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

CUSTOM SIGN CONSULTANTS

and **Cases 13-CA-343009**

JOSEPH J. KIERSTYN

Vivian Perez-Robles and Ashley Meeder, Esqs.,
for the General Counsel.
Megan Lopp Mathias, Esq.
for the Respondent.

DECISION

INTRODUCTION[1]

ANDREW S. GOLLIN, ADMINISTRATIVE LAW JUDGE. This hearing was held on March 23-24, 2026, in Chicago, Illinois, over allegations that Custom Sign Consultants (the Respondent) violated Section 8(a)(1) of the National Labor Relations Act Act) in connection with its discharge of Joseph J. Kierstyn.

Kierstyn worked for the Respondent most recently between December 2023 and May 23, 2024. On about May 13, 2024, the Respondent's owner, Al Frapolli, announced a plan to reduce the employees' hours. Kierstyn later commented to coworkers that it was unfair to reduce their hours, particularly considering what they were paid. This prompted new and renewed discussions about wages. On May 17, the Respondent's production/shop manager, Felix Ortiz, instructed Kierstyn that he was no longer allowed to discuss wages. Kierstyn ignored this instruction.

On May 23, Frapolli and the Respondent's office manager, Lesley Casas, met with Kierstyn and informed him he was being discharged for "unsatisfactory workmanship." Immediately after this meeting, Kierstyn went to Frapolli's office to discuss the reasons for his discharge. According to Kierstyn, Frapolli stated he was tired of Kierstyn "acting like a union rep" and "boasting" about his wages. Frapolli largely denies this. He contends Kierstyn was discharged because he was not showing up to work on time, he was creating bad morale for everyone, and he was not producing the product correctly.

Kierstyn filed the charges in this case on May 24, 2024, and May 20, 2025. (GC Exhs. 1(a) and (c)). Based on those charges, the Regional Director for Region 13 of the National Labor Relations

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[1] Abbreviations in this decision are as follows: "Tr. __" for transcript; "Jt. Exh. __" for Joint Exhibits; "GC Exh. __" for the General Counsel Exhibits; "R Exh. __" for the Respondent's Exhibits; "GC Br. __" for the General Counsel's Brief; and "R. Br. ___" for the Respondent's Brief. Although I have included citations to the record to highlight particular testimony or exhibits, my findings and conclusions are based upon my review and consideration of the entire record.

Board (the Board), on behalf of the General Counsel, issued a complaint on July 8, 2025, and an amendment to complaint on March 4, 2026. (GC Exhs. 1(e) and (l)). The Respondent filed its answer to the complaint on July 29, 2025, and its answer to the amendment to complaint on March 20, 2026. (GC Exhs. 1(g) and (n)).

In the complaint, as amended, the General Counsel alleges the Respondent violated Section 8(a)(1) of the Act when Ortiz orally instructed employees to not discuss wages, and later when Frapolli discharged Kierstyn because he discussed wages, hours or other terms and conditions of employment with his coworkers. In its answers, the Respondent denies these allegations and raises various affirmative defenses. Among its defenses, it argues that even if Ortiz instructed Kierstyn not to discuss wages, it was not attributable to the Respondent because Ortiz was not a statutory supervisor. It also contends that Kierstyn was discharged for legitimate business reasons, including, but not limited to, violating policies governing safety, attendance, and confidentiality.

As discussed more fully below, I conclude the Respondent committed the alleged violations. Specifically, I conclude that Ortiz's instruction was both unlawful and attributable to the Respondent because he was speaking in his role as a statutory agent who regularly relayed information from management to employees. I further conclude that the Respondent discharged Kierstyn because of his protected wage discussions, and it failed to establish that it would have discharged him in the absence of that activity.

FINDINGS OF FACT[2]

[2] These findings are a compilation of the credible testimony and documentary evidence, as well as the logical inferences drawn therefrom. To the extent evidence of a fact is trustworthy and not contested, it is generally stated without reference to the underlying evidence. To the extent testimony contradicts with the findings, such testimony has been discredited, either as in conflict with more credible evidence or because it was unworthy of belief. In assessing credibility, I relied upon witness demeanor, the quality of their recollection, testimonial consistency, the presence or absence of corroboration, the weight of the respective evidence, inherent probabilities, and the reasonable inferences that may be drawn from the record. *See Double D Construction Group.*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Auto. Dealership Group.*, 321 NLRB 586, 589 (1996)), enfd. sub nom., 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions. Indeed, nothing is more common in judicial decisions than to believe some, but not all, of a witness' testimony. *Daikichi Sushi*, supra at 622; *Jerry Ryce Builders*,352 NLRB 1262, 1262 fn. 2 (2008) (citing *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 754 (2d Cir. 1950), rev'd. on other grounds 340 U.S. 474 (1951)).

The General Counsel's witnesses were Kierstyn and former employee Kaden Smith. I found both to be credible witnesses. They each had an honest and straightforward demeanor, and provided clear, consistent, and fairly detailed testimony, even though Smith could not recall certain details, like dates, about key discussions.

The Respondent's primary witnesses were Casas and Frapolli. I found Casas to be a partially credible witness. She appeared to take her oath seriously, and, despite continuing to work for the Respondent, she generally appeared to make a genuine effort to testify as fully as her recollection and the questioning would allow. However, much of her direct examination involved responding to leading questions or questions seeking her agreement with conclusory statements, as opposed to open-ended questions that may have allowed her to provide fuller and more genuine testimony. There were a few instances where Casas sought to minimize her involvement in certain matters, but they were belied by her text communications with Frapolli.

I did not find Frapolli to be a credible witness when testifying about Kierstyn. He lacked a candid and forthright demeanor, and his recollection was often selective or vague. Like Casas, his direct examination largely involved responding to leading questions or agreeing with conclusory statements that favored the Respondent's defense. He also was prone to making generalized statements that were either unsupported or inconsistent with the record. On cross examination, he was, at times, defensive, evasive, or non-responsive, particularly regarding documents the Respondent produced to the General Counsel pursuant to subpoena.

A. Jurisdiction

The Respondent is an Illinois corporation engaged in the business of identity branding, environmental graphics, large format printing, and sign fabrication and installation. During the preceding 12 months, which is a representative period, the Respondent derived gross revenues in excess of $500,000 and provided services valued in excess of $5,000 for various enterprises located in the State of Illinois, and for Google, Capgemini, and Farmers Insurance, which are enterprises directly engaged in interstate commerce. The Respondent admits it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. (Jt. Exh. 1). Based on the foregoing, I find this dispute affects commerce, and the Board has jurisdiction pursuant to Section 10(a) of the Act.

B. Background

1. Respondent's Operations and Facility Layout

The Respondent designs, manufactures, and installs custom signage. It has a workforce of approximately 10 individuals. (Tr. 355). Their positions include production manager(s), shop manager, designer, installer, and production employees. The production employees perform specific tasks, which include cutting, fabricating, assembling, and painting/finishing. (Tr. 360-362).

During the period at issue, the Respondent had its production facility at 3915 West Armitage Avenue in Chicago, Illinois. Casas and Frapolli had their offices in the front of the facility. Outside Frapolli's office there was a hallway that led to the middle of the facility. The middle of the facility contained the vinyl room, which had the materials used for vinyl graphics, as well as the machines and computers used to cut them. (Tr. 225-226). Outside the room was the manager's workstation, with a desk and computer. (Tr. 136; 235-236). The back of the facility contained the shop area and the lunchroom. The shop area contained worktables, machines, and a production board. (Tr. 154-155).

2. Production Process

Frapolli plans most of the Respondent's projects. (Tr. 299). He prepares a production packet for each project. The packet contains a checklist of the tasks that need to be completed. (Tr. 299; 320-321). The tasks are primarily assigned by departments. Each department typically has one production employee who performs the assigned tasks. (Tr. 320-321). There is some cross training, and certain employees perform multiple tasks or operate multiple machines. (Tr. 135-135; 195-196; 270).

Frapolli meets with the production manager(s) and the shop manager regularly to go through the upcoming projects. The meetings typically occur in the morning between 8 and 9 a.m., in Frapolli's office, in the shop area, or over the telephone. During the meeting, Frapolli goes through each step of each project and makes sure the managers understand because they are tasked with then explaining it all to the employees and making sure the work is done correctly. (Tr. 327).

After meeting with Frapolli, the managers meet with the production employees. (Tr. 234). The production manager will explain the projects, make sure everyone understands what they need to do,

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In general, where there is a dispute in testimony regarding Kierstyn's conduct and his discharge, I have credited the General Counsel's witnesses over the Respondent's witnesses. Specific credibility determinations are set forth below.

and answer any questions. (Tr. 365). They also will post the production packets with the assignments and instructions on the production board. (Tr. 154-155; 247-248).

The production employees typically receive their assignments during the morning meetings, by checking the packets on the production board, or by asking the production manager. (Tr. 138-139; 233-234). Frapolli testified that if he wanted the employees to perform a task a certain way or use certain tools or methods, he would communicate that to the employees through the production manager. (Tr. 254-255). Employees confirmed this to be the case. (Tr. 245-246).

After the production employees perform their assigned tasks, the production manager performs a quality control review. (Tr. 327; 361). This involves checking the production packet to make sure all the work was done in accordance with the specifications and all the necessary components are present. (Tr. 143-144; 233-234). If there are no issues, the manager initials off on the packet. (Tr. 145). If there are issues, the manager sends the project back to the employee who performed the work to make the necessary corrections. (Tr. 145-146; 254-255).

3. Kierstyn's Initial Employment

a. *Supporting Torrentt's Request for Paid Sick Leave*

Kierstyn worked for the Respondent twice. He first worked between March 2022 and September 1, 2023. His primary duties included operating the CNC router machine, the gravograph machine, and the laser cutter. He also performed some fabrication and assembly work. (Tr. 77; 222). He and the other production employees typically worked from 8 a.m. to 4 p.m., Monday through Friday. (Tr. 165). They had a paid half-hour lunch. There was a timeclock at the front of the facility where they punched in and out at the start and end of their day, and during their lunch break.

One of Kierstyn's coworkers at the time was an installer named Anselmo "Chu" Torrentt. In late July 2023, Kierstyn learned that Torrentt had requested paid sick leave to attend an at-home dialysis class to help care for a family member. It was Kierstyn's understanding that Torrentt's request was denied. (Tr. 81-82). Kierstyn decided to speak with Casas and Frapolli, separately, about the denial. He told them that it was unfair of them to deny Torrentt's request. He noted that Torrentt had worked for the company for seven years, and he deserved more respect. (Tr. 83-85).

Text messages between Frapolli and Casas reflect that Kierstyn threatened to resign if Torrentt was not granted the leave, and that Torrentt gave notice that he planned to resign, as well. (Jt. Exh. 2 (CSC 00030). Both events upset Frapolli. On August 11, 2023, he texted Casas the following:

> [S]o this whole thing with Chu is [because] I was upset with Joe over his garbage about telling you he was going to quit if I didn't pay Chu. I was wrong in snapping at Chu over it. But what is done is done. *So I'm going to write a letter stating that Chu spoke with you and informed us of his 2 week notice. And that he never told Joe about the incident. And once he signs it, I'm firing Joe for medaling [sic.] in someone else [sic.] affairs which ultimately led to Chu leaving.*

(Jt. Exh. 2 (CSC 00030)(emphasis added).

Casas replied that she understood where Frapolli was coming from regarding Kierstyn because "this all could have been avoided" and it was "causing instability in the company." (Jt. Exh. 2 (CSC 00030)).[3]

On August 15, 2023, Casas had a conversation with Kierstyn. Following that conversation, she texted Frapolli. In the text, she wrote:

> Joe came into my office and asked if I had spoken to you about everything last week. I told him I did and he wanted to know how our conversation went. [A]t this point I don't think he needs to know about what we talk about so just left it at that. I don't think he knows what he wants and cant [sic.] make up his mind about being here. Just a heads up he said he plans to talk to you one on one. Maybe a good way to let him know it's time to move on.

(Jt. Exh. 2 (CSC 00031)).

b. *Plan to Discharge Kierstyn and His Subsequent Resignation*

On August 17, 2023, Frapolli texted Casas asking if Kierstyn showed up for work that day. (Jt. Exh. 2 (CSC 00033)). Casas responded that he had. Frapolli asked if she planned to speak to Kierstyn, and Casas replied that she had spoken to him and that it feels like he keeps telling her the same thing.[4] She did not explain what she meant by this. Frapolli responded that Kierstyn was "done." He told her to prepare a letter stating the Respondent was accepting his resignation and August 18 would be his last day. The following day, Kierstyn gave his notice stating that September 1 would be his last day. (GC Exh. 5). After receiving this notice, the Respondent took no further action.

On September 1, 2023, Kierstyn sent Frapolli a letter. (GC Exh. 6). In the letter, he wrote, in relevant part, "I appreciate you putting up with a lot of my bullshit over the past year, through my ups and downs, I don't think most bosses [would] have given me as many chances as you did or even would have put up with it. But working here and with this team has helped in a lot of ways. So thanks again for that opportunity." (GC Exh. 6).

4. Rehiring Kierstyn

After Kierstyn resigned, the Respondent had one CNC router operator, named Derek McLauglin. In November 2023, the Respondent discharged McLaughlin.[5] After Kierstyn learned

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[3] The Respondent's counsel did not question Frapolli or Casas about this text or the surrounding circumstances.

[4] Casas was asked what she and Kierstyn talked about during this conversation, and she stated she could not recall. (Tr. 374-375). Respondent's counsel then asked if the conversation had anything to do with Kierstyn's absenteeism, and Casas indicated that it did, but she provided no further specifics. Casas also testified she and Frapolli had conversations with each other about Kierstyn's performance and absenteeism, and they were planning to talk with him, but the record does not reflect that they talked with Kierstyn prior to his discharge.

[5] The Respondent issued McLaughlin a discharge letter. (GC Exh. 19(c)). It states he was discharged because of "constant unsatisfactory workmanship, which has resulted in a profit loss for the company." Id. It further states "[m]any conversations were had between [McLaughlin and the company] regarding mistakes, lack of attention to detail and failure to follow job specifications. Documentation such as disciplinary sheets were discussed and signed in hopes to resolve the issue of tardiness." Id.

Frapolli testified the Respondent's regular practice was to issue warnings to employees who are late to work. (Tr. 350). Consistent with that practice, the Respondent issued McLaughlin verbal warnings and two about McLaughlin's discharge, he contacted Frapolli about coming back to work for the Respondent, and Frapolli rehired him. (Tr. 96-98). Frapolli testified he rehired Kierstyn because he needed someone trained to operate the router. (Tr. 310). Kierstyn returned to work on December 13, 2023. Following his return, the Respondent's employees included Kierstyn, Kaden Smith, David Orozco, Eddie Ponce, Anselmo Torrentt, Evan (last name unknown), and Tim Reynolds.[6] Reynolds was a designer, Torrentt was an installer, and the rest were production employees.

C. Alleged Unfair Labor Practices

1. *Roles and Responsibilities of Felix Ortiz and George Theen*

Ortiz began working for the Respondent as a production employee in February 2022.[7] He was later promoted to shop manager. In that role, he was responsible for overseeing the shop and ordering supplies. (Tr. 358-359). Frapolli testified he "would tell [Ortiz] what to tell certain people in the back room to do." (Tr. 320). He provided no further specifics or examples of what this involved.

In December 2023, Ortiz assumed the role of production manager, in addition to continuing as shop manager. (Tr. 301-302). According to Frapolli, the difference between the two is the shop manager oversees the shop, and the production manager oversees people. (Tr. 358-359).

According to Frapolli, shortly after Ortiz assumed the role of production manager, he had or continued to have performance and attendance issues. (Tr. 301-302; 327-329). Frapolli did not provide specifics. But he testified "there were a ton of things" Ortiz was doing that he was told not to do or was not authorized to do. (Tr. 327-329). As a result, in January or February 2024, Frapolli began

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written warnings for being late. The written warnings were in August and in September 2023, and both warned of progressive discipline if the issues continued. (GC Exhs. 19(a)-(b)). The Respondent discharged McLaughlin immediately after he was a no-call, no-show for one of his shifts in November 2023. (GC Exh. 20).

McLaughlin later filed for unemployment benefits with the State of Illinois, and the Respondent challenged his eligibility claiming he was discharged for misconduct. It cites to "repeated violation of the workplace attendance policy after receiving several verbal warnings as well as official written warnings and write-ups. The constant tardiness led to unsatisfactory workmanship resulting in loss ..." (GC Exh. 20).

[6] The record does not reflect whether Torrentt rescinded his prior resignation or was rehired, like Kierstyn.

[7] Ortiz was not called as a witness. The General Counsel and the Respondent each argue I should draw an adverse inference against the other for failing to present him as a witness. (GC Br. 20 fn. 20 fn. 18) (R Br. 14 and 20). The missing witness rule allows a judge to draw an adverse inference against a party that fails to call a witness who is under its control and reasonably expected to be favorably disposed towards it, but that rule generally does not apply to a former supervisor or agent because they are no longer considered to be under the employer's control. See *Heart and Weight Institute*, 366 NLRB No. 53, slip op. at fn. 1 (2018), enfd. 827 Fed. Appx. 724 (9th Cir. 2020); *Christie Electric Corp*., 284 NLRB 740, 748 fn. 137 (1987); *Reno Hilton*, 326 NLRB 1421, 1421 fn. 1 (1998), enfd. 196 F.3d 1275 (D.C. Cir. 1999). Ortiz was discharged on July 30, 2024, for "constant unsatisfactory workmanship, failure to operate machinery correctly and is instructed causing damage to the equipment and endangering the safety of coworkers, constant phone usage, and drinking alcohol at work during work hours." (Jt. Exh. 2 (CSC 00054)). As a result, he is no longer under the Respondent's control, and, considering the circumstances surrounding his discharge, not reasonably expected to be favorably disposed towards it. I, therefore, decline to draw an adverse inference against the Respondent for failing to call him. See *Heart and Weight Institute*, supra. See also *Irwin Industries*, 325 NLRB 796, 811 fn. 12 (1998); *Lancaster-Fairfield Community Hospital*, 303 NLRB 238 fn. 1 (1991). The same holds for the General Counsel; there is no evidence he would have been favorably disposed toward their case. That said, it would have been helpful to me if Ortiz would have been called as a witness in this case.

looking to fill the production manager position with someone from outside the company. In mid-March 2024, he hired George Theen. (Tr. 303).

Shortly after Theen's hiring, Frapolli held a meeting with the employees and introduced Theen as the production manager. (Tr. 335-336). He told employees Theen was their "go-to" person. They were to go to Theen with questions or issues, and Theen would then come to Frapolli with those questions or issues. Frapolli stated that, after time, everyone would just go to Theen, and he would handle those matters himself.[8] According to Frapolli, employees asked during this meeting what Ortiz's role would be, and Frapolli told them, simply, that Ortiz was "coming back into production." Frapolli acknowledged he did not tell them that Ortiz was no longer a production manager, or that he was no longer a shop manager. (Tr. 336).

After Theen was hired, Ortiz continued to attend the morning production meetings with Frapolli and Theen to discuss and go through upcoming projects. (Tr. 363-364). According to Frapolli, Ortiz was now solely responsible for checking to see what materials and parts were needed and then reporting that information back to Frapolli.[9] (Tr. 335-336; 365-366). Frapolli testified Ortiz was no longer responsible for communicating instructions to employees or overseeing their work. Kierstyn and Smith both testified that, at least from the employees' perspective, Ortiz's role and duties did not change. They testified Ortiz and Theen were interchangeable and performed the same duties or tasks as production managers. (Tr. 138-139; 143-144; 246-247; 233-234; 249).[10]

2. Kierstyn's Alleged Performance Issues and Plans to Hire a Replacement

Frapolli testified that during Kierstyn's initial employment he had performance and attendance issues. As he described it, Kierstyn was not coming to work on time; he was wearing sunglasses inside the shop; he was not running the router as scheduled; and there was a point where he took it upon

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[8] The Respondent's offer letter to Theen lists his title as "co-production manager." (GC Exh. 17). When Frapolli was questioned about this on cross examination, he was evasive and non-responsive. (Tr. 343-347). He claimed he could not testify about the letter because he could not authenticate if it was a draft or the final version because it was unsigned. He failed to explain how the absence of a signature on a document he produced pursuant to the General Counsel's subpoena precluded him from testifying about the contents.

The Respondent, in its brief, asserts, for the first time, that Theen was hired for a 90-day probationary period, and the title was in reference to his status during that period. (R. Br. 13-14). There is no evidence in the record supporting this, and, more importantly, no explanation who the other co-production manager was during the probationary period, if not Ortiz,

[9] Frapolli testified Ortiz was relieved of all authority to oversee the production employees once Theen was hired in mid-March 2024. (Tr. 333). This is inconsistent with the Respondent's letter to the State of Illinois challenging Ortiz's eligibility for unemployment benefits. (GC Exh. 15(b)). In that letter, the Respondent described Ortiz as "someone whose role was to manage the duties of the production team and offer guidance on jobs." It states his attendance issues made him "a negative example for the rest of the employees which he oversaw." Id. It further states that, in July 2024, Ortiz remained "a trusted employee of the company and was expected to manage and keep running production at [the Armitage facility,]" and the misconduct that he engaged in at that time demonstrated "a lack of leadership." Id.

[10] Theen was not called as a witness. The General Counsel argues that, like Ortiz, I should draw an adverse inference against the Respondent for failing to call him. As stated, an adverse inference is appropriate when a party fails to call a witness who is under its control and reasonably expected to be favorably disposed towards it. The General Counsel failed to establish Theen was still employed as of the hearing. I, therefore, decline to draw an adverse inference over the Respondent's failure to call him as witness.

himself to try to discover how to make faux neon. (Tr. 306).[11] Frapolli testified that when Kierstyn was rehired, he immediately began having performance and attendance issues. (Tr. 310-311). The Respondent introduced Kierstyn's timecards from December 2023 through May 2024, which reflect numerous instances of Kierstyn arriving late, leaving early, or failing to clock out for his (paid) lunch break. (R Exh. 1). Despite these occurrences, Kierstyn did not receive any documented coaching, warning, or discipline, and he testified he was never spoken to or informed there were concerns about his attendance. (Tr. 193-194; 212). The only evidence that management spoke to Kierstyn related to his attendance came from Casas. She testified she briefly spoke to Kierstyn once about his attendance. (Tr. 372-373). She called him into her office and told him there had been instances in which he had left the shop early and she did not know if he would be coming back. She explained to him she was not trying to micromanage where he was going. She just knew that he rode his bicycle to work, and because the Respondent's facility was in an unsafe area, she was worried about his safety. Kierstyn told her he was fine and that he was safe. No further action was taken.

Regarding work performance, Frapolli testified Kierstyn was not engaged, was spending more time walking around than working, and his work was not coming off the router correctly or in a timely fashion. (Tr. 310-311). Frapolli testified he would send the work back and say how he wanted it done, and there would always be pushback from Kierstyn. (Tr. 311). There was no documentation that Kierstyn was ever counseled, warned or disciplined regarding his performance.

Frapolli testified that because of these various issues, he began looking to hire a replacement for Kierstyn in April 2024. On April 12, he emailed Casas the following:

> I placed the add [sic.] last night on craigslist for a new router person. I ran the add [sic.] so it reads that I'm looking for a router and laser person. If joe asks we are going to tell him that we are just looking to add a new person in production who can also help cover some router and laser work.
>
> I suspect he is already looking for a new job. Or I imagine the moment he sees the add [sic.], he will quit. We will see.
>
> Let me know how he does this week and if he continues to leave early. There is a ton of work for the router so there is no reason for him to leave early.

(R. Exh. 2).[12]

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[11] Frapolli testified he had "minor discussions" with Kierstyn about his performance, but he did not issue any discipline because he was concerned Kierstyn might quit, leaving the Respondent without a router operator. (Tr. 306-307). Kierstyn denies anyone spoke to him with concerns about his performance or indicated he was not performing his job at a satisfactory level. (Tr. 171). I credit Kierstyn on this point. I found Kierstyn to be a more credible witness, and Frapolli failed to provide specifics about any of these alleged "minor discussions." Casas, who handles human resource matters for the Respondent, was never questioned about these discussions or otherwise corroborated Frapolli that they occurred.

[12] Frapolli testified that by the time he sent this April 12 email to Casas he had made the decision to discharge Kierstyn. (Tr. 311-314). He stated that he prepared a draft discharge letter to give to Kierstyn once the Respondent hired his replacement. This draft letter, which is undated, states the discharge was "due to constant unsatisfactory workmanship, which has resulted in profit loss for the company." (R. Exh. 3). For several reasons, I do not credit Frapolli's testimony that he planned to discharge Kierstyn by April 12.

The record does not reflect whether the Respondent ever hired anyone to fill this position.

3. Initial Wage Discussions

Kierstyn had conversations with his coworkers about their wages in the spring 2024 (Tr. 223). One conversation occurred in the lunchroom. Kierstyn, Kaden Smith, Eddie Ponce, and David Orozco were present. (Tr. 224-225). Kierstyn brought up wages and raises. He told the others what he earned per hour, and he stated to the others that if they had worked for the company longer than him, or if they had more extensive job duties, they should be earning the same as or more than him. Smith and Orozco both stated how much they earned, and they talked about the last time they received a raise. (Tr. 225).

About a week or two later, Kierstyn was involved in a conversation about wages in the vinyl room. (Tr. 225-227). Smith, Kierstyn, and Ponce were present. Smith commented to the others that he was being asked to perform more installations on his own. Kierstyn asked Smith if he was being compensated for the additional work. Smith stated he was not. Kierstyn told him he should either ask for a raise or ask to have his job duties fit his pay. (Tr. 226).

4. Announced Reduction in Hours and Subsequent Wage Discussions

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First, as stated, I generally did not find Frapolli to be a credible witness, and I found this testimony to be self-serving, unsubstantiated, and generally unworthy of belief. I also find it notably convenient that Frapolli could authenticate and testify about this undated draft discharge letter but not the offer letter to Theen.

Second, Casas, who testified after Frapolli, was asked limited, leading questions about this alleged plan, and she offered conflicting responses. Specifically, she was asked if she was familiar with Frapolli's April 12 email to her, and whether, as of April 12, it was her understanding that Kierstyn was going to be discharged. She responded yes to both. (Tr. 377). But moments later, she confirmed the decision to discharge Kierstyn was made on May 23. (Tr. 379). When I asked Casas whether she knew the reason for the delay in Kierstyn's discharge between April 12 and May 23, she testified she did not. (Tr. 381-382). I find that response troubling. Because Frapolli regularly consulted with Casas about employment matters. (Jt. Exh. 2 (CSC 00028, 00030, 00031, 00033, 00036). His apparent failure to discuss his alleged plan with her indicates there was no plan.

Third, Frapolli's testimony is not supported by the evidence submitted prior to the hearing. During the investigation, the Respondent submitted a position statement in response to the charge. (GC Exh. 16). It does make mention of a plan to discharge Kierstyn in April 2024. It does mention that Kierstyn allegedly threatened to quit or cease working and that was problematic for the Respondent because he was the only person trained to operate the router. (GC 16, pg. 2). As noted above, this concern about Kierstyn quitting is also reflected in Frapolli's April 12 email to Casas, and he reiterated it in his testimony. He acknowledged that he intentionally wrote the job advertisement to be misleading because he "did not want [Kierstyn] to quit" given the company "needed the machine to run." (Tr. 312). The combination of the position statement, the April 12 email, and Frapolli's testimony strongly suggest the Respondent was not planning to discharge Kierstyn in April, but rather it was preparing for the possibility that he might quit.

Fourth, Frapolli's testimony is inconsistent with his own statements. He testified he fully intended to let Kierstyn go in April because he was so aggravated with his performance. (Tr. 314). The draft discharge letter lists Kierstyn's "constant unsatisfactory workmanship" as the reason for his discharge. Yet, as noted, at the end of Frapolli's April 12 email to Casas, he stated he wanted to make sure Kierstyn was not leaving work early because there was "a ton of work for the router." It is inherently inconsistent to claim you planned to discharge an employee for poor work performance while also stating you want them to perform more work.

Finally, Frapolli testified the reason for the five-week delay in announcing Kierstyn's discharge was because the Respondent needed to hire and train his replacement. The record, however, does not reflect the Respondent hired a replacement for Kierstyn before discharging him.

On about May 13, 2024, Frapolli held a meeting with the production employees to inform them he would be reducing their hours. (Tr. 314). He explained the reductions were needed because projects were going out wrong and it was costing the company money. He stated the plan would be to reduce their hours by one hour a day, five hours a week, or 10 hours every pay period.[13]

In the week or so following this meeting, Kierstyn had multiple conversations with his coworkers about the reduction in hours. About a day after the meeting, he had a conversation with Orozco, Smith, and Ortiz in the vinyl room. (Tr. 230-231). Kierstyn and Orozco commented that based on the invoices they saw for the projects being performed, they did not think that Frapolli needed to reduce their hours. Smith added that he heard Frapolli discussing possibly buying the building the shop was in, and he did not think Frapolli could do that if he was unable to continue paying them their full-time wages. Ortiz did not say anything.

A day or two later, Kierstyn had a conversation with Orozco, Ponce, and designer Tim Reynolds in the vinyl room. Kierstyn stated he thought the plan to reduce their hours was a form of punishment rather than a means to recoup costs. (Tr. 105-107). He also stated he did not think it was fair to have their hours cut, particularly considering what they were paid. The conversation then turned to wages. Kierstyn stated his wage rate, and the others did as well. Kierstyn learned Ponce earned $7 per hour less than he did. Upon learning this, Kierstyn urged Ponce to ask for a raise. Ponce declined, stating he did not want to make an issue out of it. (Tr. 107-108).

On about May 16, 2024, Kierstyn had a conversation with Anselmo Torrentt and production manager George Theen in the vinyl room. Kierstyn brought up the planned reduction in hours and how it did not make sense considering what they were paid. Torrentt and Kierstyn then discussed their individual wage rates, and they then asked Theen how much he earned. Theen stated he did not earn that much or not as much as you. (Tr. 110-111).[14]

5. *May 17 Statement Not to Discuss Wages and Continued Discussions*

The following day, on May 17, 2024, at approximately 8:15 a.m., Kierstyn saw Ortiz and Theen leave Frapolli's office. The door to the office had been closed when they were inside. He then saw Ortiz and Theen walk down the hallway towards the vinyl room. Kierstyn was standing with Orozco and Ponce outside of the vinyl room at the time. (Tr. 114). Ortiz approached and said, "Joe, you are no longer allowed to discuss wages." He and Theen then walked on. (Tr. 115-116).[15]

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[13] After Frapolli announced the plan, the employees proposed, in the alternative, that they take Fridays off. Frapolli agreed to that proposal. But, in the end, it was not implemented, in part, because work orders picked up and there was no longer a need to reduce costs. (Tr. 314-316).

[14] The General Counsel asserts that Theen was "irritated" by Kierstyn's questions. (GC Br. 9 and 36). The record does not support this assertion, and I reject it as unfounded.

[15] The General Counsel did not call any other witness who was present to corroborate Kierstyn's testimony regarding Ortiz's statement, and the Respondent did not present any witness to refute it. The Respondent argues it effectively refuted Kierstyn's testimony and impeached his credibility by establishing that Frapolli could not have been meeting with Ortiz and Theen in his office because he was out delivering a sign at that time. (Tr. 325). However, Kierstyn never testified he saw Frapolli that morning. He testified he heard from one of his coworkers that Frapolli was "in a mood," and he later saw Ortiz and Theen come out from a closed-door meeting in Frapolli's office. (Tr. 113-114). Frapolli acknowledges he spoke to Ortiz and Theen that morning over the telephone, and they were at the facility during the call, but he did not know where. (Tr. 338). It is likely that Ortiz and Theen spoke to Frapolli over the telephone from inside his office because it was private and quiet.

Kierstyn continued to talk about wage rates, as well as the potential reduction in hours, with his coworkers. (Tr. 116-117). He spoke with Ponce, Orozco, and Smith, usually in the vinyl room or in the lunchroom. He continued to try to convince Ponce to ask for a raise. He estimated that he continued to discuss wages up to about a dozen times that week. (Tr. 118-119). He provided no specifics about those discussions, including whether Frapolli, Ortiz, or Theen was present.[16]

6. *May 23 Discharge Meetings*

Kierstyn and the other production employees were part of a group text chain that included Lesley Casas. They used the group text to send messages for reasons such as whether they were going to be late for work or absent because of illness. They occasionally send humorous memes in response to messages. (Jt. Exh. 2, CSC00042-00043,00060).

On the morning of May 23, 2024, one of the production employees, Evan (last name unknown), texted the group that he was going to be a few minutes late because he was stuck in traffic. Ponce responded to the message with a meme of actors Ben Stiller and Billy Zane from the movie Zoolander. (Jt. Exh. 2 CSC 00045). A few minutes later, Kierstyn then sent a text to the group stating, "Running late also because there is no work to do and not benefit to actually be on time." Ponce responded to Kierstyn's text with a meme of a kitten in front of a large cut out of a Hello Kitty. (Jt. Exh. 2, CSC 00045 and 00060). Casas sent a screenshot of Kierstyn's text message to Frapolli.[17]

Kierstyn arrived at the Respondent's facility that morning at about 8:15 a.m. Immediately upon arriving, Frapolli called him into Casas's office. Frapolli informed Kierstyn that he was being discharged, and he handed him a letter. (Tr. 120-122). The letter states, in relevant part:

> This termination is due to constant unsatisfactory workmanship, which has resulted in a profit loss for the company. Many conversations were had between Joe and Custom Sign Consultants regarding mistakes, lack of attention to detail and failure to follow job specifications. As a small business, Custom Sign Consultants can no longer afford the mistakes that are occurring.

(GC Exh. 8).

Kierstyn does not recall what was said because he was in shock. (Tr. 122).[18] Frapolli then left Casas's office. Kierstyn asked Casas if she knew he was going to be discharged, and she replied she did not. (Tr. 122).

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[16] Frapolli testified he was not aware Kierstyn or the other employees were discussing wages. (Tr. 319). For the reasons stated above and below, I do not credit Frapolli's testimony.

[17] According to Frapolli, Casas texted and called him about the text and told him she thought things were "getting out of hand" and that he "should move forward with letting [Kierstyn] go." (Tr. 318-319). Casas did not corroborate this. She testified she really did not tell Frapolli anything. She simply sent him a screenshot of Kierstyn's text. (Tr. 379). I credit Casas. Frapolli was prone to embellishment, and I conclude this was an example of that. Additionally, he testified that Casas texted him, but those texts were not offered into evidence.

[18] Frapolli testified he informed Kierstyn during this May 23 meeting with Casas that he was being discharged because "he wasn't showing up on time, he was bad morale for everyone, and he wasn't producing the product correctly." (Tr. 323-324; 331). Frapolli also testified they discussed the text message Kierstyn sent that morning about arriving late, but he provided no specifics about what was said. Casas, who testified after Frapolli, was not questioned about this meeting. As such, Frapolli's testimony is again uncorroborated.

A few minutes later Kierstyn followed Frapolli to his office. He went inside, closed the door, and asked Frapolli what was going on with the discharge letter. (Tr. 123-125). Frapolli responded that he was tired of Kierstyn "acting like a Union rep" for his coworkers and of him "boasting about [his] wages." To which, Kierstyn said he was not boasting about his wages, he was just talking openly with his coworkers and encouraging his coworkers to ask for raises. Frapolli then began discussing jobs that had been going out wrong and that they were wasting money. Frapolli described two projects that had issues, and Kierstyn stated he was not involved in either. Frapolli said he understood that. He then told Kierstyn he could never be a business owner because he did not care about business expenses and money. Kierstyn replied that he did care, and that he tried to make his coworkers more efficient. Kierstyn then asked if he was still terminated, and Frapolli said that he was. (Tr. 123-125).[19] Kierstyn then left Frapolli's office.[20]

LEGAL ANALYSIS

A. Overview

The General Counsel alleges the Respondent violated Section 8(a)(1) of the Act on May 17, 2024, when Ortiz instructed Kierstyn in the presence of other employees that he was no longer allowed to discuss wages, and, six days later, on May 23, 2024, when Frapolli discharged Kierstyn for discussing wages with his coworkers.

Section 8(a)(1) prohibits an employer from interfering with, restraining, or coercing employees in the exercise of their Section 7 rights. Section 7 of the Act guarantees the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own

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When I asked Frapolli what he meant by "bad morale," he stated Kierstyn was a "[b]ad example. He would show up late and other people would show up late. It was contagious. It was horrible." (Tr. 331). I do not credit this testimony. The Respondent presented no evidence to substantiate that Kierstyn's tardiness brought down morale. I find it is more likely that Frapolli believed it was Kierstyn's wage discussions, particularly about the wage disparities, that brought down morale. Support for this is found in the Respondent's position statement, which stated that throughout both terms of his employment, Kierstyn was "insubordinate, his workmanship was unsatisfactory, and *communication with others diminished workplace morale, operational efficiency, and productivity*." (GC Exh. 16, pg. 2) (emphasis added). The position statement does not mention that it was Kierstyn's tardiness that affected morale, it was his "communication with others."

[19] Frapolli's recollection of this one-on-one meeting differed. (Tr. 323-325). He testified that Kierstyn came into his office and said he wanted to talk. Frapolli responded that he did not want to talk. Kierstyn entered the office anyway and closed the door. He then spent about 10 to 15 minutes talking about the other jobs he could have taken rather than coming back to work for the Respondent. Frapolli testified he said nothing. The Respondent's counsel asked him whether he ever told Kierstyn that he was "acting like a union rep" or anything like that, and Frapolli said he did not. (Tr. 324-325). Respondent's counsel did not ask Frapolli whether he commented about Kierstyn boasting about his wages.

I credit Kierstyn over Frapolli regarding this conversation largely because I found Kierstyn to be a more credible witness. I also credit Frapolli made the statements because they are consistent with his August 11, 2023 text to Casas in which he outlined his plan to discharge Kierstyn for "meddling" in Torrentt's request for leave.

[20] Almost two weeks following his discharge, on June 4, 2024, Casas emailed Kierstyn stating she had not received his signed termination letter. (GC Exh. 9). She attached a revised version of the letter to the email and asked him to sign and return it. The sentence about there being many conversations between the Respondent and Kierstyn regarding his mistakes, lack of attention to detail, and failure to follow job specifications was removed. There was no explanation provided for why, in the email or when Frapolli and Casas testified.

choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, as well as the right to refrain from any or all such activities.

Whether an employee's activity is "concerted" depends on the way their actions may be linked to those of their coworkers. *Fresh & Easy Neighborhood Market, Inc*., 361 NLRB 151, 153 (2014). The Board has held that concerted activity encompasses circumstances where individual employees seek to initiate or to induce or to prepare for group action, as well as individual employees bringing truly group complaints to the attention of management. *Meyers Industries*, 281 NLRB 882, 887 (1986) (*Meyers II*), affd. sub nom. 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988). Mutual aid or protection, in turn, focuses on the goal of the concerted activity; chiefly, whether the employee or employees involved are seeking to improve their terms and conditions of employment or otherwise improve their lot as employees. *Fresh & Easy*, supra, 361 NLRB at 153.

The right of employees to discuss their wages with each other is a core substantive right protected by Section 7. See *Triana Industries, Inc*., 245 NLRB 1258, 1258 (1979). The Board has held that discussions about wages are "inherently concerted" activity, and as such are considered protected regardless of whether they are engaged in with the express object of inducing group action. See *North Mountain Foothills Apartments, LLC,* 373 NLRB No. 26, slip op. at 8 (2024), enfd. 157 F.4th 1089 (9th Cir. 2025); See also *Automatic Screw Products Co*., 306 NLRB 1072, 1072 (1992), enfd. mem. 977 F.2d 582 (6th Cir. 1992) and *Alternative Energy Applications, Inc*., 361 NLRB 1203, 1203 (2014). The rationale is that wages are a "vital term and condition of employment," the "grist on which concerted activity feeds," and such discussions are often preliminary to organizing or other action engaged in for the employees' mutual aid or protection. *Aroostook County Regional Ophthalmology Ctr*., 317 NLRB 218, 220 (1995), enf. denied in part on other grounds 81 F.3d 209, 214, 317 U.S. App. D.C. 114 (D.C. Cir. 1996); See also *Trayco of S.C., Inc*., 297 NLRB 630, 634-635 (1990), enf. denied mem. 927 F.2d 597 (4th Cir. 1991).

B. Ortiz's Instruction and His Supervisory and Agency Status

It violates 8(a)(1) for a supervisor or agent to state or suggest that an employee is not permitted to discuss their wages or compensation. See *North Mountain Foothills Apartments, LLC*, supra; *Independent Stations Co*., 284 NLRB 394, 396 (1987); and *Waco, Inc*., 273 NLRB 746, 747-748 (1984). The Respondent, in its defense, disputes that Ortiz instructed Kierstyn he was no longer allowed to discuss his wages. But it contends that, even if he did, there was no violation because Ortiz was not a statutory supervisor at the time. For the reasons previously stated, I credit Kierstyn's unrefuted testimony that Ortiz gave this unlawful instruction. The only issue, therefore, is whether it is attributable to the Respondent based on Ortiz's actual or apparent authority to speak on behalf of management. For the reasons discussed below, I conclude that it is.

1. Supervisory Status

The General Counsel first contends Ortiz's instruction is attributable to the Respondent because he was a statutory supervisor at the time. As set forth in Section 2(11) of the Act, the indicia of supervisory status involve the authority to "hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action." The evidence must demonstrate the purported supervisor's "exercise of authority is not of a merely routine or clerical nature but requires the use of independent judgment." *Oakwood Healthcare, Inc*., 348 NLRB 686, 687 (2006), quoting

NLRB v. Kentucky River Community Care, 532 U.S. 706, 713 (2001). Independent judgment constitutes discretion in decision making which is not "dictated or controlled by detailed instructions" contained in "company rules, the verbal instructions of a higher authority, or in the provisions of a collective-bargaining agreement." *Oakwood Healthcare, Inc*., supra at 693. Finally, the evidence must establish such authority is exercised "in the interest of the employer." Id.

The burden of proving supervisory status rests on the party asserting it. Id. at 694; *Benchmark Mechanical Contractors*, 327 NLRB 829 (1999). Satisfying this burden requires "detailed, specific evidence" that is not "in conflict or otherwise inconclusive." *Oakwood Healthcare*, supra at 694; see also *G4S Regulated Security Solutions*, 362 NLRB 1072, 1072-1073 (2015); *Busco Tug and Barge, Inc*., 359 NLRB 486, 490 (2012), enfd. 696 Fed. Appx. 519 (D.C. Cir. 2017). Mere inferences or conclusory statements, without detailed, specific evidence, do not meet the burden. *UPS Ground Freight, Inc*., 365 NLRB 1123, 1123 (2017) (citing *Lynwood Manor*, 350 NLRB 489, 490 (2007); *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006)). Additionally, the Board will not lightly find supervisory status because to do so deprives the individual of the rights guaranteed by Section 7 of the Act. *Oakwood Healthcare*, supra at 688 (quoting *Chevron Shipping Co*., 317 NLRB 379, 381 (1995). Thus, the Act protects "straw bosses, lead men, and set up men" even though they perform "minor supervisory duties." Id. (quoting *NLRB v. Bell Aerospace Co*., 416 U.S. 267, 280-281(1974)). In reviewing the evidence, I conclude the General Counsel has failed to meet its burden.

The General Counsel contends Ortiz had the authority to hire or effectively recommend hiring, specifically the hiring of Kaden Smith. When Smith interviewed for his position, he met with Ortiz and Casas, and Ortiz took the lead in conducting the interview. (Tr. 236-237). When Smith received his offer letter, it was "signed" by Frapolli, Casas, and Ortiz, even though Smith had not yet spoken with Frapolli. (GC Exh. 11) (Tr. 239). Later, when Smith began his employment, Ortiz conducted his onboarding and orientation. When the two worked together, Ortiz commented that if Smith performed well on the job, it would reflect positively on Ortiz because he was the one who hired Smith. (Tr. 241). Casas and Frapolli both testified that only Frapolli has the authority to hire, but neither directly addressed the circumstances surrounding the hiring of Smith.

There are too many gaps in the evidence presented to determine how and by whom the decision to hire Smith was made. Even if Ortiz recommended Smith, there is no evidence his recommendation was effective. For a recommendation to be "effective" and involve "independent judgement," it must be independent of an investigation or other action of the purported supervisor's superiors and be based on an "opinion or evaluation by discerning and comparing data." *Oakwood Healthcare*, 348 NLRB 692-693. The General Counsel failed to present evidence on these points, and without clearer, more detailed evidence, I decline to infer Ortiz's recommendation, if any, was effective.

The General Counsel next contends that Ortiz had authority to assign work to employees. The authority to "assign" refers to the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee, not the ad hoc instruction that the employee perform a discrete task(s). See *Oakwood Healthcare*, 348 NLRB at 721. The General Counsel first contends Ortiz had the authority to assign because he controlled when they worked. Kierstyn and Smith testified they would go to Ortiz when they completed their assigned tasks. If there was no other work available, he generally would tell them to clock out and go home. Again, the evidence regarding this process is lacking, including whether and, if so, how Ortiz would make this decision. When probed further, Smith conceded that Ortiz would ultimately leave it to the employee to decide if they wanted to stay or go home. (Tr. 273).

The General Counsel further contends that Ortiz had the authority to make work assignments. Kierstyn and Smith both testified Ortiz held weekly meetings with the production employees where they would distribute production packets identifying the specific job assignments. They also testified that when they needed work, they went to Ortiz for another assignment. The record reflects that Frapolli prepares the production packets which contain detailed instructions, and the tasks are assigned to departments, and the departments typically consist of one employee. As far as assigning additional tasks, the evidence is, again, lacking regarding how those decisions were made. Without clearer evidence on how and by whom these decisions were made, and how it involved the use of independent judgement as opposed to simply following instructions or choosing the only individual available, I conclude the General Counsel failed to establish Ortiz had the authority to assign.

Overall, based on the lack of specific, detailed evidence, I conclude the General Counsel has failed to meet their burden of establishing that Ortiz was a statutory supervisor.[21]

2. Agency Status

The General Counsel further argues that even if Ortiz and Theen were not statutory supervisors, they were agents within the meaning of Section 2(13) of the Act. The Board applies common-law agency principles to determine whether an employee is acting with authority on behalf of the employer when making a particular statement or taking a particular action. See *Pan-Oston Co.*, 336 NLRB 305, 305 (2001). Apparent authority results from a manifestation by the principal to a third party that creates a reasonable belief that the principal has authorized the alleged agent to make the statements or perform the acts in question. Id. at 305-306. The test for determining whether an employee is an agent is whether "under all of the circumstances, employees would reasonably believe that the employee in question was reflecting company policy and speaking and acting for management." Id at 306; see also *D&F Industries*, 339 NLRB 618, 619 (2003). This occurs when the employer uses the alleged agent as a "conduit of information" between management and the employees such that employees would reasonably conclude the alleged agent is speaking on management's behalf. See, e.g., *Victor's Café 52*, 321 NLRB 504, fn. 1 (1996); *Southern Bag Corp.*, 315 NLRB 725 (1994); *B-P Custom Building Products*, 251 NLRB 1337, 1338 (1980). As set forth in Section 2(13), when making the agency determination, "the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling." The burden is on the party asserting the agency relationship to establish that relationship regarding the statement or conduct alleged to violate the Act. *Pan-Oston Co.*, 336 NLRB at 306.

The General Counsel argues the Respondent held Ortiz and Theen out as agents with apparent authority to speak on behalf of management. Frapolli held morning manager meetings with Ortiz and Theen where he provided them with information he expected them to relay to the production employees, which they did. Frapolli acknowledged that if he wanted the employees to perform a task a certain way or use certain tools or methods, he communicated that through the production manager(s). Frapolli also acknowledged that, as for Ortiz's other role as shop manager, he instructed Ortiz on what directions to convey to the employees in the back. Kierstyn and Smith confirmed that they would

[21] The General Counsel argues Theen was also a statutory supervisor, but they do not raise any new or different arguments. For the same reasons, I conclude they failed to meet their burden regarding Theen.

regularly come to Theen and Ortiz with questions or issues, and Theen and Ortiz would either provide a response, or they would discuss the matter with Frapolli and then provide a response.

The Respondent contends that any authority Ortiz may have had was lost once Theen was hired. I reject this contention. Frapolli acknowledged that when he introduced Theen to the employees, he did not tell them that Ortiz was no longer a production manager, or no longer the shop manager. Ortiz continued to act in those roles. He attend the morning manager meetings with Frapolli and Theen until June 2024, and he continued to attend the production meetings with employees where he and Theen would discuss the projects, announce assignments, and answer questions. Kierstyn and Smith testified that, from their perspective, Ortiz's duties remained the same. They went to Ortiz and Theen interchangeably regarding their work assignments and schedules, and they received instructions from both. Under the circumstances, I conclude employees would reasonably believe that both Theen and Ortiz were agents authorized to speak on behalf of management.

The remaining issue is whether Ortiz was acting in his capacity as an agent when he approached Kierstyn on the morning of May 17 and gave the instruction at issue. As outlined, Kierstyn saw Ortiz and Theen both leave a closed-door meeting in Frapolli's office at the time the manager meetings were normally held; the two immediately walked down the hallway from the office to where Kierstyn was standing; and Ortiz, with Theen standing nearby, told Kierstyn that he was no longer allowed to discuss wages. Under these circumstances, I conclude Kierstyn would reasonably conclude that Ortiz was speaking on behalf of management, even though Ortiz did not mention Frapolli by name. I, therefore, conclude the violation is attributable to the Respondent.[22]

C. Discharge of Kierstyn

1. The *Wright Line* Framework

It is a violation of Section 8(a)(1) for an employer to discharge an employee because they either engaged in, or were believed to have engaged in, protected concerted activity. See *North Mountain Foothills*, 373 NLRB No. 26, slip op. at 9. When assessing the lawfulness of an adverse action that turns on employer motivation, the Board applies the framework set forth in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved by *NLRB v. Transportation Management Corp*., 462 U.S. 393, 395 (1983). Under this framework, the General Counsel has the initial burden of establishing by a preponderance of the evidence that the employee's protected activity was a motivating factor in the employer's decision, i.e., that a causal relationship existed between that activity and the adverse action. The elements required to sustain the General Counsel's initial burden are: (1) the employee engaged in protected activity; (2) the employer had knowledge of that activity, and (3) the employer had animus against the protected activity. Id. See also *Intertape Polymer Corp*., 372 NLRB No. 133 (2023), enfd. 2024 WL 2764160 (6th Cir. 2024). Proof of discriminatory motivation (animus) can be based on direct evidence or can be inferred from circumstantial evidence based on the record. *Tschiggfrie Properties Ltd*, 368 NLRB No. 120, slip op. at 1 (2019). Circumstantial evidence may include, among other factors: the timing of the action in relation to the protected activity; contemporaneous unfair labor practices; shifting, false, or unsupported reasons offered for the adverse action; failure to conduct a meaningful investigation;

[22] Although the record does not establish whether Frapolli was aware Ortiz gave this instruction, his knowledge is irrelevant to determining whether Ortiz's statement, as an agent, violated the Act. See *Valmet, Inc*., 367 NLRB 84, slip op. at 2 and 11-12 (2019); *Dobbs International Services, Inc*., 335 NLRB 972, 973 (2001).

departures from past practices; and/or disparate treatment of the alleged discriminatees. *Intertape Polymer Corp*., supra slip op. at 6.

If the General Counsel establishes these factors, the burden shifts to the employer to show it would have taken the same adverse action in the absence of statutorily protected activity. *Intertape Polymer Corp*., supra slip op. at 7. The employer cannot carry this burden merely by showing that it also had a legitimate reason for the action, but must persuade, by a preponderance of the evidence, that the adverse action would have taken place absent the actual or suspected activity. Id.

2. Application

a. Protected Concerted Activity

In applying the *Wright Line* framework, I conclude the General Counsel has met their initial burden. Kierstyn engaged in protected concerted activity when he discussed wages with his coworkers, both prior to and in conjunction with the announced reduction in hours.[23] Kierstyn initiated and participated in discussions where he and others shared information about their wage rate and whether their rate reflected the work they performed. Section 7 of the Act gives employees the right to ascertain the wage rates paid by their employer, as well as to discuss the disparity in those rates. See e.g., *Automatic Screw Products*, 306 NLRB at 1072; *Trayco of SC*, 297 NLRB at 635; *Triana Industries*, 245 NLRB at 1258. During certain discussions, Kierstyn encouraged coworkers, like Smith and Ponce, to ask for a raise or to have their job duties altered if they believed they were paid less or expected to do more than others. The Board has held assisting other employees by encouraging them to take action to address their wages is protected concerted activity, even if the assisting employee is not personally affected. See *Boyds Drug Mart*, 373 NLRB No. 143, slip op. at 6 (2024) (cases cited therein).[24]

b. Knowledge and Animus

The General Counsel also established that the Respondent had knowledge of and exhibited animus toward Kierstyn's protected activity prior to discharging him on May 23. Direct evidence is found in Frapolli's May 23 statements to Kierstyn during their one-on-one meeting in which Frapolli stated he was tired of Kierstyn "acting like a union rep" and "boasting" about his wages. The Respondent argues that even if these statements were credited, they cannot be relied upon to establish animus because post-decisional statements cannot be relied upon to retroactively establish discriminatory motive.[25] I reject this argument as contrary to Board precedent. The Board has long

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[23] The General Counsel also contends that Kierstyn was engaged in protected concerted activity when he discussed the reduction in hours, separate and distinct from the wage-related discussions. Setting aside whether those specific discussions were intended to initiate, induce, or prepare for group action, I find Frapolli exhibited no animus toward them. He spoke with employees about the planned reduction, listened to their counterproposal, and agreed to implement it, before later determining the reduction was no longer needed.

[24] The Respondent contends, without citation to the record, that Kierstyn's "complaints" about wages and hours were driven by self-interest, not by any effort to initiate or induce group action for mutual aid or protection. I reject this contention. Wage discussions remain protected regardless of whether further action is planned or taken. See *Alternative Energy Applications*, 361 NLRB at 1206 fn. 10; *Parexel International*, 356 NLRB 516, 518 (2011); *Whittaker Corp*., 289 NLRB 933, 933 (1988). Additionally, Kierstyn raised awareness about the wage disparity and encouraged coworkers to ask for a rate that reflected their worth.

[25] The Respondent cites to *Strategic Tech. Inst., Inc. v. NLRB*, 87 F.4th 900 (D.C. Cir. 2023). In that case, the Board found animus based, in part, on the employer's post-discharge comments to its customer explaining the reason it was unable to fulfill its contractual obligations was because it had to deal with "false union claims/union

held an employer's statement that reflects animus toward the protected activity is relevant to determining the employer's motivation for the adverse action at issue, regardless of whether the statement occurred before or after the action is announced. See e.g., *K.W. Electric, Inc*., 342 NLRB 1231, 1231 fn. 5 (2004); *King Soopers*, 257 NLRB 1033, 1038 (1981); *Smith's Transfer Corp.*, 162 NLRB 143, 161 (1966) (citations omitted).

Even if I did not rely on Frapolli's statements to Kierstyn during their one-on-one meeting, the General Counsel has presented sufficient circumstantial evidence to infer knowledge and animus. When the employer's supervisors or agents had knowledge of the protected activity, that knowledge will be imputed to the decisionmaker, unless the employer affirmatively establishes through credible evidence a basis for negating that imputation. *Intertape Polymer Corp*., 372 NLRB No. 133 n. 85 (2023)*; State Plaza Hotel*, 347 NLRB 755, 756 (2006); *Transportes Hispanos, Inc*., 332 NLRB 1266, 1270 (2000). Ortiz and Theen were each present for at least one of Kierstyn's wage-related discussions with coworkers, and both were present on May 17, when Ortiz instructed Kierstyn that he was no longer allowed to discuss wages. These events occurred while Ortiz and Theen were regularly meeting with Frapolli to discuss events occurring at the facility related to production and employee performance. It is reasonable to infer under these circumstances that Ortiz and/or Theen made Frapolli aware of Kierstyn's protected activity.

Frapolli denies he was made aware of the activity prior to discharging Kierstyn. I do not credit him. I also find it implausible that he was unaware of these discussions under the circumstances. Under the small-plant doctrine, the Board will impute knowledge to the employer when the facility is small and open, the work force is small, the employees make no great effort to conceal their protected activities, and management personnel are in the immediate vicinity of that protected activity. See *Roemer Industries*, 367 NLRB No. 133, slip op. at 15 (2019), enfd. 824 Fed.Appx. 396 (6th Cir. 2020). Each of these factors is met. The Respondent operated a small production facility, which primarily consisted of the shop area, the vinyl room, two offices, and a lunchroom. The workforce consisted of about 10 employees, and at least half of them were involved in the discussions. Kierstyn and the others who participated did nothing to hide their activities. Most discussions occurred out in the open, either in the lunchroom or around the vinyl room, and at least two occurred around Ortiz or Theen.

There are several factors from which to infer animus. First, there is the timing of the discharge in relation to Kierstyn's protected activity and Ortiz's contemporaneous unfair labor practice. Kierstyn resumed discussing wages with coworkers on about May 13, after Frapolli announced his plan to reduce the employees' hours. On May 17, Ortiz gave his instruction to Kierstyn to no longer discuss wages. And, six days later, when Kierstyn continued discussing wages, he was discharged.[26] The close temporal proximity between the protected activity, the employer's unlawful attempt to curtail that activity, and the adverse action is strong evidence of animus. See e.g., *Red Rock Casino Resort*

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litigation." The D.C. Circuit declined to enforce the Board's order, holding the comments could not be relied on to establish animus because they were made by the employer sometime after the charges were filed. Under the Board's non-acquiescence policy, I am bound to follow the Board, not the court of appeals, unless overruled by the United States Supreme Court. See *D. L. Baker, Inc*., 351 NLRB 515, 529 fn. 42 (2007); *Gas Spring Co*., 296 NLRB 84, 97 (1989). Even if that were not the case, the cases are factually distinguishable as it relates to the timing. Here, Frapolli made the statements moments after informing Kierstyn about his discharge, during a conversation about the discharge, as opposed to a third party sometime after the charges were filed.

[26] The Respondent argues the timing does not support a finding of animus because Frapolli testified he made the decision to discharge Kierstyn by April 12, 2024, five weeks prior to any of his alleged protected activity. I previously addressed and rejected this argument.

Spa, 373 NLRB No. 67, slip op. at 37 (2024); *Bannum Place of Saginaw, LLC*, 370 NLRB No. 117 at p. 3, fn. 12 (2021), enfd. 41 F.4th 518 (6th Cir. 2022); *Evenflow Transportation, Inc*., 358 NLRB 695, 697 (2012), affirmed and adopted 361 NLRB 1482 (2014); *Cal Western Transport*, 316 NLRB 222, 223 (1995); *Richardson Bros. CP*., 312 NLRB 534 (1993).

The second factor from which to infer animus is the Respondent's shifting and largely unsupported reasons given for Kierstyn's discharge. Kierstyn's May 23 discharge letter lists a single reason for his discharge: "constant unsatisfactory workmanship, which has resulted in a profit loss for the company." The original version of the letter goes on to state there were "[m]any conversations" between Kierstyn and the Respondent regarding his "mistakes, lack of attention to detail, and failure to follow job specifications." That sentence was later removed from the revised version of the letter, without any explanation from Frapolli or Casas as to why.

As for addressing Kierstyn's alleged performance issues, the record reflects the Respondent did little prior to his discharge. Frapolli testified he had "constant" discussions with Kierstyn about his job performance, and when he sent jobs back and told Kierstyn how he wanted them done, Kierstyn would push back. Frapolli did not provide specifics about any of these jobs or the conversations he had with Kierstyn. The Respondent, in its brief, similarly contends that Kierstyn was discharged for "well-documented performance reasons." The record, however, is devoid of any documentation establishing that Kierstyn was counseled, warned, or disciplined for performance issues. In fact, there is no documentation he was counseled, warned, or disciplined *for any reason*.

Frapolli, in his testimony, added to the list of reasons why Kierstyn was discharged. He testified that during their initial meeting on May 23 he told Kierstyn he was being discharged because he was not showing up to work on time, he was creating bad morale for everyone, and he was not producing the product correctly. As stated, there is no documentation reflecting the Respondent addressed these alleged issues with Kierstyn prior to his discharge. The Respondent appears to have tolerated these alleged issues until after it learned of Kierstyn's protected activity. The Board has held that previously tolerated or minimally disciplined conduct later relied upon to discharge an employee after learning of their statutorily protected activity is strong evidence of animus. See *Amerinox Processing, Inc*., 371 NLRB No. 105, slip op. at 19 (2022); *Constellium Rolled Products Ravenswood, LLC*, 371 NLRB No. 16, slip op. at 3-4 (2021); *Andronaco,* 364 NLRB 1887, 1899 (2016); *Holding Co.*, 231 NLRB 383, 397 (1977). This is particularly true regarding matters related to attendance. See e.g., *J. J. Cassone Bakery*, 288 NLRB 406, 410 (1988); *Bond Press, Inc*., 254 NLRB 1227 fn. 1 (1981); *Martin Luther King, Sr., Nursing Ctr*., 231 NLRB 15, 19 (1977); *Citizens Trust Bank*, 206 NLRB 320, 324-325 (1973).

Not only is there no documentation the Respondent addressed these alleged issues with Kierstyn prior to his discharge, but there is also no evidence they were factors in his discharge. The Respondent issued an original and a revised discharge letter to Kierstyn, and neither addresses his attendance, his effect on employee morale, or his May 23 text about there being no benefit to be on time because there was no work to do.

The Respondent raised other defenses that largely went unaddressed at the hearing or in its brief. For example, in its position statement, the Respondent asserts that Kierstyn was discharged, in part, for insubordination. (GC Exh. 16, pg. 2). It alleges that when the Respondent rehired Kierstyn in December 2023, it instructed him to train and coordinate operational responsibilities with another unidentified new employee, which Kierstyn allegedly failed or refused to do. The Respondent presented no evidence at the hearing regarding this matter.[27]

In its answer to the complaint, the Respondent raised various affirmative defenses, including that Kierstyn was discharged for "repeated and material violations" of Respondent's written workplace policies governing safety, attendance, and confidentiality. The Respondent presented no evidence that Kierstyn violated policies related to safety or confidentiality.

The third factor from which to infer animus is the evidence of the Respondent's disparate treatment of Kierstyn. Frapolli testified the Respondent's regular practice was to issue warnings to employees who are late to work. The Respondent introduced Kierstyn's timecards showing that he arrived late, left early, or was absent from work about 30 times after he was rehired in December 2023. Yet, there is no evidence he was ever issued any documented counseling, warning, or discipline. Casas testified that she spoke to Kierstyn one time about leaving the facility during his shift, but that was only because she was concerned for his safety.

The Respondent attributes the lack of documented coaching and discipline to it being a small company without a formal progressive discipline system. That argument falls flat. The Respondent issued Derek McLaughlin verbal and written warnings for his attendance. (GC Exhs. 19(a)-(b)). He received the two written warnings in August and September 2023, and they each warned of progressive discipline if the issues continued. He was later a no-call, no-show in November 2023, and he was immediately discharged. His discharge letter refers to his prior discipline for tardiness. (GC Exh. 19(c)). When McLaughlin later filed for unemployment benefits, the Respondent challenged his eligibility citing, in part, his prior discipline for attendance. (GC Exh. 20).

The absence of any documented warning or discipline to Kierstyn for his numerous occurrences indicates the Respondent was far more lenient with him than it had been with McLaughlin, and that leniency continued until the Respondent learned about Kierstyn's protected activity.

For these reasons, I conclude the General Counsel has met their initial burden under *Wright Line* of establishing the discharge was discriminatorily motivated, and the burden now shifts to the Respondent to establish it would have discharged Kierstyn in the absence of his protected activity.

c. Respondent's Defense

The Respondent argues it has met its burden because it planned to discharge Kierstyn due to his performance and attendance issues weeks before he engaged in any protected activity. It cites Frapolli's April 12 email to Casas about hiring a new router person and to his undated draft discharge letter that he planned to issue once Kierstyn's replacement was hired. As for the reason for the discharge, the Respondent cites Frapolli's testimony about Kierstyn's "chronic tardiness, poor work

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[27] Throughout its brief, the Respondent cites factual assertions raised in its position statement as evidence of those facts. (R Br. 3, 8, 14, 15, 17, 19). While a party's position statement can be received as an admission against interest or as an inconsistent statement, see e.g., *United Scrap Metal, Inc.*, 344 NLRB 467, 467-468 (2005); *Black Entertainment Television, Inc.*, 324 NLRB 1161 (1997); *Elyria Foundry Co.*, 321 NLRB 1222, 1232-1233 and 1251 (1996), enfd. 205 F.3d 1341 (6th Cir. 2000), it cannot be relied upon as substantive evidence to establish the factual assertions contained therein. See e.g., *Prime Communications, LP*, 374 NLRB No. 88, slip op. at 3 fn. 2 (2026); *Tuscaloosa Quality Foods*, 318 NLRB 405, 408 (1995).

product from the router, spending more time walking around than working, constant pushback against management direction, and toxic effect on employee morale." It also cites Kierstyn's September 1, 2023 thank-you letter to Frapolli in which he acknowledged his performance deficiencies during his initial employment, as well as Kierstyn's timecards reflecting his approximately 30 late arrivals after he was hired. The Respondent contends the "final straw" was the text Kierstyn sent his co-workers on the morning of May 23 informing them that he would be arriving late to work that morning and there was no reason to be on time considering there was no work to perform, which Frapolli viewed as "deliberate insubordination."

These arguments have largely been addressed and rejected. As discussed, I do not credit Frapolli's testimony that the Respondent planned to discharge Kierstyn prior to his protected concerted activity. I find Frapolli placed the job advertisement not because he planned to discharge Kierstyn, but rather because he was concerned Kierstyn might quit, and he wanted to line up a replacement in case that happened. If the Respondent's plan had been to discharge Kierstyn, and it delayed doing so until it hired and trained his replacement, then why did it choose to announce his discharge on May 23, without having hired his replacement? As for Kierstyn's alleged performance or attendance issues, the Respondent asserts those were long-standing issues, dating back to his initial employment, but as outlined, it never issued Kierstyn a documented counseling, warning, or discipline for these alleged issues. The first documentation came in the form of his discharge letter, which, as stated, only mentions his unsatisfactory workmanship. As for Kierstyn's May 23 text message, the General Counsel astutely points out: "Respondent's two explanations cannot both be true. If the decision [to discharge] was made in April, it could not have been based on a May 23 text message. And if the May 23 text supposedly triggered the termination, then no April decision existed." (GC Br. 47).

The Respondent further argues it would have discharged Kierstyn regardless of his protected activity because it discharged three other employees who failed to meet its performance standards. The first employee was McLaughlin, who received written warnings for tardiness, and was subsequently discharged for "constant unsatisfactory workmanship," which is the same reason listed in Kierstyn's discharge letter. The second is Felix Ortiz, who was discharged for serious misconduct, including drinking alcohol on the job, causing a fire with the laser equipment, and excessive phone use. The last was Paul Han, a designer, who was terminated for lack of communication and profit loss. The Respondent argues it treated Kierstyn the same as these other underperforming employees: it counseled them, it tolerated their ongoing issues as long as it could, and it ultimately discharged them when retaining them any longer became untenable.

The Respondent did not tolerate McLaughlin's attendance issues. As discussed, it issued warnings for his tardiness and immediately discharged him after his no-call, no-show.[28] Similarly, it did not tolerate Ortiz's misconduct. It promptly investigated what happened and immediately discharged him. As for Han, there is no evidence regarding what his alleged issues were or how the Respondent tolerated them, before eventually discharging him. As such, he cannot reasonably be considered as a comparable.

[28] McLaughlin's discharge letter cites to his "constant unsatisfactory workmanship," and the Respondent points out that is like the language in Kierstyn's discharge letter. But when the Respondent later challenged McLaughlin's eligibility for unemployment benefits, its arguments focus solely on McLaughlin's tardiness, and how it disrupted production and inconvenienced the rest of the production team because he could not be relied upon to show up on time.

Unlike with McLaughlin and Ortiz, the Respondent tolerated Kierstyn's alleged performance and attendance issues for several months before taking any action, and only after learning about his wage-related discussions. This establishes to me that while the Respondent tolerated Kierstyn's alleged performance and attendance issues, it did not tolerate his protected concerted activity.

What I find to be comparable to Frapolli's reaction to Kierstyn's wage-related discussions in May 2024 was his reaction to Kierstyn's "meddling" in Torrentt's request for paid sick leave in August 2023. The Respondent contends that Kierstyn had performance and attendance issues during both periods of his employment, and during both the record reflects the Respondent tolerated those issues until he began advocating for his coworkers or encouraging them to advocate for themselves. In both situations, Frapolli exhibited direct animus toward Kierstyn's protected activity and expressed his intent to retaliate against Kierstyn. With the former, Frapolli's intent is outlined in his August 11 text to Casas. With the latter, his intent was set forth in his statements to Kierstyn during their May 23 one-on-one meeting. The only difference is that, with the first situation, Kierstyn quit before Frapolli could discharge him. Not so with the second.

Based on the record, I conclude the Respondent failed to establish it would have taken the same action in the absence of Kierstyn's protected activity.

I, therefore, conclude the General Counsel has established the Respondent violated Section 8(a)(1) when it discharged Kierstyn because of his protected wage discussions.

Conclusion of Law

1. The Respondent Custom Sign Consultants is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. Felix Ortiz was an agent within the meaning of Section 2(13) of the Act in May 2024.

3. The Respondent violated Section 8(a)(1) of the Act on or about May 17, 2024, when Ortiz instructed Joseph J. Kierstyn in the presence of other employees that he was no longer allowed to discuss wages.

4. The Respondent violated Section 8(a)(1) of the Act on May 23, 2024, when it discharged Kierstyn because he engaged in protected activity by discussing wages with his coworkers.

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

Remedy

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

The Respondent, having unlawfully instructed employees that they may not discuss wages, must rescind that instruction. Also, the Respondent, having unlawfully discharged Kierstyn because of his protected activity, must offer him reinstatement to his former job or if that job no longer exists, to a substantially equivalent position without prejudice to his seniority and other rights and privileges they would have enjoyed absent the discrimination against him.

The Respondent shall also make Kierstyn whole for any loss of earnings and other benefits. The make-whole remedy shall be computed in accordance with *F.W. Woolworth Co.,* 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB 6 (2010). Consistent with *Thryv, Inc.*, 372 NLRB No. 22, slip op. at 14 (2022), enf. denied in part on other grounds, 102 F.4th 727 (5th Cir. 2024), Respondent shall also compensate Kierstyn for any other direct or foreseeable pecuniary harms incurred as a result of the unlawful discharge, including reasonable search-for-work and interim employment expenses, if any, regardless of whether these expenses exceed interim earnings.[29] Compensation for those harms shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

In addition, the Respondent shall compensate Kierstyn for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 13, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years, in accordance with *AdvoServ of New Jersey, Inc.,* 363 NLRB 1324 (2016). In accordance with *Cascades Containerboard Packaging–Niagara*, 370 NLRB No. 76 (2021), as modified in 371 NLRB No. 25 (2021), the Respondent shall also be required to file with the Regional Director for Region 13 a copy of each backpay recipient's corresponding W–2 form reflecting the backpay award.

The Respondent shall also be required to remove from its files any references to the unlawful instruction and discharge of Kierstyn, and to notify him in writing that this has been done and that the discharge will not be used against him in any way.

The Respondent shall post an appropriate informational notice, as described in the attached appendix. This notice, on a form provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the Respondent shall distribute the notice electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notice is not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed its facility, 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 the facility at any time since May 17, 2024.

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[29] In their prayer for relief, the General Counsel did not specifically mention they were seeking remedies under *Thryv*. This may have been inadvertent or intentional. Regardless, *Thryv* remedies are standard under current Board law, and they are included in the recommended order. If the General Counsel is seeking to change that law, then it is free to file exceptions and raise those arguments to the Board.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[30]

ORDER

The Respondent, Custom Sign Consultants, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Discharging or otherwise discriminating against any employee for engaging in protected concerted activities, such as discussing wages

(b) Instructing employees that they are not allowed to discuss wages.

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

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

(a) Within 14 days from the date of the Board's Order, rescind the instruction prohibiting employees from discussing their wages.

(b) Within 14 days from the date of the Board's Order, offer Joseph J. Kierstyn 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.

(c) Make Kierstyn whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest, and also make him whole for any other direct or foreseeable pecuniary harms, suffered as a result of the unlawful discharge, including reasonable search-for-work and interim employment expenses, plus interest.

(d) Compensate Kierstyn for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 13 within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

(e) Within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful instruction and discharge of Kierstyn, and within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

(f) 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 amounts due under the terms of this Order.

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

(g) Within 14 days after service by the Region, post at its current Chicago, Illinois facility copies of the attached notice marked "Appendix."[31] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 17, 2024.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 13 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 10, 2026

Andrew S. Gollin
Administrative Law Judge

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

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union;
Choose a representative to bargain with us on your behalf;
Act together with other employees for your benefit and protection;
Choose not to engage in any of these protected activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL NOT discharge or otherwise discriminate against any of you for engaging in protected concerted activities, such as discussing wages.

WE WILL NOT instruct you that you are not allowed to discuss wages.

WE WILL rescind our instruction prohibiting employees from discussing their wages.

WE WILL, within 14 days from the date of the Board's Order, offer Joseph J. Kierstyn 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 Joseph J. Kierstyn whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest, and **WE WILL** also make him whole for any other direct or foreseeable pecuniary harms, suffered as a result of the unlawful discharge, including reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Kierstyn for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and **WE WILL** file with the Regional Director for Region 13 within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award(s) to the appropriate calendar year(s).

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful instruction and discharge of Kierstyn and **WE WILL**, within 3 days thereafter, notify him in writing that this has been done and that neither will be used against him in any way.

CUSTOM SIGN CONSULTANTS
(Employer)

Dated: ____________________ By: ______________________________
(Representative) (Title)

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

Dirksen Federal Building, 219 South Dearborn Street, Room 808, Chicago, IL 60604-2027
(312) 353-9158, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/13-CA-343009 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (312) 353-7170.