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

KROGER FULFILLMENT NETWORK

and

Cases 09-CA-353140
09-CA-355697

GENERAL DRIVERS, WAREHOUSEMEN & HELPERS LOCAL UNION NO. 89

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for the General Counsel.
Cody Hibbard, Esq.
for the Charging Party/Union
Daniel Goode, Esq.
for the Respondent.

DECISION

INTRODUCTION[1]

ANDREW S. GOLLIN, ADMINISTRATIVE LAW JUDGE. In the fall of 2024, the General Drivers, Warehousemen & Helpers Local Union No. 89 (the Union) attempted to organize the employees of Kroger Fulfillment Network (the Respondent) at its Louisville, Kentucky facility. Two of the employees who solicited support for the organizing effort were informed by management that certain of their activities violated company policy. The Union filed the underlying charges alleging the Respondent's statements and conduct violated Section 8(a)(1) of the National Labor Relations Act (the Act).[2] Based on those charges, the Regional Director for Region 9, on behalf of the General Counsel, issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing on September 30, 2025, and an Amended Consolidated Complaint and Notice of Hearing on January 12, 2026. The Amended Consolidated Complaint alleges the Respondent violated Section 8(a)(1) by: (1) maintaining

[1] Abbreviations to the record are as follows: "Tr. __" for transcript; "GC Exh. __" for the General Counsel's Exhibits; and "R. Exh. __" for the Respondent's Exhibits. Although I have included citations to the record to highlight particular testimony or exhibits, my findings are based upon my review and consideration of the entire record and the logical inferences drawn therefrom.

[2] The Union filed the charge in Case 09-CA-353140 on October 18, 2024, alleging the Respondent violated Sec. 8(a)(1) by engaging in surveillance or creating the impression of surveillance of employees' union activities, interrogating employees about their union activities, and maintaining work rules that prevent or discourage employees from forming, joining or supporting a labor organization. (GC Exh. 1(a)). The Union filed the charge in Case 09-CA-355696 on November 26, 2024, alleging the Respondent violated Sec. 8(a)(1) by interrogating employees about their union activities, by maintaining work rules that prevent or discourage employees from engaging in protected concerted activities, and by holding a captive-audience meeting. (GC Exh. 1(c)). The Union filed an amended charge in Case 09-CA-353140 on June 27, 2025, alleging the Respondent also violated Sec. 8(a)(1) by telling employees that soliciting for the Union is against company policy, by prohibiting employees from soliciting for the Union on company property, by prohibiting employees from discussing the Union on working time, and by unlawfully maintaining and enforcing a rule prohibiting employees from off-duty access and solicitation in non-working areas. (GC Exh. 1(e)).

an overly broad policy prohibiting employee solicitation and off-duty access; (2) prohibiting employees from talking about the Union; (3) interrogating employees about their union sympathies; (4) prohibiting employees from talking about the Union during work time while permitting them to talk about other non-work subjects; (5) prohibiting employees from soliciting for the Union on company property; (6) surveilling employees engaged in union activities; and (7) conducting a mandatory captive-audience meeting. The Respondent filed timely answers on November 26, 2025 and January 26, 2026, denying these allegations and raising various affirmative defenses. The hearing was held on February 10-11, 2026. At the hearing, the parties were afforded the right to call, examine, and cross-examine witnesses, to present any relevant evidence, to orally argue their legal positions, and to file post-hearing briefs.[3]

After considering the entire record, assessing the demeanor of the witnesses, and analyzing the parties' briefs, I have determined the Respondent violated Section 8(a)(1) by maintaining an overly broad policy prohibiting employee solicitation and off-duty access, and by prohibiting employees from engaging in Union solicitation on company property during non-working time.

FINDINGS OF FACT[4]

A. Jurisdiction

The Respondent is a limited liability company with an office and place of business at 4325 Robards Lane, Louisville, Kentucky (the Respondent's facility), where it has been engaged in the transportation and delivery of retail grocery products. In conducting its operations during the 12-month period ending September 1, 2025, the Respondent purchased and received goods valued in excess of $50,000 directly from points outside the Commonwealth of Kentucky. The Respondent admits, and I find, it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Accordingly, I find this dispute affects commerce and that the National Labor Relations Board (the Board) has jurisdiction pursuant to Section 10(a) of the Act.

B. Background

1. Respondent's Operations and Hierarchy

[3] On April 2, 2026, I granted the Respondent's request to allow the parties, if they chose, to file supplemental briefs to address the General Counsel's theory and support related to the alleged unlawful maintenance of the policy prohibiting employee solicitation and off-duty access.

[4] The Findings of Fact are a compilation of the admitted facts, credible evidence, and logical inferences drawn therefrom. To the extent testimony contradicts with the findings herein, such testimony has been discredited, either as in conflict with credited evidence or because it was incredible and unworthy of belief. In assessing credibility, I relied upon witness demeanor, the quality of their recollection, testimonial consistency, the presence or absence of corroboration, the weight of the respective evidence, the established or admitted facts, inherent probabilities, and the reasonable inferences that may be drawn from the record as a whole. *See Double D Constr. Group.*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Auto. Dealership Group.*, 321 NLRB 586, 589 (1996)), enfd. sub nom., 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions. Indeed, nothing is more common in judicial decisions than to believe some, but not all, of a witness's testimony. *Daikichi Sushi*, supra at 622; *Jerry Ryce Builders*,352 NLRB 1262, 1262 fn. 2 (2008) (citing *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 754 (2d Cir. 1950), rev'd. on other grounds 340 U.S. 474 (1951)). Specific credibility findings related to the allegations are set forth below.

The Respondent stages and delivers online grocery orders. It employs approximately 150 customer service delivery drivers (CSDDs) who operate the company's box trucks and vans that transport the staged orders from the Respondent's facility to the customers' homes or places of business. (Tr. 78). The CSDDs are paid hourly and typically work five eight-hour shifts per week, including one required weekend shift. The Respondent has morning and afternoon shifts, with start times staggered every 30 minutes. The morning start times are between 4:30 and 7 a.m., and the afternoon start times are between noon and 5 p.m. (Tr. 360). The shift change is between noon and 3 p.m. (Tr. 360). There is a five-minute grace period for arriving for the start time. (Tr. 215; 338-339).

The CSDDs report to the transportation supervisors. These supervisors are salaried and work at the Respondent's facility. The supervisors report to the transportation manager. (Tr. 41-42). In the fall of 2024, the transportation supervisors included Robert Williams, Griffin Chambers, Will Mosley, and Jesse Rose. (Tr. 56). Williams was later promoted to transportation manager.[5]

The facility's human resources (HR) department is led by HR generalist Chloie Reynolds. She began working for the Respondent in July 2024. (Tr. 40). Her assistant is Krystal Brown. (Tr. 42).

At all material times, Williams, Mosley, and Reynolds are admitted supervisors and agents of the Respondent within the meaning of Section 2(11) and (13) of the Act. (GC Exh. 1(n)).

2. Layout of Respondent's Facility and Surrounding Area

The Respondent's facility is in a rectangular warehouse building. (R. Exhs. 1 and 2). The Respondent leases and operates out of the southern half of the building. The northern half of the building is leased by an unrelated company called Daifuku. (Tr. 248-249).

The main entrance to Respondent's facility is on the west (front) side of the building, facing Robards Lane, which runs north and south.[6] The entrance consists of two glass doors surrounded by glass panels. (GC Exh. 9). Upon entering the facility, there is a security desk and time clocks. Beyond the time clocks is a hallway with offices, a classroom, and the employee breakroom. (Tr. 377-378). At the end of the hallway, there is a doorway into the warehouse area where the orders are staged.

Immediately outside the Respondent's main entrance is a cement patio. The patio leads to a sidewalk that runs along the west side of the building. West of the sidewalk is a parking lot. This lot, referred to as the front lot, contains rows of lined parking spaces and driving aisles. The lot's sole entrance/exit is on the northwest corner of the property, to Robards Lane. The Respondent and Daifuku

[5] Chambers and Mosely resigned in 2025. (Tr. 365).

[6] I take judicial notice of the information available on Google maps regarding the Respondent's facility and the surrounding area, including satellite images and distance measurement tools. See Fed. R. Evid. 201(b); *Feminist Majority Foundation v. Hurley,* 911 F.3d 674, 710 fn. 5 (4th Cir. 2018)(Agee, CJ., concurring in part) (relying on Google maps and its Distance Measurement Tool to determine locations and distances); *Pahls v. Thomas*, 718 F.3d 1210, 1216 n.1 (10th Cir. 2013) (collecting cases supporting taking judicial notice of content gleaned from Google maps and its features given that geographic facts and distances are "peculiarly susceptible to judicial notice"); *United States v. Schultz*, 537 F. App'x 702, 705 fn.1 (9th Cir. 2013) (taking judicial notice of maps, including Google maps, to determine distances and locations). The relevant maps, satellite images, distance measurements can be found at www.google.com/maps/place/4325+Robards+Ln,+Louisville,+KY (last checked on May 7, 2026).

share this lot, and it is where they have their employees, visitors, and customers park their personal vehicles. (Tr. 352-353).

On the south end of the front lot is a gated entrance to an L-shaped driveway. The driveway leads around the south end of the building to a fenced back lot on the southeast portion of the property, which is referred to as the back lot. This back lot is where the Respondent receives its deliveries and parks its delivery trucks and vans.

3. Typical Day for CSDDs

Upon arriving at the Respondent's facility for the start of their shift, the CSDDs sign in at the security desk and punch in on the time clock. They then check out any equipment they will need for their shift. One piece of equipment every CSDD checks out is a DANI device, which looks like a cellphone and is used for calling or sending texts, location tracking, and scanning orders. (Tr. 126).

At the beginning of every start time/shift, there is a brief meeting, or huddle, in the employee breakroom. Attendance is not taken. A transportation supervisor conducts the huddle and will discuss various topics such as performance metrics, weather issues, safety tips, and other company announcements. (Tr. 337-342). The supervisor will also answer any questions the CSDDs may have. The huddles typically last three to five minutes. At the conclusion, the supervisor will leave written copies of the information discussed at the huddle in the breakroom for those CSDDs who do not attend.

Each CSDD is assigned a delivery truck or van containing orders staged for delivery in the back lot. (Tr. 136-139).[7] To get to the back lot, the CSDDs typically walk through the warehouse. Upon arriving at their vehicle, they conduct a pre-route safety inspection. If they need a credit card to fuel their vehicle, a replacement battery for their DANI device, or some other piece of equipment, they can either walk back through the warehouse to retrieve the item(s), or they can pull their vehicle around to the front lot, park in one of the driving aisles, and run in through the main entrance to get the item(s). Reynolds testified that the latter happens about five times a day. (Tr. 356-357).

After making their deliveries, the CSDDs return to the facility and park their vehicle in the back lot. They perform a post-route safety inspection, return the equipment they checked out, and clock out and sign out for the day. (Tr. 76-78).

4. Training

Newly hired CSDDs undergo training during their first two weeks of employment. (Tr. 254-257). Initially, they receive classroom training from a supervisor at the Respondent's facility. This training usually lasts three or four days. Once that training is completed, the Respondent assigns the trainee to a CSDD trainer for one-on-one, on-road training. The Respondent selects the trainers based on their skills, performance, and temperament. (Tr. 270-272). During the on-road training, the trainers demonstrate for the trainee how to perform every aspect of their job. The trainers are given a detailed checklist of the skills, tasks, and techniques the trainees must learn and eventually perform on their own. (Tr. 274-275) (R Exh. 6).

[7] On occasion, the Respondent will stage it delivery vehicles in the front lot. This has occurred when there was no access to the back lot because of construction, a power outage, or inclement weather. (Tr. 357-360). The record does not reflect how often this has occurred.

The on-road training typically takes two or three days. (Tr. 275). At the conclusion, the trainer will submit a completed checklist to the training supervisor reflecting what skills, tasks, and techniques the trainee successfully performed. (Tr. 278-279) (R Exh. 7). The trainer will also provide their assessment of the trainee. (Tr. 279-280). If the trainer believes there are issues or the trainee may not be a good fit, they are to report that to the training supervisor. (Tr. 282). The training supervisor will then conduct a ride along to personally observe the trainee's performance. If the supervisor determines there is an issue(s), they will move to terminate the trainee. (Tr. 300-301).

If the trainer reports the trainee can perform the job in accordance with the Respondent's standards and policies, the supervisor will place the trainee on a three-week training route that they will perform on their own. Over the next 30 days, the new hire's supervisor must conduct a ride along to observe and verify the new hire is performing the job correctly. (Tr. 283-284).

If in evaluating the trainees, the training supervisors conclude there is an issue with the training the trainee received from their trainer, the training supervisors will conduct coaching and development of the trainer. (Tr. 306-307). If coaching and development do not address the issue(s), the trainer could be removed from the training program.

In 2024, the CSDD trainers were assigned to train two to four times a month, for about three days each. (Tr. 316). They also were required to attend monthly training meetings with the training supervisors. The only benefit the trainers received at that time was they were not required to work a weekend shift. (Tr. 263-264). In 2025, the Respondent reassessed and began paying the trainers an additional $1 per hour. (Tr. 317-318).

5. Rules and Policies

The Respondent has an Employee Handbook. It contains various rules and policies that have remained in effect since at least April 2024. There are two policies at issue. The first is the "Parking" policy, which states:

> Parking is provided for all of this location['s] team members, visitors and customers. Everyone is expected to observe the rules established in the parking areas. The parking lot is part of the Company premises and, therefore, all Company policies and rules, including the prohibition against solicitation apply to team members and their vehicles while in the parking lot. Team Members/Customers/Visitors that use the Company parking lot do so at their own risk and should keep their vehicles locked. The Company assumes no responsibility for any damages to, or theft of, any vehicle or personal property left in the vehicle while in the parking lot.
>
> Employees who are not scheduled to work are not permitted to be in the company parking lot or otherwise on company premises unless they have a meeting scheduled with management or human resources or are there temporarily to pick up personal items accidentally left from a previous shift.

(GC Exh. 3, p. 9).

The second is the "Solicitation and Distribution Statement," which states:

> Solicitation for any cause and distribution of any materials by team members is prohibited when one or more of the involved team members are on working time. For illustrative purposes, "working time" is defined as all hours during the associate's normal start and stop times, except authorized breaks and lunch periods or other times when the associate is not required to be working.
>
> Team members may not distribute materials to other team members who are on working time or in working areas of the business. Team members are also not permitted to distribute materials soliciting other employees' business or participation in activities -- for example, to purchase products or join sports leagues. Solicitation and/or the distribution of literature for partisan political campaigning or gambling are prohibited at all times in all areas of the business.

(GC Exh. 3, p. 19)

6. *Organizing Campaign*

Christopher Minton began working for the Respondent in January 2023 as a CSDD. (Tr. 75-76). In October 2023, he was selected to be a CSDD trainer. (Tr. 123). He remained in that dual role until September 2025, when he returned to working solely as a CSDD. Katherine Applegate began working for the Respondent in January 2024. (Tr. 166). She works as a CSDD.

In about mid-2024, Minton and Applegate contacted the Union about organizing the Respondent's facility. (Tr. 175). They met with Union organizer Wesley Odle. Following those meetings, Minton and Applegate began soliciting support for the organizing effort by speaking with coworkers and distributing written materials. (Tr. 86, 151-152, 204, and 397).

C. Alleged Unfair Labor Practices[8]

1. *Conversations Between Reynolds and Minton*

a. October 3

In early October 2024, HR generalist Chloie Reynolds received complaints that Minton and two other CSDD trainers were soliciting trainees during their on-road training. (Tr. 367-368). Reynolds held one-on-one meetings with each of the trainers. (Tr. 368-369). Reynolds met with Minton in her office on October 3, at about 1:35 p.m. There is a dispute over what she said.

[8] The General Counsel's primary witnesses were Chirstopher Minton and Katerine Applegate. The Respondent's primary witnesses were Chloie Reynolds, Robert Williams, and Jesse Rose. I found Reynolds, Williams, and Rose to be largely credible witnesses. Each had a candid and straightforward demeanor, had a clear and consistent recollection, and provided detailed and logical testimony on direct and cross examination. I found Minton and Applegate to be less credible. Although Minton had a forthright demeanor, he struggled to independently recall key details, and his testimony was, at times, limited, unsupported, or contradicted by his prior written statements. Applegate had a guarded, almost defensive, demeanor. And while she appeared confident in her recollection, her testimony was, at times, vague, uncorroborated, or simply unbelievable. Where the testimonies conflict, I have credited the Respondent's witnesses over the General Counsel's witnesses.

Reynolds testified she informed Minton that management had received complaints about possible solicitation of trainees during their on-road training, and she reminded him of the solicitation policy (Solicitation and Distribution Statement) in the Employee Handbook. Minton responded "okay." (Tr. 369).

Minton, on the other hand, testified Reynolds began by stating a couple of his trainees had complained that he was "soliciting for a meeting" and that it was interfering with their on-road training. (Tr. 88-89). Minton responded that he understood. Reynolds then stated, "it was against Kroger policy … to solicit for the Union." (Tr. 89).[9] Minton replied "okay."

Later that day, at about 2:05 p.m., Minton sent a text message to Union organizer Wesley Odle. (GC Exh. 6). He wrote "Guess who just got pulled into the office and told not to solicit for the [U]nion during work hours … Pretty sure that's illegal right? …." Odle asked Minton what was said. Minton replied, "They have a [non-solicitation] policy during work hours and that some of my trainees were saying that it was interfering with learning." Minton expressed skepticism that any of his trainees had complained to management. He noted he had talked about politics and religion with some of his trainees and "nothing bad came back on [him] for that."[10]

b. October 4

The following day, Minton went back to Reynolds' office to ask for clarification about the policy she referenced the day before. He secretly recorded this conversation using his cellphone. (GC Exh. 7(a)). The following is the relevant portion of that conversation:

MINTON:	[W]hat is the policy? What am I allowed to talk about with trainees …
REYNOLDS:	So just no soliciting.
MINTON:	No soliciting.
REYNOLDS:	So like no like pushing your opinion on the driver, like your trainees.
MINTON:	Absolutely, absolutely, cause I've had trainees in the past where I've talked …
REYNOLDS:	It's a good way to think about it.... Like also with Girl Scout cookies, like you shouldn't be like, you need to buy my daughter's Girl Scout cookies or …
MINTON:	Yeah.
REYNOLDS:	Like …

[9] Minton initially did not recall Reynolds mentioning the policy. He provided this testimony only after the General Counsel specifically asked what, if anything, Respondent said about Kroger policies. (Tr. 89). While memory lapses and inadvertent omissions may occur because of the stress of testifying, Minton did not appear nervous, making his inability to independently recall this statement in such a brief conversation more dubious.

[10] The primary dispute regarding the October 3 meeting is whether Reynolds told Minton, broadly, that it was against company policy to solicit for the Union, or whether she simply reminded him about the solicitation policy (Solicitation and Distribution Statement), which prohibits employee solicitation during working time. I credit Reynolds that it was the latter. As noted, Minton struggled to independently recall the details of this meeting, and the testimony he offered was in direct conflict with the text message he sent to Odle. In the text, Minton twice acknowledged the prohibition against solicitation was limited to working hours. When asked about the discrepancy between his testimony and his text, Minton acknowledged the text was likely more accurate because it was prepared when the contents were fresher in his mind. (Tr. 169). Although Minton's text indicated the prohibition was limited to "working hours" rather than "working time," I credit that the reference, if any, was to "working time" because that is the term used in the policy that Reynolds referenced in the meeting.

MINTON: Absolutely, absolutely, because I've like had conversation with my trainees about all sorts of things, baseball, family …
REYNOLDS: Yeah.
MINTON: Dungeons and Dragons, because that's my thing, ah, it's like history …. I even talk religion and politics and I never got, never got a complaint. So, I just wanted to make sure … obviously, I only talk about the forbidden topics when I'm very comfortable with the trainee.
REYNOLDS: That's fair.
MINTON: But, uh, but I am clear to talk about this other stuff?
REYNOLDS: Yeah, you don't have to just be like, we're only talking about Kroger and the job related to Kroger, we're not asking that.
MINTON: Absolutely.
MINTON: It's like the whole soliciting of like, opinion pushing, whether that did or did not happen, that's why it's not in anybody's file, just a conversation.
MINTON: Yeah.
REYNOLDS: Nothing is written down.
MINTON: I was, just like what, I've only had like two trainees in the past like two months.
REYNOLDS: Nothing.
MINTON: … I am pretty opinionated… I don't remember sharing anything like super specific then again.
REYNOLDS: Yeah, that's not it. Nobody's in trouble, nothing.
MINTON: Okay.
REYNOLDS: I just have to cover my bases on a conversation standpoint. Nothing was written down, nothing was recorded, nothing in anybody's file.
MINTON: Absolutely.
REYNOLDS: It was just a reminder.
MINTON: Absolutely. Okay. Thank you so much.
REYNOLDS: Yes, of course.
….

(GC Exh. 7(b), pg. 4-6).

2. *Conversations and Interactions Involving Reynolds and Applegate*

a. October 10

i. Conversation

On October 10, Applegate worked her morning shift and punched out at around 1:30 p.m. After exiting the facility through the main entrance, Applegate went and stood near the sidewalk. As Applegate stood there, an afternoon-shift employee named Jasmina Selmonvic was heading into the facility to start her shift. Applegate stopped and spoke to Selmonvic and gave her a Union authorization card. Selmonvic took the card and went inside. (Tr. 179-180). Selomnvic then went to

the HR office and spoke with Krystal Brown and Chloie Reynolds about her interaction with Applegate. (Tr. 374-375).[11]

After speaking with Selmonvic, Reynolds went to her office and reviewed the Parking policy in the Employee Handbook. (Tr. 375). She then went outside and spoke with Applegate. There is a dispute over what was said.

Reynolds testified she informed Applegate there had been complaints she was blocking the front door. Reynolds then reminded her about "the two policies in the handbook, the solicitation and parking lot policy." (Tr. 377-378).

Applegate testified Reynolds told her there was no soliciting on company property. (Tr. 181-182). Applegate responded that she believed the Act allowed her to distribute Union materials off company time and outside of work areas. Reynolds reiterated that there was no soliciting on company property. According to Applegate, Reynolds did not reference any policy or the Handbook. (Tr. 205).[12]

ii. Alleged Monitoring

Following their conversation, Applegate then turned and walked away, and Reynolds went back inside and to her office. Applegate testified she walked across the front lot to a nearby intersection on Robards Lane to speak with Union organizer Wesley Odle. (Tr. 181-183). She estimated the intersection was about a football field away from the Respondent's main entrance. After speaking with Odle for several minutes, Applegate saw Reynolds, supervisor Will Mosley, and another unidentified supervisor exit through the main entrance. The three managers stood outside for about five minutes and then went back inside. According to Applegate, they "seemed to be observing the area." She did not provide any further details.

Reynolds denies this. She testified that after going back inside following their conversation, she did not exit the facility again until about 5 p.m., when she left for the day. (Tr. 378-379). She also testified that October 10 was a Thursday, and Mosley did not work on Thursdays. (Tr. 379).[13]

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[11] Brown and Reynolds testified about what Selmonvic reported to them regarding her interaction with Applegate, but Selmonvic was not called to testify. The General Counsel objected on hearsay grounds. I informed the parties I would receive the testimony solely as context for what Reynolds did next after speaking with Selmonvic, not for the truth of what Selmonvic allegedly reported to them. (Tr. 373-374). The Respondent similarly sought to introduce testimony about a conversation Reynolds later had with another employee, Jared Brown, who allegedly expressed concerns about Applegate's solicitations. Brown was not called to testify. I made the same ruling regarding Reynolds' testimony about what Brown said to her. (Tr. 386-387).

[12] The primary dispute regarding their October 10 conversation is whether Reynolds referenced the Parking policy when she spoke to Applegate about her conduct. I credit that Reynolds did. As stated, I found Reynolds to be a more credible witness. I also find it both more logical and reasonable that Reynolds, as the facility's head of HR, would reference the policy she just reviewed in her office when speaking with Applegate about her conduct. It also is consistent with Reynolds' practice. As noted, a week earlier, when Reynolds met with Minton about soliciting trainees during work time, she specifically referenced the relevant policy.

[13] I again credit Reynolds over Applegate. Applegate's testimony about her observations was unsupported and, frankly, unbelievable. She testified she was with Odle when she saw the managers come and stand outside by the entrance. Yet, neither the Union nor the General Counsel called Odle as a witness, despite him being present at the hearing. The decision not to call Odle, the Union's agent, to testify went unexplained. An administrative law judge may draw an adverse inference from a party's failure to call a witness who may be reasonably assumed

b. October 15

i. Conversation

On October 15, Applegate again worked her morning shift and clocked out at approximately 1:35 p.m. She went to her car and retrieved a handful of Union flyers.[14] She stood on the sidewalk and passed out the flyers to employees as they were entering or exiting the main entrance. After about ten minutes, Reynolds and Will Mosely came to the main entrance. Reynolds came outside and spoke to Applegate on the sidewalk. There is a slight dispute over what was said.

Applegate testified that Reynolds told her that according to company policy, there was no solicitation on company property. (Tr. 183). Applegate responded that her conduct was protected by Section 7 of the Act. She then handed Reynolds information she printed from the Board's website addressing Section 7 and protected activity. (R Exh. 12). Reynolds took the document and stated they would have their lawyers look at it. (Tr. 183). Reynolds and Mosely then went back inside the facility.

Reynolds testified she received reports that Applegate may be blocking the main entrance. (Tr. 387-388). She headed there to speak with Applegate. Mosely followed behind her. When they arrived at the entrance, Reynolds went outside. Mosley remained behind her, holding the front door open. Before Reynolds could say anything, Applegate handed her papers she said she had printed off from the Board's website. (Tr. 388-389) (R. Exh. 12). After taking what Applegate handed to her, Reynolds reminded Applegate about the Respondent's Parking policy. (Tr. 391). Reynolds then went inside and Mosely followed. (Tr. 391-392).[15]

ii. Alleged Monitoring

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to be favorably disposed to a party and could reasonably be expected to corroborate its version of events, particularly when the witness is the party's agent. See *Target One, LLC*, 361 NLRB 848, 860 (2014); *Battle Creek Health System*, 341 NLRB 882, 884 (2004). Although I decline to draw an adverse interference, I find the lack of corroboration on this disputed fact further detracts from Applegate's testimony.

Also detracting from Applegate's testimony is that it is inherently improbable. According to Google maps, the only intersection near the Respondent's facility on Robards Lane is north of the parking lot, where Robards Lane crosses Gardner Lane. See www.google.com/maps/place/4325+Robards+Ln,+Louisville,+KY. Using the Distance Measurement Tool on Google maps, this intersection is about 650 feet (or more *two* football fields) from the main entrance. Additionally, the view between the intersection and the entrance is blocked by a woodland area directly north of the parking lot, which extends north to Gardner Lane and east of Robards Lane. According to the Distance Measurement Tool, this woodland area is about 150 feet by 350 feet. The satellite images and photographs establish the trees throughout this area are taller than the height of the Respondent's facility. (R. Exhs. 1 and 2). Although the record does not reflect where at the intersection Applegate and Odle were, I find the area contains several trees that are large and wide enough to block any direct view between the intersection to the main entrance. Based on the distance and the arboreal impediments, I do not credit Applegate could accurately identify who was standing outside or what they were doing.

[14] Applegate testified she did not distribute Union flyers outside the Respondent's facility prior to October 15. However, she did distribute flyers in the employee breakroom while off the clock (before and after her shift) on multiple occasions. (Tr. 204-205). Reynolds observed Applegate distributing flyers in the breakroom in early October, after Applegate's shift. (Tr. 375-376). Reynolds did not speak with Applegate about this conduct.

[15] The primary dispute regarding this October 15 conversation is whether Reynolds specifically referenced the Parking policy when speaking with Applegate. For the same reasons as above, I credit that Reynolds did.

Following the conversation, Applegate remained outside for several more minutes. While she was outside, Mosely came back out. Applegate testified he stood approximately a few yards away and was "just observing." (Tr. 184; 195-197). As far as specifics, Applegate explained he was "standing there, not saying anything, not conducting any action, just present." (Tr. 197).[16] He remained there for about five minutes and then returned inside.[17] After he did, Applegate got into her car and left at about 1:45 p.m. (Tr. 185).[18]

4. November 22

As stated, the transportation supervisors held meetings, or huddles, for CSDDs in the employee breakroom at the beginning of each shift/start time.[19] In the mornings, these huddles occurred every half hour between 4:30 and 7 a.m., and they lasted three to five minutes. On November 22, Applegate attended the meeting that started at 5 a.m. She arrived in the breakroom at approximately 5:02 a.m. Chloie Reynolds and supervisor Jesse Rose were both present. Reynolds was reading from a document describing the collective bargaining process. Applegate secretly recorded a portion of the meeting on her cellphone. She asked Reynolds why they were having captive audience meetings when the Board ruled them illegal a week ago. Reynolds disputed that. (GC Exh. 10(a)-(b)). Reynolds then handed out copies of the document she read from, and she left the rest on a table in the breakroom. (GC Exhs. 2(a)-(c)). The CSDDs in attendance then left to go to their delivery vehicles.

ALLEGATIONS AND ANALYSIS

A. Overview of the Allegations

The Amended Consolidated Complaint specifically alleges the Respondent violated Section 8(a)(1) of the Act: (1) since about April 2024, by maintaining its Parking policy (¶5); (2) on about

[16] Applegate's testimony about Mosley's conduct was limited and vague. She did not testify whether he ever looked at her while standing outside.

[17] Reynolds testified Mosley would often spend a portion of his day outside in the front parking lot. (Tr, 393-394). She stated he would always park his personal pick-up truck in the front parking spot near the main entrance. He would take phone calls out there, talking to CSDDs. He frequently would sit on the tailgate to his truck to smoke or vape during the day, because neither was allowed inside the facility. (Tr. 413-414).

[18] I decline to draw an adverse inference from the Respondent's failure to call Mosley as a witness. Mosley's employment with the Respondent ended in 2025. It generally is not appropriate to draw an adverse inference from the employer's failure to call former managers who are no longer under the control of the company. *Heart & Weight Institute*, 366 NLRB No. 53, slip op. at 1 fn. 1 (2018) (finding that drawing an adverse inference under the "missing witness" rule generally does not apply to a former employee because they are generally not considered to be under a party's control), enfd. 827 Fed. Appx. 724 (9th Cir. 2020).

[19] Minton and Applegate testified these huddles were mandatory. Reynolds and Rose testified they are not. I credit Reynolds and Rose on this point. Minton and Applegate testified they were told by supervisors on multiple occasions the huddles were mandatory, but they failed to provide specifics, such as when and where the conversations took place, the context, and what specifically was said. (Tr. 84-85; 186). Another factor detracting from their testimony is they were never disciplined or threatened with discipline regarding their attendance at this meeting. (Tr. 140-141; 215-216). Both confirmed they missed or arrived late for these huddles on multiple occasions, including after they were allegedly told they were mandatory. Reynolds confirmed no employee was disciplined related to their attendance at these huddles. (Tr. 400-401). Finally, CSDDs have a five-minute grace period when arriving for work. (Tr. 215; 338). These huddles occur during the first three to five minutes of each start time. As such, the huddles occur before employees are required to be at work. Rose credibly testified that most CSDDs use their grace period and do not come to the huddles. (Tr. 338).

October 3, when Reynolds, in her office, prohibited employees from talking about the Union and interrogated employees about their union sympathies (¶6(a)(i)-(ii)); (3) on about October 4, when Reynolds, in her office, prohibited employees from talking about the Union during working time while permitting employees to talk about other non-work subjects (¶6(b)); (4) on about October 10, when Reynolds, at the sidewalk outside the entrance to the facility, prohibited employees from soliciting for the Union on company property (¶7(a)); (5) on about October 10, when Reynolds and supervisor Will Mosley, at the sidewalk outside the entrance to the facility, surveilled employees engaged in union activities (¶7(b)); (6) on about October 15, when Reynolds, at the sidewalk outside the entrance to the facility, prohibited employees from soliciting for the Union on company property (¶8(a)); (7) on about October 15, when Mosley, at the sidewalk outside the entrance to the facility, surveilled employees engaged in union activities (¶8(b)); and (8) on about November 22, when Reynolds, in the breakroom at the facility, expressed views concerning unionization during a captive-audience meeting (¶10).[20] The Respondent, in its answers, denies these allegations and raises various affirmative defenses.[21]

Section 8(a)(1) prohibits an employer from interfering with, restraining, or coercing employees in the exercise of their rights guaranteed under Section 7 of the Act. Section 7 guarantees employees "the right to self-organization, 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" as well as the right "to refrain from any or all such activities." The test for evaluating whether there has been a violation of Section 8(a)(1) is an objective one, i.e., whether, under the totality of the circumstances, the employer's statement or conduct would reasonably tend to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. *Multi-Ad Services*, 331 NLRB 1226, 1227-1228 (2000); *Sage Dining Services, Inc*., 312 NLRB 845, 846 (1993). In making this evaluation, the Board does not consider the employer's motive or whether the coercion succeeded or failed. *American Tissue Corp*., 336 NLRB 435, 441 (2001); *American Freightways Co., Inc*., 124 NLRB 146, 147 (1959).

B. Section 10(b)

The Respondent initially defends the allegations in paragraphs 6(a)(i), 6(b), 7(a) and 8(a) of

[20] At the hearing, I granted the General Counsel's motion to withdraw paragraph 9 of the Amended Complaint, which alleged on about October 16, the Respondent, through Joni Pitzer, in the breakroom at the Respondent's facility, prohibited employees from soliciting for the Union on company property. (Tr. 10-11).

[21] The Respondent raises several affirmative defenses on constitutional grounds, such as: (1) the Region's prosecution of this case is void *ab initio*, as the Board did not have a lawful quorum at the time the Region, on behalf of the Acting General Counsel, issued the complaints. Thus, the Acting General Counsel was without authority to file the complaints because the Board lacks the requisite quorum of Presidentially appointed Members; (2) the administrative proceeding in this matter is being heard by an Administrative Law Judge who is unconstitutionally exercising substantial executive functions while being insulated from Presidential control in violation of Article II of the Constitution; and (3) the proceedings in this matter are unconstitutional because the Board's structure violates separation of powers insofar as the Board's Members are unconstitutionally insulated from removal by the President in violation of Article II of the Constitution; (4) the proceedings in this matter violate Kroger's due process rights and transgresses the separation of powers because the Board is exercising prosecutorial, legislative, and adjudicatory authority within the same proceeding; and (5) he proceedings in this matter violate Kroger's right under the Seventh Amendment to a jury trial because it adjudicates private rights outside the confines of an Article III court. The Board has rejected each of these defenses. See *Amazon.com Services LLC*, 374 NLRB No. 82 fn. 5 (2026); *Portillos Hot Dogs, LLC*, 374 NLRB No. 58 fn. 2 (2026) (cases cited therein).

the Amended Consolidated Complaint should be dismissed as untimely under Section 10(b) of the Act. Section 10(b) provides, in pertinent 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." The six-month period starts to run when the charging party has clear and unequivocal notice---either actual or constructive---of the acts that constitute the alleged violation. *John Morell & Co*., 304 NLRB, 896, 899 (1991). Notwithstanding the language of Section 10(b), the Board does not bar all allegations filed outside the six-month period. It has held that "the timely filing of a charge tolls the time limitation of Section 10(b) as to matters subsequently alleged in an amended charge which are similar to, and arise out of the same course of conduct, as those alleged in the timely filed charge. Amended charges containing such allegations, if filed outside the [six-month] period, are deemed, for 10(b) purposes, to relate back to the original charge." *Pankratz Forest Industries*, 269 NLRB 33, 36-37 (1984), enfd. mem. sub nom. 762 F.2d 1018 (9th Cir. 1985). In determining whether an amended charge relates back, the Board applies the "closely related" test set forth in *Redd-I, Inc*., 290 NLRB 1115 (1988), and later clarified by *Carney Hospital*, 350 NLRB 627 (2007). Under this test, 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) the respondent would raise the same or similar defenses to both the otherwise untimely and timely allegations. The Respondent has the burden of proof regarding its untimeliness defense. *Midwest Terminals of Toledo*, 365 NLRB 1645, 1659-1660 (2017).

The Respondent argues the four allegations at issue are untimely because they were not raised until the Union filed the amended charge in Case 09-CA-353140, which was more than eight months after the Union had notice of the underlying events giving rise to the allegations. It further argues those untimely allegations do not relate back to the timely allegations in the original charge because they are predicated on a separate set of facts, involve different theories, and are analyzed under separate Board decisions.

In reviewing the evidence, I conclude the amended allegations at issue relate back and are closely related to the allegations in the original charge. The original charge alleges, in relevant part, that the Respondent violated Section 8(a)(1) by maintaining policies that prevent or discourage employees from forming, joining, or supporting a labor organization. The amended charge alleges the Respondent further violated Section 8(a)(1) by applying those policies to employees engaged in such activities, including specifically the activities alleged in paragraphs 6(a)(i), 6(b), 7(a) and 8(a) of the Amended Consolidated Complaint. Not only do these allegations involve the same provision of the Act, but they also involve the same legal theory, which is the Respondent had and imposed restrictions that would reasonably tend to interfere with, restrain, and/or coerce employees' in the exercise of their Section 7 rights.[22] The allegations also stem from the same factual situation and are a continuation of the same chain of events, which again occurred when the Respondent notified Minton and Applegate of the policies and then applied them to restrict or limit their organizational activities. Finally, the Respondent has raised the same or similar defenses to the allegations, namely that the policies are lawful and, as such, so were their applications on the dates alleged. For these reasons, I conclude the Respondent has failed to meet its burden of establishing the amended allegations are untimely under Section 10(b). I, therefore, will address the merits of the allegations.

[22] Although the maintenance allegation in the Amended Consolidated Complaint is limited to the Parking Policy, the charge appears broader and would reasonably include other provisions in the Employee Handbook, such as the Solicitation and Distribution Statement.

C. Maintenance of Parking Policy

Several of the allegations concern the Respondent's Parking policy. The General Counsel first alleges the Respondent's maintenance of the policy violates Section 8(a)(1) because it broadly prohibits employee solicitation and off-duty access. The prohibition against solicitation states, "The parking lot is part of the Company premises and, therefore, all Company policies and rules, including the prohibition against solicitation apply to team members and their vehicles while in the parking lot." The prohibition against off-duty access states, "Employees who are not scheduled to work are not permitted to be in the company parking lot or otherwise on company premises unless they have a meeting scheduled with management or human resources or are there temporarily to pick up personal items accidentally left from a previous shift." The Respondent's separate Solicitation and Distribution Statement, which prohibits employee solicitation during working time and prohibits employee distribution of materials on working time or in working areas, is not alleged to violate the Act.

1. Policy's Prohibition Against Solicitation

An employer may maintain a policy restricting union solicitation on company property during working time in the absence of evidence that it was promulgated for a discriminatory purpose or applied in a discriminatory manner; however, an employer may not restrict union solicitation on company property during non-working time in the absence of proof that such a restriction is necessary to maintain production or discipline. See *Harbor Freight Tools USA, Inc*., 373 NLRB No. 2, slip op. at 1-2 (2023) (solicitation rule was overbroad as written because it failed to clarify that the solicitation ban did not extend to employees' working areas during their non-working time). See also *UPS Supply Chain Solutions, Inc*., 357 NLRB 1295, 1296 (2011); *Our Way, Inc*., 268 NLRB 394, 394-395 (1983); and *Peyton Packing Co*., 49 NLRB 828, 843 (1943), enfd. 142 F.2d 1009 (5th Cir. 1944), cert. denied 323 U.S. 730 (1944). To be valid, the policy must contain or incorporate a clear statement of its scope and limitations. *UPS*, 327 NLRB 317 (1998), enfd. 228 F.3d 772 (6th Cir. 2000); *Albertsons, Inc. v. NLRB*, 161 F.3d 1231,1236 (10th Cir. 1998). Any ambiguity in the wording of the policy is construed against the employer as the drafter. See *Fiesta Hotel Corp*., 344 NLRB 1363, 1368 (2005); *Baptist Medical Center*, 338 NLRB 346, 363 (2002); *Altorfer Machinery*, 332 NLRB 130 (2000). The existence of an overbroad policy violates Section 8(a)(1) even if the employer does not enforce or plan to enforce it. See *Alaska Pulp Corp*., 300 NLRB 232, 234 (1990), enfd. 944 F.2d 909 (9th Cir. 1991); *Brunswick Corp*., 282 NLRB 794, 795 (1987).

The General Counsel argues the Parking policy's prohibition against solicitation is facially unlawful because it applies regardless of whether the solicitation occurs during working or non-working time. The Respondent contends the policy's prohibition is limited to working time, and this limitation is the result of the policy's incorporation of the Solicitation and Distribution Statement. The Respondent contends the incorporation is evident by the Parking policy's use of the phrase "all Company policies and rules, including the prohibition against solicitation apply." The General Counsel counters the incorporation of the Solicitation and Distribution Statement is not explicit and the phrasing in the Parking policy is ambiguous at best. They argue a reasonable employee would not understand the Parking policy refers to the Solicitation and Distribution Statement, and it is not reasonable to construe the Parking policy to be lawful when the prohibition against solicitation contained therein broadly prohibits employee solicitation in the parking lot. Also, the Respondent has presented no proof that the provision is necessary to maintain production or discipline.

In reviewing the evidence, I agree there is enough ambiguity over whether the Parking policy's prohibition against solicitation is limited to non-working time, and this ambiguity is construed against the Respondent as the drafter. The Board has held that when an employer has a no-solicitation policy that is ambiguous and presumptively unlawful, it has the burden of showing it communicated or applied the policy in a way that clearly conveyed its intent to permit employee solicitation during non-working time. See e.g., *Burndy, LLC*, 364 NLRB 946, 978 (2016); *Winkle Bus Co., Inc*., 347 NLRB 1203, 1216 (2006); *Our Way*, 268 NLRB at 395 fn. 6. In reviewing the record, I find the Respondent has not met this burden. There is no evidence management notified employees they could solicit in the parking lot or sidewalk during non-working time. The evidence, in fact, is to the contrary. As discussed more fully below, when Reynolds approached Applegate outside the main entrance on October 10, she invoked the Parking policy's prohibition against solicitation even though she knew that Applegate and Selmonvic were not on working time at the time of their interaction because Applegate had clocked out and Selmonvic had not yet clocked in. The same is true when Reynolds approached Applegate outside the main entrance on October 15. Reynolds again invoked the policy's prohibition against solicitation even though Applegate had clocked out, and the employees she was interacting with outside the main entrance were arriving for or leaving work, and were not clocked in.[23]

Based on the foregoing, I conclude the Parking policy's prohibition against solicitation violates Section 8(a)(1) because, by its wording and application, it is not limited to working time and, therefore, imposes unlawful restrictions on union solicitation.

2. Prohibition on Off-Duty Employee Access

The above conclusion is bolstered by the Parking policy's prohibition against off-duty access, which prohibits employees from engaging in solicitation on the company's premises during non-working time. In *Tri-County Medical Center*, 222 NLRB 1089, 1089 (1976), the Board held an employer's policy barring off-duty employee access is valid only if it: (1) limits access solely with respect to the interior to the plant and other working areas; (2) is clearly disseminated to all employees; and (3) applies to off-duty employees seeking access to the plant for any purpose and not just to those employees engaging in union activity. A policy that denies off-duty employees entry into parking lots, gates, and other outside non-working areas is invalid unless it is justified by business reasons. Id. In establishing a business reason, the Board has held an employer cannot rely on speculation, particularly regarding potential risks. See *Postal Service*, 318 NLRB 466, 468 (1995); *Orange Memorial Hospital*, 285 NLRB 1099, 1100-1101 (1987).

Only the first *Tri-County* factor is in dispute, and the focus is on whether the front parking lot is a working area. In general, the Board has held that parking lots and sidewalks on the employer's premises do not qualify as working areas even when periodic or incidental work occurs there. See *Meijer, Inc*., 344 NLRB 916, 917 (2005), enf. in relevant part 463 F.3d 534 (6th Cir. 2006); See also *Burger King*, 366 NLRB No. 156, slip op. at 2 (2018); *National Steel Corp.*, 173 NLRB 401 (1968), enfd. 415 F.2d 1231 (6th Cir. 1969); and *Plant-City Steel Corp*., 138 NLRB 839 (1962), enfd. 332 F.2d 1231 (6th Cir. 1964). To qualify as a working area, the space and the work performed there must be integral---not merely incidental---to the employer's primary business. *Meijer, Inc*., supra. See also *Santa Fe Hotel & Casino*, 331 NLRB 723, 730 (2000); *U.S. Steel Corp*., 223 NLRB 1246, 1248 (1976).

[23] These applications further undermine the Respondent's claim that the Parking policy incorporated the Solicitation and Distribution Statement's limitation on the prohibition to working time because Applegate's conduct occurred while she and the employees she spoke to were on non-working time.

The Respondent's primary business is staging and delivering online grocery orders. Typically, it stages its delivery vehicles in the back lot, and the CSDDs leave from there to make their deliveries. On occasion, the Respondent will stage the vehicles in the front lot when the back lot is unavailable because of construction, a power outage, or inclement weather. Additionally, a few CSDDs will pull their delivery vehicle around and briefly park in the front lot to quickly run inside the main entrance to retrieve a fuel card, a replacement battery, or some other needed equipment, before leaving to make their deliveries. Based on these examples, the Respondent argues the front lot is a working area. In reviewing the evidence, I conclude that while some work occasionally occurs in the front lot, that work appears to be too sporadic or incidental to the Respondent's primary business to transform the front lot into a working area.[24]

Whether the front parking lot is a working area is largely irrelevant, because the Parking policy broadly bars off-duty employees from accessing *the entire company premises*, except for limited purposes. As such, the policy broadly bars employee solicitation on company premises during their off-duty hours. The Board has consistently held that an employer may not treat its entire premises as a working area for the purpose of excluding employee solicitation or distribution during non-working time. *Santa Fe Hotel*, 331 NLRB at 723; *Flamingo Hilton-Laughlin*, 330 NLRB 287, 289-290 (1999); and *U.S. Steel Corp*., 223 NLRB at 1247-1248. That is what the policy's prohibition against off-duty access does.

The Respondent contends that even if the *Tri-County* factors are not all met, it has articulated legitimate business reasons for prohibiting off-duty employee access. Specifically, it notes that it leases the exterior areas, including the front parking lot, which it shares with Daifuku, and it must be respectful of how much of those areas it uses and how that use impacts Daifuku. Additionally, it cites safety and congestion concerns in the front lot caused by allowing employees to be present or remain outside of their work hours. The Respondent points to the narrowness of the driving aisles, and that the employees' personal vehicles cannot fit side-by-side with a delivery vehicle parked in one of the driving aisles. It argues that allowing off-duty employees to access the lot outside of their work time would create increased risk of accidents and injuries, and those risks worsen during shift changes when there are multiple vehicles entering and exiting the lot.

As stated, an employer cannot rely on speculation to justify a restriction on access, and, in the end, that is what the Respondent has done. There was no evidence presented that Daifuku or the landlord raised any issue regarding the Respondent's use of the parking lot or other shared areas. Nor is there evidence of accidents or injuries occurring because of the delivery vehicles in the front lot. Presumably if these were actual issues caused by the delivery vehicles presence in the front lot, the Respondent would have taken reasonable steps to address them, and there is no evidence of that.

For these reasons, I conclude the Parking policy's prohibition again off-duty employee access violates Section 8(a)(1) because it broadly restricts employees from union solicitation or distribution on the company's premises during non-working time, without proof of a legitimate business reason.

D. Prohibiting Employees from Talking About the Union

[24] Even if these instances were more than incidental or sporadic, the record reflects the front lot is primarily used for employee, customer, and visitor parking. As such, the front lot is, at most, a mixed-use area. The Board has held an employer may not restrict union solicitation or distribution during non-work time in mixed-use areas. See *UPMC Presbyterian Hosp*., 366 NLRB No. 142, slip op. at 1 (2018); *DHL Express, Inc*., 357 NLRB 1742, 1742 fn. 1 (2011); and *UPS*, 327 NLRB 317 (1998), enfd. 228 F.3d 772 (6th Cir. 2000).

The General Counsel alleges that Reynolds violated Section 8(a)(1) during her October 3 meeting with Minton when she prohibited him from talking about the Union. They further allege Reynolds violated Section 8(a)(1) during her October 4 meeting with Minton when she prohibited him from talking about the Union during working time while allowing him to talk about other non-work subjects. The Board has held it is a violation of Section 8(a)(1) for an employer to broadly prohibit employees from talking about the union during working time. *Colburn Electric*, 334 NLRB 532, 551-552 (2001) (holding that a rule prohibiting employees from talking about the union during work was facially unlawful), enfd. 54 Fed.Appx. 793 (5th Cir. 2002). See also *Earthgrains Co*., 351 NLRB 733, 737 (2007). It also is a violation of Section 8(a)(1) for an employer to allow employees to talk about nonwork-related subjects during working time but to prohibit them from talking about union-related matters. See *Jensen Enterprises*, 339 NLRB 877, 878 (2003); *Frazier Industrial Co*., 328 NLRB 717, 717 (1999); and *Industrial Wire Products, Inc*., 317 NLRB 190, 190 (1995).

At no time did Reynolds broadly prohibit Minton from talking about the Union during working time. During the October 3 meeting, she informed him of reports she received that CSDD trainers may be soliciting trainees during their working time, and she reminded him of the Solicitation and Distribution Statement's prohibition against solicitation during working time. The General Counsel argues that, in this context, soliciting and talking are the same because Reynolds failed to define solicitation, and that, without providing a definition, employees would reasonably interpret it broadly to include talking about the Union. The General Counsel provided no authority for this proposition, and I have found none.

The General Counsel separately cites *Wal-Mart Stores, Inc*., 340 NLRB 637, 638 (2003), which held that solicitation, in the context of a union campaign, means asking someone to join the union by signing their name on an authorization card or petition; it does not mean merely talking about a union, a union meeting, or whether a union is good or bad. The General Counsel asserts that Reynolds spoke to Minton about the policy without knowledge or suspicion that he ever presented an employee with a card or petition when speaking to them about the organizing effort. As such, they argue the Respondent could not lawfully restrict him from talking with employees about the Union by invoking the no-solicitation policy in the Solicitation and Distribution Statement.

While this argument finds support in *Wal-Mart Stores*, as well as in *Conagra Foods, Inc*., 361 NLRB 944, 945 (2014), enfd. in part 813 F.3d 1079 (8th Cir. 2016), both decisions were later overruled in *Wynn Las Vegas, LLC*, 369 NLRB No. 91 (2020). In *Wynn*, the Board broadened the definition of solicitation to include conversations where an employee makes statements to a coworker during working time that are intended and understood as an effort to persuade the employee to vote a particular way in a union election. If the employer has a lawful no-solicitation policy, an employee may be disciplined for conversations aimed at trying to persuade an employee to support the union. Id. slip op. at 6-7.[25]

When Minton came to Reynolds on October 4 seeking clarification on what he was allowed to talk about with the trainees, Reynolds told him, "just no soliciting … no like pushing your opinion on … your trainees." She provided the example of him trying to get a coworker to buy his daughter's Girl Scout cookies, and how that was not allowed. When he asked whether he could talk to trainees about

[25] The exception, of course, would be if the employer discriminatorily enforced its policy. However, there is no evidence the Respondent discriminatorily enforced the no-solicitation provisions in its Solicitation and Distribution Statement or its Parking policy to allow other types of soliciation.

non-work topics, such as history, religion, politics, Dungeons & Dragons, etc., she indicated he could, and that he was not limited to talking about company-related topics. She told him, again, employees just could not engage in "soliciting" or "opinion pushing." These instructions are entirely consistent with the holding in *Wynn* that an employer may apply its lawful no-solicitation policy to prohibit employees from having conversations during working time to persuade others about their support for the union.

Based on the evidence presented, I find the General Counsel failed to establish that Reynolds unlawfully prohibited Minton from talking about the Union during their October 3 and 4 meetings. I, therefore, recommend dismissing these allegations.[26]

[26] The Respondent raises, as an affirmative defense, these allegations should be dismissed because Minton was, at the time, a supervisor under Sec. 2(11) of the Act. Individuals are statutory supervisors if (1) they have the authority to engage in any one of the supervisory functions listed in Sec. 2(11): to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action; (2) their exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment; and (3) their authority is held in the interest of the employer. See *Oakwood Healthcare, Inc*., 348 NLRB 686, 687 (2006)). The burden of proving supervisory status is on the party alleging such status. Id. at 687. Accordingly, "[t]he Board construes a lack of evidence on any of the elements necessary to establish supervisory status against the party asserting that status." *Busco Tug & Barge, Inc*., 359 NLRB 486, 490 (2012). A party seeking to prove that an individual is a supervisor must do so by the presentation of "detailed, specific evidence" that is not "in conflict or otherwise inconclusive." Id.

Independent judgement will not be found where it "is dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective bargaining agreement." *Oakwood Healthcare*, 348 NLRB at 693. Accordingly, for a recommendation to be "effective" and involve "independent judgement," the recommendation must be independent of an investigation or other action of the purported supervisor's superiors and be based on an "opinion or evaluation by discerning and comparing data." Id. at 692-693. Mere evaluation of an employee or applicant, without more, following observation of their performance is insufficient to establish supervisory authority. *Harbor City Volunteer Ambulance Squad, Inc*., 318 NLRB 764 (1995).

The Respondent first argues CSDD trainers have 2(11) authority to assign and responsibly direct their trainees' work during their two to three days of on-road training. The authority to "assign" refers to the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant over all duties, i.e., tasks, not the ad hoc instruction that the employee perform a discrete task(s). See *Oakwood Healthcare*, 348 NLRB at 721. See also *Providence Hospital*, 320 NLRB 717, 727, 729-730 (1996) (routine assignment or direction to perform discrete task stemming from experience, skills, and training, insufficient indicia of supervisory authority). The record does not establish the trainers have the authority to assign. The training supervisor assigns the trainee to a trainer, and the trainee accompanies the assigned trainer; the trainer is not involved in the pairing or the scheduling. Additionally, the record does not establish trainers exercise independent judgment in assigning tasks to the trainee. The Respondent provides trainers with detailed checklists containing the skills, tasks, and techniques the trainees are expected to learn and independently perform by the conclusion of their on-road training. The trainers may rely on their own training and experience in teaching the trainees these skills, tasks, and techniques, but that alone does not establish supervisory status. See *KGW-TV*, 329 NLRB 378 (1999) ("even the exercise of substantial and significant judgment by employees instructing other employees based on their own training, experience and expertise does not translate into supervisory authority responsibly to direct other employees").

The same is true regarding the trainer's purported authority to responsibly direct the trainee's work. The trainer follows the checklist, teaches the skills, tasks and techniques contained on it, and then has the trainee independently perform each of them. For direction to be "responsible," the person directing and performing the oversight of the employee must be accountable for the performance of the task by the other, such that some

E. Interrogated Employees about their Union Sympathies

The General Counsel also alleges Reynolds violated Section 8(a)(1) during her October 3 meeting with Minton when she interrogated him about his Union sympathies. In assessing whether an employer's questioning of an employee amounts to unlawful interrogation, the Board considers the totality of the circumstances test set out in *Rossmore House*, 269 NLRB 1176 (1984), affd. sub nom. 760 F.2d 1006 (9th Cir. 1985), which considers factors such as the background against which questioning occurred, the nature of the information sought, the identity of the questioner, the place and method of interrogation, the truthfulness of the employee's reply, and whether the employee involved as an open and active union supporter. See also *Westwood Health Care Center*, 330 NLRB 935, 939-940 (2000). Unlawful interrogation may occur when a manager makes remarks that are not phrased as questions but are clearly calculated to elicit responses about union sentiments. Id. at fn. 21.

The General Counsel contends that Reynold's statements to Minton that his trainees had complained about him soliciting them and it was interfering with their training constituted unlawful interrogation. The assertion is that such a vaguely leveled accusation of wrongdoing from the facility's head of HR during a one-on-one meeting in her office, though not phrased as a question, indirectly called for a response, and that an employee in Minton's place would naturally seek to defend themself by explaining what they did or did not do in terms of union activities.

I reject this contention. In reviewing the totality of the circumstances, I conclude Reynolds did not, directly or indirectly, attempt to elicit any information from Minton regarding his or any other employee's union activities. Rather, she made him aware of the complaints and advised him of the Respondent's policy prohibiting employee solicitation during working time. Additionally, Reynolds did not accuse Minton of solicitation. She stated she received reports that solicitation may be occurring. As the facility's head of HR, it would not be unusual or unreasonable for her to ensure he was aware of the company's policies applicable to such conduct.

Based on the evidence, I find the General Counsel failed to establish unlawful interrogation. I, therefore, recommend dismissing this allegation.

F. Prohibiting Employees from Soliciting for the Union on Company Property

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adverse consequence may befall the one providing the oversight if the tasks performed by the employee are not performed properly. *Oakwood Healthcare*, 348 NLRB at 691-692. Robert Williams testified that if the training supervisor sees a repeated pattern of trainees failing to be properly trained, and if coaching and development efforts do not help the trainer in addressing the issue(s), the trainer could be removed from the program. (Tr. 306-307). That reflects adverse consequences for the trainer failing to properly perform their job of training the trainees, not for failing to oversee and responsibly direct the trainee in the performance of their job.

The Respondent next argues CSDD trainers have the Sec. 2(11) authority to recommend trainees for promotion and termination at the conclusion of their on-road training based on their assessment of the trainee. These recommendations, however, are not effective because they are not independent of an investigation or other action by the trainer's superior. If the trainer observes the trainee has a disqualifying issue or is unable to perform one or more or the tasks, skills, or techniques on the checklist, the trainer notifies the training supervisor, and, according to Williams, the supervisor will independently observe the trainee and determine if they should remain or be terminated. Conversely, if the trainer reports the trainee successfully completed the items on the detailed checklist, the trainee is placed on a three-week training schedule, and their supervisor will conduct an independent evaluation in the first 30 days to verify the new hire can perform the job.

Based on this evidence, I conclude the Respondent failed to establish the trainers are 2(11) supervisors.

The General Counsel next alleges that Reynolds violated Section 8(a)(1) during her October 10 and 15 conversations with Applegate when she prohibited her from soliciting for the Union on company property. As stated above, an employer may prohibit employee solicitation during working time and in working areas, but it cannot extend the prohibition to non-working areas in the absence of proof that such a restriction is necessary to maintain production or discipline. Reynolds testified, and I credit, that both times she spoke to Applegate outside the main entrance she cited to the Parking policy, which is unlawfully overbroad because it prohibits employee solicitation in non-working areas, and it was applied (at least in the two instances at issue) during non-working time.

The Respondent defends that Reynolds' statements to Applegate were limited to her standing by the door and blocking the ingress and egress to the facility, and that prohibiting such conduct does not violate the Act, even when the employee is engaged in union activities. Setting aside whether Applegate was, in fact, blocking the main entrance, Reynolds' statements to Applegate were not limited to blocking the entrance. Nor did Reynolds clarify that Applegate could continue soliciting from the sidewalk or parking lot if she moved further away from the entrance. Reynolds, instead, referred to the Parking policy, which broadly prohibits employee solicitation in the front parking lot, and it broadly prohibits off-duty employee access to the company premises. I believe Reynolds did not make this clarification because she likely understood that the policy, as it was worded, barred off-duty employees from soliciting or distributing materials in the parking lot or elsewhere outside of the facility on the company's premises.

The Respondent also argues that while Reynolds reminded Applegate about the Parking policy, she did not enforce it. I reject this claim. When a manager approaches an employee about their conduct and refers to a policy addressing that conduct, the manager is enforcing the policy. Reynolds may not have disciplined or threatened to discipline Applegate under the policy, but she invoked it in response to Applegate's conduct, and, as stated, Reynolds did nothing to indicate it was limited to blocking ingress or egress to the entrance. If Reynolds' statements were limited to Applegate blocking ingress or egress to the entrance, there would have been little reason for her to refer to the Parking policy because the policy says nothing about ingress or egress to the facility.

Finally, the Respondent points out that Applegate distributed Union flyers in the employee breakroom, including on October 15, with Reynolds' knowledge, and nothing was said to her. The Respondent contends Applegate routinely distributed literature and solicited for the Union on the Respondent's property, and so long as she complied with the relevant policies, she was permitted to do so. The issue, however, is not whether Applegate was allowed to solicit inside the facility; it is whether she was allowed to do it outside the facility, and whether the Respondent's maintenance and, in these two instances, invocation of the Parking policy to prohibit Applegate's solicitation during non-working time violated the Act. I conclude that it did, and I would recommend finding the Respondent violated Section 8(a)(1) on October 10 and 15 when Reynolds, by her statements and conduct, prohibited Applegate from Union solicitation on company property during non-working time.

G. Surveillance of Employees Engaged in Union Activities

The General Counsel next alleges the Respondent, through Reynolds and Mosley, violated Section 8(a)(1) on October 10 and 15 when they surveilled Applegate while she was engaged in union activities. The test for whether an employer engages in unlawful surveillance is an objective one that involves determining whether the employer's conduct, under the circumstances, would tend to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. *Grill Concepts Services*, 364 NLRB 385, 385, 400 (2016), enfd. in relevant part 722 Fed. Appx. 1 (D.C. Cir. 2018). The Board

has held that an employer's mere observation of open union activity on or near its property does not constitute a violation. See *Fred'k Wallace & Son*, 331 NLRB 914, 915 (2000). It is a violation when the employer's conduct is out of the ordinary and thereby deemed coercive. *Hilton Anchorage*, 370 NLRB No. 83, slip op. at 18-19 (2021), enfd. 2022 WL 3010171 (9th Cir. 2022). Factors that are considered in determining if the surveillance is coercive include the duration of the observation, the employer's distance from the employees while observing them, and whether the employer engaged in other coercive behavior during its observation. Id.

The General Counsel contends the Respondent engaged in unlawful surveillance on October 10, when Reynolds, Mosley, and a third supervisor stood outside the main entrance and observed the front lot together for about five minutes before returning inside. The General Counsel argues this conduct was out of the ordinary because it occurred shortly after Reynolds spoke to Applegate about soliciting outside the main entrance, and it involved three supervisors who otherwise had no reason to be standing together observing the front lot. Although I do not credit Applegate's testimony that these events occurred, I find that even if they did occur it was not coercive under the circumstances. As stated, the supervisors were allegedly standing outside the main entrance, which was approximately 650 feet from the intersection where Applegate and Odle were, and the view between the two locations was blocked by several large trees. Next, the supervisors were allegedly outside for about five minutes before they went back inside. And, aside from allegedly standing together observing the parking lot, the three supervisors were not alleged to have engaged in any other coercive behavior. In fact, Applegate did not testify that any of the supervisors ever looked in the direction where she and Olde were standing. Based on the far distance, the short duration, and the otherwise innocuous conduct, I conclude the General Counsel has failed to establish the supervisors engaged in unlawful surveillance on October 10. I, therefore, recommend dismissing the allegation.

The General Counsel next contends that Mosley also engaged in unlawful surveillance on October 15, when he came outside and stood a few yards away from Applegate while she was handing out Union flyers. They argue that Mosley's conduct was out of the ordinary because of his close proximity to Applegate and its close timing in relation to Reynolds coming out and telling Applegate (again) about the Respondent's Parking policy which prohibits solicitation in the parking lot. The Respondent contends it was not uncommon for Mosley to be outside the main entrance throughout the day, often smoking and talking on the phone to CSDDs. The General Counsel, however, points out that Mosley was not engaged in any of these activities while Applegate was there. According to her, he silently watched the front lot for about five minutes before returning inside the facility.

In reviewing the totality of the circumstances, I conclude the General Counsel failed to establish that Mosley was engaged in unlawful surveillance. It was not out of the ordinary for him to be standing outside the main entrance. While he may have been a few yards away from Applegate, he was there for a brief period, and he did not engage in any other coercive behavior. In fact, Applegate did not testify that Mosley looked at her while she was outside. I, therefore, recommend dismissing this allegation as well.

H. Captive Audience Meeting

Finally, the General Counsel alleges the Respondent violated Section 8(a)(1) on November 22, when Reynolds, in the breakroom, conducted a captive-audience meeting. About a week before this meeting, the Board issued its decision in *Amazon.com Services LLC*, 373 NLRB No. 136 (2024), which overruled *Babcock & Wilcox Co*., 77 NLRB 577 (1948), and held that an employer violates Section 8(a)(1) when it requires employees to attend a meeting where it expresses its views on unionization.

The Board held a violation turns on the employer's use of its power to compel employees to attend such a meeting, stating:

> An employer will be found to have compelled attendance if, under all the circumstances, employees could reasonably conclude that attendance at the meeting is required as part of their job duties or could reasonably conclude that their failure to attend or remain at the meeting could subject them to discharge, discipline, or any other adverse consequences. An express order from a supervisor, manager, or other agent of the employer to attend such a meeting is sufficient, but not always necessary, to establish a violation. Moreover, attendance at a meeting that is included on employees' work schedules, as communicated by a supervisor, manager, or other agent of the employer, will be considered to be compelled.

Id. slip op. at 20.[27]

Here, the sole dispute is whether the employees were compelled to attend the November 22 meeting. The General Counsel, as the party alleging the violation, has the burden of proof. In reviewing the evidence, I conclude the General Counsel failed to meet this burden. As discussed above, there was a credibility dispute between the General Counsel's witnesses and the Respondent's witnesses over whether these pre-shift huddles were mandatory, and I credited the Respondent's witnesses that they were not. But setting aside credibility, there is no dispute that employees have a five-minute grace period for when they arrive for their shift/start time, and these huddles occur during the first three to five minutes of each shift/start time. As such, I conclude the huddles cannot reasonably be viewed to be mandatory for employees to attend if they occur before the employees are required to be at work. I, therefore, recommend dismissing this allegation.

CONCLUSION OF LAW

1. Kroger Fulfillment Network (the Respondent) is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. General Drivers, Warehousemen & Helpers Local Union No. 89 (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has violated Section 8(a)(1) of the Act since about April 2024, and continuing, by maintaining the prohibitions against employee solicitation and off-duty employee access in the Parking policy in its Employee Handbook.

4. The Respondent violated Section 8(a)(1) of the Act on about October 10 and 15, 2024, when it prohibited employees from soliciting for the Union on company property during non-working time.

[27] In *Amazon.com Services LLC*, the Board created a safe harbor from liability for employers who want to express their views concerning unionization in the workplace during work hours. To qualify, the employer must, reasonably in advance of the meeting, inform employees that: (1) the employer intends to express its views on unionization at a meeting at which attendance is voluntary; (2) employees will not be subject to discipline, discharge, or other adverse consequences for failing to attend the meeting or for leaving the meeting; and (3) the employer will not keep records of which employees attend, fail to attend, or leave the meeting. 373 NLRB No. 136, slip op. at 19. The Board, however, held the failure to give these assurances will not itself result in a violation of Section 8(a)(1). Id. There is no dispute the Respondent failed to provide these assurances.

5. 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. On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[28]

ORDER

The Respondent, Louisville, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining unlawfully overbroad prohibitions against employee solicitation and off-duty employee access.

(b) Prohibiting employees from soliciting for the Union or any other labor organization on company property during non-working time.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days of the date that this order becomes final, rescind the prohibitions against employee solicitation and off-duty employee access in the Parking policy in its Employee Handbook.

(b) Furnish employees with an insert for the current Employee Handbook that (1) advises that the prohibitions against employee solicitation and off-duty employee access in the Parking policy have been rescinded, or (2) provides a lawfully worded policy on adhesive backing that will cover the unlawful prohibitions in the Parking policy. Alternatively, Respondent may publish and distribute to employees a revised version of the Employee Handbook that (1) does not contain the unlawful prohibitions in the Parking policy, or (2) provide a lawfully worded policy.

(c) Within 14 days after service by the Region, the Respondent shall post at its Louisville, Kentucky location the attached notice marked "Appendix."[29] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in

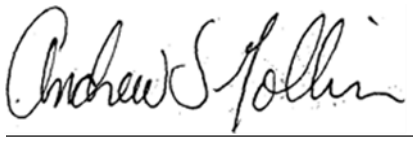
[28] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes due under the terms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

[29] 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."

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 a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 1, 2024.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 9 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



Andrew S. Gollin
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 interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL NOT maintain unlawfully overbroad prohibitions against employee solicitation and off-duty employee access.

WE WILL NOT prohibit you from soliciting for the General Drivers, Warehousemen & Helpers Local Union No. 89, or any other labor organization, during non-working time.

WE WILL rescind the prohibitions against employee solicitation and off-duty employee access in the Parking policy in our Employee Handbook

WE WILL furnish all current employees with an insert for the current Employee Handbook that (1) advises that the prohibitions against employee solicitation and off-duty employee access in the Parking policy in the Employee Handbook have been rescinded, or (2) provides a lawfully worded policy on adhesive backing that will cover the unlawful prohibitions in the Parking policy. Alternatively, WE WILL publish and distribute a revised Employee Handbook that either (1) does not contain the unlawful prohibitions in the Parking policy or (2) includes a lawfully worded policy.

KROGER FULFILLMENT NETWORK
(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.

John Weld Peck Federal Building, 550 Main Street, Room 3-111, Cincinnati, OH 45202-3271
(513) 684-3686, Hours: 8:00 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.NLRB.gov/case/09-CA-353140 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 (513) 684-3733.