

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

SOUTHERN ALUMINUM FINISHING COMPANY, INC.

and

**Case Nos.: 25-CA-325283
25-CA-325296**

**SHEET METAL WORKERS, AIR, RAIL
AND TRANSPORTATION WORKERS,
LOCAL UNION NO. 20**

Thomas Browder, Esq.,
Counsel for the General Counsel
Robert Chadwick, Jr., Esq. and Carli L. Smith, Esq.,
Counsel for the Respondent
Neil E. Gath, Esq.,
Counsel for the Charging Party

DECISION

STATEMENT OF THE CASE

JEFFREY P. GARDNER, Administrative Law Judge. The charge in case 25-CA-325283 was filed September 6, 2023, and later amended on March 15, 2024. The charge in case 25-CA-325296 was filed September 6, 2023, amended on March 15, 2024, and further amended on April 2, 2024.¹ The within Consolidated Complaint was issued on August 16, 2024. (GC 1(a)).²

In substance the General Counsel alleges that Respondent violated Section 8(a)(3) and (1) of the Act by unlawfully isolating, suspending and discharging employee Kyle Phillips in retaliation for and in order to discourage union and other protected activities. It further alleges that Respondent violated Section 8(a)(1) of the Act by interrogating employees about their protected activities and by maintaining work rules and an employment agreement that unlawfully restrict employees' Section 7 rights.

Respondent filed its Answer on August 30, 2024, in which it denied the substantive allegations of the Consolidated Complaint.

Beginning December 10, 2024, and ending December 11, 2024, I conducted a trial during which all parties were afforded the opportunity to present their evidence. On January 15, 2025, the General Counsel, Respondent and Charging Party each filed timely initial briefs. On

¹ A third charge filed on September 6, 2023, in case 25-CA-325288 was withdrawn on April 15, 2024.

² Abbreviations used in this decision are as follows: "Tr." for the transcript, "GC Exh." for the General Counsel's exhibits, "R Exh." for Respondent's Exhibits, and "Jt Exh." for Joint exhibits. Specific citations to the transcript and exhibits are included only where appropriate to aid review, and are not necessarily exclusive or exhaustive.

April 23, 2025, the General Counsel filed a motion to withdraw certain arguments in its post-hearing brief, to which no opposition was filed.³

Upon consideration of the entire record and the Briefs filed, I make the following

FINDINGS OF FACT

I. JURISDICTION

Based on the pleadings and stipulated facts, the Respondent admitted and I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2) (6) & (7) of the Act, and that the Union, Sheet Metal Workers, Air, Rail and Transportation Workers, Local Union No. 20 A/W International Association of Sheet Metal, Air, Rail, and Transportation Workers (“the Union”) has been at all material times a labor organization within the meaning of Section 2(5) of the Act. It further admitted, and I find, that the individuals named in paragraph 4 of the Complaint are supervisors and agents of Respondent within the meaning of Sections 2(11) and 2(13) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The Respondent, Southern Aluminum Finishing Company, Inc., is engaged in the business of fabricating, distributing and finishing custom aluminum products at various facilities around the country, including its facility in Indianapolis, Indiana, the only facility at issue here. On March 10, 2023, Respondent hired Kyle Phillips as a fabricator at its Indianapolis Indiana facility. He was subsequently discharged on April 17, 2023.⁴

At the time Phillips was hired, and for the short duration of his employment, the acting general manager of the Indianapolis facility was Francis Buchholz.⁵ Buchholz was in charge of overseeing operations, including financials, productivity, sales and marketing. He reported directly to Respondent’s CEO, Penn McClatchey, and had three direct reports, fabrication supervisor Brian Mikesell and two sales associates, Brianna Koons and Joe Braun. Buchholz and Mikesell each testified at the hearing.

When Phillips began working for Respondent, he was one of approximately nine fabrication and shipping employees, none of whom were represented by a union. About two weeks after starting, on March 24, Phillips announced to Mikesell that he was a union organizer and intended to organize the employees at the facility. Phillips provided Mikesell with a letter from the Union stating that he was a member and employee of the Union, and that he had been assigned to organize the employees of Respondent.

³ Specifically, the General Counsel requests to withdraw Sections III.E and IV, located at pages 49-63 of its post-hearing Brief, which had sought special remedies for Respondent’s alleged unlawful rules. The General Counsel’s motion to withdraw those arguments, absent opposition, is granted. The General Counsel’s arguments otherwise relating to the lawfulness of the disputed rules remain, and are addressed in this decision.

⁴ All of the underlying events at issue here took place in 2023, so all dates referenced hereafter can be assumed to be in 2023, unless otherwise noted.

⁵ Buchholz was Respondent’s Vice President of Operations Excellence and Innovation, based in its Georgia corporate headquarters, but on temporary assignment following the separation of the facility’s general manager in February 2023.

That same day, Mikesell emailed Buchholz to advise him that Phillips was an organizer for the Union, and acknowledged receipt of the Union's March 24 letter confirming the same, which Mikesell attached to his March 24 email to Buchholz. Buchholz in turn forwarded Mikesell's email to Respondent's CEO, McLatchy, also that same day. Mikesell also notified Human Resources Manager Johndrea Dalton that Phillips was a union organizer, and Dalton replied to him with an email attaching Respondent's Nondisclosure, Nonsolicitation and Noncompetition During Employment Agreement, containing its nonsolicitation policy.

When Phillips began working for Respondent, he had been assigned to work in the assembly area, alongside other employees. At that time, there had been no concerns raised about Phillips's work or any negative impact on operations. However, just after announcing his role with the Union, Phillips was assigned to work on the bandsaw – an unusually loud machine that had the effect of isolating him from other employees and which prevented him from interacting with other employees. That assignment lasted only a few days before Phillips returned to other duties. It appears from Respondent's work assignment records that other employees routinely rotated in to work the bandsaw before and after Phillips's assignment.

It is not disputed that some of Phillips's co-workers were vocally unreceptive to his efforts to discuss the Union with them. Indeed, employees Marcus Brummett, Dustin Strole and Jesse Curtis, each of whom testified at trial, all filed formal complaints that Phillips kept trying to talk to them about the Union despite their insistence that they were not interested in the Union. They were given contact information and instructions for how to file a complaint by Supervisor Mikesell, though he denied encouraging any employee to complain.

An initial investigation of those complaints was then conducted by Respondent's Human Resources Manager Johndrea Dalton. Dalton testified that she first received employee complaints against Phillips by email on April 5 and that the investigation began the following day when she spoke with employees by telephone on April 6. When asked a question about her April 6 telephone conversations with employees "what specific conduct did Mr. Phillips engage in that was harassing the employees?" Dalton responded that "the employees stated to me that Kyle wouldn't stop unionizing." (Tr at 117-118).

Phillips was suspended the following day on April 7, just 2 weeks after he disclosed that he was working for the Union to organize Respondent's employees. That day, April 7, Dalton spoke with Buchholz about her telephone interviews with the three complaining employees, and testified that she told Buchholz about the union-related subject matter of Phillips's complained-of conversations. Buchholz, by contrast, claimed in his testimony that he had no idea of the subject matter of the harassment complaints when it was decided that Phillips would be suspended.

Despite Dalton having already learned that the basis for the employee complaints was that Phillips was trying to organize for the Union, Respondent's proffered reason for the suspension was that it needed to further investigate these 3 employees' complaints that Phillips was harassing them, and that the company's anti-harassment policy required that he be put on administrative leave without pay⁶ pending an investigation of the complaints. A fourth complaint by employee Dustin Matlock was filed thereafter.

⁶ Dalton acknowledged that there is no difference between an unpaid administrative leave and a suspension, but that "we like to use the term administrative leave." (Tr at 115).

The subsequent investigation was also conducted by Dalton, who came to Indianapolis from her office in Atlanta to interview each of the complaining employees, including Matlock, as well as Supervisor Mikesell. Those interviews took place on April 11. The subject of the investigation did not include any allegation of poor performance of production issues on Phillips's part, but rather, continued to focus on his alleged "harassment" of his co-workers about the Union. Dalton also interviewed Phillips, but she declined to interview non-complaining co-workers the names of whom Phillips had identified as people with relevant information to the investigation.

Dalton also did not investigate multiple claims of harassment against Phillips that Phillips brought to her attention during his interview. These included a petition signed by 5 other employees calling on him to resign and employees carrying rubber chickens around on the production floor and squeaking them when Phillips walked by. Phillips also complained of anti-union t-shirts that other employees printed up and wore on the production floor. At trial, the employee witnesses did not deny the underlying facts of any of Phillips's complaints.

Buchholz was present for Dalton's interview of Phillips. According to Buchholz, "Phillips was pretty adamant about continuing the activities of – of what he was doing as he continued to organize. And he was pretty – what I would say, emphatic." Phillips believed that was his legal right, and used "body language and a tone that meant he was not going to stop." (Tr. at 53.) Buchholz testified based on this that "I truly believe Mr. Phillips was not going to stop his tactics on what I would consider to be aggressively trying to interfere with other people." (Tr. at 54).

Following her in-person interviews on April 11, Dalton prepared a memo summarizing the findings of her investigation. The memo acknowledges that Phillips's allegedly harassing behavior was entirely related to his union organizing efforts, including discussion of wages. Dalton found that the discussions were primarily during break times, though did sometimes take place during production when other non-work subjects were also being discussed. She concluded that the discussions may have caused other employees to stop working at times, though not specifically Phillips.

Phillips never returned to work after his April 7 suspension, and instead, his suspension was converted to a termination on April 17. In an April 17 letter addressed to Phillips from Buchholz, Respondent advised Phillips that he was terminated because he violated Section 2.4 of the company's Employee Manual which prohibits "all forms of discrimination and conduct that could be considered harassing, coercive and disruptive, including sexual harassment" (R Exh. 8). In fact, Section 2.4 is entitled "Sexual and Other Unlawful Harassment" and details a list of specific examples of sexual harassment.

Dalton could not recall whether she ever made a specific recommendation to terminate Phillips, but maintained that she could have done so with the information she had gathered in the investigation. Nevertheless, after Phillips was terminated on April 17, she continued corresponding with Supervisor Mikesell about additional interviews Mikesell was still conducting with employees on April 19 about Phillips's union activities. Mikesell testified that he was conducting these interviews because he was instructed by Dalton to investigate whether Phillips was disrupting production.

Buchholz testified that it was his decision to terminate Phillips after reviewing the final report prepared by Dalton along with Ms. Dalton's interview notes, and after talking with McClatchy about the findings of the report. When asked why he made the ultimate decision to

terminate Phillips, Buchholz singled out first that Phillips “was antagonizing four employees repeatedly” (Tr. 53) and noted that Phillips “was pretty adamant about continuing the activities of – of what he was doing as he continued to organize” (Tr. 54). Buchholz was convinced that Phillips was not going to stop trying to organize for the Union.

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In his testimony, Buchholz claimed that he had noticed production had slowed down since Phillips began his organizing activities. Buchholz testified that he was concerned that other employees were going to leave and quit if Phillips continued trying to “agitate” them. (Tr. 57). He also expressed concern that those other employees might even resort to violence if Phillips continued his organizing. He made no suggestion that Phillips was the person who would be violent, only that his organizing could make others engage in some type of workplace violence. (Tr. 37).

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However, there was no mention of slowed production in the termination letter given to Phillips. (R Exh. 8). Nor was slowed production mentioned in the report from Dalton, or in any of Dalton’s interview notes that Buchholz reviewed prior to his decision to terminate. At that time, Buchholz admitted he had not reviewed the initial complaints made by employees Brummett, Strole, Curtis or Matlock, nor Ms. Dalton’s notes upon receiving those complaints.

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Based on his review of Dalton’s report, and his expressed concerns about disruption caused by Phillips’s organizing activity, and after speaking with both Dalton and McLatchy, Buchholz made the decision to terminate Phillips on April 17. That same day, Phillips was emailed a letter advising that he was being terminated. (R. Exh. 8). The letter stated that he was being terminated for violating Section 2.4 of Respondent’s Employee Manual.

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Section 2.4 of Respondent’s Employee Manual is entitled “Sexual and Other Unlawful Harassment” and states:

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“SAF is committed to providing a work environment that is free from all forms of discrimination and conduct that can be considered harassing, coercive, or disruptive, including sexual harassment. SAF will not tolerate any actions, words, jokes, or comments based on a person’s sex, race, color, national origin, age, religion, disability, sexual orientation, or any other legally protected characteristic.

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Sexual harassment is defined as unwanted sexual advances, or visual, verbal, or physical conduct of a sexual nature. This definition includes many forms of offensive behavior and includes gender-based harassment of a person of the same sex as the harasser. The following is a partial list of sexual harassment examples:

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- Unwanted Sexual Advances.
- Offering employment benefits in exchange for sexual favors.
- Making or threatening reprisals after a negative response to sexual advances
- Visual Conduct that includes leering, making sexual gestures, or displaying of sexually suggestive objects or pictures, cartoons or posters.
- Verbal conduct that includes making or using derogatory comments, epithets, slurs or jokes.
- Verbal sexual advances or propositions.

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- Verbal abuse of a sexual nature, graphic verbal commentaries about an individual’s body, sexually degrading words used to describe an individual, or suggestive or obscene letters, notes, or invitations.
- Physical conduct that includes touching, assaulting, or impeding or blocking movements.

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Unwelcome sexual advances (either verbal or physical), requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of employment; (2) submission to or rejection of the conduct is used as a basis for making employment decisions; or, (3) the conduct has the purpose or effect of interfering with work performance or creating an intimidating, hostile, or offensive work environment.”

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(R Exh. 2).

The termination letter concludes by stating, “Employees that violate work rules such as harassing and unprofessional conduct may be subject to disciplinary action, up to and including termination of employment. There is no discussion in the termination letter of what specifically Phillips did to violate Respondent’s Sexual and Other Unlawful Harassment policy. Nor is there any mention of slowed production or other interference with work processes. There was also no mention that Phillips violated any other of Respondent’s written policies.

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In addition to Respondent’s “Sexual and Other Unlawful Harassment” policy, it maintains additional policies in its Employee Manual, including policies regarding confidential information and nonsolicitation.

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Section 3.7 of Respondent’s Employee Manual is entitled “Confidentiality Policy” and states, in part:

“Confidential information is any company information that is not generally known to the public or our industry. Examples of confidential information include, but are not limited to, the following:

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Customer lists and files, including customer preferences and trade secrets.

Product information such as materials, methods, and costs.

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Personnel files

Manufacturing information such as running times, material cost, and product pricing. Computer records, including programs and codes.

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Financial and marketing data and strategies

Research and development data and marketing strategies

Trade secrets and any scientific data

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Technological data and prototypes

You may not disclose or use proprietary or confidential information except as your job requires. You also may not disclose or use any proprietary or confidential information that you obtained during your employment with any previous employer. Anyone who violates these guidelines will be subject to disciplinary action and possible legal recourse.”

(R Exh. 2).

Respondent also maintained a “Nondisclosure, Nonsolicitation and Noncompetition During Employment Agreement” policy which states, in part:

“Nonsolicitation of Employees. In consideration of the Employee’s employment by the Company, the Employee agrees that during employment and for a period of twelve (12) months thereafter, the Employee shall not, either directly or indirectly, on the Employee’s own behalf or on behalf of any person, entity or enterprise, solicit or attempt to solicit away from employment by the Company any person employed by the Company, with whom the Employee had regular contact in the course of the Employee’s employment by the Company during the last twelve (12) months of the Employee’s employment by the Company, for the purpose of having such person perform duties similar to those performed by such person for or on behalf of the Company. The provisions of this Section shall only apply to those persons employed by the Company at the time of solicitation or attempted solicitation.”

(R Exh. 1, Section 2.5).

There is no allegation that any alleged violation of either of these policies were part of the decision to discharge Phillips. However, when Phillips first announced his organizer status, Mikesell did confront Phillips with the language of the nonsolicitation policy, which he had obtained that day from Dalton. Mikesell read the language to Phillips alone, and claimed it was because he had reason to believe Phillips was encouraging employees to leave, which Phillips denied.

III. CREDIBILITY DETERMINATIONS

My factual findings set forth above are based on my observations of witnesses’ testimonial demeanor.⁷ I found Phillips to be a mostly credible witness. He testified consistently on direct and cross examination. Although his answers on cross-examination were more abrupt than when he testified on direct, he did not appear evasive or untruthful, but rather, seemed merely unwilling to say any more than what was absolutely necessary in response to Respondent counsel’s questions.

By contrast, I did not find Respondent’s manager, Francis Buchhold, to be credible. While he was very detailed when testifying about the basic company operations, and took full responsibility for the decision to terminate Phillips, his explanations for his decision were

⁷ Where credibility resolution is not based on observations of witnesses’ testimonial demeanor, the choice between conflicting testimonies rests on the weight of the evidence, established or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole. *Taylor Motors, Inc.*, 366 NLRB No. 69 slip op. 1 at fn. 3 (2018); *Lignotock Corp.*, 298 NLRB 209 at fn. 1 (1990).

repeatedly contradicted by the record evidence, particularly when talking about the reasons for Phillips's termination. His recollection about what he knew on April 7 about the substance of the employee complaints about Phillips was also contradicted by that of Dalton.

5 I found Brian Mikesell and HR Manager Johndrea Dalton to be less than credible as well. Both Mikesell and Dalton appeared to struggle remembering important facts. Notably, when they were confronted with documents showing their continued investigation of Phillips after he was already terminated, they seemed evasive, and could not adequately explain why that investigation was continuing.

10 I did find the individual employee witnesses – Marcus Brummett, Dustin Strole, Jesse Curtis and Dustin Matlock - to be mostly credible to the extent they forthrightly testified that they were not interested in the Union, and wanted Phillips to stop trying to convince them. But, despite being given the opportunity to do so, none of the witnesses described Phillips as being anything more than persistent (in the best light) yet annoying (in the worst) in his efforts to persuade employees to support the Union. No one described specific conduct on Phillips's part that could reasonably be considered harassing.

ANALYSIS

A. Respondent violated 8(a)(3) and 8(a)(1) of the Act on April 7 and 17, 2023, when it isolated, suspended and later discharged Phillips, and Respondent has not met its *Wrightline* burden.⁸

25 In *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), enfd. 662 F.2d 889 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399-403 (1983), the Board set forth its causation test for cases alleging violations of the Act turning on employer motivation.⁹ First, the General Counsel must make an initial prima facie showing sufficient to support the inference that protected conduct was a “motivating factor” in the employer's decision. *Wright Line*, 251 NLRB at 1089. See *Coastal Sunbelt Produce, Inc. & Mayra L. Sagastume*, 362 NLRB No. 126, slip op. at 1 (2015).

35 Establishing unlawful motivation requires proof that: “(1) the employee engaged in protected activity; (2) the employer was aware of the activity; and (3) the animus toward the activity was a substantial or motivating reason for the employer's action.” *Consolidated Bus Transit, Inc.*, 350 NLRB 1064, 1065 (2007), enfd. 577 F.3d 467 (2d Cir. 2009).

40 If the General Counsel makes that showing, the burden shifts to the employer to “demonstrate that the same action would have taken place even in the absence of the protected conduct.” *Wright Line*, 251 NLRB at 1089. See also *Septix Waste, Inc.*, 346 NLRB 494, 496

⁸ The General Counsel also alleged that Respondent violated 8(a)(3) by reassigning Phillips to work the bandsaw on March 23, in an attempt to isolate and prevent him from interacting with other employees on the production floor. While the timing of that assignment was conspicuously close to Phillips's disclosure about his Union activities, the evidence shows that employees routinely rotate into that position, and that Phillips's assignment there was for only a short duration and not altogether unusual. As such, I do not find sufficient evidence to find a violation of the Act based on that temporary assignment.

⁹ The Board has since clarified that the *Wright Line* test remains unchanged. *Intertape Polymer Corp.*, 372 NLRB No. 133 (2023).

(2006). An employer “cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected activity.” *W.F. Bolin Co.*, 311 NLRB 1118, 1119 (1993).

5 Here, Phillips clearly engaged in protected activity when he openly talked with his co-workers about the benefits of bringing in a Union. As such, I find that the General Counsel proved the first element of its prima facie case. Likewise, it is not disputed that Respondent was well-aware of Phillips’s union activity, as it took place in public, and because Phillips specifically notified his supervisor that he was attempting to organize his fellow employees. Therefore,
10 there can be no doubt that the General Counsel also proved the second element of its prima facie case.

As to the third element of the General Counsel’s prima facie case, it is longstanding Board law that animus need not be proven by direct evidence; it can be inferred from the record as a whole. *Fluor Daniel, Inc.*, 304 NLRB 970 (1991). The Board has since reaffirmed the principle that timing alone can be substantial circumstantial evidence of an employer’s unlawful motivation. *Capstone Logistics LLC et al.* 372 NLRB No. 124 at p. 5 (2023). Here, I find the combination of direct evidence, timing and pretext demonstrate that Respondent’s actions were
15 in retaliation for Phillips’s union activity.

20 While not itself unlawful, Respondent’s animus toward union activity is made clear in Section 2.7 of Respondent’s Employee Manual entitled “Union Free Employment” where it states that “We believe that the environment we strive to create in the workplace does not require a union nor would it be in the best interests of our customers or employees.” (R Exh. 2). Respondent backed that policy up with its near immediate response to learning Phillips was engaged in union organizing, including when Mikesell called Phillips into his office to read him Respondent’s nonsolicitation policy.
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In addition, I find the timing of Respondent’s decision to suspend (and later terminate) Phillips is further evidence of animus in this case, coming as it did just two weeks after Phillips notified his supervisor of his Union activity. The three employees who filed formal complaints with the company were assisted by Mikesell to do so, and Dalton conducted an initial telephone interview with those employees before Phillips was initially suspended. At that point, it should have been clear that the conduct Phillips was engaged in was protected activity.
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35 I further find Respondent’s pretextual claim regarding alleged interference with production, discussed below, to bolster this specific finding of animus. Taking all these together, I find more than sufficient evidence to demonstrate Respondent’s animus. Compare *BS&B Safety Systems, LLC*, 370 NLRB No. 90 (2021), where the Board found that the General Counsel met its burden of proving Respondent’s animus “rely[ing] only on the timing of the discharge and evidence of pretext as found by the judge.”
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45 Accordingly, having met all three elements, protected activity, knowledge, and animus motivating Phillips’s discharge, I find that General Counsel has met its prima facie burden that the discharge was unlawful. With the burden shifted to Respondent to demonstrate that it would have taken the same action even in the absence of protected conduct, I find that Respondent has failed to meet its burden.

50 Where an employer’s proffered reasons are pretextual - either false or not actually relied on - the employer fails by definition to meet its burden of showing it would have taken the same

5 action for those reasons absent the protected activity. See *Boothwyn Fire Co. No. 1*, 363 NLRB No. 191, slip op. at 7 (2016); *Pro-Spec Painting, Inc.*, 339 NLRB 946, 949 (2003); and *Hays Corp.*, 334 NLRB 48, 49 (2001). I find Respondent's claim that Phillips was interfering with production to be disingenuous considering the totality of the circumstances here. Instead, I find those claimed explanations to be merely pretext for its unlawful termination in retaliation for Phillips's union activity.

10 On the subject of pretext, it is important to note that Respondent initially did not take the position that there was anything wrong with Phillips's work performance. Indeed, in its opening statement at trial, counsel stated unequivocally that "we made the decision to terminate Mr. Phillips. It wasn't because he was a bad employee, it wasn't because he wasn't doing his job, it was because he was harassing other employees." (Tr. 38).

15 This finding is also supported by the fact that Phillips had no history of counseling or discipline during his brief tenure of employment, and because performance was not implicated in the investigation or ultimate decision to terminate him. Yet, after his termination, Respondent attempted to build a case for alleging Phillips was interfering with production, and that contributed to his being discharged.

20 Finally, the policy which Phillips is alleged to have violated is plainly one specifically prohibiting sexual harassment and harassment based on a person's legally protected class – sex, race, color, national origin, age, etc. On its face, Respondent's application of the policy appears shoe-horned to apply to Phillips's Union organizing, with only the most strained interpretation suggesting it is applicable to the facts present.

25 As such, I find that Respondent has not met its burden under *Wright Line*, and that it cannot prove it would have taken the same action against Phillips even in the absence of his union activity. Indeed, I find that it would not have discharged Phillips but for the fact that he engaged in that activity.

30 Accordingly, I find that Respondent violated Section 8(a)(3) or (1) of the Act when it suspended Phillips on April 7 and later terminated Phillips on April 17, and therefore, recommend that Phillips be made whole for the unlawful actions taken by Respondent.

35 **B. Respondent did not violate 8(a)(1) of the Act by interrogating employees.**

40 The General Counsel alleged that Respondent unlawfully interrogated employees about Phillips's and other employees' Union activity, specifically during the interviews conducted by Johndrea Dalton. While the Act does not prohibit employers from interrogating employees per se, it does prohibit employers from any:

45 "activity which in some manner tends to restrain, coerce or interfere with employee rights. To fall within the ambit of Section 8(a)(1), either the words themselves or the context in which they are used must suggest an element of coercion or interference."

Rossmore House, 269 NLRB 1174 (1986), quoting *Midwest Stock Exchange v. NLRB*, 635 F.2d 1255, 1267 (7th Cir. 1980).

The Board considers the totality of the circumstances when determining whether the questioning of an employee constitutes an unlawful interrogation, and applies “the *Bourne* factors” to analyze the alleged interrogation, specifically:

- (1) The background, i.e. is there a history of employer hostility and discrimination?
- (2) The nature of the information sought, e.g., did the interrogator appear to be seeking information on which to base taking action against individual employees?
- (3) The identity of the questioner, i.e. how high was [s]he in the company hierarchy?
- (4) Place and method of interrogation, e.g. was employee called from work to the boss’s office? Was there an atmosphere of unnatural formality?
- (5) Truthfulness of the reply.

Westwood Health Care Center et al., 330 NLRB 935, 939 (2000), citing *Bourne v. NLRB*, 332 F.2d 47, 48 (2d Cir. 1964).

Significantly, the Board has instructed that these factors are not to be mechanically applied in each case, but rather, are to be considered useful indicia that serve as a starting point for assessing the “totality of the circumstances.” *Id.*, citing *Perdue Farms, Inc v. NLRB*, 144 F.3d 830, 835 (D.C. Cir. 1998).

To be sure, questioning employees about their protected activities or that of other employees would ordinarily violate the Act in the absence of a legitimate need for the information sought, and a mechanical application of the *Bourne* factors might lead to that conclusion. However, the context in which the alleged interrogations took place here was limited to the questionnaires and interviews conducted by Dalton in connection with the complaints filed by employees about Phillips’s protected activity.

Notwithstanding the unlawful actions taken against Phillips by Respondent, those interviews did take place in response to complaints that were made by employees about Phillips’s organizing. And Dalton was tasked with conducting an investigation to understand the underlying facts being complained of.

As such, I find there was a legitimate need for the information sought by Dalton, and that taking into account the totality of the circumstances, neither the questions asked of the employees nor the context in which they were being asked suggests an element of coercion or interference. Accordingly, I recommend the 8(a)(1) allegation of unlawful interrogation be dismissed.

C. Respondent violated 8(a)(1) of the Act by maintaining an overly broad confidentiality policy and nonsolicitation agreement.

General Counsel has also alleged that Respondent has been maintaining an overly broad confidentiality policy and employment agreement in violation of Section 8(a)(1) of the Act. The test for evaluating whether work rules violation Section 8(a)(1) of the Act is likewise guided by “whether they have a reasonable tendency to interfere with, restrain, or coerce employees who may engage in activities protected by Section 7.” *American Freightways Co.*, 124 NLRB 145, 147 (1959).

This test applies to work rules which explicitly restrict Section 7 rights as well as rules that do not explicitly restrict those rights but are based on broad language where one of the following factors are present:

- (1) employees would reasonably construe the language to prohibit Section 7 activity,
- (2) the rule was promulgated in response to union activity, or
- (3) the rule has been applied to restrict the exercise of Section 7 rights.

Karl Knaus Motors, Inc., 359 NLRB 1754, 1754 (2012).

In making that determination, the Board considers “whether the General Counsel has established that a challenged work rule has a reasonable tendency to chill employees from exercising their Section 7 rights.” *Stericycle, Inc.*, 372 NLRB No. 113 (2023).

In *Stericycle*, the Board clarified that “the reasonable employee interprets rules as a layperson, not as a lawyer. If an employee could reasonably interpret a rule to restrict or prohibit Section 7 activity, the General Counsel has satisfied [its] burden and demonstrated that the rule is presumptively unlawful.” *Id.* at p. 9. This remains so “even if the rule could also reasonably be interpreted not to restrict Section 7 rights and even if the employer did not intend for its rule to restrict Section 7 rights.” *Id.* at p. 9-10.

The present case does not involve rules that explicitly restrict Section 7 rights or ones that have been unlawfully promulgated or discriminatorily applied. Rather, the General Counsel alleges that the language of these rules are so broad that they reasonably could be read as restricting protected rights, even if they could also be read not to, as explained in *Stericycle*. I agree with the General Counsel.

In pertinent part, Respondent’s confidentiality policy prohibits employees from sharing “any company information that is not generally known to the public or our industry.” An employee could reasonably interpret this policy to prohibit them from engaging in common protected activities, including for example sharing information with each other or a union organizer about employee wages and benefits. That is clearly protected Section 7 activity, and yet would appear to be prohibited by Respondent’s confidentiality rule.

Likewise, an employee could reasonably interpret Respondent’s Nondisclosure, Nonsolicitation and Noncompetition During Employment Agreement to prohibit Section 7 activity. That policy further restricts employees from sharing “information relating to the Company’s conduct of its business” that “is treated by the Company as confidential.” (R Exh. 2 at 150). Again, an employee could reasonably interpret this prohibition to bar them from sharing information with each other or a union organizer about employee wages and benefits, which is clearly protected Section 7 activity.

The Nonsolicitation Agreement also states that employees may not “solicit or attempt to solicit away from employment by the Company any person employed by the Company” for extended periods. Yet, the Board has held that it is protected activity for an employee to encourage others to seek better paying employment, or threaten to do so in pursuit of improved working conditions, or simply to cause other employees to leave their employer upon learning of better opportunities elsewhere. *See, e.g. M.J. Mechanical Services*, 325 NLRB 1098 (1998). An employee could reasonably interpret Respondent’s Nonsolicitation Agreement to prohibit this and other protected conduct.

As such, I find these rules to be overly broad, and that an employee could reasonably interpret the rules to restrict or prohibit Section 7 activity. Accordingly, I find that Respondent violated Section 8(a)(1) by maintaining its overly broad confidentiality policy and nonsolicitation agreement.

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Conclusions of Law

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent violated Section 8(a)(3) and (1) of the Act on April 7, 2023, by suspending Kyle Phillips in retaliation for his union activity.
4. Respondent violated Section 8(a)(3) and (1) of the Act on April 17, 2023, by unlawfully terminating the employment of Kyle Phillips in retaliation for his union activity.
5. Respondent violated Section 8(a)(1) of the Act by maintaining an overly broad confidentiality policy and non-solicitation agreement.
6. The above violations are unfair labor practices within the meaning of the Act.

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Remedy

As I have concluded that the Respondent engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. Respondent, having discriminatorily suspended and discharged Kyle Phillips must rescind its unlawful discipline, offer Phillips reinstatement and make him whole for any loss of earnings and other benefits resulting from that discrimination.

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Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). The Respondent shall also file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters and shall also compensate the discriminatee for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year. *Don Chavas, LLC d/b/a Tortillas Don Chavas and Mariela Soto and Anahi Figueroa*, 361 NLRB No. 10 (2014).

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In addition to the backpay-allocation report, Respondent shall file with the Regional Director for Region 25 a copy of Kyle Phillips's corresponding W-2 form(s) reflecting the backpay award. *Cascades Containerboard Packaging*, 370 NLRB No. 76 (2021). In addition, Respondent is ordered to reimburse Kyle Phillips for all search-for-work-related expenses regardless of whether he received interim earnings in excess of these expenses overall or in any given quarter. *King Soopers, Inc.*, 364 NLRB No. 93 (2016). Respondent shall also remove from its files any reference to the unlawful suspension and discharge of Kyle Phillips.

Additionally, in accordance with *Thryv, Inc.*, 372 NLRB No. 22 (2022), Respondent shall also compensate Phillips for any other direct or foreseeable pecuniary harms incurred as a result of the unlawful discharge.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁰

ORDER

The Respondent, Southern Aluminum Finishing Company, Inc., its officers, agents, and representatives, shall

1. Cease and desist from:

(a) Suspending, discharging or otherwise discriminating against any employee because they engage in union activities, or to discourage other employees from engaging in these activities;

(b) Maintaining overly broad confidentiality and nonsolicitation policies that fail to advise employees of their Section 7 rights.

(c) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act

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

(a) Within 14 days from the date of the Board's Order, offer Kyle Phillips full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Kyle Phillips whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the decision, plus reasonable search-for-work and interim employment expenses regardless of whether those expenses exceed his interim earnings.

(c) Compensate Kyle Phillips for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 25, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years, along with Kyle Phillips's corresponding W-2 form(s) reflecting the backpay award.

(d) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful suspension and discharge, and within 3 days thereafter notify Kyle Phillips in writing that this has been done and that neither the suspension nor the discharge will be used against him in any way.

¹⁰ If no timely 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.

(e) Preserve, and within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Indianapolis, Indiana the attached notice marked "Appendix."¹¹ Copies of the notice, on forms provided by the Regional Director for Region 25 after being signed by the Respondents' authorized representatives, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to the physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondents customarily communicate with its employees by such means.

Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have 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 January 3, 2020.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 2 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. June 3, 2026



Jeffrey P. Gardner
Administrative Law Judge

¹¹ 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 the National Labor Relations Act and has ordered us to post and abide by this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Bargain collectively through representatives of their own choice
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising these rights.

WE WILL NOT maintain or attempt to enforce overly broad rules relating to confidentiality and nonsolicitation..

WE WILL NOT reassign, suspend, discharge or otherwise discriminate against any employee for engaging in activity protected by Section 7 of the Act.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of their rights under Section 7 of the Act.

WE WILL revise or rescind our overly broad rule.

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

WE WILL make Kyle Phillips whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms suffered as a result of the discrimination against him, plus reasonable search-for-work and interim employment expenses regardless of whether those expenses exceed his interim earnings.

WE WILL compensate Kyle Phillips for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 25, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years, along with a copy of Kyle Phillips's corresponding W-2 form(s) reflecting the backpay award.

WE WILL within 14 days from the date of this Order, remove from our files any reference to the unlawful suspension and discharge of Kyle Phillips, and **WE WILL** within three days thereafter, notify him in writing that this has been done.

SOUTHEN ALUMINUM FINISHING COMPANY, INC.

(Employer)

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

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

575 N. Pennsylvania St., Ste. 238, Indianapolis, IN 46204-1520
(317) 226-7381, Hours: 8:30 a.m. to 5:00 p.m.

The Administrative Law Judge's decision can be found at <http://www.nlr.gov/case/25-CA-325283> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF
POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER
MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS
PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE
OFFICER, (317) 991-7644.