, that he received a phone call about damage to the vehicle, and that he instructed either O'Donnell or Gentry to convey the termination decision (all on October 16). I credit Anzelmo's testimony on these points, which was specific and consistent with Burke's testimony that Anzelmo was off on Tuesdays and that she prepared the separation report on Wednesday based on Anzelmo's account.

To the extent Gannon testified that Anzelmo personally told him at the tower near closing time that they should part ways, I do not find it necessary to resolve every detail of that asserted conversation for purposes of these findings. Whether Anzelmo verbally fired Gannon himself or whether he instructed O'Donnell (or Gentry) to do so on the night of October 16, it is undisputed that a manager of Respondent discharged Gannon on the night of October 16, and that Respondent's separation papers for Gannon are dated October 18. Anzelmo acknowledges that he made the decision to terminate Gannon on the night of October 16—whether he made the statement himself in person as opposed to instructing another manager by phone to tell Gannon he was fired is not dispositive of the legality of the discharge.

B. Did Respondent Threaten Gannon in Violation of Section 8(a)(1) of the Act?

1. Applicable Legal Standard

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.

2. Analysis

Complaint paragraphs IV(a) and (b) and legal conclusion paragraph V allege the Respondent violated Section 8(a)(1) when, on or about September 25, the Respondent, through Sales Manager Patrick O'Donnell, threatened Gannon not to discuss wage rates and bonus structures with other employees and that he would be discharged if he did so.[10] (GC Exh. 1(c).)

There is no factual dispute that O'Donnell told Gannon not to talk to any other employees about wages or that he would take away his salary or fire him, and Burke's notes state on their face O'Donnell threatened to fire Gannon for talking to another employee about pay plans and bonus plans.

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."

O'Donnell's threat to fire Gannon for speaking about wages and bonus structures was clearly an attempt to restrain Gannon from discussing a topic protected by Section 7.

[10] I note here that the General Counsel did not plainly plead in paragraph IV of the complaint that O'Donnell's September 25 alleged threats independently violated Sec. 8(a)(1) of the Act. Rather, the General Counsel pled that Gannon engaged in protected concerted activity on September 25 and then complained to management about threats on September 26. However, it was clear at trial and on brief that both the General Counsel and Respondent considered, addressed, and adduced testimonial and documentary evidence regarding the issue of the alleged threat by O'Donnell as an independent violation of Sec. 8(a)(1) of the Act. Tr. 12, 21–28, 136–139, GC Exh. 2; R. Exh. 2.) In fact, as discussed above in Section II, Respondent acknowledged Burke's September 26 written corroboration that Gannon reported O'Donnell threatened him with discharge on September 25 because he was talking to another employee about wages and bonuses. Moreover, as noted in the Credibility section above, Gannon's testimony about the September 25 conversation with O'Donnell wherein O'Donnell threatened him with discharge because he spoke to another employee about wages and bonus plans is unrefuted.

Based on the foregoing, I find that the General Counsel has proved the allegation that Respondent, by threatening Gannon about wages, violated Section 8(a)(1) of the Act.

C. Did Respondent Violate Section 8(a)(1) of the Act When it Terminated Gannon?

1. Applicable Legal Standard

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 Gannon's protected concerted activity contributed to the decision to discharge him, I will apply *Wright Line*. Under this framework, the General 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. The General Counsel may offer proof that the employer's reasons for the personnel decision were false or pretextual. When the employer's stated reasons for its decision are found to be pretextual—that is, either false or not in fact relied upon—discriminatory motive may be inferred but such an inference is not compelled. *Electrolux Home Products*, 368 NLRB No. 34, slip op. at 3 (noting that the Board may infer from the pretextual nature of an employer's proffered justification that the employer acted out of union animus where the surrounding facts tend to reinforce that inference). A respondent's defense does not fail simply because not all the evidence supports its defense or because some evidence tends to refute it. Ultimately, the General Counsel retains the burden of proving discrimination. *Farm Fresh Co., Target One, LLC*, 361 NLRB 848, 861 (2014).

2. Analysis

Complaint paragraph IV(c) and legal conclusion paragraph V allege the Respondent violated Section 8(a)(1) when, on or about October 18, the Respondent discharged Gannon. (GC Exh. 1(c).)

Respondent's knowledge of Gannon's protected activity has been described in detail above and is not in dispute.

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 Gannon engaged in protected concerted activity in his discussion with Evans regarding compensation and that Respondent had immediate knowledge of Gannon's protected concerted activities about wages as of September 25 and 26.

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 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 and of complaining to management about threats made by managers. Anzelmo testified without explanation that while Gannon was a good salesperson, he did not have a great attitude. The Board has long recognized that even a respondent's use of euphemistic terms that are less threatening than "unacceptable," such as "troublemaker" and "attitude," can still be indicative of animus. See *Citizens Service Investment Corp.*, 342 NLRB 316, 328 (2004), and cases cited therein ("bad attitude" and "troublemaker" were "simply another way of indicating that [the employee] was terminated because he engaged in protected concerted activity"). See also *Children's Studio School Public Charter School*, 343 NLRB 801, 805 (2004) ("Board has long considered . . . comments, such as accusing an employee of having a 'bad attitude,' to be a veiled reference to the employee's protected activities.").

Gannon testified that O'Donnell asked him (while threatening him) on September 25 why it was always him who was talking to other employees about wages and commenting further that it was always him (Gannon). (Tr. 26.) O'Donnell's threat not to discuss wages or the bonus structure was itself an unfair labor practice, as detailed above. Moreover, though Respondent made much on the record and on brief of its antidiscrimination, antiharassment, and open-door policies,

there is no evidence that Anzelmo, the general manager of Respondent, took any actual disciplinary action against O'Donnell after he threatened Gannon. Rather, by Anzelmo's own admission, it was a mere conversation. There is nothing in the record to show that O'Donnell's threats were taken seriously beyond documenting them.

Timing can also be a strong indicator of animus. Contrary to Respondent's assertions on brief, 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, Gannon's discharge, just three weeks after management learned of his pay discussion with another employee and after Manager O'Donnell threatened Gannon with discharge, raises a strong inference of animus.

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 Gannon's discharge resulted from his failure to inspect the Jeep on October 16, not his protected activity on September 25.

Anzelmo testified that he ordered Gannon to be fired because due to "insubordination" because of his lack of effort at looking at the car and that it "was not an accident." Respondent insists that Gannon's September 25 and 26 protected concerted activities (speaking with another employee about wages and then complaining to management after he was threatened with discharge for doing so) had absolutely nothing to do with his discharge, and rather that it was his performance, or lack thereof, that was the sole reason for the October 18 discharge.

I find Respondent's defenses are pretextual. First, the essential component of insubordination is a willful disregard of or refusal to obey an order. See *Crown Cork & Seal Co.*, 253 NLRB 310, 316, fn. 29 (1980) (insubordination is "refusal to obey some order which a superior officer is entitled to give and have obeyed. Term imports a willful or intentional disregard of the lawful and reasonable instructions of the employer.") (citing Black's Law Dictionary).

In Gannon's case, Respondent instructed Gannon to look over the Jeep, which he never refused to do. Gannon returned to the dealership and reported that he noticed missing wheel caps. He may not have noticed a gouge to the panel or two pin-sized black marks under the clear coat by the wheel, but there is no evidence that Gannon failed to do as he was asked, which was to inspect the vehicle. It is improbable that Gannon would have noticed that the incorrect tire caps were on the Jeep if he had not at least walked around the vehicle as he testified he did. Moreover, when the customer noticed the gouge and the pin-sized black marks, Gannon reported those issues directly and immediately to O'Donnell and asked about warranty coverage to salvage the deal with the customer. The record evidence fails to show that Gannon was insubordinate or that he willfully failed to inspect the Jeep on October 16.

Moreover, the evidence shows that Respondent failed to do any investigation before it discharged Gannon. According to Anzelmo's version of the evening of October 16, as described

in detail above, he received a phone call from either O'Donnell or Gentry, was told that the customer did not take the Jeep and that there was some damage on the car. With that limited information, Anzelmo ordered the manager on the phone to let Gannon go on October 16. By his own admission, Anzelmo did not see the car prior to making his decision. Anzelmo did not ask his managers to take pictures of the vehicle. Anzelmo had no idea how much the deficiencies might cost Respondent to fix when he made the decision over the phone to fire Gannon. Anzelmo did not arrange to talk to Gannon that night or at any time thereafter. This complete lack of follow up suggests that Anzelmo merely seized upon the Jeep incident as a reason to get rid of an employee who was raising workplace issues. *St. Paul Refining Co*., 366 NLRB No. 83, slip op. at 15 (2018) (pretext may be demonstrated by asserting a reason that is false and by an indifferent or inadequate investigation).

Likewise, the evidence shows that there are comparable errors to that of Gannon's and that Respondent treated Gannon disparately by allowing other salespersons and porters to pay Respondent when they dinged or otherwise mistakenly damaged Respondent's vehicles. Respondent urges in its posthearing brief that these comparators are "apples to oranges" because when an employee causes damage to one of Respondent's vehicles while operating the vehicle, Respondent's insurer reimburses Respondent for those damages. (R. Brief, pp. 9–10; GC Exh. 5.) Respondent asserts that Gannon's failure to inspect the Jeep caused Respondent itself, rather than its insurer, to have to pay for repairs.

However, the documentary evidence shows that Respondent still incurred a deductible expense for damaged vehicles, and that this cost was passed on to the salespersons who damaged the vehicles. Salespersons who damaged Respondent's vehicles were permitted as a matter of course and of policy to pay deductibles of $2000 each back to Respondent over time without receiving discipline or being fired. One of the salespersons damaged a vehicle in June and one in November, just one month after Respondent fired Gannon. Both salesmen were put on pay plans to pay off the $2000 deductible to Respondent. (GC Exh. 5 and attached personnel files of salespersons H.K. and M.A.) Neither was fired or disciplined. Thus, I find Respondent's "apples to oranges" argument unavailing. In these other cases (in which there was actual damage), the salespersons were permitted to pay off the deductible for the damages they caused. In Gannon's case (in which he failed to notice certain damage), he was summarily fired. Respondent had no idea of how much damage there was to the Jeep when it fired Gannon, nor did it give Gannon the option of paying off the damage. I find that Respondent treated Gannon disparately from the other salespersons who were permitted to pay for damage inflicted on Respondent's vehicles.[11]

Respondent's submission of different comparators to Gannon further exemplifies Respondent's disparate treatment. Respondent compares Gannon's discharge to a host of other 2023 discharges (only two of whom were salespersons—the others worked in different departments) for violations of completely unrelated offenses—Respondent's attendance policy, fraud, offensive verbal conduct toward customers, and theft. (GC Exh. 4.) Moreover, most of these purported comparators received several warnings before they were fired, with Burke writing in the separation documents that it was "not [the employee's] first offense, but it would

[11] If anything, Gannon's failure to notice flaws in the Jeep seems objectively less serious than salespersons who actively damaged Respondent's vehicles while operating them.

be the last."(GC Exh. 4.) None of these purported comparators engaged in a trade in for a new vehicle like Gannon did. These are the employees to whom the "apples to oranges" argument apply. I do not find that fraud and theft compare to a damaged vehicle.

The *Wright Line* analysis requires an employer to show that it actually would have imposed the discipline on the employee in the absence of the employee's protected concerted activity, not just that it could have, *Wright Line*, supra. Respondent actions here are more consistent with an employer determined to fire Gannon for insubordination and/or willful failure to inspect a vehicle without regard to whether he inspected the vehicle or not, and without regard to whether Respondent actually had a reasonable basis for believing Gannon was insubordinate or otherwise committed a willful and fireable offense. My finding of pretext—that the reason advanced either does not exist or was not actually relied on—of necessity means that Respondent has not met its rebuttal burden and the "inquiry is logically at an end." *Thermon Heat Tracing Services, Inc*., 320 NLRB 1035, 1038 (1996), citing *Wright Line*, supra.

Based on the foregoing, I find the Respondent would not have terminated Gannon on October 16 but for his protected concerted activity, and the General Counsel has established that Gannon's discharge violated Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. The Respondent, Liberty Auto City, Inc. 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 25, 2023, threatened Charging Party Ryan Edward Gannon not to discuss wages or bonus structures with other employees or that he would be fired; on October 16, 2023, verbally discharging Gannon for engaging in protected concerted activity; and on October 18, 2023, confirming the discharge in writing.

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 threatened Charging Party Ryan Edward Gannon not to discuss wages and bonus structures with other employees, shall cease and desist from such conduct.

The Respondent, having unlawfully discharged Ryan Edward Gannon, 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. The Respondent shall also make Gannon 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), the Respondent shall also compensate Ryan Edward Gannon 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, the Respondent shall compensate Ryan Edward Gannon for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 13, 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 13 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[12]

ORDER

The Respondent, Liberty Auto City, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

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

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

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.

[12] 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.

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 Ryan Edward Gannon 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.

b) Make Ryan Edward Gannon 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.

c) Compensate Ryan Edward Gannon for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 13, 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 of this Order, remove from its files any reference to the unlawful discharge of Ryan Edward Gannon 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.

e) Within 14 days after service by the Region, post at its Libertyville, Illinois, facility copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 13, 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 25, 2023.

Within 21 days after service by the Region, file with the Regional Director for Region 13 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 8, 2026

Lisa Friedheim-Weis

Lisa Friedheim-Weis
U.S. Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union;
Choose 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 threaten you not to discuss wages or other terms and conditions of employment with others.

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 Ryan Edward Gannon 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 Ryan Edward Gannon 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 Ryan Edward Gannon for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 13 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 Ryan Edward Gannon, 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.

LIBERTY AUTO CITY, INC.
(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 13
National Labor Relations Board
Dirksen Federal Building
219 South Dearborn Street
Suite 808
Chicago, Illinois 60604
Fax: (312)886-1341
Telephone: (312) 353-7570, **Hours of Operation:** 8:30 AM-5:00PM CT

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/13-CA-330556 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 (312) 353-7170.