Floss N Gloss PA d/b/a Aqua Dental *and* Sandra Yvette Estrada. Case 16–CA–305753

June 1, 2026

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY AND MAYER

On July 26, 2024, Administrative Law Judge Amita Baman Tracy issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief. The General Counsel filed cross-exceptions and a supporting brief.

The National Labor Relations Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge, as modified below, and orders that the Respondent, Floss N Gloss

[1] The Respondent asserts that the Board lacks jurisdiction over this matter and that the Board's proceedings are unconstitutional because of the agency's structure, for-cause removal protections for Board members and the multi-level for-cause removal protections for administrative law judges. These arguments, raised for the first time in the Respondent's exceptions brief, are untimely and accordingly are waived. See, e.g., *Prime Communications*, 374 NLRB No. 88 (2026); *Yorkaire, Inc.*, 297 NLRB 401, 401 (1989), enfd. 922 F.2d 832 (3d Cir. 1990).

The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In finding that employee Sandra Yvette Estrada engaged in protected concerted activity, we rely only on the judge's findings pertaining to the October 10, 2022 anonymous email sent to the Respondent addressing workplace concerns. We find this email was protected concerted activity based only on the judge's credibility determination, to which we are bound, that employee Amberlee Christensen had discussed with Estrada the workplace issues contained in that email. We find it unnecessary to pass on the judge's finding that Estrada also engaged in protected concerted activity by discussing bonuses with her coworkers on October 20, 2022. Contrary to his colleagues, in finding that Estrada engaged in protected concerted activity, Member Prouty would adopt and rely upon all of the judge's findings pertaining to the October 10, 2022 anonymous email to the Respondent and would adopt the judge's finding that Estrada engaged in protected concerted activity by discussing bonuses with her coworkers on October 20, 2022.

In affirming the judge's finding that the Respondent violated Sec. 8(a)(1) by disciplining and terminating Estrada on October 21 and 24, 2022, for engaging in protected concerted activity, Chairman Murphy would rely on the judge's animus finding only insofar as it is based on the Respondent's shifting rationales for Estrada's termination.

Member Prouty joins his colleagues in affirming the judge's finding that the Respondent violated Sec. 8(a)(1) by disciplining and terminating Estrada on October 21 and 24, 2022, for engaging in protected concerted activity. In so doing, he notes that the direct evidence of animus and unlawful motivation in this case mean that the violation here may be found without conducting an analysis under *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). The Board has found that "[w]here an employer takes adverse action against employees for the explicit purpose of retaliating against their protected activity, further analysis of its motive for the action is unnecessary." *Vesta VFO, LLC*, 373 NLRB No. 10, slip op. at 2 fn. 7 (2024) (citing *Tito Contractors, Inc.*, 366 NLRB No. 47, slip op. at 4 fn. 11 (2018), enfd. mem. 774 Fed. Appx. 4 (D.C. Cir. 2019)). Member Prouty would, nevertheless, conclude it is sufficient for him to find that the Respondent's motive in this case was unlawful under *Wright Line*.

In adopting the judge's dismissal of the allegation that the Respondent promulgated an unlawful oral rule, Member Prouty notes that this is a fact-specific analysis and that the General Counsel here did not provide sufficient evidence that the Respondent promulgated a blanket rule against the discussion of bonuses.

[2] We shall modify the recommended Order and substitute a new notice to conform to the violations found and the Board's standard remedial language. The judge ordered remedies consistent with the Board's decision in *Thryv, Inc.*, 372 NLRB No. 22 (2022), vacated in part on other grounds 102 F.4th 727 (5th Cir. 2024).

The Respondent argues that the make-whole remedy ordered consistent with *Thryv*, violates the Constitution; that the National Labor Relations Act does not permit the imposition of damages under *Thryv;* and that the Respondent was denied a trial by an Article III court and a jury trial. The Board has already addressed these arguments in *Thryv*. See, e.g. 372 NLRB No. 22, slip op. at 7, 9-10 (addressing the Board's statutory authority) and slip op. at 9-10 (rejecting the argument that the remedy was unconstitutional). As for the Respondent's assertion that the Board should not apply *Thryv* retroactively, the Respondent fails to raise any facts that establish that the Board should treat this case differently from all the other cases that have applied *Thryv* retroactively.

As stated in *Performance Plumbing, LLC*, 374 NLRB No. 48, slip op. at 2 fn. 2 (2026), and *Lodi Volunteer Ambulance Rescue Squad, Inc.*, 374 NLRB No. 26, slip op. at 3 fn. 3 (2026), Chairman Murphy and Member Mayer find no need at this time to express an opinion whether the novel remedies announced by the Board majority in *Thryv* are permissible under the Act. They would be open to reconsideration of that precedent in a future proceeding, but in the absence of a three-member majority to overrule it at this time, they agree to apply *Thryv*.

Because we find that the Board's traditional remedies are sufficient to effectuate the purposes of the Act in this matter, we deny the General Counsel's requests for additional remedies, including ordering the Respondent to read the notice or permit the notice to be read to its employees; permit a Board agent to conduct mandatory training sessions for the Respondent's managers and supervisors and its non-managerial, non-supervisory employees on the provisions of the Act; and issue a letter of apology to Estrada.

Member Prouty would grant the General Counsel's request for a notice reading and distribution of the notice during that reading consistent with his concurring opinion in *CP Anchorage Hotel 2 d/b/a Hilton Anchorage*, 371 NLRB No. 151, slip op. at 9–15 (2022), enfd. 98 F.4th 314 (D.C. Cir. 2024). He also notes that the facts of this case make notice reading particularly appropriate to effectuate the purposes of the Act, including the fact that the discharge was based in part on quintessential

PA d/b/a Aqua Dental, Pearland, Texas, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

(a) Issuing disciplinary warnings to employees because of their protected concerted activities.

2. Substitute the following for paragraph 2(g).

(g) Within 14 days after service by the Region, post at its 10223 Broadway Street, Pearland, Texas 77584 office, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representatives, 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 internet or an intranet 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 office involved in this proceeding, 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 October 10, 2022.

3. Substitute the attached notice for that of the administrative law judge.

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

_____
James R. Murphy, Chairman

_____
David M. Prouty, Member

_____
Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

protected concerted activity, and a notice reading would help inform employees of their rights.

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

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives 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 issue disciplinary warnings to you because you engage in protected concerted activities.

WE WILL NOT discharge or otherwise discriminate against you for your protected concerted activities or to discourage other employees from engaging in those 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 Sandra Estrada full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights previously enjoyed.

WE WILL make Sandra Estrada whole for any loss of earnings and other benefits resulting from the discrimination against her, less any net interim earnings, plus interest, and WE WILL also make her whole for any other direct or foreseeable pecuniary harms suffered as a result of the adverse actions, including reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Sandra Estrada for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 16, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

WE WILL file with the Regional Director for Region 16, within 21 days of the date the amount of backpay is fixed

by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of Sandra Estrada's W-2 form(s) reflecting the back-pay award.

WE WILL, within 14 days from the date of the Board's order, remove from our files any reference to the unlawful disciplines and discharge of Sandra Estrada, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the unlawful employment actions will not be used against her in any way.

FLOSS N GLOSS PA D/B/A AQUA DENTAL

The Board's decision can be found at www.nlrb.gov/case/16-CA-305753 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.

Tory Valenti, Esq., for the General Counsel.
Louis J. Cannon, Jr., Esq. (Mitchell Silberberg & Knupp LLP), of Washington, D.C., for the Respondent.
Michael A. Gillman, Esq. and *Dustin Loosbrock, Esq. (O'Donoghue* and *O'Donoghue LLP),* of Washington, D.C., for the Charging Party.

BENCH DECISION AND CERTIFICATION

STATEMENT OF THE CASE

KELTNER W. LOCKE, Administrative Law Judge. I heard this case on May 6, 2025, in Knoxville, Tennessee. After the parties rested, I adjourned the hearing until June 13, 2025, so that counsel would have the opportunity to receive and review the transcript and exhibits and prepare oral argument. On June 13, 2025, the hearing resumed by videoconference and the parties presented oral argument. On June 16, 2025, the hearing resumed again by videoconference and I issued a bench decision pursuant to Section 102.35(a)(10) of the Board's Rules and Regulations, setting forth findings of fact and conclusions of law. In accordance with Section 102.45 of the Rules and Regulations, I certify the accuracy of, and attach hereto as "Appendix A," the portion of the transcript containing this decision.[1] The Conclusions of Law, Remedy, Order, and Notice are set forth below.

CONCLUSIONS OF LAW

1. The Respondent, Aqua-Chem, Inc., a corporation with an office and place of business in Knoxville, Tennessee, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Charging Party, Tennessee Pipe Trades Association, and its member, UA Local 102, Plumbers and Pipefitters, are labor organizations within the meaning of Section 2(5) of the Act.
3. The Respondent violated Section 8(a)(1) of the Act by removing the signs which the Tennessee Pipe Trades Association, acting with or on behalf of UA Local 102, Plumbers and Pipefitters, placed on public right-of-way near the Respondent's property.
4. The actions described in paragraph 3, above, affect commerce within the meaning of Section 2(6) and (7) of the Act.
5. The Respondent did not violate the Act in any other manner alleged in the complaint.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act, including posting the notice to employees attached hereto as Appendix B.

It must also return to the Tennessee Pipe Trades Association the signs which it removed from public right-of-way on or about May 28, 2024, or, if those signs no longer exist, must reimburse Tennessee Pipe Trades Association for the cost of the signs and any sign holders used to support them.

On the findings of fact and conclusions of law herein, and on the entire record in this case, I issue the following recommended[2]

ORDER

The Respondent, Aqua-Chem, Inc., [location, city, state] its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Removing signs posted on public right-of-way or on other property not our own, by the Tennessee Pipe Trades Association, by UA Local 102, Plumbers and Pipefitters, or by any other labor organization,

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

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

(a) Within 14 days after service by the Region, post at its facility in Knoxville, Tennessee, copies of the attached notice

[1] The bench decision appears in uncorrected form at pages 203 through 226 of the transcript. The final version, after correction of oral and transcriptional errors, is attached as Appendix A to this Certification.

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

marked "Appendix B."[3] Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. *J. Picini Flooring*, 356 NLRB 11 (2010). In the event that, during the pendency of these proceedings, 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 May 28, 2024. *Excel Container, Inc.*, 325 NLRB 17 (1997).

(b) Within 21 days after service by the Region, file with the Regional Director for Region 10 a sworn certification of a responsible official on a form provided by the Regional Director attesting to the steps that the Respondent has taken to comply.

Dated Washington, D.C. August 11, 2025

APPENDIX A

BENCH DECISION

This decision is issued pursuant to Section 102.35(a)(10) and Section 102.45 of the Board's Rules and Regulations. The Respondent violated Section 8(a)(1) of the Act by removing organizing campaign signs which the Union had placed on public right–of–way which was adjoining, but not part of, the Respondent's property. However, the Respondent did not violate the Act in any other way alleged in the complaint.

Procedural History

This case began on July 3, 2024, when the Charging Party, Tennessee Pipe Trades Association, filed an unfair labor practice charge against the Respondent, Aqua–Chem, Inc., with the National Labor Relations Board. The Board's staff docketed the charge as Case 10–CA–345660.

On February 13, 2025, after investigation of the charge, the Regional Director for Region 10 of the Board issued a complaint and notice of hearing, which I will call the "complaint." In issuing this complaint, the Regional Director acted on behalf of the General Counsel of the Board, whom I will refer to as the "General Counsel" or as the "government."

On May 6, 2025, a hearing opened before me in Knoxville, Tennessee. During the hearing, the General Counsel amended the complaint to address an inconsistency. The unfair labor practice charge which began this proceeding identified the Charging Party as Tennessee Pipe Trades Association. However, the caption of the complaint identified the Charging Party as UA Local 102, Plumbers and Pipefitters.

At hearing, the General Counsel amended the complaint's caption to show that Tennessee Pipe Trades Association was the Charging Party. The General Counsel amended complaint paragraph 3 to make clear that UA Local 102, Plumbers and Pipefitters, was one of the local unions which are members of the Tennessee Pipe Trades Association.

Also at hearing, the Respondent amended complaint paragraph 4 by removing the allegation that the Respondent's general counsel, Anna Corcoran, was a supervisor of the Respondent, while retaining the allegation that Corcoran was Respondent's agent.

After the parties presented evidence, I adjourned the hearing until June 13, 2025, when it resumed by videoconference. After counsel presented oral argument, I adjourned the hearing until today, June 16, 2025, when it resumed by videoconference for delivery of this bench decision.

Admitted Allegations

The Respondent filed a timely answer to the unfair labor practice complaint. Additionally, the parties entered into a written stipulation which is in evidence as Joint Exhibit 1.

Based on the admissions in the Respondent's answer, the stipulation, and the Respondent's oral admission of the allegations in the amended complaint paragraph 4, I find that the General Counsel has proven the allegations set forth in complaint paragraphs 1, 2(a), 2(b), 3, and 4.

More specifically, I find that the Charging Party filed and served the unfair labor practice charge as alleged in complaint paragraph 1.

Additionally, I find the following facts, as alleged in complaint paragraph 2 and its subparagraphs: At all material times the Respondent has been a corporation with an office and place of business in Knoxville, Tennessee. It is engaged in the design and fabrication of water purification systems. Further, I conclude that it meets both the statutory and discretionary standards for the assertion of the Board's jurisdiction, and that it is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

At noted above, during the hearing, the General Counsel amended paragraph 3 of the complaint. More specifically, the amendment replaced the original language in this complaint paragraph with the following: The Charging Party is an association composed of various constituent labor organizations, including UA Local 102, Plumbers and Pipefitters, each of which, at all material times, has been a labor organization within the meaning of Section 2(5) of the Act and are herein collectively called Union. The Respondent admits this allegation. Accordingly, I conclude that the General Counsel has proven the allegations raised in complaint paragraph 3, as amended.

The hearing record suggests that the Charging Party, the Tennessee Pipe Trades Association, undertook the organizing effort either on behalf of or together with one of its members, UA Local 102, Plumbers and Pipefitters. Notably, it was Local 102, not the Tennessee Pipe Trades Association, which sent a May 9,

[3] If this Order is enforced by a judgment of the 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."

2024 letter (Jt. Exh.1(b)) notifying the Respondent of the organizing campaign.

As already noted, during the hearing, the General Counsel orally amended complaint paragraph 4. The Respondent admitted the amended allegation. Accordingly, I find that at all material times, Anna Corcoran has held the position of general counsel of the Respondent and has been an agent of Respondent within the meaning of Section 2(13) of the Act, as alleged in the amended complaint paragraph 4.

Facts

Summary of Facts

The relevant facts, to be discussed in greater detail below, may be summarized as follows: Beginning in February 2024, the Union tried to organize the Respondent's employees. In May, it prepared signs which displayed the logos of both the Union and the Respondent, along with some other information, including the Union organizer's telephone number.

Union organizers placed signs on public right-of-way adjacent to the Respondent's property and near the driveways leading from the road to the Respondent's offices. The next day, the signs were gone, so the organizers put up more. The Respondent took down these signs and notified the Union by letter that a city ordinance prohibited the posting of unauthorized signs.

The Respondent also sent a copy of this letter, along with a cover letter, to the city's public service director.

The government alleges that the Respondent removed both sets of signs and thereby violated the Act twice. It also alleges that the Respondent's letter to the city official violated the Act by attempting to enlist the city's assistance in removing the union signs from public property. The General Counsel further alleges that the Respondent's letter to the Union promulgated an unlawful rule prohibiting employees and unions from using the Respondent's logo on union campaign materials.

Detailed Facts

The union organizing campaign, which began in February 2024, entered a new phase when the business manager of UA Local 102, Plumbers and Pipefitters, sent a May 9, 2024 letter notifying the Respondent of the organizing campaign. (Jt. Exh. 1(b)) A few days later, Union Organizer Jordan Chase Daniel designed a sign and sent the design to a printer. The sign displayed the words "Aqua-Chem Workers United, Local 102, Knoxville, Tennessee." It also stated, in capital letters, "DON'T JUST STAND BY AND WATCH, GET INVOLVED!" and "SOLIDARITY MEANS WE STICK TOGETHER!:

The sign bore Respondent's logo along with the name "aqua-chem" in lower case letters. Somewhat above the Respondent's name appeared the Union's logo. The sign also displayed the logo of the international union with which the Union is affiliated. That union is the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the U.S. and Canada, AFL–CIO.

All these words and symbols appeared inside a circle. In smaller letters, curving parallel to the circle, was the statement "INTENDED FOR INFORMATION PURPOSES ONLY. WE ARE NOT ASKING ANYONE TO STOP WORKING OR CEASE MAKING DELIVERIES." Those sentences actually appeared twice: Once on the left and again on the right. (Jt. Exh. 3.) The printer provided multiple copies of this sign.

Organizer Daniel consulted a website called KGIS, which provides property line information for Knoxville and Knox County, Tennessee. (Tr. 33–34; GC Exh. 2.) This information allowed him to find places to put the signs which were not on the Respondent's property but close to it.

Late in the day on May 27, 2024, Organizer Daniel placed the signs in wire holders which could be stuck in the ground, near the entrances to the Respondent's place of business. (Tr. 28–29.) The parties agree that the signs were not on the Respondent's property but rather were in the right–of–way between the road and the Respondent's property.

Early on May 28, 2024, Daniel received word that the signs were no longer there. He returned to the Respondent's place of business and put up more signs. (Tr. 44.) The signs were identical to those which he had placed on May 27, 2024. (GC Exh. 5.)

During the investigation of this case, the Respondent's attorney submitted a position statement which admitted that Respondent removed some signs. However, it did not admit that it removed the signs which Daniel placed on the right-of-way on May 27, 2024. To the contrary, Respondent stated that management was not aware of the signs which Daniel set out on May 27. That day was Memorial Day and the Respondent's offices were closed. (Jt. Exh. 1(f).)

The offices of the Respondent's General Counsel, Anna Corcoran, are at the Knoxville facility. Corcoran testified that at 7:04 a.m. on May 28, 2024, while she was still at home, she received a call from Respondent's marketing manager, Aimee Ray. After Ray told her about the signs, Corcoran asked Ray to send her a photo. (Tr. 78–79.)

By the time Corcoran arrived at the office, about 8:15 a.m., the signs were gone. The record does not reflect who took them down or what happened to them.

My observations of Corcoran while she testified persuade me that her testimony is reliable. Moreover, because the Respondent admitted taking down some of the Union's signs, it would serve no purpose for it to deny removing the signs which the Union placed on May 27. If removing the signs violated the Act, the remedy would be the same whether it took down signs on one occasion or two.

Accordingly, I conclude that a preponderance of the evidence does not establish that the Respondent removed the signs which the Union set out on May 27, 2024. However, based on the admission in the Respondent's position statement, I find that the Respondent did remove the signs which the Union placed the next day.

Like Daniel, Corcoran obtained data from the KGIS website. (Tr. 81.) She also examined the deed to the Respondent's property. Based on this information, she concluded that the signs had not been placed on the Respondent's property but instead had been placed in the right–of–way area.

Corcoran testified that she did this research "because, if the signs were on Aqua–Chem's property, we would be able to remove them." (Tr. 87.) However, the record is unclear on whether Corcoran made this determination before the Respondent took down the signs which Daniel had placed on May 28, or

after the Respondent removed them.

It seems more likely that she reached this conclusion after the Respondent had taken down the signs. If she had determined that the signs were not on the Respondent's property before they were taken down, she likely would have advised Respondent's management and, presumably, management would have decided that, because the signs were not on the Respondent's property, they should not be disturbed.

From Corcoran's testimony and my observations of her while she testified, I got the strong impression that she is very much a dot–all–i's–cross–all–t's kind of lawyer and tries to prevent problems by anticipating them. It appears clear that she believed the Union might put up more signs.

Corcoran and her husband, who is also a lawyer, have been active in local politics. When her husband ran for office, she served as his campaign treasurer. (Tr. 88.) Running for office, of course, typically includes putting up signs. Corcoran learned about a Knoxville city ordinance prohibiting putting any signs on public right–of–way without official approval.

Corcoran testified that she knew that the city enforced this ordinance and that failure to comply with it could result in a substantial fine. (Tr. 92.) She became concerned that the inclusion of Respondent's logo on the Union's sign could create the appearance that the Respondent was complicit in placing an unauthorized sign in the right–of–way.

Although the government regards this stated concern as farfetched and perhaps disingenuous, I do not. Nothing on the sign suggested that the Union was in conflict with the Respondent. On the contrary, language on the sign disavowed any intent to encourage a work stoppage or a refusal to cross a picket line.

Moreover, employers and unions sometimes do display their logos side by side to acknowledge the role of a union and the employees it represents in making a superior product. Indeed, in the present case, the sign in question includes a small insignia indicating that union-represented printers produced it.

Corcoran impressed me as being just as energetic and meticulous about spotting possible issues as a student taking a bar examination. Her experience had taught her that local officials did, in fact, enforce the ordinance. So, I believe the concerns she expressed were genuine and not pretextual.

How she acted on these concerns provides another example of her cautious approach. Corcoran testified that she drafted a letter to the Union and a letter to the city. However, she did not mail them right away. Instead, she decided to "sleep on it." (Tr. 97.)

The next day, May 30, 2024, two union organizers, Daniel and Robert Moneymaker, showed up at the Respondent's offices and spoke with Corcoran. Daniel made an audio recording of the conversation using a pen recorder. (Tr. 51.)

Corcoran expressed her concern that the presence of the Respondent's logo on the sign might lead a city official to believe that the Respondent was involved in the decision to place the signs on public right-of-way. A transcript of Daniel's recording includes the following:

> MR. MONEYMAKER: So we'd like to get those signs back, if possible.
>
> MS. CORCORAN: I can see where they are. Now, those signs do have our logo—
> MR. MONEYMAKER: Um-hum.
>
> MS. CORCORAN:—which is patented and trademarked, whatnot. The other issue that you're going to have to deal with is that this area is City of Knoxville.
>
> . . .
>
> MS. CORCORAN:—that there cannot be signs on the right of way in the City of Knoxville. So our concern in removing those signs, because it bears our logo, is that we would be held responsible by the City and that they would fine us.
>
> MR. MONEYMAKER: Okay.
>
> (GC Exh. 7.)

Moneymaker then said that he probably needed to "get you in touch with our counsel" and Corcoran replied that she would be "happy to speak with your counsel." However, it is unclear whether Corcoran and the Union's attorney ever spoke about this matter.

Until the union organizers' visit, Corcoran had been unsure whether to send letters to the Union and to the city. After the visit, she did so the same day. Corcoran's May 30, 2024 letter to Moneymaker is the letter referred to in complaint paragraph 6. It states as follows:

> Dear Mr. Moneymaker:
>
> It was a pleasure to meet you today. As discussed, Local 102 placed signs near Aqua-Chem's (the "Company") facility on Tuesday May 28, 2024. Those signs include an unauthorized use of Aqua-Chem's logo, to which Aqua-Chem does not and will not consent. Additionally, the signs have been placed on a public right-of-way, which is located within the limits of the City of Knoxville. As I explained to you, this is in violation of the ordinances of the City of Knoxville ("Ordinances"). Specifically, Article 13.2(F) of the Ordinances prohibit the following signs:
>
> > Signs within the public right-of-way, except publicly owned signs, such as wayfinding signs and regulatory signs, and those signs approved by the Department of Engineering.
>
> As far as Aqua-Chem is aware, Local 102's signs do not meet any of the above exceptions. This is particularly troubling to Aqua-Chem for two reasons. First, the signs are placed close to Aqua-Chem's property. Second, the signs (as noted above), identify Aqua-Chem and contain the Company's logo. Because of the risk that City of Knoxville authorities may mistakenly conclude that the Company has been complicit in the placing of the signs and may penalize the Company for violation of Article 13 of the City of Knoxville Ordinances, as well as any other applicable prohibition on the placing of signs in a public right-of-way, and to facilitate the mowing of the grass, Aqua-Chem removed the signs.

> As such, Aqua-Chem demands that your union cease and desist engaging in prohibited conduct in a manner that gives the impression that the Company endorses or is involved in such behavior.
>
> Please be advised that the Company has contacted the City of Knoxville and is sending the City a copy of this letter.

(Jt. Exh. 1(d).)

Corcoran sent a copy of this letter to the City of Knoxville's public service director, Chad Weth. Along with this copy, Corcoran included a cover letter. This letter pertains to the allegation raised in complaint paragraph 5(c) that the Respondent "attempted to enlist the City of Knoxville to remove Union campaign materials from public property. . ."

The General Counsel did not present any evidence that the Respondent had any communication with a Knoxville official concerning the Union's signs except for this May 30, 2024 letter. Accordingly, if the Respondent made any attempt to get the city to remove the signs, the letter must constitute this attempt. The letter to Weth states as follows:

> Dear Mr. Weth:
>
> It has come to Aqua-Chem's attention that Local 102 is placing signs near Aqua-Chem's (the "Company") facility. Those signs include an unauthorized use of Aqua-Chem's logo, to which Aqua-Chem does not and will not consent. Our facility is located along E. Gov. John Sevier Hwy, adjacent to an area that is within the Knoxville city limits.
>
> Because there is a risk that City of Knoxville authorities may mistakenly conclude that the Company has been complicit in the placing of the signs and may penalize the Company for violation of Article 13 of the City of Knoxville Ordinances, as well as any other applicable prohibition on the placing of signs in a public right-of-way, Aqua-Chem hereby gives notice to the City that the Company does not endorse and is not involved in this behavior. These are not our signs, and we have no involvement in the placement of them. We have sent the union a letter asking them to cease and desist from their unlawful actions. A copy of the letter is attached hereto.
>
> Please feel free to contact me directly at 865-963-9168 if you have any questions.

(Jt. Exh. 1(e).)

On July 16, 2024, the Union again placed signs near the Respondent's property. (Tr. 64–65.) These signs included one significantly larger than the signs the Union placed in May. (R. Exh. 1.) The Respondent did not take down any of these signs. (Tr. 66.)

Unfair Labor Practice Allegations

Complaint Paragraph 5(A)

Complaint paragraph 5(a) alleges that about May 27, 2024, Respondent removed Union campaign materials from public property on E. Governor John Sevier Highway across from Respondent's facility. The Respondent denies this allegation.

The term "campaign materials" refers to the signs which Organizer Daniel designed, had printed, and placed on the right–of–way near the Respondent's facility on May 27, 2024. The evidence certainly indicates that these signs disappeared and it is reasonable to assume that someone or something took them.

However, for the reasons stated above, I have concluded that the General Counsel has not proven, by a preponderance of the evidence, that any supervisor or agent of the Respondent was that someone or something.

The question then arises, if the Respondent did not remove the signs, who did? The absence of any obvious suspect weighs on the side of concluding that the Respondent must have done it. However, this one question does not tip the balance.

Several factors weigh on the other side of the scales. The Union placed the signs on Memorial Day, when the Respondent's facility was closed. For reasons stated above, I have concluded that Corcoran's testimony is reliable. Based on that testimony, I find that the signs were gone by 8:15 a.m. on May 28, 2024, when Corcoran arrived at work.

That does leave a short interval during which a supervisor or agent of the Respondent might have taken the signs, but there is no evidence that any supervisor or agent did so. There is no evidence at all concerning who took the signs.

Moreover, the Respondent admitted removing the next set of signs. There is no reason why the Respondent should be forthright in one instance and not forthright in the other. There would be nothing to gain. The denials come from the Respondent's counsel, and it seems unlikely that any lawyer would lie gratuitously. There is absolutely no reason to believe or even suspect that Respondent's counsel has been anything but totally candid and punctilious.

In sum, the unanswered question of who did it does not outweigh the evidence that the Respondent did not. Therefore, concluding that the General Counsel has not carried the government's burden of proof, I recommend that the Board dismiss the allegations raised in complaint paragraph 5(a).

Complaint Paragraph 5(B)

Complaint paragraph 5(b) alleges that about May 28, 2024, Respondent removed Union campaign materials from public property on E. Governor John Sevier Highway across from Respondent's facility. Although the Respondent's answer denies this allegation, the Respondent's August 13, 2024 position statement (Jt. Exh. 1(f)) admits that it did remove the signs. This admission is consistent with other evidence in the record. Based on the admission and the record as a whole, I find that the Respondent did remove the signs which the Union placed in the right–of–way on May 28, 2024.

However, the Respondent argues that its action was lawful. It argues that, because the Union placed the signs in the public right–of–way, the signs were illegal. Because the signs bore the Respondent's logo they might, according to Respondent, cause city officials to believe that the Respondent bore responsibility for placing the illegally. The officials might then seek to fine the Respondent for violating the ordinance which prohibited placing

signs in the public right of way without the city's permission.

Although the Respondent had a legitimate concern, that concern did not justify the action it took, removing the signs. The Respondent did not claim that, before taking down the signs, it had checked with either the Union or the city to determine whether the city had granted such permission. No evidence suggests that the Respondent made such a call to the Union and I conclude that it did not. Checking with the Union would have been easy to do because the Union organizer's telephone number appeared on the sign itself.

A Union which represents or seeks to represent an employer's employees has the right to use the employer's logo in a non-misleading way. Although the Respondent had a genuine concern that an overzealous city official, upon seeing the logo, might jump to the wrong conclusion, the Union's sign itself made no claim that the Respondent endorsed the sign or had any role in preparing or displaying it.

The Union did not abandon its ownership interest in the sign by placing it on the public right-of–way. By removing the sign, the Respondent was taking property which was not its own. Although the Union, on May 30, 2024, asked the Respondent for the signs, the record does not establish that the Respondent ever returned them.

Respondent's general counsel, Anna Corcoran, consulted the KGIS service and the deed to the property to ascertain whether the signs on the Respondent's property and determined that it was not. She testified that she did this research because she believed that if the signs were on the Respondent's property, the Respondent could remove them.

By the same logic, if the signs were not on the Respondent's property, the Respondent would have no right to remove them. However, the Respondent did so anyway.

The signs were the Union's way of communicating with employees before they arrived at work or after they had left work, in other words, during the employees' free time. The employees certainly had the right to receive the Union's message when they were not at work. By taking the Union's signs, the Respondent interfered with that right.

An employer clearly could not lawfully cut a union's telephone line to prevent it from contacting employees during their off-duty time. By the same principle, it may not lawfully take the Union's signs when those signs are on public property.

However, the Respondent did so and it thereby violated Section 8(a)(1) of the Act. See *Troy Grove,* 371 NLRB No. 132, slip op. at 1 (2022); *Muncy Corp.*, 211 NLRB 263, 272 (1974).

Complaint Paragraph 5(C)

Complaint Paragraph 5(c) alleges that about May 30, 2024, Respondent, by Anna Corcoran, attempted to enlist the City of Knoxville to remove union campaign materials from public property on E. Governor John Sevier Highway. The Respondent denies this allegation.

As discussed above, no evidence indicates that the Respondent communicated on May 30, 2024, with any Knoxville official except through the letter which the Respondent sent on that date to Public Service Director Weth. Therefore, if there is any attempt to prompt the city to remove the signs, it must appear in this letter.

The entire body of this letter is quoted verbatim above. Not once in the letter does the Respondent ask the city to take action. Rather, the thrust of the letter is "don't blame us for putting these signs in the right–of–way. We had nothing to do with them."

Does the General Counsel claim that merely informing the city that there had been signs bearing the Respondent's logo in the public right–of–way constitute an attempt to get the city to take action to remove the signs? That hardly makes sense because the Respondent already had removed the signs. There was nothing in the right–of–way to remove.

Moreover, even if there had been signs in the public right–of–way, merely telling the city that the signs were there hardly rises to the level of urging the city to take action. The letter did not ask the city to take any action and did not suggest that the city take any action. The only thing it asked was for the city not to take action against the Respondent.

It is difficult to believe that Congress intended to make it unlawful for a resident to notify a city authority that an ordinance has been violated. Such a rule could have adverse effects on the health and safety of a city's residents.

Moreover, the First Amendment to the United States Constitution forbids Congress from making any law which abridges the right of the people to petition the government for the redress of grievances. If the Congress has no authority to make such a law, neither does the Board, which Congress created.

In sum, I recommend that the Board dismiss the allegations raised by complaint paragraph 5(c).

Complaint Paragraph 6

Complaint paragraph 6, as amended at the hearing, alleges that about May 30, 2024, Respondent, by Anna Corcoran, through a letter addressed to the Union, promulgated and has since maintained a rule which prohibits employees and unions from using Respondent's logo on union campaign materials. The Respondent denies these allegations.

The text of the letter in question appears in full above. Clearly, it does not prohibit either employees or unions from using the Respondent's logo on union campaign materials. After Corcoran explained Respondent's concern that the Union was using the Respondent's logo in a way that might cause city officials to believe it was breaking the law, she continued:

> Aqua-Chem demands that your union cease and desist engaging in prohibited conduct in a manner that gives the impression that the Company endorses or is involved in such behavior.

No reasonable person would conclude that this letter demanded or even requested that the Union stop using Respondent's logo altogether. Indeed, the letter does not even demand that the Union stop placing signs in the public right–of–way, which Corcoran described as "prohibited conduct." Respondent only demanded that the Union stop doing so in a way that created the appearance that Respondent was involved in such conduct or approved of it.

Stated another way, the letter is telling the Union that if it decides to place signs in the public right–of–way, don't put the company's logo on the signs in a way that creates the impression that the Respondent approves of or is involved in that violation

of the ordinance.

Respondent is saying, in effect, "don't get us in trouble with the city." That hardly constitutes a prohibition on the use of its logo.

The complaint alleges that through this letter, the Respondent promulgated a rule. However, when an employer promulgates a rule, it communicates the rule to its employees because it expects them to comply. This letter went only to Union officials, not to employees. Significantly, the Union is not the employees' representative.

The General Counsel has not offered any evidence that the Respondent ever sent this letter to employees. Moreover, the record fails to establish that any employees received any communication from the Respondent, which prohibited them or the Union from using the Respondent's logo.

In sum, the General Counsel has not proven the allegations raised in complaint paragraph 6. Therefore, I recommend that the Board dismiss these allegations.

Respondent's Affirmative Defenses

The Respondent's answer raises a number of affirmative defenses. Some of them, such as the defense that certain allegations may be time barred by Section 10(b) of the Act, clearly do not apply. The allegations clearly are timely.

The Respondent has asserted, as an affirmative defense, that the complaint is so vague and lacking in detail that Respondent is unable to understand the charges and issues to be considered at trial. However, this defense is meritless.

Some of the affirmative defenses challenge the constitutionality of the Board and of this proceeding. With respect to the latter, I hesitate to rule myself unconstitutional lest I vanish in a puff of smoke. Moreover, I must presume the constitutionality and regularity of the present proceedings.

It would appear that the Respondent raised these issues at this time to preserve them on appeal. They are noted here for that reason. However, the Respondent's affirmative defenses are rejected.

When the transcript of this proceeding has been prepared, I will issue a Certification which attaches as an appendix the portion of the transcript reporting this bench decision. This Certification also will include provisions relating to the Findings of Fact, Conclusions of Law, Remedy, Order, and Notice. When that Certification is served upon the parties, the time period for filing an appeal will begin to run.

All counsel in this proceeding demonstrated the highest levels of civility and professionalism, which I truly appreciate. The hearing is closed.

APPENDIX B

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 representatives 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 our employees in the exercise of these rights, guaranteed to them by Section 7 of the National Labor Relations Act.

WE WILL NOT remove signs which have been placed on public property, or other property not our own, by UA Local 102, Plumbers and Pipefitters, or by the Tennessee Pipe Trades Association, without the permission of the Union which placed the sign.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL return to the Tennessee Pipe Trades Association the signs we removed from the public right-of-way on May 28, 2024, or, if those signs no longer exist, we will compensate the Union for the cost of the signs and sign holders.

AQUA-CHEM, INC.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/10-CA-345660 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.