UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD A–327568
DIVISION OF JUDGES

INJEXED MEDBAR LLC

and **Case 16–CA-327568**

SAVANNAH SMITH, an Individual

Ester Thomas*, Esq.,* for the General Counsel.
Maxie Miller*, Esq.,* for the General Counsel.
David Maez, *pro se,* for the Respondent.
LaDelle Maez, *pro se,* for the Respondent.

DECISION

STATEMENT OF THE CASE

CHRISTAL J. KEY, Administrative Law Judge. This case was tried in Fort Worth, Texas, on April 7, 2026. The complaint and notice of hearing in this case issued on January 26, 2026, and an amended complaint issued on February 10, 2026 (the complaint). It alleges that on June 9, 2023, Injexed Medbar LLC (Respondent) violated Section 8(a)(1) of the Act by promulgating a work rule that prohibited employees from discussing their wages with their coworkers and issued Savannah Smith (Smith) two verbal warnings for discussing her wages with her coworker. The complaint further alleges that on June 13, 2023, Respondent fired Smith for discussing her wages with her coworker. On January 28 and February 24, 2026, Respondent filed its answer to the complaint and amended complaint. Respondent denied the essential allegations of the complaint. After the conclusion of the trial, General Counsel filed a brief.[1]

Based on the entire record, including my observation of the demeanor of the witnesses, and after considering the brief filed by the General Counsel, I make the following

[1] Respondent did not file a brief or request an extension to do so.

FINDINGS OF FACT[2]

I. JURISDICTION

At all material times, Respondent has been a Texas limited liability company with an office and place of business located in Frisco and/or Plano, Texas, and has been engaged in the operation of a medical spa providing patients medical–grade skincare treatments and services. In conducting its operations during the 12–month period ending October 1, 2023, Respondent derived gross revenues in excess of $250,000. In conducting its operations during the 12–month period ending October 1, 2023, Respondent purchased and received at its Frisco and/or Plano, Texas facility goods valued in excess of $5,000 directly from points outside the State of Texas. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and has been a health care institution within the meaning of Section 2(14) of the Act. (Tr. 118-119, GC Exhs. 1(e), 1(g), 1(h), 1(j), and 1(k).)

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

1. Respondent's operations and supervisors

LaDelle and David Maez are Respondent's owners. They opened the spa in 2019. (Tr. 114.) LaDelle Maez (LaDelle) is a registered nurse. Her functions at the spa consisted of owning and operating the business, managing and overseeing the staff and the day–to–day operations of the spa, including overseeing the allocation of employees' commissions and injecting clients. (Tr. 24, 33, 114, 133.) David handled the spa's marketing and maintained its website. (Tr. 24, 114–115.)

2. Respondent's written policies related to the discussion of pay

Respondent maintains a staff manual that all employees are required to sign at the beginning of their employment with Respondent. (Tr. 130, 133.) The staff manual has two sections restricting employees from discussing pay. Section 2, states that confidential information "may include . . . financial information [and] . . . personnel information" which employees are required to keep confidential "on or off the Company's property, and during and even after the end of the employee's employment with the Company." (R. Exh. 3 at 7.) Section 2.7, states that "personnel files and payroll records are confidential." Respondent also maintains a staff handbook, that it requires every employee to sign when it hires them. (Tr. 157.) The page of the handbook setting forth the office manager's job duties, states: "No–Drama policy—No discussion of pay, bashing team members, etc. If overheard bring to management immediately." (R. Exh. 4 at 6.)[3]

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

[3] The complaint does not plead that these policies violate the Act. A judge may consider unalleged allegations when they are fully litigated and closely related to other complaint allegations. *Pergament United Sales*, 296 NLRB 333, 334 (1989), enfd. 920 F.2d 130 (2d Cir. 1990). I decline to consider the lawfulness of the rules in the staff manual because it would require an analysis under the Board's *Stericycle, Inc.,* decision, which allows Respondent to present

3. Savannah Smith's employment with Respondent

Respondent hired Savannah Smith (Smith) on February 7, 2023,[4] as a laser technician and esthetician. (GC Exh. 3 at 4.) Respondent hired her at an hourly wage rate of $20 per hour plus a 6 percent commission. (Tr. 32.) LaDelle was Smith's immediate supervisor. (Jt. Exh. 2 at 19, GC Exh. 3, Tr. 24.) About 4 to 6 weeks into her employment, Smith approached LaDelle and asked for a raise. (Tr. 134.) LaDelle increased Smith's commission from 6 percent to 10 percent. (Tr. 134.) On June 9, Smith attended a meeting with David and LaDelle. During that meeting, David issued Smith two written verbal warnings. The stated reason for the first warning was for talking with staff about pay. The stated reason for the second warning was adding her name to commissions that were not properly hers and talking over management when she discussed her commissions with David on June 8. (GC Exh. 3 at 4.) When David announced Smith's warning, for talking about her pay with other employees, he told Smith they had terminated Tali Wald. Wald was the person Smith had spoken to about pay. (GC Exh. 4(b) at 3.) During the June 9 meeting, David and LaDelle also gave Smith her 90–day review which was overwhelmingly positive. They announced that they would be increasing her hours because they needed her to pick up some of Wald's job duties. They also announced a new pay structure for Smith whereby they would give her a $2 per hour raise and a yet-to-be-determined bonus, but they were eliminating her commissions. (GC Exh. 4(b) at 5, 10.) On June 13, LaDelle sent Smith a text message notifying her of her termination with the stated basis being that she was not the right fit. (GC Exh. 2.)

4. Tali Wald's position with Respondent

A central issue in the case is whether Tali Wald was a supervisor as defined by Section 2(11) of the Act. During Smith's employment, the spa's staff consisted of David Maez, LaDelle Maez, Tali Wald and Savannah Smith. (Tr. 24.) The record does not establish when Respondent hired Wald, but Respondent terminated her on the afternoon of June 8, or the morning of June 9. (GC Exh. 4(b) at 3.) Wald's job title was office manager. Wald's job duties consisted of answering the telephone, scheduling clients' appointments, entering commissions in Respondent's software system, helping to run payroll, greeting clients at the front desk and checking them in, and checking clients out including taking their credit card payments. (GC Exh. 4(b) at 5–6, 14, Tr. 25–26, 33, 154.)[5] Like Smith, Wald's pay structure included commissions on items she sold. (GC Exh. 4(b) at 4, 5.) Wald did not hire, discipline, or grant paid time off and she did not evaluate Smith's work. (Tr. 25–26.) On August 7, David and LaDelle provided testimony to a hearing officer of the Texas Workforce Commission (TWC) regarding Smith's entitlement to unemployment benefits. (GC Exh. 12 at 4, Jt. Exh. 2 at 19.) During the TWC hearing, LaDelle testified that she was Smith's immediate supervisor. (Jt. Exh. 2 at 19.) During the TWC hearing, David and LaDelle were asked to provide a reason for Smith's termination. David testified that Respondent fired Smith in part

evidence of certain defenses, while the no-drama rule pled in the complaint requires no such analysis. 370 NLRB No. 89 (2021). I also decline to address the no drama policy because General Counsel was aware of it and chose not to amend it into the complaint.

[4] All dates hereinafter are 2023 unless otherwise stated.

[5] Smith testified to some of Wald's job duties. (Tr. 24, 26, 33.) Further, during the June 9 meeting, David and LaDelle told Smith that because they had terminated Wald they were going to increase her hours and that she would be picking up some of Wald's job duties. They told Smith her new job functions would consist of greeting clients at the front desk and checking them in, answering the phone, using their software to schedule clients' appointments, and checking clients out including taking their credit card payments. (GC Exh. 4(b) at 5–6, 14.)

because she discussed pay with Wald, who he referred to as an employee rather than a supervisor. (Jt. Exh. 2 at 23, 30, 47, 48.) The hearing officer asked if Respondent had a policy that employees aren't to discuss their salaries amongst each other. (Jt. Exh. 2 at 48.) David responded that yes there was such a policy in their handbook which employees sign as part of the onboarding process. (Jt. Exh. 2 at 48–49.) During the NLRB hearing, Respondent introduced its staff handbook which all employees sign as part of Respondent's onboarding process. (R. Exh. 4.) The handbook has a page entitled leadership, which states that LaDelle is the co–founder and lead injector and that David is the co–founder and spa director with experience in branding and marketing. (R. Exh. 4 at 4.) The handbook also has a page which sets forth the office manager's roles and responsibilities. The record does not support that Wald performed many of the functions set forth in the job description. For example, the job descriptions states that the office manager had responsibility to effectively manage a team of estheticians, cosmetologists, and other spa staff. However, LaDelle was Smith's direct supervisor and there were no other employees for Wald to manage or supervise. Similarly, the job description states that the office manager performed administrative duties including "personnel management, budgeting and bookkeeping." There is no evidence in the record to support that Wald actually performed these functions.

On September 11, Smith also testified at a TWC hearing. (GC Exh. 12 at 4.) Smith testified that Wald was her "manager" and that she verified Smith's commissions and then LaDelle reviewed and verified her commissions. (Tr. 59–60.) The TWC hearing officer asked Smith if she had gotten a verbal warning for discussing salaries with other employees. Smith responded that she wasn't just discussing everybody's salaries, that she was discussing her pay with Wald "who is my manager, and who also managed my pay. I was discussing my pay with her, and that was it. There was no discussion of her pay or anybody else's pay. It was just my pay with my manager that she reviewed." The hearing officer then asked Smith if she was saying that she had not discussed salaries with her coworkers because that was part of Respondent's claim. Smith responded, "No not at all." (Tr. 65.) During the TWC hearing, Smith testified about a June 8 telephone conversation with David regarding her commissions. She testified that during that call, David was yelling and speaking inappropriately to her and that she walked inside the spa to be next to her manager Tali Wald "so that way I could have a witness for how he was speaking to me." (Jt. 2 at 62.)

B. June 9 Verbal Warnings, Announcement of a Work Rule Regarding Employees Discussing their Wages and June 13 Termination

1. Smith and Wald discuss pay and Smith attempts to resolve pay issues with LaDelle and David

On June 6, Smith discussed her commissions and pay with Wald. (Tr. 36–38, 56, Jt. 2 at 65.) Wald told Smith that she had noticed that some appointments and the resulting commissions were missing from her commission report. (Tr. 36–37.) After Wald and Smith spoke, Smith looked at her commission report and found that certain appointment commissions and around $5,000 of sales were missing from the report. (Tr. 37–38.) On June 6, at 4 p.m. LaDelle emailed Smith and stated that she was reminding her that she only receives commissions on any upsells for example she would not receive a commission on any treatments already on the books. (GC Exh. 5 at 1.) Smith sent an email response stating that from the time she accepted the job she understood she would receive commissions for services she consulted on, closed the sale for and performed. (GC Exh. 5 at 2.) Smith stated that she would appreciate having a conversation before LaDelle removed commissions that affect her paycheck. She stated she had noticed that some facials she had performed the previous Saturday had been removed from her commissions. On June 7, David sent Smith an email asking to be included on future emails, stating that there was some confusion regarding commissions and he set a meeting for Friday, June 9, at 12 p.m. to discuss the commissions and conduct her 90–day review. (GC Exh. 5 at 4.) On June 8, Smith sent David and LaDelle an email stating that she was concerned about waiting until Friday to resolve the commission issue because payroll would run before Friday, and she had already budgeted for those commissions. (GC Exh. 5 at 5, Tr. 39.) David then asked Smith to call him and the two spoke via telephone on the afternoon of June 8. Smith stated that appointments had been removed from her commission report and David stated that she was only entitled to commissions on goods and services that she upsold. (Tr. 173–174.) Smith stated that she wanted to meet in person that day to resolve the matter before payroll was processed. (Jt. Exh. 2 at 62, Tr. 39–40.) At this point in the call, David started yelling at Smith, who was outside the spa. Smith walked into the spa so that Wald could overhear David and serve as a witness that he was yelling at her. (Jt. Exh. 2 at 62, GC Exh. 4(b) at 3, Tr. 39, 174.) The call ended by Smith stating we are going to talk about this tomorrow. (Jt. Exh. 2 at 29, 62–63.)

2. Respondent issues Smith two letters of warning on June 9, and terminates her on June 13

On June 9, David and LaDelle met with Smith for a noon meeting. Smith recorded the meeting and a transcript is in evidence. (GC Exh. 4(b).) David opened the meeting by telling Smith he was issuing her a verbal warning related to their phone call on the day prior. He stated, “the reason being is that you were talking in our foyer . . . that just can’t happen. If it’s a private conversation, take it in a different room.” (GC Exh. 4(b) at 3.) He stated, “I would never talk to my boss like that.” He said that if they hired another manager in the future he would not want Smith to talk to that manager the way she had spoken to him. David then told Smith, “The other verbal warning comes from um as you know we’ve let Tali go. Okay? Um you can’t talk about financial stuff with other employees.” Smith asked what he meant. David responded, “related to commissions, anything related to your hourly pay, anything like that just cannot be discussed.” Smith advised him that discussing pay is protected by a federal law. David responded,

> You cannot—this is the policy, you cannot discuss your pay with another employee. You just can’t do it okay? You . . . can’t do it here. Yeah, I’m not sure what you’re referring to, but this is our policy. You can’t do it, okay.

LaDelle then stated that discussing pay creates negativity and nothing good will ever come out of that. Smith then asked them to confirm that there was to be no talk about pay, commissions or anything like that. David confirmed that she could not discuss those issues. (GC Exh. 4(b) at 4.) David then stated,

> And actually she, Tali should know better also, and that’s very unprofessional, and she cannot discuss what her hourly rate is. She cannot discuss what her commission split is, like that’s just unacceptable at any job anywhere, right. Because once that starts–starts to happen, things start to fall apart, right. And so that’s just a hard line for us, like we can’t do it. [S]o with all that being said I want to talk about some of

> the positive stuff, okay. You've been fantastic and that really kind of hurt my feelings when you were saying, "do you think that I haven't been performing." I think you're doing a great job. And LaDelle you can chime into that too. (GC Exh. 4(b) at 4.)

Later during the meeting, David stated that wages and commissions were private and if Respondent hired another esthetician he did not want Smith discussing her pay with that employee because if Respondent paid the esthetician less money "that could cause a massive contention. So that's why we don't discuss that." (GC Exh. 4(b) at 16.)

David and LaDelle gave Smith her performance review. During the review, they repeatedly complimented Smith's performance by telling her such things as, she was doing a fantastic job and they got great feedback from clients regarding her work. (GC Exh. 4(b) at 4, 9, 10.) David told Smith "You show up when you're supposed to show up. You do what you're supposed to do. I think that maybe there was maybe a misunderstanding on the commission stuff. (GC Exh. 4(b) at 4.) David also stated, "Your job is here. Your job is secure." (GC Exh. 4(b) at 9.) During the meeting, David and LaDelle told Smith that they were going to increase her hours because she would be taking on some of Wald's job assignments and increasing her hourly wage rate from $20 to $22. They stated that they believed the commission issue was simply a misunderstanding on Smith's part that she believed she was entitled to commissions on all items she sold and services that she provided as opposed to only those she upsold. (GC Exh. 4(b) at 4, 9, 10.) LaDelle stated that when she was reviewing Smith's commissions it was "getting real sticky" because she didn't know where certain clients came from so she reviewed the notes to try and figure it out. (GC Exh. 4(b) at 10.) David stated that they had decided to eliminate commissions because they were "so complex to try to figure out too." (GC Exh. 4(b) at 10.) During the meeting David stated that the commission structure was confusing, crazy and hectic. (GC Exh. 4(b) at 5, 10.) They explained that while they were eliminating her commissions they intended to implement a yet-to-be-determined bonus structure. (GC Exh. 4(b) at 7–8.) David and LaDelle wanted Smith to sign her 90–day review and agree to the new pay structure. Smith declined stating that she wanted to see the new bonus structure before agreeing to it. (Tr. 52.) David documented Smith's warnings on a form stating:

> 2 verbal warnings were given. 1 for communicating with staff about pay. This is against policy at Injexed. 2. Adding her name to sales that were not hers and talking over management when discussed. (GC Exh. 3 at 4.)

Smith was scheduled to work from 10 a.m. to 4 p.m. on June 9. (Tr. 78.) However, after the meeting, she advised LaDelle that she wasn't feeling well and LaDelle gave her permission to go home early. (Tr. 78.) On Saturday, June 10, Smith was scheduled for work at 10 a.m. (R. Exh. at 1.) On June 9, at 4:09 p.m., Smith sent LaDelle a text message stating that she was feeling sick and her condition had not improved therefore she would not be able to work the following day. LaDelle responded, "Oh no. I am sorry you're feeling bad. I hope you feel better." (GC Exh. 7.) Later on June 9, LaDelle again texted Smith to ask her if she could work late until 6 p.m. one day the following week since she had rescheduled all her appointments for June 10, but some clients needed later appointments. Smith responded, "Yes I can definitely do that." LaDelle responded, "Thanks, Get some rest and I'm working on the bonus structure. Will send it asap." (GC Exh. 7.) On June 9, at 4:41 p.m., Smith sent David and LaDelle an email message stating that she would prefer to wait and sign any paperwork regarding the new pay structure they had proposed until they had finalized the details of how the bonus would be computed. (GC Exh. 10.)

Smith was next scheduled to work on Tuesday, June 13. (Jt. Exh. 2 at 38.) Prior to Smith's start time on June 13, LaDelle emailed Smith stating that "We have decided to let you go. We feel it's not the right fit for both parties. This is purely a business decision and not personal." (Tr. 27–28, GC Exh. 2.)

3. David testifies to the TWC that Respondent fired Smith in part for discussing her wages and LaDelle states that in writing

Smith applied for unemployment benefits through the TWC. Initially the TWC granted her benefits because it found she had not engaged in "misconduct connected with the work." (GC Exh. 12 at 10.) LaDelle wrote a letter to the TWC seeking to overturn that ruling. In her letter, LaDelle wrote:

> The Reason for the termination was 100% due to misconduct in the workplace. 2 verbal warnings were given:
> 1. For communicating with staff about internal pay which is against INJEXED policy.
> 2. For adding her name to commission sales that were not rightfully hers to claim and for talking over management when discussed.
>
> This is all on file within our office and Savannah did not agree to signing the documented paperwork.
> Because of the insubordination it was determined that it was not a good fit for employment. (GC Exh. 12 at 10.)

During the TWC hearing, David testified that one of the reasons Respondent fired Smith was for communicating with staff about internal pay, which is against the Company's policy. (Jt. Exh. 2 at 47.)

III. CREDIBILITY

A. General Principles

Evaluating certain issues of fact in this case requires an assessment of witness credibility. Credibility determinations involve consideration of the witness' testimony in context, including factors such as witness demeanor, "the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole." *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001), enfd. 56 Fed.Appx. 516 (D.C. Cir. 2003); see also *Hill & Dales General Hospital*, 360 NLRB 611, 615 (2014). Corroboration and the relative reliability of conflicting testimony are also significant. See, e.g., *Pain Relief Centers, P.A.*, 371 NLRB No. 70 slip op. at 2, fn. 4, 14 (2022), enfd. 2023 WL 5380232 (4th Cir. 2023).

B. David and LaDelle Maez

I discredit David and LaDelle Maez' testimony except where it was adverse to Respondent's case. I base this finding on their demeanor, the fact that their testimony was contradicted by their own, and each other's testimony during the NLRB hearing and their sworn testimony at the TWC hearing. Finally, their testimony was contradicted by Respondent's documents and in certain instances illogical.

As General Counsel's brief correctly points out, David Maez' testimony regarding why he fired Smith shifted depending on who he was addressing. (GC Br. at 5.) During the TWC hearing, the hearing officer asked David, if the specific reasons he fired Smith were for communicating with staff about internal pay, which is against the Company's policy, for adding her name to commission sales that were not rightfully hers and talking over management when they discussed the commissions. David testified, "Yes, absolutely." (Jt. Exh. 2 at 47.) However, during his testimony at the NLRB hearing, David testified, "I would never fire somebody for any wage discussion. I would never do anything like that. . . " (Tr. 177.) During the NLRB hearing LaDelle asked David why he fired Smith.[6] (Tr. 183.) He testified,

> [U]ltimately the reliability was a big concern for us. I know that people have the right to call–in sick. I understand that. But the timing was very, very suspicious in nature and I just honestly didn't know if Savannah was going to come back to work . . . . But ultimately it came down to the fact that she seemed disgruntled. She seemed that she did not want to work at INJEXED. And I want everybody to win. I want everybody to be happy that we're working with. And so ultimately that was the decision. It was bad behavior, unreliability. We can call it insubordination. We can call it bad behavior. But, you know, those things, it was just a little bit too much. It had nothing to do with pay or anything like that and that's why we gave her a raise. It had nothing to do with pay. (Tr. 183–184.)

Thus, when testifying at the TWC hearing, David testified that one of the reasons he fired Smith was because she discussed her wages with another employee, but at the NLRB hearing he denied that her discussion of wages formed a basis for the termination.

Similarly, during the TWC hearing, the hearing officer asked David if Respondent had a policy that says that employees aren't to discuss salaries amongst each other? The hearing officer, clearly ignorant to the Act, commented, "I mean, it's evident in most jobs, but is there any specific policy you have?" David testified, yes the paperwork employees sign during the onboarding process prohibits them from discussing their pay. In response to the hearing officer's question, David confirmed that Smith had received the relevant handbook when Respondent hired her. (Jt. 2 at 48–49.) During the TWC hearing, David again testified, "[I]t's internally a policy for us not to communicate about pay structure and stuff. It's confidential in our company." (Jt. Exh. 2 at 30.) Conversely, at the NLRB hearing, LaDelle testified that Respondent did not have a policy prohibiting wage discussions. (Tr. at 152, 154–155.) Likewise, when LaDelle questioned David, she asked him, "And is there a policy in the manual she signed that states she cannot talk about her

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[6] Respondent appeared pro se at the hearing. LaDelle questioned David and David questioned LaDelle. (Tr. 172–173.)

wages or that there would be punishment for that?" David testified, "There is not." Thus, David and LaDelle's testimony at the NLRB hearing was contradicted by David's testimony at the TWC hearing.

Respondent's documents contradict LaDelle and David's testimony that Respondent did not maintain a policy that prohibited Smith from talking to Wald about her wages. (Tr. 154–155.) The verbal warning Respondent issued Smith stated it was, "For communicating with staff about pay. This is against policy at Injexed." (GC Exh. 3 at 4.) The staff manual all Respondent's employees sign state that employees are to keep confidential all personnel and financial information and it states that all personnel files and payroll records are confidential. (R. Exh. 3 at 6–7.) Respondent also maintains a staff handbook, that it requires every employee to sign when it hires them. (Tr. 157.) The staff handbook contains a no drama policy which restricted Wald from discussing employees' pay and it instructed her that if she overheard such communications she was to immediately bring it to management's attention (Tr. 156–157, 168–169, R. Exh. 4 at 6.) Thus, Respondent's documents contradict LaDelle and David's testimony that Respondent did not have a policy that prohibited Smith from discussing wages with Wald.

Both LaDelle and David testified at the NLRB hearing that Respondent did not have a policy that prohibited employees from discussing their wages and they never enforced such a policy. (Tr. 168, 178–179.) However, during the NLRB hearing, LaDelle contradicted her own testimony by testifying that on June 9, Respondent issued Smith a verbal warning "for talking about her pay and her commissions with Tali." (Tr. 141.) Further, David's statements during the June 9, meeting contradict his testimony. During that meeting he told Smith that she could not engage in any discussions "related to commissions, anything related to your hourly pay, anything like that just cannot be discussed." Smith advised him that discussing pay is protected by a federal law. David responded that he did not know what she was referring to, but that Respondent's policy prohibited employees from discussing their pay. (GC Exh. 4(b) at 3.)

I discredit David and LaDelle's testimony because on the most crucial issues in the case they provided false testimony.

C. Savannah Smith

I credit Smith's testimony over that of David and LaDelle. I base this on her demeanor, the fact that she readily answered both parties' questions, she had a clear recollection about the facts she testified about, her testimony was more logical than David and LaDelle's testimony and her testimony at the NLRB hearing was consistent with Respondent's documents. Many of the important facts in this case are not in dispute because Smith recorded the June 9 meeting, and the verbal warning Respondent issued Smith states Respondent issued it because Smith discussed wages with another staff member. However, there are areas of dispute. As discussed above, I credit Smith over LaDelle and David. Further, I find specific evidence that makes Smith's versions more logical than LaDelle or David's versions. For example, LaDelle testified that on June 9, after their meeting, Smith left without getting her permission and that Smith's conduct was so egregious she could have fired her for it. (Tr. 170.) Conversely, Smith testified that LaDelle gave her permission to leave. (Tr. 78.) I find Smith's version more logical and credible. I do so because, later that day when Smith texted LaDelle that she was still sick and would be absent the next day. LaDelle responded, "Oh no I'm sorry you're feeling bad. Hope you're better soon." (GC Exh. 7.)

Later they exchanged messages about Smith's schedule for the next week and LaDelle responded, "Thanks, Get some rest and I'm working on the bonus structure. Will send asap." If, as LaDelle testified, earlier in the day Smith had left work without permission and her conduct was so inappropriate that LaDelle could have fired her, I do not find it logical that LaDelle would have responded with such empathetic responses rather than admonishing Smith about her conduct and demanding documentation to support the absences.

There is one area where Smith's testimony at the NLRB hearing differed from her testimony at the TWC hearing. At the NLRB hearing Smith testified she reported to LaDelle and David Maez. (Tr. 24.) At the TWC hearing, Smith testified that Wald was her manager. For example, when testifying about the June 8 telephone conversation with David, she testified that David was yelling at her, "so, I came back inside to be next to my manager, so that way I could have a witness for how he was speaking to me, because it was very unprofessional. (Jt. Exh. 2 at 62.) The TWC hearing officer asked Smith if she had been discussing salaries with other employees. (Jt. Exh. 2 at 64.) Smith testified, "I was discussing my pay on my paycheck with Tali, who is my manager, and who also managed my pay." (Jt. Exh. 2 at 65.) Tali Wald's job title was office manager. During the TWC hearing, Smith was clearly attempting to establish that she did not violate Respondent's policy that prevented wage discussions among employees, by testifying that her conversations were limited to talking with the "manager."

While Smith provided different testimony at the two hearings, Respondent does not dispute Smith's hearing testimony that LaDelle was her supervisor. In fact, LaDelle testified at the TWC hearing that she was Smith's immediate supervisor. (Jt. Exh. 2 at 19.) Further, the evidence at the NLRB hearing supports that LaDelle and David were Smith's supervisors. LaDelle is the person who increased her commission rate from 6 percent to 10 percent, LaDelle is the person who removed Smith's commissions, and David and LaDelle scheduled the June 9 meeting for the purpose of discussing her commissions and giving her a 90–day review. During the NLRB hearing, Respondent did not present any testimony disputing that LaDelle was her supervisor. Further, David testified at the TWC hearing that he disciplined Smith for "discussing pay with other employees, which is against our policy, our internal policy." (Jt. Exh. 2 at 23, 47, 48.) As discussed below in the analysis section of this decision, the record does not demonstrate that Wald was a supervisor as defined by Section 2(11) of the Act. The fact that Smith referred to Wald as her manager during the TWC hearing does not make Wald a 2(11) supervisor. Taken as a whole, I found Smith to be a more credible witness than either David or LaDelle.[7]

III. ANALYSIS

A. Tali Wald's Status

Section 2(11) of the Act defines a supervisor as any person having authority, in the interest of the employer, 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, if such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. The party asserting supervisory status has the

[7] As discussed below, I found additional portions of David and LaDelle's testimony was contradicted by other evidence or testimony or illogical.

burden of proof. *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 710–712 (2001). Job titles and descriptions are not controlling; rather it turns on the authority actually possessed and whether its exercise involved the use of independent judgement. *Oakwood Healthcare*, 348 NLRB 686, 687, 690 fn. 24 (2006). Similarly, inferences and conclusory statements are insufficient to establish supervisory status. *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006).

Respondent bears the burden of proving Wald is a supervisor because they are the party asserting such status. (Tr. 20, 48, 154.) The spa's staff consisted of David Maez, LaDelle Maez, Tali Wald, and Savannah Smith. (Tr. 24.) LaDelle was Smith's supervisor. (Jt. Exh. 2 at 19, Tr. 24.) As discussed above in the credibility portion of this decision, while Wald was still employed, LaDelle is the person who granted Smith's raise, removed her commissions and LaDelle and David set the meeting to give Smith her 90–day review. (Tr. 134, GC Exh. 5 at 2, GC Exh. 4(b).) While Wald's title was office manager, she did not hire, fire, or discipline employees, she did not evaluate employees' work and she did not approve leave. (Tr. 25–26.) Wald's duties consisted of answering the telephone, scheduling appointments, greeting and checking in clients for their appointments, checking out clients by taking their credit card payments, scheduling new appointments, adding commissions to Smith's profile in Respondent's scheduling software and she helped run payroll. (GC Exh. 4(b) at 6, 14, Tr. 25–26, 33, 37, 155.) Respondent's handbook contains a job description for the office manager. (R. Exh. 4 at 6.) Respondent did not establish that Wald performed any of the supervisory type job functions listed in the job description. Rather, because only four people worked at the spa, two of which were the spa's owners, it is clear that Wald did not perform many of the functions listed in the job description.

The only evidence that Wald had any potential supervisory authority relates to her duties regarding commissions, payroll and scheduling appointments. Wald was the person who added Smith's commissions to her profile in Respondent's software. (Tr. 33.) The record does not establish exactly what criteria Wald utilized to input commissions, but commissions appear to be tied to which employee was scheduled for an appointment in Respondent's scheduling software entitled Jane. (Tr. 33, 37.) After Wald input commissions, LaDelle reviewed them, and manually modified the allocation of commissions when she determined that they were inaccurate. (Tr. 33, 133–135, GC Exh. 4(b), Jt. Exh. 2 at 59–60.) LaDelle testified that every person that worked at the spa, who had log–in access, could add or remove their name from commissions, but she was ultimately in charge of all commission allocations. (Tr. 133, 135, Jt. Exh. 2 at 59–60.) The employee handbook states the office manager's responsibilities include, "schedule staff shifts and appointments, ensuring proper coverage at all time." (R. Exh. 4 at 6.) Smith testified that Wald asked for her availability when Wald scheduled her appointments. (Tr. 25.) Respondent did not present any evidence to rebut this testimony or otherwise establish that Wald exercised independent judgement when scheduling Smith's appointments. Further, the only other person who treated clients at the spa was LaDelle. Respondent did not present any evidence that Wald set LaDelle's schedule. Thus, Respondent did not meet its burden to establish that Wald's duties regarding commissions or scheduling went beyond a clerical role and that she had the authority to exercise independent judgement to allocate commissions or set employees' schedules. In fact all the evidence in the record indicates that LaDelle was the person who had that authority. Despite overwhelming evidence to the contrary, LaDelle testified that it was perfectly okay for Smith to talk to Wald about her commissions because Wald "helped run the payroll." (Tr. 154.) Here again Respondent did not demonstrate that Wald exercised any independent authority with regard to this job function or that Wald exercised any other indicia of supervisory authority as defined in the Act.

B. Promulgation of a Work Rule Prohibiting Employees from Discussing their Wages

On June 9, David told Smith, he was issuing her a verbal warning for talking about financial stuff with other employees. Smith asked David what he meant. David responded that Smith could not discuss anything related to her commissions. Smith responded that discussing pay is protected by a federal law. David then stated,

> You cannot—this is the policy, you cannot discuss your pay with another employee. You just can't do it okay? You . . . can't do it here. Yeah, I'm not sure what you're referring to, but this is our policy. You can't do it, okay.

LaDelle then stated that discussing pay creates negativity and nothing good will ever come out of that. Smith then asked them to confirm that it was their policy that she could not talk about her pay, commissions or anything like that and David responded, "nope can't do it. . . ." (GC 4(b) at 4.)

David and LaDelle's statements constituted the oral promulgation of a rule. First during the June 9 meeting, they repeatedly stated that discussing wages violated their "policy" and they wrote this on Smith's verbal written warning. Second, their statements' made it clear that the policy applied to all employees because they said that both Smith and Wald had violated their policy by discussing Smith's wages. Third, David stated that Respondent's policy prohibited Smith from discussing her wages with employees they might hire in the future. *Fresh & Easy Neighborhood Market, Inc*., 356 NLRB 588, 591–592 (2011), enfd. 459 Fed. Appx. 1 (D.C. Cir. 2012) (finding that Respondent unlawfully promulgated a rule in response to union activity when a manager informed an employee on two separate occasions that she was not allowed to talk about the Union while on the clock or on the sales floor).

The work rule David announced explicitly restricts Section 7 activities. Therefore there is no need for a further analysis regarding whether the rule is unlawful. "[A] work rule will be deemed unlawful when it explicitly restricts Sec. 7 activity or was promulgated in response to union or other protected concerted activity." *Stericycle, Inc. & Teamsters Loc. 628,* 372 NLRB No. 113, slip op. at 3 fn. 3 (2023).

General Counsel established that Respondent violated Section 8(a)(1) of the Act, as alleged in paragraph 6(c) of the complaint, by promulgating a work rule prohibiting employees from discussing their wages.

C. Smith's June 9 Verbal Warnings

1. Smith's conversation with Wald constituted protected, concerted activity

A central issue in the case is whether Wald and Smith engaged in protected concerted activity. On June 6, Wald alerted Smith that she believed some appointments were missing from Smith's commission report, and they discussed Smith trying to resolve the issue before the next payroll cycle on June 8. Wald, shared an interest in Respondent accurately allocating commissions because she, like Smith, was entitled to commissions on items she sold. (GC Exh. 4(b) at 4, 5.) David testified at the TWC hearing that Respondent issued Smith a verbal warning and discharged her in part because she communicated with another employee about their salary and pay. (Jt. Exh. 2 at 30.) The Board has long held that employees' wage discussions are inherently concerted and, as such, are protected, regardless of whether they are engaged in with the express object of inducing group action. See, e.g., *North Mountain Foothills Apartments, LLC*, 373 NLRB No. 26 (2024), enfd. 157 F.4th 1089 (9th Cir. 2025); *Alternative Energy Applications, Inc.*, 361 NLRB 1203, 1206 fn. 10 (2014); *Hoodview Vending*, 359 NLRB 355 (2012), reaffd. 362 NLRB 690 (2015); *Automatic Screw Products Co.*, 306 NLRB 1072, 1072 (1992), enfd. mem. 977 F.2d 582 (6th Cir. 1992); and *Scientific–Atlanta, Inc.*, 278 NLRB 622, 624–625 (1986). The rationale for finding wage discussions inherently concerted 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 for mutual aid or protection. *N.W. Rural Electric Coop.*, 366 NLRB No. 132 (2018); *Alternative Energy Applications, Inc.*, supra; *Aroostook County Regional Ophthalmology Center*, 317 NLRB 218, 220 (1995) (citations omitted), enf. denied in part on other grounds 81 F.3d 209, 214 (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) (contemplation of group action is not required when employee discussion concerns wages); and *Whittaker Corp.*, 289 NLRB 933, 933 (1988) (with respect to wage discussions, "object of inducing group action need not be express"). This is true even if the discussion involves only a speaker and a listener. *Belle of Sioux City, L.P.*, 333 NLRB 98, 101 (2001). This is also true regardless of whether the listener agrees with the speaker or joins in the cause. See *Mushroom Transportation Co. v. NLRB*, 330 F.2d 683, 685 (3d Cir. 1964). Thus, Smith and Wald's conversation aimed at ensuring Respondent did not improperly remove Smith's commissions constituted protected concerted activity.

The concerted nature of their conversation is further demonstrated by the fact that Wald told Smith about the missing commissions so that Smith could seek redress before the next payroll cycle. Section 7 protects employees when they "engage in . . . concerted activities for the purpose of collective bargaining or other mutual aid or protection." 29 U.S.C. §157. To be protected by Section 7, employee activities must be both "concerted" and engaged in for the purpose of "mutual aid or protection." See, e.g., *Morgan Corp.*, 371 NLRB No. 142, slip op. at 2–3 (2022). "[B]oth the concertedness element and the 'mutual aid or protection' element are analyzed under an objective standard." *Fresh & Easy Neighborhood Market, Inc.*, 361 NLRB 151, 153 (2014). In *Fresh & Easy* the Board held that an employee's solicitation of her coworkers in connection with her personal complaint of sexual harassment was concerted activity because she sought to enlist the help of other employees. Id. at 3–4. "[T]he Board has long held that employee discussions in which advice about future action is sought or offered constitute concerted activity." *UniQue Personnel Consultants*, 364 NLRB No. 112, slip op. at 3 (2016) (citing *Jhirmack Enterprises,* 283 NLRB 609, 614–615 (1987), and *Cadbury Beverages,* 324 NLRB 1213, 1220 (1997), enfd. 160 F.3d 24 (D.C. Cir. 1998)). In *UniQue*, supra, the Board found that an employee engaged in concerted activity by seeking a coworker's advice about how to deal with perceived unfair discipline. Similarly, the Board repeatedly has held that an employee's warning to another employee that the latter's job is at risk constitutes protected, concerted activity. *Food Services of America, Inc.*, 360 NLRB No. 123, slip op. at 2–4 (2014); *Tracer Protection Services*, 328 NLRB 734, 740–741 (1999); and *Jhirmack Enterprises*, supra at 609 fn. 2 (1987). In *Food Services*, an employee alerted her coworker she might be discharged, because their supervisor had criticized her job performance and berated the employee for recommending the coworker for employment. In *Jhirmack*, an employee advised her coworker about complaints that other employees made to management about his job performance. The common thread in these cases is the employees were motivated to speak to their coworkers by a desire to encourage them to take corrective action to retain their employment. In *Butler Medical Transport, LLC,* the Board found an employee's Facebook post protected where he advised his discharged coworker that she might want to think about hiring a lawyer and taking the employer to court and that she could also contact the labor board. 365 NLRB 1095, 1095–1096 (2017). The Board in *Butler* found the employee's post to be concerted activity because he offered advice to his former coworker regarding future action to redress his coworker's discharge. The Board distinguished *Mushroom Transportation Corp., v. NLRB*, because there was "no evidence that [the coworker] or any of the employees with whom she discussed [the] discharge contemplated doing anything about the discharge." Id. In light of this precedent, Wald and Smith's conversation constitutes protected, concerted activity. During the conversation, Wald advised Smith that appointments were missing from her commission report. It is evident she did this so that Smith could take action to redress the missing commissions. Wald shared an interest in ensuring Smith received the commissions to which she was entitled, because Respondent also paid Wald commissions. Thus, Smith and Wald's conversation constituted protected concerted activity.

Smith's conduct of emailing David and LaDelle about her missing commissions and speaking with David about it on June 8, was also protected concerted activity because it was a logical outgrowth of her prior protected concerted activity and she was bringing a shared employee concern about wages to management's attention and requesting that Respondent remedy the matter. See *NLRB v. Mike Yurosek & Son, Inc.*, 53 F.3d 261, 265 (9th Cir. 1995) (where evidence supports a finding that an employee's "lone" conduct "'stems from' or 'logically grew' out of prior concerted activity," it will be deemed concerted); *Gold Coast Restaurant Corp.*, 304 NLRB 750, 752–753 (1991) (finding concerted a complaint where a single employee, acting without authority from other employees, reported to management the group's dissatisfaction with their pay); *Every Woman's Place, Inc.*, 282 NLRB 413, 413 (1986) (once there has been established the existence of a common complaint or concern which transcends the interests of that employee alone, *an employee's individual conduct will be deemed* concerted as a continuation of the employees' protected activity), enfd. 833 F.2d 1012 (1987).

2. The first verbal warning

The first verbal warning Respondent issued to Smith stated it was, "for communicating with staff about pay." (GC Exh. 3 at 4.) The Board has long held that Section 7 "encompasses the right of employees to ascertain what wage rates are paid by their employer, as wages are a vital term and condition of employment." *Triana Industries*, 245 NLRB 1258 (1979). Where the conduct for which an employer disciplines an employee is protected, concerted activity, the discipline violates Section 8(a)(1) and no analysis pursuant to *Wright Line*, 251 NLRB 1083 (1980), is necessary. *Neff-Perkins Co.*, 315 NLRB 1229, 1229 fn. 2 (1994); *Mast Advertising & Publishing*, 304 NLRB 819 (1991). An employer violates the Act when it informs an employee they are being disciplined for activity protected by Section 7 of the Act. See *Noah's Ark Processors, LLC* , 370 NLRB No. 74, slip op. at 4 (2021), enfd. 31 F.4th 1097 (8th Cir. 2022) (holding that an employer violated "Section 8(a)(1) by . . . telling employees they were terminated for engaging in protected concerted activities).

3. The second verbal warning

The second verbal warning Respondent issued to Smith stated it was for, "[a]dding her name to sales that were not hers and talking over management when discussed." (GC Exh. 3 at 4.) It is proper to analyze the discipline using 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 in *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983). Under the *Wright Line* decision, the General Counsel bears the initial burden of showing that the Respondent's decision to take adverse action against an employee was motivated, at least in part, by the employee's protected activities. Id. see also; *American Red Cross Missouri–Illinois Blood Services Region*, 347 NLRB 347, 349 (2006) ("The Board applies the *Wright Line* framework to alleged violations of Section 8(a)(1) that turn on employer motivation."). The General Counsel satisfies the initial burden by showing (1) the employee's protected activity; (2) the employer's knowledge of that activity; and (3) the employer's animus. *Alternative Energy Applications Inc.,* 361 NLRB 1203, 1205 (2014). Proof of discriminatory motivation can be based on direct evidence or can be inferred from circumstantial evidence based on the record as a whole. *Embassy Vacation Resorts,* 340 NLRB 846, 848 (2003). A discriminatory motive may be established by among other factors: (1) the timing of an employer's adverse action in relation to the employee's protected activity; (2) statements and actions showing an employer's general and specific animus; (3) the presence of other unfair labor practices; and/or (4) evidence that an employer's proffered explanation for the adverse action is a pretext. *National Dance Institute–New Mexico, Inc.,* 364 NLRB 342, 351 (2016); and *Lucky Cab Co.,* 360 NLRB 271, 274 (2014). The same principles apply to a determination of whether an employer has retaliated against an employee in the *belief* that the employee is engaged in protected activity. *Alternative Energy Applications, Inc.*, supra (emphasis in original) citing *Signature Flight Support*, 333 NLRB 1250, 1250 (2001), affd. mem. 31 Fed. Appx. 931 (11th Cir. 2002); *United States Service Industries*, 314 NLRB at 31 (1994). An employer violates the Act if it acts against employees in the belief that they have engaged in protected activities, regardless of whether or not they actually did so. *Capstone Logistics LLC & Associated Wholesale Grocers, Inc. As Joint Emps. & Joyce Henson & Peggy Cooper*, 372 NLRB No. 124 slip op. at 4 (2023). See also *N. Telecom, Inc.,* 233 NLRB 1374, 1374 (1977) citing *N.L.R.B*. v. *Link-Belt Company,* 311 U.S. 584, 589–590 (1941). The Board "may infer from the pretextual nature of an employer's proffered justification that the employer acted out of animus, *'at least where. . . the surrounding facts tend to reinforce that inference.*'" *Electrolux Home Products*, 368 NLRB No. 34, slip op. at 3 (2019) (quoting *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966) (emphasis in *Electrolux Home Products*). Pretext may be demonstrated by (1) an employer's false reasons for an adverse action; (2) disparate treatment; (3) departure from past practice; (4) shifting explanations by an employer for an adverse action; and/or (5) the failure to investigate whether the employee engaged in the alleged misconduct. *ManorCare Health Services-Easton*, 356 NLRB 202, 204 (2010); *Windsor Convalescent Center*, 351 NLRB 975, 984 (2007), enfd. in relevant part 570 F.3d 354 (D.C. Cir. 2009); *Inter–Disciplinary Advantage, Inc.,* 349 NLRB 480, 509 (2007). Furthermore, the Board has held that even when the employer's rationale is not patently contrived, "weakness of an employer's reasons for adverse personnel action can be a factor raising a suspicion of unlawful motivation." *General Films, Inc.,* 307 NLRB 465, 468 (1992).

If the General Counsel establishes a discriminatory motive, the burden shifts to the employer to prove that it would have taken the same adverse employment action against the employee even in the absence of the employee's protected activity. *Donaldson Bros. Ready Mix,* *Inc.,* 341 NLRB 958, 961 (2004). The employer cannot meet its burden merely by showing that it had a legitimate reason for the discharge or discipline; rather, it must demonstrate that it would have taken the same action in the absence of the protected conduct. *Roure Bertrand Dupont, Inc.,* 271 NLRB 443, 443 (1984). When the employer's stated reasons for its decision are found to be pretextual—that is, either false or not in fact relied upon—discriminatory motive may be inferred but such an inference is not compelled. *General Motors, LLC,* 369 NLRB No. 127, slip op. at 16 (2020).

a. General Counsel's prima facia case

Smith and Wald engaged in protected concerted activity by discussing Smith's commissions. Smith engaged in further protected concerted activity when she approached LaDelle and David and attempted to get the missing commissions restored before the next payroll cycle. The language on the first written warning Respondent issued Smith on June 9, demonstrates that Respondent knew that Smith had engaged in protected concerted activity. Knowledge is further demonstrated by LaDelle and David's statements in the June 9 meeting and David's testimony to the TWC commissioner that they had disciplined Smith and fired her in part because she had discussed pay and salary with another employee. (Jt. Exh. 2 at 30.)

The final element of the prima facie case–i.e. that Respondent bore animus towards Smith's protected activity is demonstrated by multiple types of evidence, each of which is independently sufficient to establish animus. General Counsel demonstrated animus through timing. Respondent issued Smith the second verbal warning just three days after Wald and Smith spoke about the commissions and during the very same meeting they issued her the first written warning for talking to Wald about her wages.

General Counsel demonstrated animus because Respondent provided false and shifting explanations regarding Smith's conduct during the June 8 call, which allegedly warranted discipline. During the July 9, meeting David told Smith he was disciplining her because she failed to take their phone call in a private area. (GC Exh. 4(b) at 3) In Smith's written discipline Respondent stated that it was for talking over management during the phone call. (GC Exh. 12 at 10.) During the TWC hearing, David testified Respondent disciplined Smith because she had talked over him during the call and been unprofessional by ending the call by telling David, "We're going to talk about this tomorrow." (Jt. Exh. 2 at 29, 47.) However, by the time of the NLRB hearing, David story had grown, he testified that Smith was yelling at him during the call and that she hung up on him. (Tr. 174–176.) I have credited Smith's testimony that she did not yell at David, rather it was David who yelled at her during the call. Smith's testimony is corroborated by the fact that when David began yelling at her she went back inside the spa so that Wald could overhear David yelling at her and serve as a witness to the conduct. (GC Exh. 4(b) at 3, Jt. Exh. 2 at 62.) Thus, General Counsel demonstrated animus by Respondent providing false and shifting reasons for Smith's alleged misconduct during the June 8 call.

General Counsel established animus because Respondent disciplined Smith for engaging in protected concerted activity during the June 8 call. Smith's phone conversation with her supervisor David was protected under the Act because it was a logical outgrowth of her June 6 conversation with Wald, where she attempted to redress the missing commissions that she and Wald had discussed. Thus, it was unlawful for Respondent to have disciplined her for the phone call unless Smith's conduct during the call was so egregious so as to have lost the Act's protection. The record does not establish that Smith engaged in any such conduct.

Respondent's animus is further demonstrated by the fact that Respondent disciplined Smith for adding her name to commissions, but Respondent failed to investigate whether it was Smith or Wald who engaged in that conduct. LaDelle testified that anyone who had a log in on its computer system can change commissions. (Tr. 135.) LaDelle clearly did not investigate whether it was Smith or Wald who modified the commissions because she testified at the hearing she did not know whether it was Smith or Wald who moved the commissions into Smith's name. (Tr. 135, 162–163.)

Further, General Counsel established animus by demonstrating Respondent provided a false reason for Smith's discipline by claiming she engaged in misconduct by adding commissions to her name. During the June 9 meeting, LaDelle and David stated that they believed it was simply a misunderstanding on Smith's part that she believed she was entitled to commissions on all items she sold and services that she provided as opposed to only those she upsold. (GC Exh. 4(b) at 4, 9, 10.) LaDelle stated that when she was reviewing Smith's commissions it was difficult to determine whether Smith was entitled to certain commissions and while she reviewed notes to try and figure it out it "was getting real sticky" to apportion the commissions. (GC Exh. 4(b) at 10.) David stated that they were eliminating the commissions because it was too confusing to sort them out. (GC Exh. 4(b) at 5, 10.) Consistent with those statements, David testified at the TWC hearing that Smith had been confused about the commission pay structure which only provided for commissions on goods and services that she upsold. (Jt. Exh. 2 at 21–22.) Thus, the evidence does not support that Respondent believed that Smith had engaged in misconduct related to the commissions.

b. Respondent's rebuttal

General Counsel having established a discriminatory motive for Smith's second verbal warning, the burden shifts to the employer to prove that it would have taken the same actions in the absence of the employee's protected activity. *General Motors LLC*, 369 NLRB No. 127, supra. However, here because Respondent's proffered reasons are pretextual–either false or not actually relied on, Respondent fails by definition to meet its burden of showing it would have taken the same action for those reasons absent the protected activity. See *Boothwyn Fire Co. No. 1*, 363 NLRB No. 191, slip op. at 7 (2016); *Pro–Spec Painting, Inc.,* 339 NLRB 946, 949 (2003); and *Hays Corp*., 334 NLRB 48, 49 (2001). I find Respondent's proffered reasons for issuing Smith the second written warning disingenuous considering the totality of the circumstances here, and therefore, I find the defense to be a pretext for its unlawful discipline in retaliation for her protected activity. Therefore, I find that Respondent has not met its burden under *Wright Line*, and that it cannot prove it would have taken the same action against Smith in the absence of her protected activity.

One aspect of Respondent's rebuttal warrants addressing. Throughout the hearing, David and LaDelle repeatedly stated that they bore no animus toward Smith for discussing her wages with Wald as demonstrated by the fact that, during the June 9 meeting, they offered Smith a 2-dollar-per-hour raise. However, Respondent's contention ignores that during the meeting, David and LaDelle also told Smith they were eliminating her 10 percent commission and would be replacing it with a yet to be defined bonus structure. Respondent did not present evidence to demonstrate that the new pay structure would have resulted in a net increase in Smith's wages.

General Counsel established that Respondent violated Section 8(a)(1) of the Act, as alleged in paragraph 6(b) of the complaint, by issuing Smith two verbal warnings on June 9, in retaliation for her having engaged in protected concerted activity.

4. Smith's June 13 Termination

a. General Counsel's prima facia case

General Counsel established that Smith engaged in protected concerted activity and that Respondent knew about her activity. The final element of the prima facie case–i.e. that Respondent bore animus towards Smith's protected activity is demonstrated by multiple types of evidence.

General Counsel established animus because David testified at the TWC hearing that Respondent fired Smith in part for discussing wages with employees and LaDelle put this in writing to the TWC. (Jt. 2 at 47, GC Exh. 12 at 10.)

General Counsel established animus through timing. Respondent fired Smith on June 13, which was just four days after Respondent had disciplined her for discussing her commissions with Wald. During the June 9 meeting, in the same sentence when David told Smith that Respondent was writing her up for talking about wages, he also told Smith that Respondent had terminated Tali Wald, explaining, ". . . you can't talk about financial stuff with other employees." (GC Exh. 4(b) at 3.) Thus, General Counsel established animus through timing.

General Counsel established animus because Respondent provided shifting reasons for Smith's termination. Despite all the evidence to the contrary, including their prior sworn testimony, David and LaDelle testified at the NLRB hearing, that Smith's discussions about her wages did not play a role in her termination. David testified, "I would never fire somebody for any wage discussion. I would never do anything like that. . . " (Tr. 177.) In response to an open–ended question regarding the basis for Smith's termination, David testified that it was because she was unreliable, the timing of her absences was suspicious, she seemed disgruntled, she had engaged in bad behavior, and insubordination. David concluded by testifying, "[i]t had nothing to do with pay or anything like that and that's why we gave her a raise. It had nothing to do with pay. (Tr. 183–184.) Conversely, David testified to the TWC hearing officer that "[y]es absolutely" communicating with staff about internal pay was one of the reasons Respondent fired Smith. (Jt. Exh. 2 at 47.) At the NLRB hearing, LaDelle also testified that Smith's discussion of wages did not play a role in her termination. (Tr. 122.) LaDelle testified, Respondent fired Smith for insubordination related to Smith moving commissions into her name, not returning to work after the June 9 meeting, and yelling at management." (Tr. 122.) However, Respondent's letter and testimony to the TWC establish that Respondent terminated Smith in part because she discussed wages with Wald. (Jt. 2 at 47, GC Exh. 12 at 10.) Thus, Respondent provided shifting reasons for Smith's termination.

Respondent provided additional false reasons for Smith's termination. David testified that Respondent fired Smith in significant part because she was unreliable. However, this testimony is contradicted by David and LaDelle's prior statements and conduct. During the June 9 meeting, David told Smith, **"You show up when you're supposed to show up. You do what you're supposed to do."** (GC Exh. 4(b) at 4 emphasis added.) During the June 9 meeting, David and LaDelle repeatedly complimented Smith's work and neither of them said anything to Smith about her attendance or lack of reliability. David testified that he was suspicious of Smith's absences on June 9 and 10. However, neither David nor LaDelle's conduct supports that alleged suspicion. Neither of them told Smith they had any concerns and they did not seek any documentation from her about those absences. In fact, when Smith texted LaDelle notice on June 9, that she would be out sick on June 10, LaDelle responded by telling her that she was sorry she wasn't feeling well and she hoped she felt better soon. LaDelle then rescheduled Smith's clients for the following week and Smith agreed to work late to cover those rescheduled appointments. In response LaDelle texted Smith to thank her and told her to get some rest. (GC Exh. 7.) Respondent's statements and actions demonstrate that David's testimony that they fired Smith in significant part because she was unreliable was false.

As discussed above, regarding the second written warning, the evidence does not support that they fired Smith because she improperly moved commissions into her name or because she was insubordinate to David during the June 8 call.

Given the timing of Smith's termination in relation to her discussion of commissions with Wald; that Respondent has stated that they terminated her in part for discussing commissions with Wald; that Respondent has stated that they terminated her in part for her discussion with David related to those commissions; that Respondent repeatedly stated and testified that discussing wages violated their policies and Smith could not engage in that conduct; that they failed to investigate conduct for which they disciplined Smith; and that Respondent provided shifting and false reasons for her termination, General Counsel established a discriminatory motive for Respondent's termination of Smith.

b. Respondent's rebuttal

General Counsel having established a discriminatory motive for Respondent's termination of Smith, the burden shifts to the employer to prove that it would have taken the same actions in the absence of the employee's protected activity. *General Motors LLC*, 369 NLRB No. 127, supra. Despite Respondent's attempts to contort its own words to demonstrate otherwise, the record does not support that Respondent would have fired Smith in the absence of her protected activity. As discussed above, I find Respondent's proffered lawful reasons for deciding to terminate Smith disingenuous considering the totality of the circumstances here, and therefore, I find the defense to be a pretext for its unlawful termination in retaliation for her protected activity. Therefore, I find that Respondent has not met its burden under *Wright Line*, and that it cannot prove it would have taken the same action against Smith in the absence of her protected concerted activities.

General Counsel established that Respondent violated Section 8(a)(1) of the Act, as alleged in paragraph 6(d) of the complaint, by terminating Smith in retaliation for her having engaged in protected concerted activity.[8]

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[8] Respondent's discharge of Smith also almost certainly violates Sec. 8(a)(1) pursuant to the Board's "Double Eagle" rule. That rule holds that discipline imposed pursuant to an unlawfully overbroad rule violates the Act in those

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), (7), and (14) of the Act.

2. Respondent violated Section 8(a)(1) of the Act by announcing a policy which prohibited employees from discussing their wages, pay and commissions.

3. Respondent violated Section 8(a)(1) of the Act by issuing Savannah Smith verbal written warnings because she discussed wages with her coworker and otherwise engaged in activity protected under Section 7 of the Act.

4. Respondent violated Section 8(a)(1) of the Act by discharging Savannah Smith because she discussed wages with her coworker and otherwise engaged in activity protected under Section 7 of the Act.

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

REMEDY

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

Among the latter, the Respondent must make Savannah Smith whole for any loss of earnings and other benefits incurred as a result of her unlawful termination. Backpay shall be computed in accordance with *F. W. Woolworth Co.,* 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with *Thryv, Inc.,* 372 NLRB No. 22 (2022), Respondent shall also compensate Savannah Smith for any other direct or foreseeable pecuniary harms incurred as a result of its unlawful conduct, including reasonable search–for–work and interim employment expenses, if any, regardless of whether those expenses exceed the individual's interim earnings. See also *King Soopers, Inc.,* 364 NLRB 1153 (2016), enfd. in relevant part 859 F.3d 23 (D.C. Cir. 2017). Search–for–work and interim employment expenses 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. Additionally, the Respondent shall compensate Savannah Smith for the adverse tax consequences, if any, of receiving a lump-sum backpay award, in accordance with *Don Chava, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014), and file with the Regional Director for Region 16, within 21 days of the date the amounts of backpay are fixed, either by agreement or

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situations in which an employee violated the rule by (1) engaging in protected conduct or (2) engaging in conduct that otherwise implicates the concerns underlying Section 7 of the Act. *Continental Group, Inc.*, 357 NLRB No. 39, slip op. at 3–6; citing *Double Eagle Hotel & Casino*, 341 NLRB 112, 112 fn. 3 (2004), enfd. 414 F.3d 1249 (10th Cir. 2005), cert. denied 546 U.S. 1170 (2006). However, having found that Smith's termination violates the Act under a *Wright Line* analysis, I find it unnecessary to fully analyze the discharge under that theory.

Board order, a report allocating the backpay awards to the appropriate calendar year in accordance with *AdvoServ of New Jersey, Inc*., 363 NLRB 1324 (2016).

The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration at the appropriate time and in the appropriate manner. In addition, pursuant to *Cascades Containerboard Packaging*, 370 NLRB No. 76 (2021), Respondent will file with the Regional Director for Region 16 a copy of the corresponding W–2 form(s) reflecting the backpay awards.

On these findings of facts and conclusions of law and on the entire record, I issue the following recommended[9]

ORDER

Respondent, Injexed Medbar LLC, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining a policy or work rule that prohibits employees from discussing wages or their other terms and conditions of employment.

(b) Issuing discipline to its employees because they discuss their wages or otherwise engage in protected concerted activities.

(c) Discharging or otherwise discriminating against its employees because they discuss their wages or otherwise engage in protected concerted activities.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section7 of the Act.

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

(a) Rescind the policy or work rule that prohibits employees from discussing wages or any other terms and conditions of employment.

(b) Within 14 days from the date of this Order, offer Savannah Smith full reinstatement to her former job, or if that job no longer exist to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(c) Within 14 days from the date of this Order, make Savannah Smith whole for any loss of earnings and other benefits she suffered because we fired her, including, but not limited to, reimbursement of direct or foreseeable pecuniary harms incurred as a result of her termination, plus interest.

(d) Within 14 days of the date of this Order, remove from its files any reference to its unlawful discipline and discharge of Savannah Smith, and within 3 days thereafter,

[9] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Orders 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.

notify her in writing that this has been done and that the unlawful discipline and/or termination will not be used against her in any way.

(e) File with the Regional Director for Region 16, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of Savannah Smith's W–2 form(s) reflecting the backpay award.

(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 amount of backpay due under the terms of this Order.

(g) Compensate Savannah Smith for the adverse tax consequences, if any, of receiving a lump–sum backpay award.

(h) Within 14 days after service by the Region, post at its facility located in Plano, Texas, a copy of the Notice to Employees and Notice of Employee Rights Under the NLRA. Copies of the notices, on forms provided by the Regional Director for Region 16, after being signed by Respondent's authorized representative, shall be posted by 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 notices shall be distributed 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 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 June 9, 2023.

(i) Within 21 days after service by the Region, file with the Regional Director for Region 16 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.

IT IS SO ORDERED.

Dated: Washington, D.C. July 23, 2026

Christal J. Key

Christal J. Key
Administrative Law Judge

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT interfere with, restrain, or coerce you in the exercise of the above rights.

YOU HAVE THE RIGHT to discuss wages, hours, and working conditions with other employees, and **WE WILL NOT** do anything to interfere with your exercise of that right.

WE WILL NOT maintain a policy or work rule that prohibits you from discussing your wages or other terms and conditions of employment with your coworkers or otherwise exercising your right to engage in collective activity to improve your terms and conditions of employment.

WE WILL NOT discipline you because you discuss wages, hours or working conditions with your coworkers or engage in any other activity protected under Section 7 of the Act.

WE WILL NOT discharge you because you discuss wages, hours or working conditions with your coworkers or engage in any other activity protected under Section 7 of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the National Labor Relations Act.

WE WILL rescind all policies or rules which prohibit you from discussing your wages or other terms and conditions of employment with your coworkers.

WE WILL offer Savannah Smith full reinstatement to her former job, or if that job no longer exist to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make whole Savannah Smith for any loss of earnings and other benefits she suffered because we terminated her on June 13, 2023, and **WE WILL** make her whole for reasonable search–for–work and interim employment expenses and any other direct or foreseeable pecuniary harms suffered as a result of her termination, plus interest compounded daily.

WE WILL within 14 days of this Order, remove from our files any reference to the discharge we issued Savannah Smith on June 13, 2023, and the written warnings we issued to her on June 9,

2023. **WE WILL**, within 3 days thereafter notify Savannah Smith in writing that this has been done and that the discharge and warnings will not be used against her in any way.

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

WE WILL file with the Regional Director for Region 16, within 21 days of the date that the amount of backpay is fixed, either by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of the W–2 form for Savannah Smith reflecting the backpay award.

INJEXED MEDBAR LLC
(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. We conduct secret–ballot elections to determine whether employees want union representation and we investigate and remedy 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 or you may call the Board's toll–free number 1–844–762–NLRB (1–844–762–6572). Callers who are deaf or hard of hearing who wish to speak to an NLRB representative should send an email to relay.service@nlrb.gov. An NLRB representative will email the requestor with instructions on how to schedule a relay service call.

National Labor Relations Board, Region 16
819 Taylor St., Rm 8A24
Fort Worth, TX 76102–6107
Telephone: (817) 978–2921
Hours of Operation: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/ 16-CA-327568 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 (817) 978–2921