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

UNITED FOOD & COMMERCIAL
WORKERS LOCAL 7, AFL-CIO

and

Case 27–CA–327689

FEDERATION OF AGENTS &
INTERNATIONAL REPRESENTATIVES
UNION

UNITED FOOD & COMMERCIAL
WORKERS LOCAL 7, AFL-CIO

Case 27–CB–343601

and

RANDY BLEA, an Individual

José R. Rojas, Esq., for the General Counsel.

Mathew Shechter, Esq., Tighe Robertson Beach, Esq., and *Kristina Bush, Esq. (United Food & Commercial Workers Local 7),* of Wheat Ridge, Colorado, for the Respondent.

DECISION

CHARLES J. MUHL, Administrative Law Judge. This is an atypical retaliation case involving an employer-labor organization that suspended and discharged one of its employee-union representatives. Randy Blea worked for the Respondent United Food and Commercial

Workers Local 7, AFL–CIO as a union representative for more than a decade assisting employees at a variety of grocery stores in the Denver metropolitan area. Blea and the other union representatives who worked for the Respondent were represented by Charging Party Federation of Agents & International Representatives Union (FAIR). On August 31, 2023, Blea testified at a prior National Labor Relations Board trial to support allegations in the General Counsel's complaint that the Respondent committed numerous unfair labor practices against its union representative employees. On September 7, 2023, the Respondent suspended Blea pending an investigation into his alleged poor work performance. On September 22, 2023, the Respondent discharged Blea. The General Counsel's complaint in this case alleges that the Respondent violated Sections 8(a)(4), (3), and (1) of the National Labor Relations Act by suspending and discharging Blea for his union activity and his testimony at the first trial. I conclude that the Respondent violated the Act as alleged.

Shortly after the Respondent discharged Blea, he went to work at a King Soopers grocery store where he and other store employees were represented by the Respondent. The General Counsel's complaint further alleges that the Respondent violated Sections 8(b)(2) and 8(b)(1)(A) of the Act by attempting to cause the grocery store to discipline or discharge Blea when the Respondent's supervisors or agents: (1) falsely reported that Blea had threatened a union representative with physical harm; and (2) raised questions about Blea's continued employment with King Soopers in light of his alleged criminal activity. I conclude that the Respondent violated the Act as alleged in the first instance, but dismiss the second allegation because, as the General Counsel concedes, it is untimely under Section 10(b).

On September 17 through 19, 2025, and January 22, 2026, I heard this case in Denver, Colorado. On April 2, 2026, the General Counsel and the Respondent filed posthearing briefs, which I have read and carefully considered. On the entire record, I make the following findings of fact and conclusions of law.[1]

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[1] On April 30, 2025, the General Counsel, through the Regional Director for Region 27 of the National Labor Relations Board (the Board), issued a consolidated complaint against Respondent United Food & Commercial Workers Local 7, AFL–CIO, in Cases 27–CA–327689 and 27–CB–343601. The complaint was premised upon unfair labor practice charges, and an amended charge, filed by Randy Blea and the Federation of Agents & International Representatives Union (FAIR) on October 12, 2023, June 3, 2024; and February 28, 2025. On May 14, 2025, the Respondent filed a timely answer to the complaint, denying the substantive allegations and asserting numerous affirmative defenses.

In its answer, the Respondent admitted, and I so find, that it is an employer within the meaning of Sec. 2(2), (6), and (7) of the Act. The Respondent also admitted, and I so find, that it is a labor organization within the meaning of Section (2)(5). The Respondent also stipulated, and I so find, that King Soopers is an employer within the meaning of the Act. (Tr. 7.)

ALLEGED UNFAIR LABOR PRACTICES

I. BACKGROUND FINDINGS OF FACT[2]

The Respondent is a labor organization engaged in the business of representing employees for the purposes of collective bargaining over terms and conditions of employment, processing grievances, and other representational functions. The Respondent's principal place of business in the Denver area is a facility located in Wheat Ridge, Colorado. The Respondent represents numerous bargaining units with employees at area grocery stores, including King Soopers and Safeway. At material times, the Respondent's president was Kim Cordova and its retail director was Ramon Zuniga, both supervisory positions. Zuniga supervised and directed the Respondent's union representatives in the geographic areas assigned to him.[3]

Blea worked for the Respondent as a union representative beginning in January 2012 until his termination in September 2023. His job duties were to handle calls from employees, address issues they had, police the collective-bargaining agreement, file and process grievances, and visit grocery stores throughout the Denver metropolitan area. Blea was responsible for 10 to 12 facilities. Zuniga was Blea's direct supervisor for a majority of his employment with the Respondent.[4]

Blea and other union representatives of the Respondent were represented by FAIR. For about 4 years, including at the time of his termination, Blea served as a steward for FAIR. The collective-bargaining agreement between the Respondent and FAIR ran from November 13, 2018, through June 26, 2022, and no successor contract had been reached at the time of Blea's termination.

The Respondent describes itself as a unique labor organization which provides "aggressive" representation and "super" servicing. It files thousands of grievances each year in the Denver area. Each of its union representatives is responsible for handling roughly 100 grievances at a time. If a member asks the Respondent to file a grievance or to take another course of action, the Respondent will do so. A member decides whether to take or reject a

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[2] In order to aid review, I have included citations to the record in my findings of fact. The citations are not necessarily exclusive or exhaustive. My findings of fact are based upon consideration of the entire record. Any testimony in conflict with my findings has been discredited. In assessing witnesses' credibility, I relied upon witness demeanor; the context of the testimony; the quality of the recollections; testimonial consistency; the presence or absence of corroboration; the weight of the respective evidence; established or admitted facts; inherent probabilities; and reasonable inferences that may be drawn from the record as a whole. See *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001), citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996), enfd. sub nom. 56 Fed.Appx. 516 (D.C. Cir. 2003). My specific credibility determinations are detailed in the findings of fact.

[3] Tr. 456.

[4] Tr. 30–33, 460–461.

grievance settlement. The Respondent requires its union representatives to respond to a phone call/email/text from a member within 24 hours.[5]

II. DID THE RESPONDENT SUSPEND AND DISCHARGE BLEA IN VIOLATION OF SECTIONS 8(A)(4), (3), AND (1)?

FINDINGS OF FACT

A. The Respondent's Communications with Blea About His Job Performance in the Summer of 2023

1. Member Daniel Shavartz

On May 10, 2023,[6] Union President Cordova emailed Blea and reported a call from member Daniel Shavartz, who worked at a Safeway store. She told Blea that Shavartz reported that he had been terminated and called Blea about a week after to report the termination, but Blea did not call him back. She said Shavartz also told her this was the second time that Blea did not call him back and he wanted Blea to ask the company some questions. Cordova told Blea to let her know what was going on with Shavartz and when Blea called him back.[7]

Blea responded about 30 minutes later and told Cordova he had talked to Shavartz about a week earlier. Blea told her that Shavartz said he was being questioned about making racial statements towards other members, but he did not tell Blea about the termination. Blea also reported it was his understanding that Shavartz was suspended pending the company's completion of an investigation. Blea said he was hoping to get more information from the store manager or the labor relations specialist, but the store manager told him she did not know what was going on and the matter was being handled by labor relations. Blea told Cordova he would follow up with her when he got more information.[8]

That same day, Blea emailed the labor relations specialist and asked him the status of the company's investigation into Shavartz. Blea also stated that Shavartz was claiming nobody ever reached out to him, so he did not know what was going on.[9]

The Respondent did not discipline Blea because of Shavartz' complaint about him.[10]

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[5] Tr. 470–485; Jt. Exh. 1; GC Exh. 14, pp. 78–89.

[6] All dates hereinafter are in 2023 unless otherwise noted.

[7] GC Exh. 15; Tr. 506–509.

[8] GC Exh. 15.

[9] R. Exh. AS.

[10] On June 28, the General Counsel issued a consolidated complaint against the Respondent in Case 27–CA–298239. The complaint contained extensive allegations of unlawful conduct. In part, the complaint was premised upon an unfair labor practice charge filed by FAIR. The complaint set August 29 as the trial date. Herein, this case will be referred to as *UFCW Local 7 No. 1*.

2. Member Kevin Stone

On July 12, Blea and member Kevin Stone had a 10-minute phone conversation. Stone reported that he had transferred back to a Denver King Soopers store and wanted to get his accrued vacation time and health insurance reinstated. Blea said he would work on it. However, Blea did not immediately investigate Stone's issues.[11]

On August 9, Cordova sent an email concerning Stone to a human resources manager for King Soopers. Cordova wrote that Stone had contacted her concerning his issues with accrued vacation time not showing in his account and his loss of health insurance. Cordova also said that Stone went to the emergency room several weeks before because he was left working outside in extreme heat without shade and water. Cordova stated that Stone wanted a worker's compensation claim processed and payment from the company for his medical bills.[12]

Cordova then forwarded her email to Blea. She told Blea that Stone had called her and said he had been waiting for weeks for Blea to respond to the issues in her email. She asked Blea if grievances had been filed for Stone and told him to send her the dates he tried to contact Stone about the issues. She noted that any grievance filed now might be untimely.[13]

That same day, Blea went to Stone's store and spoke to him. Stone again told Blea about his issues with vacation time and health insurance. Blea then spoke to store management about Stone's issues.

After the visit, Blea responded to Cordova that evening with a lengthy email detailing his communication with Stone. He told Cordova that Stone transferred back to a store in the unit on June 15 and Blea had spoken to him at some point later. He said that he had not heard from Stone from that point until today. He also claimed that Stone had not contacted him since then. In that conversation, Blea reported Stone telling him that Stone had issues with health insurance and vacation time upon his transfer back. Blea also said the two conversed briefly on those topics. Blea then claimed that he took Stone to an HR specialist in the store and explained Stone's issues with vacation, health insurance, and being out in excessive heat. He further claimed that the HR specialist told them she would work on it. Blea stated he told Stone to get back in touch with him if Stone had any further questions. Finally, Blea said he would be filing grievances over the issues Stone had raised.[14]

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[11] Tr. 432–433, 437, 513–514; R. Exh. AU. Blea's work phone records reflect this call to Stone and its duration.

[12] GC Exh. 8.

[13] GC Exh. 8.

[14] GC Exh. 8. Neither Blea nor Stone had a strong or detailed recall of their interactions. I find that, although Blea did converse with Stone about the latter's issues, their initial conversation occurred over the phone on July 12, not in person as Blea indicated in his email to Cordova. In addition, Blea did speak to store management about Stone's issues, but that occurred on August 9 after he received Cordova's email, not during his initial conversation with Stone. Blea did not take Stone to an HR specialist at any time. Blea and Stone did not speak between July 12 and August 9. (Tr. 86–91, 432–435.)

On August 10, Blea attended a grievance meeting on behalf of member Paul Marquez. Zuniga was there for the Respondent. Zuniga told Blea and the other attendees that the contract (with FAIR) expired, there was no arbitration or grievance procedure, and the grievance was denied.

On August 15, Blea emailed Cordova and told her that the company had agreed to make Stone's pension contributions and to reinstate his health insurance. The Respondent also verified Stone's vacation hours and scheduled his time off.[15]

Thereafter on August 20, Zuniga notified Blea that member Jacob Nevarez Jr. had contacted Zuniga to say several departments in his store were not following the "select-a-shift" provision in the collective-bargaining agreement. Zuniga asked Blea to address this with management "this coming week." Zuniga also told Blea he wanted to see copies of the select-a-shift paperwork from each department in Nevarez' store. Zuniga told Blea to follow up with him after Blea spoke to management. Blea responded "Got it" to Zuniga the next day. On August 22, Zuniga asked Blea for an update. Blea did not respond.[16]

Also on August 22, Zuniga emailed a coworker in the Respondent's records department and asked her to provide Zuniga with Blea's phone records from July to the present. Ultimately, those records confirmed Blea's July 12, 10-minute call with Stone. They also confirmed that Blea did not call Stone, and Stone did not call Blea, on any other date in that time period.[17]

3. Member Trisha Wismer

On August 23, Zuniga emailed Blea concerning member Trisha Wismer. Zuniga told Blea he had spoken to Wismer, who reported to him she had unsuccessfully attempted to contact Blea via his cell phone. He said Wismer told him she could not leave a message (presumably because the voicemail box was full). Wismer also reported to Zuniga that she had a medical issue necessitating a reasonable accommodation for her shift, namely a second break, but store management was not willing to grant it. She also said to Zuniga that she had a meeting coming up to discuss shifting to a different department to resolve the issue. Zuniga told Blea that he should adjust his schedule and attend the meeting and that he was to contact Wismer. He also told Blea to follow up with him after the meeting.[18]

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[15] GC Exh. 8.

[16] GC Exh. 10; R. Exh. P. Blea did not provide a written response to Zuniga on August 22 and I do not credit his testimony that he provided such an update over the phone to Zuniga. As will be discussed further below, Zuniga again raised this issue, and Blea provided a response, at a meeting they had on September 6. Had Blea previously provided the information, Zuniga would not have needed to ask him to provide the information again.

[17] R. Exhs. AP and AU.

[18] GC Exh. 9; Tr. 535–537.

Blea responded the same day and told Zuniga he had spoken to Wismer about her concerns and would be attending the meeting the next day. Blea did attend that August 23 meeting with Wismer and store management.[19]

B. Blea's Testimony in the UFCW Local 7 No. 1 Trial

On August 30 at 7:49 a.m., Blea emailed Zuniga with a subject of "Vacation day." Blea told Zuniga he had been "subpoenaed for the hearing today" [the prior NLRB trial in *UFCW Local 7 No. 1*] and needed to take the day off.[20]

At 8:16 a.m. on that same day, Nate Bernstein, the Union's health care/retail director, emailed Blea and other representatives and said that an employee had brought it to his attention that a nonunit third party was performing bargaining unit work. Bernstein directed the representatives to speak to pharmacy technicians at their King Soopers and Safeway stores to determine if this was happening. Bernstein also asked the representatives to follow up with him, Zuniga, and another union representative supervisor, Christine Arellano, about what they learned. Bernstein gave them until the end of the week, or September 2, to complete the task.[21]

At 9:21 a.m. that day, Zuniga replied to Blea's email concerning the subpoena and thanked Blea for letting him know. Zuniga's receipt of Blea's email that day was the first time Blea advised Zuniga that he would be testifying in the NLRB trial.[22]

Blea ended up testifying on behalf of the General Counsel and FAIR on August 31. He testified concerning his assistance supporting a January 2022 strike by King Soopers employees who worked at a Denver area grocery store. Blea detailed how he was in charge of a strike line at one of the stores. He worked 60 to 70 hours a week leading up to the strike and more than 90 hours a week during the strike. The weather was freezing and snowy during the strike, with temperatures sometimes below zero.

Toward the end of the strike, union representatives and organizers working on the picket lines participated in a videoconference with, among others, Cordova, Zuniga, and representatives from the UFCW international union. Blea spoke up at the meeting:

> I just remember saying that we were exhausted, people were dropping off, people were not coming out as strong when they first—when we first went on strike, the

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[19] GC Exh. 9.

[20] GC Exh. 4.

[21] GC Exh. 11; R. Exh. X; Tr. 238, 528–531.

[22] GC Exh. 4. I credit Zuniga's testimony that he first learned that Blea was being subpoenaed via Blea's August 30 email. (Tr. 525–526.) I do not credit Blea's testimony that, 1 week or 2 weeks earlier, he advised Zuniga and/or another supervisor about being subpoenaed to testify. (Tr. 51–53, 251–254, 278–279.) He did not testify to those facts in the affidavit he gave the General Counsel during the investigation of this case. He also did not say anything in his email to Zuniga which would corroborate his claim, such as writing "As we previously discussed" or "To confirm."

> picket lines were dwindling, especially late in the evening. It was hard to keep track of the payroll, make sure everybody was getting paid that was there and actually there. So it's a lot of—mixture of a lot of things that were happening that we were not prepared for or trained for.

Blea then testified concerning a meeting Cordova held after the strike, on February 7, 2022, that was attended by the representatives and organizers who worked on the strike. Cordova said she was embarrassed about the videoconference call because the international union was on it hearing the employees' complaints. Blea further testified that Cordova said, if they did not like the direction UFCW Local 7 was headed, the bricks were only going to get heavier, and the companies were going to get worse, and she repeatedly said she would accept their resignation effective immediately if they were not up to the task. Blea also testified that, in response to a comment by Cordova that the representatives were highly compensated, he said:

> Also, she mentioned how highly compensated we—we are, which I took offense to. And then I—I spoke up at that point and told her that it was—it was disturbing that she's—she's been saying that for over the past year, how highly compensated she thinks we are, and I would appreciate it if she'd stop saying that because we work very hard. I—I—I said at that point—I've said this in other meetings too—that I've given up my life for this job. This job is a life changer. And everybody was doing their part, doing the best that they could with what they had. And after working 63 straight days, we come to a meeting and just get pummeled. It just—it was—it was very hurtful. It was hurtful.[23]

C. The Respondent's Subsequent Communications with Blea About His Job Performance

On Friday, September 1, the day after Blea's testimony, Blea and Zuniga spoke to one another while waiting for the start of a step 2 grievance meeting. Zuniga asked Blea if he was recording him like Coleson Breen. (Breen was the discriminatee in the first NLRB trial and provided a recording of a meeting Union President Cordova had with the Respondent's employees on June 27, 2022.) Blea told Zuniga he was not recording him. He added that everything he said on the stand was true and he did not have to do anything to cover his ass. Blea added that he was not afraid of Zuniga or Cordova anymore.[24]

On that same date, Blea emailed Zuniga and Bernstein and requested an extension to complete his investigation of whether the unit work of pharmacy technicians was being performed by nonunit workers. Zuniga responded the same day and said he was okay with an extension until 5 p.m. the following Monday, September 4. Zuniga also asked Bernstein if he was okay with that extension, but Bernstein did not immediately reply to the email.[25]

[23] GC Exh. 2, pp. 5 and 6 of Judge Laws' decision.

[24] Tr. 54–57. I credit Blea's testimony about this conversation as it was detailed and not contradicted by Zuniga.

[25] Tr. 238–239, 528–531; GC Exh. 11.

On September 2, Blea and Zuniga had a conference call with member Ramon Ross. The call preceded a step 2 meeting on September 5 for a grievance challenging a 6-day suspension imposed on Ross. Blea had informed Ross of the step 2 meeting on August 28. He also informed Ross that he should notify Blea if he wished to attend that meeting. Under the Respondent's policy, Ross was entitled to attend the step 2 meeting if he requested to do so. During the September 2 call, Ross stated he wanted to attend the meeting.[26]

On September 3 at 7:33 p.m., Zuniga emailed Blea and again asked if he had been able to address the select-a-shift issue raised by Nevarez. He also asked Blea if he had received copies of the select-a-shift for each department.[27]

Monday, September 4 was Labor Day. At 7:37 p.m. that evening, Blea sent a response to Zuniga's September 3 email about select-a-shift. Blea said that he spoke to Nevarez Jr. about his issue but he also spoke to other employees at the store and no one else had an issue with select-a-shift. He also told Zuniga he had not received copies of each department's select-a-shift paperwork, but he would follow up with the store manager the next day. Blea also said that Nevarez Jr.'s contention that an employee with less seniority was getting better shifts than him was not true.[28]

Labor Day also was the deadline that Zuniga gave Blea to respond to Berstein's directive to investigate pharmacy technician work being performed by nonunit personnel. Blea had spoken to two technicians by then but he had not completed the assignment by the deadline.[29]

On September 5 at 7:53 a.m., Union President Cordova sent Blea an email telling him to file a grievance on behalf of Stone (the employee with the health insurance, vacation, and extreme heat issues). According to Cordova, Stone was again left outside in extreme heat. She asked Blea if there was a signed settlement for the first incident (of extreme heat exposure). Cordova said, if not, Blea should have the company sign off if they agree to rotate and provide a safe work environment. She also asked for a copy of any settlement. Cordova also stated that Stone had not received his insurance packet or his vacation payout and asked Blea for the status of both. Eight minutes later, Blea responded "will do."[30]

That morning at around 9 a.m., the step 2 grievance meeting for Ross was held. Blea had numerous grievance meetings scheduled for that day, in 15-minute intervals. At 9:08 a.m., Ross texted Blea and asked if he was supposed to join a phone call for the meeting. Blea responded to give him a few minutes because he was dealing with a different grievance at that point. At 9:35 a.m., Blea texted Ross that "[t]hey are going to remove the discipline and back pay you 5 days are you good with that?" Ross immediately responded that his suspension was

[26] R. Exh. R; Tr. 58, 526–527.

[27] GC Exh. 10.

[28] GC Exh. 10.

[29] Tr. 238–239; R. Exh. X.

[30] GC Exh. 34; Tr. 95.

for 6 days, to which Blea said that the company was going to pay the 6 days. Ross responded: "Yeah as long as they remove the discipline and pay me back for my 6 days of work." Thus, the employer provided Ross with a full remedy on the grievance.[31]

Shortly thereafter, Zuniga emailed Blea and reported that Ross had called him and complained about not being able to participate in the call that led to his grievance settlement. Zuniga told Blea to respond in writing by 9 a.m. the following morning as to why Ross was not invited to participate. Zuniga and Blea then had a phone conversation which Blea recorded. Therein, Blea reported the events described above concerning how he resolved the grievance. Zuniga again asked Blea to put his response in writing. At the tail end of the conversation, Zuniga said he wanted to have a "me and you" discussion with Blea the next day. Blea asked Zuniga what kind of discussion and whether he needed union representation. Zuniga responded that Blea could bring a representative if he thought the conversation could lead to discipline.[32]

D. The Respondent's Suspension and Discharge of Blea

On September 6, Zuniga met with Blea via cell phone to discuss Blea's job performance. Again, Blea recorded the meeting.[33]

Zuniga began by saying their conversation started yesterday. He then detailed his understanding of Blea's interaction with member Stone. Zuniga said that Cordova told Blea she was investigating a complaint from Stone, who alleged Blea did not respond to his calls. Zuniga commented that such failures had been an issue for Blea before. Then Zuniga mentioned a mid-July phone conversation Blea had with Stone. Blea responded that he had an in-person meeting with Stone and took him up to talk to management. Blea stated that Stone never contacted him thereafter. Zuniga admitted he was not sure if Stone was calling the right

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[31] R. Exh. AE; Tr. 50. On that same date, Cordova sent Blea an email telling him to file a grievance on behalf of Stone (the employee with the health insurance, vacation, and extreme heat issues) after Stone was again exposed to extreme heat. (GC Exh. 34.) She also asked if there was a signed settlement for the first incident and for a copy of that settlement if it existed. But Blea already had advised her via his August 9 email that he had discussed Stone's safety issues with store management and were assured that management would take care of Stone going forward. Even Cordova acknowledged this in her September 5 email to the store's HR representative. Beyond that, Blea responded "will do" to Cordova's email but did not file a grievance on Stone's behalf thereafter. (He was suspended 2 days later.)

I do not credit the hearsay testimony in Cordova's September 5 email that Stone had not received his health insurance packet or vacation time. Stone testified at the hearing but did not corroborate Cordova's statement. Cordova did not testify at the hearing at all.

[32] GC Exhs. 5 and 6. Blea also submitted a written response to Zuniga the same day, again advising him that the company had offered to pay Ross for all the time he missed without discussion. He further reported that, when Ross advised him he was suspended for 6 days, not 5, Blea went back to the company and obtained pay for that day as well.

[33] GC Exhs. 7(a), 7(b), and 7(c).

number to reach Blea. The Stone discussion concluded with Blea saying he had too much on his plate with the two additional stores he had been assigned.[34]

Zuniga moved on to discuss member Ross' complaints, which were that Blea did not return his phone calls and did not permit him to participate in his grievance meeting. Zuniga acknowledged that Blea obtained a full remedy for Stone on his grievance. But Zuniga told Blea he needed to get Ross on the phone [for the grievance meeting].[35]

Zuniga said that member Wismer also complained that she could not get in touch with Blea. Blea responded that he attended the meeting between Wismer and management and negotiated a resolution that Wismer approved. Zuniga admitted that Wismer had no further contact with Zuniga since then.[36]

Zuniga reiterated that he had received complaints from members about not being able to contact Blea or leave him a message, and that Blea needed to fix it. Blea responded that he had issues with his phone in July because he lost one, used a temporary replacement, and had technical issues clearing his voice mail.[37]

Zuniga went on to discuss the complaint from member Nevarez Jr. about his store not following the collective-bargaining agreement's "select-a-shift" policy. Blea explained to Zuniga that he could not find any support for Nevarez' claim and Nevarez' complaints only related to his and his father's work schedules. Blea acknowledged that the bakery department may not have been following the policy because of the small number of employees there. Zuniga told him to follow the contract and Blea agreed. Blea also told Zuniga that he requested from the store copies of the schedules but had not been provided with them.[38]

Finally, Zuniga asked Blea if he complied with Bernstein's directive to investigate non-unit workers performing bargaining unit work at his King Soopers and Safeway stores. Blea admitted "I just spaced it out."

Prior to leaving, Blea asked Zuniga if the meeting was investigatory. Zuniga responded that "it did turn into that, yes."

On September 7, Zuniga placed Blea on a suspension pending investigation. The investigation period ran from that date to September 22. The investigation consisted of Zuniga seeking relevant documents from other executive staff members about Blea's work performance and then placing those documents in Blea's personnel file. Thereafter, Zuniga and two other supervisors spent two hours while at a work conference in New Orleans reviewing Blea's

[34] GC Exh. 7(b), 7:15-15:30.

[35] GC Exh. 7(b), 15:30-22:45.

[36] GC Exh. 7(b), 22.45-27:00.

[37] GC Exh. 7(b), 27:00-34:30.

[38] GC Exh. 7(b), 34:50-40:52; 7(c), 0:00-5:30; GC Exh. 10; R. Exhs. U and AO; Tr. 519-523.

personnel file, including his disciplinary history. Zuniga also met with Stone and Ross. He did not meet with any other members who complained about Blea's performance. Zuniga ultimately recommended to Cordova that Blea be fired and Cordova agreed.[39]

On September 22, the Respondent terminated Blea. In his letter to Blea notifying him of the discharge, Zuniga stated that the Respondent began investigating Blea's work performance "in early August" following complaints from union members. He said that, in the investigatory meeting held on September 6, "we discussed a variety of different issues that we continue to have concerning your overall job performance." Zuniga then stated that Blea had been given a "one-week suspension and final warning concerning your overall job performance in August of 2022." He added that Blea previously had been issued a number of other warnings regarding his job performance and failure to follow directives. Finally, Zuniga informed Blea his discharge was due to "continued poor job performance, continued failure to follow directives, and dishonesty."[40]

Also on September 22, the Respondent held a meeting with Blea to inform him of his discharge. The meeting was attended by Zuniga and Blea, among others. Zuniga informed him of his termination and said they would schedule a Step 1 meeting on it for a different date. Blea said to Zuniga that he never got to have a "come-to-Jesus moment" with Union President Cordova. (In the past, Blea participated in meetings that Cordova had with employees who were struggling with job performance to inform them of the areas they needed to improve upon to avoid termination.) Blea asked if he could have such a meeting. Zuniga responded that he would reach out to Cordova and get back to Blea. Zuniga later told Blea that Cordova was out of town but would schedule a time to meet when she returned. But Cordova never met with Blea.[41]

E. The October 6 Step 1 Grievance Meeting Between the Respondent and FAIR on Blea's Discharge

On October 6, the Respondent and FAIR held a Step 1 grievance meeting regarding Blea's discharge. Zuniga, Blea, and FAIR representatives attended, but Cordova did not. Blea again recorded this meeting. Zuniga also took detailed notes concerning what occurred.[42]

The meeting began with Blea asking Zuniga why Blea had not received his personnel file from the Respondent. Zuniga said he would provide it now and the delay was caused by his looking through it and making sure everything was in there.[43] Blea then asked what the Respondent relied upon to terminate him and how the discipline was progressive.[44] Zuniga

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[39] Tr. 109, 196, 538–539; R. Exh. F. Zuniga did not provide any details about his interviews with Stone and Ross.

[40] GC Exh. 12.

[41] Tr. 111–115.

[42] GC Exhs. 13 (recording) and 42 (Zuniga's notes}.

[43] GC Exh. 13, 2:12-2:20.

[44] GC Exh. 13, 4:10-4:30.

responded that Blea had multiple disciplines for failure to follow directions and to follow through. He said the latest discipline was in August 2022 (the prior year), a 1-week suspension.

Zuniga went on to discuss Stone.[45] He said the Respondent had "been investigating" Blea since Stone's complaint on August 2023. He stated that Blea had been dishonest in his August 9 email to Cordova when Blea said Stone never reached out to him. Zuniga added that phone records showed Blea had a 10-minute conversation with Stone on July 12. Zuniga said that Blea told Cordova he would reach back out to Stone but Blea never did so. Zuniga then stated "[t]hat's why it turned into an investigation." He added that it was an ongoing pattern of behavior. Zuniga told Blea that Cordova informed Blea over the phone that the Respondent was investigating Blea before his testimony at the NLRB trial. Blea vehemently denied that contention, saying it was a lie. Zuniga said that was "what I've been told." Zuniga went on that the severity of the issue turned it into an investigation, because Stone was "on the spectrum, had called Cordova, and reported that he felt he was being ignored by the Union because of his disability. Blea told Zuniga he did not recall a phone call with Stone but that he took Stone to see a management representative. He also noted that Stone had received a full remedy on the issues he raised.[46]

Zuniga then discussed Roman Ross, telling Blea he never got Ross on the phone for his Step 2 meeting. Blea responded that the grievance was settled without discussion, the management representative agreed to pay Ross for the 6 days he was suspended, the full remedy. Zuniga responded that Ross was not okay with it and called him to complain.[47]

Zuniga moved on to Trisha Wismer, stating that she called and complained she could not reach Blea, which was an ongoing pattern of behavior with Blea.[48]

Zuniga next pointed to Blea's failure to follow Bernstein's directive regarding nonunit employees performing unit work.[49]

Zuniga concluded by saying "[a]ll of this plus the fact that you were issued multiple final warnings for failing [to] follow directives."[50]

Blea asked Zuniga who made the decision to discharge him. Zuniga first responded that the executive staff collectively made the decision. But he ultimately conceded that, at the end of the day, Cordova was the one who made the final decision.

Blea then asked to be returned to work.

[45] GC Exh. 13, 12:15 to 28:30.
[46] GC Exh. 13, 20:45-23:00.
[47] GC Exh. 13, 28:30-32:30 and GC Exh. 42.
[48] GC Exh. 13, 32:30-33:05 and 36:30-38:50.
[49] GC Exh. 13, 33:05-33:30 and 33:40-36:30.
[50] GC Exh. 13, 33:30-33:40.

When an attending FAIR representative then asked Zuniga if he kept a phone log for every union representative, Zuniga said no but that the Respondent would place emails in the file "at times" if a problem arose.

The meeting concluded with Zuniga stating: "At this time, I will be denying the grievance based on what was discussed and your progressive discipline: Suspension final warning on August 8, 2022, July 21, 2022 written warning, April 21, 2020 written warning, October 9, 2018 written warning, April 18, 2013 written warning[51], also the email from [Cordova] that is in your file regarding your 78 DBFs and failing to follow [Bernstein's directive]."[52]

F. Blea is Hired by King Soopers and Cordova Denies His Request to Appeal His Discharge

On October 13, King Soopers hired Blea at a store in the Denver area. He began working there on October 14, meaning his 60-day probationary period ran from that date until December 13. In his new job, Blea was part of the Denver bargaining unit and was represented by the Respondent. At that time, Tom Olson was the Respondent's union representative for the store. Respondent Regional Director Christine Arellano oversaw the store. Her husband, Marvin Arellano, was an employee there and also served as a steward for the Respondent.[53]

The "probationary period" article in the collective-bargaining agreement between King Soopers and the Respondent permitted the termination of a probationary employee for any reason and without recourse to the grievance and arbitration procedures.

On Blea's 1st workday of October 14, his King Soopers assistant store manager told him that she accidentally sent a text to the work cell phone he used when employed by UFCW Local 7. She also told him she stated in the text that Respondent supervisor Christine Arrelano was making a fuss about Blea's hire date with King Soopers. Later, Christine Arrelano visited Blea's store, met with the manager, held up Blea's old work phone in the manager's face, and said "What is this?"[54]

Thereafter that same day, Blea spoke to Christine Arellano. Blea told her he did not want to be harassed at work, that he wanted to stay and do his job, go home, and be left alone.

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[51] Zuniga testified at the hearing that the Respondent did not rely on the 2013 discipline because it was too old. (Tr. 604.)

[52] GC Exh. 14. A "DBF" is a "demand before the fact." The Respondent has a policy that requires a representative to bring a grievance before the Respondent's Executive Grievance Committee with 30 days of the completion of a Step 2 grievance meeting. If a representative cannot meet that deadline, the representative must seek approval to demand arbitration before the fact, i.e. before the Respondent has evaluated whether to proceed or not from Step 2.

[53] Tr. 149, 328–329; Jt. Exh. 2, p. 28, Art. 26.

[54] Tr. 152–154. I do not rely on this hearsay testimony for the truth of the matters asserted concerning what Christine Arrelano said. Nonetheless, the testimony provides context to the subsequent conversation between Christine Arrelano and Blea.

She apologized to him, cried, and told him it was hard to see him in his uniform. Blea asked her if she was part of making the decision to terminate him and she replied no. She ended the conversation by telling Blea things are going to get ugly.[55]

On October 17, Blea filed a grievance with Cordova challenging his termination by the Respondent. He also requested from Cordova a hearing and vote of the FAIR membership, as was permitted by the collective-bargaining agreement between the Respondent and FAIR under certain circumstances. Blea contended that he could appeal to the executive board and membership because he was a dues-paying member in good standing; was a union representative; and had been successful in "availing 'winning' a disciplinary action issued to him in April 2013, as the Respondent had referenced that discipline as part of its progression leading to Blea's discharge.[56]

Just 1 day later on October 18, Cordova denied Blea's request. She justified the denial by stating: "The provision [in the CBA] further provides that 'only employees . . . who have successfully (i.e. won) availed themselves of the Grievance or Arbitration procedures for related disciplinary matters shall have the right to appeal . . . " She then stated that it was "simply not accurate" that Blea was successful at "winning" a 2013 disciplinary matter. She said that case was resolved with a non-precedential settlement and was not arbitrated. Therefore, she asserted, Blea did not "win" with respect to the matter. Cordova went on that Blea had been disciplined numerous times since 2013 but had never availed himself of the grievance and arbitration procedure. Cordova concluded that Blea was not entitled to appeal his termination. But she went on that FAIR had not filed a grievance to contest Blea's termination. And she said his appeal was untimely as he knew of his discharge more than 20 days prior to his October 17 "grievance." Last but not least, Cordova said the Respondent's bylaws provided only for an appeal to its executive board and not to the full membership.[57]

G. Administrative Law Judge Eleanor Laws Issues Her Decision in UFCW Local 7 No. 1

On February 8, 2024, Administrative Law Judge Eleanor Laws issued a decision in Case 27–CA–298239 involving, amongst others, the Respondent and FAIR. Judge Laws concluded that UFCW Local 7 violated Section 8(a)(1) by:

- telling employees the Respondent confiscated their work equipment because of the employees' support of FAIR and the possibility the employees would go on strike [Union President Cordova and another];

[55] Tr. 154–56. I credit Blea's testimony on this conversation based upon it being confident and convincing. Moreover, it is uncontroverted because Christine Arrelano did not testify.

[56] GC Exh. 16, Art. 21, Sec. 2/UFCW Local 7 Bylaws.

[57] GC Exh. 16.

- telling employees they could work elsewhere and/or invited employees to resign in response to concerted complaints about their working conditions and other protected activities [Union President Cordova];

- disparaging or denigrating FAIR by falsely telling employees that, during a bargaining session for a successor contract, FAIR told the Respondent to discipline and fire employees [Union President Cordova}; and

- repeatedly telling employees the grievance procedures in their expired collective-bargaining agreement were no longer in force or effect.

Judge Laws also found that the Respondent violated Sections 8(a)(5), (3), and (1) by confiscating the work equipment of employees represented by FAIR and requiring them to check-out and check-in their work equipment each day.

Finally, Judge Laws concluded that the Respondent violated Section 8(a)(5) and (1) by: (1) failing to continue the grievance procedure provisions of the collective-bargaining agreements after their expirations; (2) insisting during negotiations that the Respondent agree to the removal of secretaries from the bargaining unit; and (3) by its overall conduct failing and refusing to bargain in good faith with FAIR. In reaching the conclusion that the Respondent did not bargain in good faith, Judge Laws relied, in part, on the finding that, at a June 27, 2022, meeting, Cordova falsely told employees that, during a bargaining session for a successor contract, FAIR told the Respondent to discipline and fire employees The judge also relied upon Cordova's unlawful statements on January 9, 2023, and May 23, 2023, denigrating FAIR's performance in representing the bargaining-unit employees.

The Respondent filed exceptions to Judge Laws' decision, which currently are pending before the Board.

H. The Disciplinary Histories of Blea and Other Union Representatives Discharged by the Respondent

In addition to Blea, the Respondent has discharged, or permitted employees to resign instead of being discharged, on multiple occasions. These employees' disciplinary histories are discussed below.

Let us start with Blea. Blea worked for the Respondent for almost 11 years. His disciplinary history included the following:

NAME	DATE	DISCIPLINE	REASON
RANDY BLEA	10/23/12	Written coaching	Failure to return member communication
	09/17/12	Written coaching	Failure to return member communication
	09/03/16	Final (written) warning	Failure to follow a directive

	10/09/18	Written warning	Poor job performance and insubordination
	04/21/20	Written warning	Failure to process grievances in a timely manner
	07/21/21	Written warning	Failure to follow a directive and insubordination
	8/8/2022	Written warning	Poor job performance
	08/10/22	Suspension-one week and final warning	Poor job performance
	09/22/23	Discharge	

The Respondent did not discipline Blea at any time after August 10, 2022, until his suspension on September 7, 2023, more than 1 year later. During that time period, the Respondent did receive complaints about Blea's job performance from five members (Shavartz, Stone, Nevarez, Wismer, and Ross). During that same time period, Blea also failed to timely follow the Respondent's policy to submit DBF requests for 76 grievances. He likewise failed to complete Bernstein's August 2023 directive to investigate unit work being done by nonunit employees. However, the Respondent did not contemporaneously issue any discipline to Blea for those infractions.[58]

Next up is union representative Paul Marquez, an 11-year employee prior to being discharged. His disciplinary record was as follows:

NAME	DATE	DISCIPLINE	REASON
PAUL MARQUEZ	01/29/13	Written warning	Failing to follow directives and poor job performance, by not signing up members within 90 days
	10/17/13	Written warning	Poor job performance, by not submitting route books in a timely manner and with incorrect information
	03/01/16	Written warning	Failing to process grievances to the Executive Grievance Committee in accordance with work rules
	10/10/16	Written warning	Failing to follow through on a directive and violation of grievance handling processes (reduced from one week suspension pursuant to agreement between FAIR and R
	06/09/17	Final written warning	Failing to follow a directive and poor job performance

58 R. Exh. F.

	08/13/18	One-day suspension	Demanding before the fact on several cases without getting approval from executive staff
	10/13/18	Three-day suspension	Poor job performance, for failing to confirm that grievance secretary received grievance according to policy
	01/28/20	Written warning	Poor job performance, by failing to follow up with member's requests to become a fee payer
	08/03/20	Final warning	Failure to follow U President directive and poor job performance
	08/04/22	Written warning	Insubordination and failing to follow directive
	08/08/22	Written warning	Failure to follow store-time requirements in violation of policy
	02/16/23	One-week suspension/final warning	Again failing to follow store-time requirements
	11/01/24	Discharge	

When discharging Marquez, the Respondent relied only upon the discipline going back to August 13, 2018. In that time period, the Respondent issued Marquez seven disciplines, including three suspensions. Marquez also had a meeting with Cordova on July 19, 2024 (the "Come to Jesus" meeting), where she discussed her concerns with Marquez' job performance prior to his discharge.[59]

We turn now to Brian Archuleta, who agreed to resign in lieu of being terminated a second time for dishonesty. His disciplinary history was as follows:

NAME	DATE	DISCIPLINE	REASON
BRIAN ARCHULETA	02/05/20	Written warning	Failure to timely file grievance
	02/17/23	Written warning	Poor job performance, incl. discrepancies on time sheet, missing information in grievance files, and member complaint about not receiving call backs within 24 hours
	04/13/23	Last chance agreement	Falsely reporting in his timesheet that he served on jury duty

[59] GC Exhs. 19, 20; Tr. 306–309.

	03/09/24	Discharge	Settled member grievances without consent and dishonest w R about his dealings with grievance related to the settlement. Also failure to adequately settle a grievance; follow-up on a member's safety concerns; and adequately process grievances in accordance w work policies. Also failure to adhere to last-chance agreement.

The Respondent first discharged Archuleta was on April 13, 2023, which was reduced to a last-chance agreement pursuant to negotiations with FAIR. That resolution came about after a meeting with Archuleta and Cordova (the "Come to Jesus" meeting). Archuleta's second termination came less than 1 year later.[60]

We now move on to Henry/Hank Carreras. His disciplinary history was as follows

NAME	DATE	DISCIPLINE	REASON
HENRY/HANK CARRERAS	12/07/17	Written warning	Violation of sexual harassment policy
	02/12/18	One-week suspension/final warning	Careless behavior, misplacing laptop in violation of R's policies
	06/24/18	Written warning	"Essentially" for failing to invite member to step 2 grievance meeting and failing to memorialize a waiver or postponement of grievance deadlines
	01/28/20	Written warning	Failing to timely comply with a directive
	08/03/20	Final warning	"Ostensibly" failing to follow directives. Warning later expunged from his personnel file.
	02/22/21	One week suspension	Poor job performance, i.e. failing to timely file a grievance
	04/09/21	Two-week suspension/final warning	Poor job performance, failing to properly audit his route books resulting in one member being charged back dues and failing to follow a directive regarding the earlier failure. Misclassified two pharmacy techs resulting in them paying less in dues than they should have.

[60] GC Exhs. 21, 22, 29; Tr. 310–321, 503–504, 626–629.

	07/01/22	Discharge until R allowed him to resign after negotiation w FAIR	Leaving laptop in his vehicle multiple times, stolen once.

The Respondent discharged Carreras on July 1, 2022, after about 5 years of service. He left his work laptop in his unlocked vehicle multiple times. As a result of an agreement between the Respondent and FAIR, Carreras was permitted to resign rather than being discharged.[61]

Our next comparator is Najee Jackson, whom the Respondent hired in August 2019 and terminated on April 6, 2022. His discipline history is:

NAME	EXHIBIT	DATE	DISCIPLINE	REASON
NAJEE JACKSON	09/20/21		Written warning	Failure to submit credit card receipts
	10/04/21		Written warning	Failure to file a grievance
	10/13/21		Final warning	Failure to follow directive from U President Cordova
	12/07/21		Two week suspension	Failing to follow directive and poor job performance
	02/21/22		Log	R required Jackson to log all his member calls
	04/01/22		Two week suspension/final warning	Failing to follow directives and poor job performance, namely not processing grievance in accordance w Respondent policies
	04/06/22		Discharge	Failure to timely process grievances or follow directive related to such.

Jackson worked for the Respondent less than 7 months and was discharged after twice receiving 2-week suspensions.[62]

Finally, the disciplinary record[63] of Frank Mealey was:

NAME	DATE	DISCIPLINE	REASON
FRANK MEALEY	08/24/20	One-week suspension	Failure to follow directive
	12/21/20	One week suspension/employee action plan	Failure to process grievances in timely manner
	05/23/22	Formal counseling	Multiple issues

[61] GC Exhs. 24, 29, 38; Tr. 608–612.

[62] GC 30, 45; Tr. 612–613, 624–625. It is not clear in the record if the Respondent discharged Mealey.

[63] GC Exh. 35. The transcript is corrected at page 375 to read "Mealey," not "Neely."

	07/21/22	Final written warning	Failure to follow directives
	10/13/22	One-week suspension	Failure to file grievance over wage issue

Thus, in a span of just over two years, the Respondent issued Mealey three one-week suspensions.

ANALYSIS

The General Counsel's complaint alleges that the Respondent violated Section 8(a)(3) and (1) of the Act by suspending and discharging Blea due to his union and/or protected, concerted activity. The complaint also alleges that the Respondent violated Section 8(a)(4) and (1) of the Act by suspending and discharging Blea because he testified in the *UFCW Local 7 No. 1* trial.

A. Legal Framework

Section 8(a)(3) of the Act makes it an unfair labor practice for an employer, "by discrimination in regard to hire or tenure of employment or any term or condition of employment[,] to encourage or discourage membership in any labor organization." Section 8(a)(4) makes it an unfair labor practice for an employer "to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act."

When assessing the lawfulness of an employer's discharge of an employee under either Section 8(a)(3) or (4), the Board applies the analytical 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).[64] To prove an 8(a)(3) or (4) violation under *Wright Line*, the General Counsel must demonstrate, by a preponderance of the evidence, that the employee's protected activity was a substantial or motivating factor in the employer's discharge of the employee. *SBM Site Services, LLC*, 367 NLRB No. 147, slip op. at 2 (2019). The protected conduct under Section 8(a)(3) is union or protected concerted activity. The protected conduct under Section 8(a)(4) is, among other things, testifying at a Board trial. The General Counsel satisfies the initial burden by showing that: (1) the employee engaged in protected activity, (2) the employer had knowledge of the activity, and (3) the employer had animus towards the activity. Animus can be established through direct evidence or inferred from circumstantial evidence on the record. *Intertape Polymer Corp*, 372 NLRB No. 133, slip op. 6-7 (2023). Circumstantial evidence of discriminatory motive may include the timing of the

[64] For this proposition being applied in Sec. 8(a)(4) cases, see, e.g., *Freightway Corp.*, 299 NLRB 531, 532 (1990); *General Services*, 229 NLRB 940, 941 (1977).

discharge in relation to the protected conduct; the presence of other unfair labor practices; statements or actions showing an employer's general and specific animus; and evidence that the employer's proffered reason for the discharge is pretextual. Pretext may be shown by false reasons for the discharge; disparate treatment of the employee; departure from past practice; shifting explanations for the discharge; and failure to meaningfully investigate if the employee engaged in the asserted misconduct

If the General Counsel meets the initial burden of proof, the burden then shifts to the employer to demonstrate it would have discharged the employee even in the absence of the employee's protected conduct. *Wright Line*, 251 NLRB at 1089. The employer cannot carry this burden merely by showing that it also had a legitimate reason for the discharge, but must persuade, by a preponderance of the evidence, that the discharge would have taken place even if the employee had not engaged in protected conduct. *Northeast Center for Rehabilitation*, 372 NLRB No. 35, slip op. at 1-2 fn. 5 (2022), and cases cited therein.

B. Is it Proper for Me to Rely Upon Judge Laws' Findings of Fact and Conclusions of Law in UFCW Local 7 No. 1?

As a preliminary matter, the parties disagree over whether I should rely upon any of the Findings of Fact and Conclusions of Law contained in Judge Laws' decision in *UFCW Local 7 No. 1*.

Board administrative law judges (ALJs) have discretion to rely on the factual and legal findings of another ALJ in a prior case, even if that case is pending at the Board on exceptions. See, e.g., *Voith Industrial Services, Inc.*, 363 NLRB No. 109, slip op. at 1 fn. 2 (2016); *Detroit Newspapers Agency*, 326 NLRB 782, 782 fn. 3 (1998). If the Board ultimately affirms the ALJ's findings in the prior case, then taking judicial notice of the prior ALJ decision and relying on the findings therein in the subsequent case is proper. *Pain Relief Centers II*, 371 NLRB No. 143, slip op. at 1 fn. 8 (2022); *Registry of Interpreters for the Deaf, Inc.*, 370 NLRB No. 18, slip op. at 4 fn. 11 (2020); *International Longshore and Warehouse Union, AFL–CIO* et al. *(ICTSI Oregon, Inc.)*, 363 NLRB No. 47, slip op. at 1 fn. 3 (2015). If those findings are not affirmed, they cannot be relied upon in the subsequent case.

In this case, I conclude that it is appropriate for me to rely upon Judge Laws' factual and legal findings in *UFCW Local 7 No. 1* as background evidence on animus. See *Grand Rapids Press of Booth Newspapers*, 327 NLRB 393, 394–395 (1998) (trial judge exercised discretion to rely on factual findings made by an ALJ in a prior case pending before the Board on exceptions as evidence of animus), enfd. mem. 215 F.3d 1327 (6th Cir. 2000).

C. The General Counsel's Initial Wright Line Burden

As to the General Counsel's initial burden under *Wright Line* in this case, no question exists that Blea engaged in protected conduct within the meaning of Sections 8(a)(3) and (4) and that the Respondent was aware of that conduct prior to discharging him. Blea served as a FAIR union steward for four years, through the date of his termination. His job duties in that role included processing grievances for unit members at Step 1. According to Judge Laws' decision, this included a grievance meeting on August 10, 2023, over the Respondent's suspension of member Marquez attended by, among others, Blea and Zuniga. On August 30, 2023, Blea informed Zuniga that he had been subpoenaed to testify at the Board hearing the next day in *UFCW Local 7 No. 1*. Blea testified on behalf of FAIR and the General Counsel on August 31.

The preponderance of the evidence also is sufficient to establish that the Respondent harbored animus towards Blea's testimony. This evaluation must begin with the timing of the Respondent's suspension and discharge of Blea in relation to his testimony at the Board trial. Seven days after that testimony, the Respondent suspended him. Fifteen days after he was suspended, the Respondent discharged him. This close proximity between protected conduct and adverse action is a strong indicator of animus. *Davey Roofing, Inc.*, 341 NLRB 222, 223 (2004), and cases cited therein.

The Respondent contends that it began an investigation into Blea's work performance on August 9, well before his testimony at the Board trial. This contention is based upon Cordova's email to Blea on that date. Therein, she reported Stone complaining to her about Blea's performance. She also directed Blea to address the situation. Obviously, then, Cordova was initiating an investigation into that particular complaint. But wholly missing from the communication is any notification from Cordova to Blea that the Respondent was investigating his overall job performance or that he could be facing discipline or discharge from such an investigation. In this regard, the Respondent's failure to call Cordova to testify is telling. The Respondent offered only Zuniga's uncorroborated and unconvincing testimony that Cordova told him to look into Blea's situation.[65] Whatever investigation the Respondent took into Blea's overall job performance began on September 6, when Zuniga informed him that their meeting

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[65] Zuniga testified on direct (Tr. 509):

Q: Let's take a look now at Respondent's L. I'm handing you what's been marked as Respondent's Exh. L. Again, that's already in evidence. Taking a look at this document. We've—we heard Mr. Stone testify today this is an email we've seen before between President Cordova and Mr. Blea. At what point did Local 7 begin its investigation into Mr. Blea that led to his discharge?

A: Well, it would have been at this point, right here, once we received this email because we -- you know, once again, we were receiving—you know, we received the Daniel Shavartz, you know, complaint. Then, you know, what was it, 3 months later, we go in and get this complaint right here, you know, from Kevin Stone. And you know, Kim had directed me to go ahead and look into this at that point in time.

Zuniga testified on cross (Tr. 580–581):

Q: Okay. And so you questioned Randy Blea about his dealings with Tricia Wismer on September 6th, 2023, correct?

A: That's correct.

Q: And that's when you first notified Mr. Blea that he was being investigated?

A: That wasn't the first time I told him he was being investigated. No.

Q: He was being investigated for possible discipline?

A: No. He understood he was being investigated for possible discipline going back to Kevin Stone.

had turned into an investigatory one. Prior to then, Cordova and Zuniga inquired about other member complaints against Blea but never notified him that they were investigating his overall job performance or that he was in danger of being discharged. Zuniga did not even put the communications reflecting the member complaints into Blea's personnel file until the September 2023 investigation.[66] Thus, the Responded initiated its investigation into Blea's overall job performance just 1 week after he testified at the Board trial, a further demonstration of hostility towards his protected activity.

Further cementing the finding of animus, I also conclude that the Respondent's asserted reasons for suspending and discharging Blea are a pretext. The Respondent contends that it issued progressive discipline to Blea, consistent with how it had treated other employees.[67] But the evidence regarding the comparators proves the Respondent treated Blea disparately by not following progressive discipline prior to discharging him as it had done for other employees in the past.

To begin, Blea was disciplined only eight times in over a decade. The most severe discipline was a 1-week suspension and final warning on August 10, 2022. The Respondent discharged Blea more than 1 year later without any additional discipline being issued to him, including in response to member complaints about him during 2023. Thus, the Respondent went from a single 1-week suspension to a discharge with Blea.

In contrast, comparators identified by the General Counsel were discharged only after far more serious and/or lengthy disciplinary histories. Respondent terminated Marquez after previously issuing him a 1-day suspension, a 3-day suspension, and a 1-week suspension/final warning. The Respondent discharged Archuleta twice. It agreed to reduce the first termination to a last-chance agreement, even though Archuleta falsely reported on his timesheet that he served on jury duty and Zuniga asserted at the hearing that the Respondent had a zero-tolerance policy for dishonesty. The Respondent discharged Carreras after issuing him a 1-week suspension/final warning, another final warning, and another 2-week suspension/final warning. After negotiations with FAIR, the Respondent allowed Carreras to resign rather than being terminated. The Respondent discharged Jackson only after issuing him a final warning, a 2-week suspension, and a second 2-week suspension.

Beyond the difference in the disciplinary history of these individuals compared to Blea, there is no clear practice of progressive discipline and what steps trigger a discharge.

Moving on now from disparate treatment, animus also is established by the Respondent's other unfair labor practices found by Judge Laws involving Blea. Judge Laws found that, in January 2022, Blea was in charge of a strike line when employees represented by

[66] R. Exhs. J, K, and L. Tr. 586–587.

[67] Zuniga testified that "And it got to the point where we just, you know, we had to start that progressive discipline with him, and he just wouldn't correct his behavior." (Tr. 486.) He also confirmed that he told Blea in the October 6 Step 1 grievance meeting that he was fired after progressive discipline. (Tr. 607.) But Zuniga did not identify where the progressive discipline to Blea began.

UFCW Local 7 and working at a Denver King Soopers grocery store went on a 9-day strike. Towards the end of the strike, Blea and other Respondent employees met with Zuniga. Blea spoke up about many issues they were having on the strike line. After the strike ended, Cordova met with Blea and other union representatives on February 7, 2022. She told the employees that they were highly compensated and, if they did not like the direction the Respondent was headed, she would accept their resignations effective immediately. Blea responded that he wanted Cordova to stop saying the union representatives were highly compensated because they worked very hard. Judge Laws concluded that Cordova's statements were coercive and violated Section 8(a)(1).

Moreover, Judge Laws concluded that the Respondent committed an unfair labor practice when its supervisors told FAIR representatives that the grievance and arbitration process did not survive the expiration of their collective-bargaining agreement. One example of this occurred during a grievance meeting on August 10, 2023, over a suspension Marquez received on August 4. Zuniga told Blea and the other attendees that the contract expired, there was no arbitration or grievance procedure, and the grievance was denied. Judge Laws found the statement violated Section 8(a)(1).

Finally, as to statements of supervisors demonstrating general or specific animus, the Respondent, by Zuniga, made a statement to Blea after his testimony that reflects animus towards that activity. On September 1, 2023, the day after Blea's testimony, Zuniga asked Blea: "You're not recording me like Coleson Breen, are you?" Previously in the trial, Breen had provided the General Counsel with a 2-hour recording of a meeting that Respondent President Cordova held on June 27, 2022. The General Counsel alleged in the complaint that Cordova disparaged or denigrated FAIR in that meeting by falsely telling employees that, during a bargaining session for a successor agreement, FAIR told the Respondent to discipline and fire employees, in violation of Section 8(a)(1). Zuniga's question to Blea about recording their conversation conveyed Zuniga's displeasure with Breen for recording the meeting and supporting FAIR's case against the Respondent. In a similar fashion, Blea was supporting FAIR's case by testifying. Thus, Zuniga indirectly conveyed disdain for Blea's conduct as well.

For all these reasons, I conclude that the General Counsel has met the initial *Wright Line* burden. Thus, the burden shifts to the Respondent to establish that it would have discharged Blea in any event despite his union activity and/or his testimony at the Board trial.

D. The Respondent's Shifting Wright Line Burden

The Respondent contends that it treated Blea the same or similarly to others who were issued consistent warnings, suspensions and terminated. But the Respondent did not introduce any documents showing employees who were similarly situated to Blea upon their discharges. Instead, it relied upon the very same disciplinary records the General Counsel introduced, which show disparate, not consistent, treatment.

Beyond that, Zuniga testified in extremely limited fashion about the names of employees who were discharged based upon member complaints or for dishonesty.[68] Again, the Respondent did not introduce any documents which would corroborate Zuniga's claims. The names alone fall woefully short of meeting the Respondent's burden.

The Respondent's suspension and discharge of Blea violated Sections 8(a)(4), (3), and (1).

III. DID THE RESPONDENT ATTEMPT TO CAUSE KING SOOPERS TO DISCIPLINE OR DISCHARGE BLEA IN VIOLATION OF SECTION 8(B)(2) AND 8(B)(1)(A)?

FINDINGS OF FACT

A. The December 8, 2023 Conversation Between Blea and Union Representative Tom Olson and its Aftermath

On December 8, Blea was working at King Soopers store 50, 5 days away from the end of his probationary period. At that time, Tom Olson was working as a special project union representative for the Respondent and was representing employees, including Blea, working at store 50. Olson visited the store that day.

In the backroom, Blea walked by Olson and the two greeted one another by saying hello. After Blea was 10-15 feet past him, Olson yelled to Blea that he had "seen those fliers you were passing out." Blea asked Olson what he was talking about. Olson said, "the fliers that you are passing out at my Safeway store." (The flier apparently was critical of Union President Cordova.) Blea told Olson he had no idea what Olson was talking about. He then turned around, walked back to Olson, and said "leave me out of your messes." Blea added that he did not want to be harassed at work, he was a member whom Olson represented, and Olson needed "to squash this now." Olson asked Blea if Blea was threatening him and Blea responded no. Blea added that if Olson was harassing members, he could be fired. Blea walked away. The two were talking loudly enough that Assistant Store Manager Clinton Duffens heard them. However, Duffens could only make out some discussion of fliers and nothing more.[69]

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[68] Tr. 502–504.

[69] Tr. 156, 325–329, 335–336. I credit Blea's testimony regarding his conversation with Olson. The testimony was corroborated by statements that Blea contemporaneously provided during a subsequent investigation into the incident conducted by King Soopers. (GC Exh. 17.) Those statements contained many additional details of what was said and occurred during the conversation, thereby providing appropriate context. In contrast, Olson's contemporaneous "statement" consisted only of his claim that Blea said "keep my name out of your mouth or I will smash you" in response to Olson saying to Blea that he had seen his fliers. (Tr. 380, 383–384; GC Exh. 29.) He did not offer any additional testimony. However, he testified that he said Blea would enjoy his time in jail if he smashed him. This claim did not appear in Olson's contemporaneous statement. I give the contemporaneous statements more weight in this case because the testimony about this conversation took place almost 3 years after the conversation occurred. I further note that one of the definitions of "squash" is to put down or suppress, e.g. "squash rumors." (SQUASH Definition & Meaning - Merriam-Webster visited 7/30/26). This fits more closely

Shortly thereafter, Olson reported the conversation to Duffens and asked if Duffens heard Blea threaten him with physical violence. Duffens said he did not. Olson also asked Duffens what Blea's hiring date was and Duffens provided it to Olson. Olson then reported to his supervisor at UFCW Local 7, Christine Arrelano, that Blea had threatened him with violence. Olson claimed that Blea said, if Olson did not take Blea's name out of his mouth, Blea would smash him.[70]

In that same timeframe, Blea spoke to fellow bargaining-unit employee Marvin Arellano, who also serves as a union steward for the Respondent. Marvin Arellano is married to Christine Arellano. Blea told Marvin Arellano that Marvin needed to have a conversation with Olson, because Olson was out of control. Blea told Marvin what had occurred and said he just wanted to come to work, do his job, and then come home. Blea added that Olson could get fired for attacking members. Marvin agreed and said he would speak to Olson. He also told Blea that "things are going to get ugly."[71]

Following the incident, the Respondent reported to King Soopers that Blea had threatened Olson with physical violence. Christine Arellano obtained "statements" from Olson and Marvin Arellano. Olson's statement read: "On Friday, December 8, I was in the backroom at 11:45 am and Randy walked by. I said hello to Randy. During our brief conversation, Randy got up in my face and said, 'keep my name out of your mouth or I will smash you.' I took this to be a threat of physical violence." Marvin Arellano's statement read: "To whom it may concern: On Dec 8th Randy the day for[e]man told me he had a conversation with Tom the union Rep and stated he told Tom, 'Keep my name out of your mouth or I will smash you.' I took this as a physical threat to Tom." Christine Arellano forwarded the two statements to King Soopers. She also asked Duffens if Blea had been suspended pending investigation for making the alleged threat.[72]

King Soopers then began an investigation into the accusation, collecting two statements from Blea and one from Duffens. In addition, King Soopers also interviewed both Blea and Marvin Arellano. King Soopers did not obtain an additional statement from or interview Olson. In both of his statements, Blea denied telling Olson that he should take Blea's name out of his mouth or Blea would smash him. Ultimately, King Soopers determined that the evidence was insufficient to substantiate Olson's claim that Blea had threatened him with physical harm.[73]

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with Blea's testimony than with Olson's testimony, i.e. Blea wanted Olson to squash the untrue rumors about Blea passing out fliers. I find it less likely that Blea would respond to Olson's comment that he saw Blea's fliers with a threat of violence to Olson.

[70] Tr. 331–335.

[71] Tr. 159–161. I credit Blea's testimony as it is uncontroverted. The Respondent did not call Marvin Arellano to testify.

[72] GC Exh. 26.

[73] GC Exh. 25, 28; Tr. 161–164.

B. Zuniga References Blea's Criminal History During a January 19, 2024 Grievance Meeting with a King Soopers Representative

On January 19, 2024, King Soopers HR manager Stephanie McClanahan held a meeting to discuss Step 3 grievances with Zuniga and Christine Arellano. While discussing the suspension of an employee following the employee's arrest on domestic violence charges, Zuniga brought up Blea's name. McClanahan asked why Zuniga was bringing up Blea. Zuniga responded that Blea had current criminal charges and McClanahan was treating the suspended employee worse than Blea (who was not suspended). McClanahan asked Zuniga if he was background checking all bargaining-unit members or just Blea. Zuniga said he was not background checking anybody. McClanahan said she needed to speak to Blea about this and that he had met King Soopers' hiring criteria.[74]

Subsequent to the meeting, McClanahan met with Blea and asked if he had any current criminal charges. Blea responded no. McClanahan also ran a background check on Blea and it did not contain any current criminal charges.[75]

LEGAL ANALYSIS

The General Counsel's complaint alleges that the Respondent violated Section 8(b)(2) and 8(b)(1)(A) of the Act by attempting to cause King Soopers to discipline or discharge Blea when: (1) union representative Olson falsely reported that Blea had threatened to harm him; and (2) when Zuniga inquired of King Soopers whether Blea would continue his employment despite his criminal background. Finally, the complaint alleges that the Respondent's conduct was motivated by Blea's protected activity, including providing testimony to the Board and its belief that Blea had engaged in protected activity (dissident activities against Union President Cordova).

Section 8(b)(2) of the Act provides that it is an unfair labor practice for labor organizations "to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3)" of the Act—that is, "in regard to hire or tenure of employment or any term or conditions of employment to encourage or discourage membership in any labor

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[74] I credit McClanahan's testimony concerning her conversation with Zuniga, which was logical and confident. (Tr. 356–358.) Moreover, Blea corroborated her testimony concerning a subsequent meeting she had with him concerning Zuniga's allegation. In contrast, Zuniga's testimony was unconvincing. (Tr. 573–576.) To begin, Zuniga conceded that he brought Blea's name up in the meeting. His claimed rationale was that King Soopers was disparately treating the grievance compared to how it handled Blea's criminal history. The grievance he was discussing with McClanahan involved an employee who was suspended due to current domestic violence charges. Thus, I find it more likely than not that Zuniga told her that Blea had current criminal charges as well, beyond his history. The proper comparator would be another employee who was not suspended after being charged with a crime, not an employee like Blea who previously had been hired despite having a criminal history. Zuniga's self-serving testimony that he told McClanahan twice he was not saying to fire Blea came across as unconvincing.

[75] Tr. 358–359.

organization." An 8(b)(2) violation can be established by direct evidence that the union sought to have the employer discriminate, or by sufficient circumstantial evidence to support a reasonable inference that the union requested that the employer discriminate. *International Operating Engineers, Local 12 (Kiewet Industrial)*, 337 NLRB 544, 545 (2002); *M. W. Kellogg Constructors, Inc.*, 273 NLRB 1049, 1051 (1984), remanded on other grounds 806 F.2d 1435 (9th Cir. 1986).

In determining whether a union has violated Section 8(b)(2), the Board has applied both the analytical framework set forth in *Wright Line*, above, as well as its duty-of-fair-representation framework. *ILWU Unit 223*, 373 NLRB No. 133 (2024); *Caravan Knight Facilities Mgmt., Inc.*, 362 NLRB 1802, 1804–1805 (2015).

Under the latter analysis, whenever a labor organization causes or attempts to cause an adverse action to be taken against employees, "there is a rebuttable presumption that it acted unlawfully because by such conduct it demonstrates its power to affect the employees' livelihood in so dramatic a way as to encourage union membership among the employees." *Caravan Knight,* 362 NLRB at 1805, citing *Acklin Stamping*, 351 NLRB 1263, 1263 (2007); *Graphic Communications Local 1-M (Bang Printing)*, 337 NLRB 662, 673 (2002). This presumption, however, may be overcome if the union demonstrates that its actions were taken "in good faith, based on rational considerations, and were linked in some way to its need effectively to represent its constituency as a whole." *Caravan Knight,* 362 NLRB at 1805, citing *Operative Plasterers & Cement Masons, Local No. 299 (Wyoming Contractors Assn.)*, 257 NLRB 1386, 1395 (1981).

Under either framework, I conclude the Respondent's actions towards Blea violated Section 8(b)(2) with respect to his conversation with Olson on December 8 and its aftermath.

To summarize the relevant facts, the Respondent's union representative Olson initiated a conversation with Blea, after Blea already had gone 10–15 feet past him, about dissident activities Olson believed Blea had engaged in. He told Blea he had seen fliers in Olson's stores. Those fliers apparently were critical of Union President Cordova. Blea told Olson that Olson needed to squash this now—in reference to Olson harassing Blea at work even though Olson was his bargaining representative. Olson then falsely reported to King Soopers that Blea had threatened him with physical harm. And Respondent supervisor Christine Arrellano subsequently asked King Soopers manager Duffens if Blea had been suspended pending investigation for making the alleged threat.

As to *Wright Line*, Olson believed Blea had engaged in protected union dissident activity. Olson also exhibited animus towards that activity by raising the subject with Blea, getting into a heated discussion with him about it, and then falsely reporting an exaggerated account of what Blea had said to him. This satisfies the General Counsel's initial burden. The Respondent cannot sustain its shifting burden. Although Zuniga claimed that the Respondent reported all threats of physical harm to the employer, the Respondent reported a false threat that Blea did not make. Had the Respondent reported what Blea actually said, his comment to

Olson was not a threat of physical harm and the Respondent did not establish that it reported comments such as the one Blea made to the employer. Thus, the Respondent's conduct violates Section 8(b)(2) under a *Wright Line* analysis.

Applying the duty-of-fair representation framework, Olson's reporting of a false threat of physical harm and Arellano's asking King Soopers if Blea had been suspended are sufficient to support an inference that they were requesting King Soopers take an adverse action against Blea. The two engaged in that conduct for discriminatory reasons—Blea's perceived dissident activity of criticizing Union President Cordova. Under these circumstances, the Respondent violated Section 8(b)(2). See *SPFPA Local 444*, 360 NLRB 430, 435 (2014) (union official provided to employer's client an exaggerated and misleading account of employee's outburst); *Paperworkers Local 1048 (Jefferson Smurfit Corp.)*, 323 NLRB 1042, 1044-1045 (1997) (union violated Section 8(b)(2) when one of its officials, in retaliation for protected activity, reported to the employer, without support, that a dissident member made a racial slur).[76]

CONCLUSIONS OF LAW

1. The Respondent United Food and Commercial Workers Local 7, AFL–CIO is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. It also is a labor organization within the meaning of Section 2(5) of the Act.

2. Dillon Companies, LLC d/b/a King Soopers is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. Federation of Agents & International Representatives Union is a labor organization within the meaning of Section 2(5) of the Act.

4. The Respondent violated Section 8(a)(4), (3), and (1) on September 6, 2023, by

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[76] In reaching the conclusion that the Respondent violated Sec. 8(b)(2), I acknowledge and have considered that a union has a legitimate interest in reporting actual threats of physical harm to an employer, consistent with its duty to represent all unit employees. *Acklin Stamping,* 355 NLRB 824, 825–826 (2010); *Graphic Communications Local 1-M (Bang Printing)*, 337 NLRB 662, 674 (2002).

The General Counsel's complaint also alleged that Olson's conduct independently violated Section 8(b)(1)(A). I likewise find merit to that allegation, because the Respondent retaliated against Blea based upon its belief that he engaged in protected activity. *Graphic Communications Conference/Teamsters Local 735-S*, 369 NLRB No. 97, slip op. at 5 (2020).

Finally, I find it unnecessary to make a finding on the General Counsel's complaint allegation 7(b). The complaint alleges that the Respondent attempted to cause King Soopers to discipline or discharge Blea based upon Zuniga's comments to McClanahan in the January 19, 2024 grievance meeting. The General Counsel concedes that this allegation is barred by Sec. 10(b) of the Act. (Tr. 171.) The allegation apparently first appeared in the General Counsel's complaint issued May 14, 2025. But the General Counsel wants to use this incident to further support an animus finding. Given my prior conclusion about animus being sufficiently demonstrated and my credibility determinations related to the January 19, 2024 conversation, I find no need exists to address this allegation.

suspending Charging Party Randy Blea for his union activity and for testifying at a Board trial.

5. The Respondent violated Section 8(a)(4), (3), and (1) on September 22, 2023, by discharging Blea for his union activity and for testifying at a Board trial.

6. The Respondent violated Section 8(b)(2) and 8(b)(1)(A) on December 8 and 10, 2023, by requesting that King Soopers discipline or discharge Blea based on its false report that Blea had threatened to harm a Respondent representative.

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

8. The Respondent has not violated the Act in the other manners alleged in the complaint.

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.

Specifically, having found that the Respondent violated Section 8(b)(2) and 8(b)(1)(A) by attempting to cause an employer to discipline or discharge an employee due to his protected activity, I shall order the Respondent to cease and desist from engaging in this conduct and, in any like or related manner, interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed by Section 7 of the Act.

I shall further order the Respondent to offer Charging Party Randy Blea 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; to expunge any references to his discharge from its files and records, and to notify him, in writing, that it has done so and that the discharge will not be used against him in any way.

I shall also order that the Respondent make Blea whole, with interest, for any loss of earnings and other benefits suffered as a result of the unlawful discharge. 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 the Board's decision in *Thryv, Inc.*, 372 NLRB No. 22 (2022), enf. denied on other grounds, 102 F.4th 727 (5th Cir. 2024), the Respondent shall also compensate Blea for any other direct or foreseeable pecuniary harms incurred as a result of his unlawful discharge, including reasonable search-for-work and interim employment expenses, if any, regardless of whether these expenses exceed interim earnings.

Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, above, compounded daily as prescribed in *Kentucky River Medical Center*, above.

Furthermore, I shall order the Respondent to compensate Blea for the adverse tax consequences, if any, of receiving a lump-sum backpay award and to file a report with the Regional Director for Region 27 allocating the backpay award to the appropriate calendar year(s). *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016). In addition to the backpay allocation report, I shall order the Respondent to file with the Regional Director for Region 27 a copy of Blea's corresponding W-2 form(s) reflecting the backpay award. *Cascades Containerboard Packaging-Niagara*, 370 NLRB No. 76 (2021), as modified in 371 NLRB No. 25 (2021).

The Respondent contends that Blea is not entitled to reinstatement and his backpay should be limited based upon misconduct it learned of after discharging Blea.

Under the Board's after-acquired evidence doctrine, "if an employer satisfies its burden of establishing that the discriminatee engaged in unprotected conduct for which the employer would have discharged any employee, reinstatement is not ordered and backpay is terminated on the date that the employer first acquired knowledge of the misconduct." *Tel Data Corp.*, 315 NLRB 364, 367 (1994). The Board's standard for after-acquired knowledge of pre-discharge misconduct is appropriate only when the arguably disqualifying behavior occurs before the allegedly unlawful discharge, but the employer does not discover it until after the discharge. Id.

The Respondent alleges that, during his employment, Blea instructed bargaining-unit employee, Kyra Cruz, to put a false hiring date on her job application so she would avoid having to pay back dues owed to the Respondent. This conduct allegedly occurred in the spring of 2023 and the Respondent discovered it in December 2023, about 3 months after Blea's discharge. The Respondent argues that this act of dishonesty would have resulted in Blea's termination.

I conclude that the Respondent has not met its burden, because it failed to establish that Blea engaged in the misconduct for which the Respondent claims it would have discharged him.

In December 2023, the Respondent's business agent, Christopher Lay, was asked by a representative in the Respondent's records department to look into Cruz' employment start date due to a discrepancy in the records. Lay spoke to Cruz about it and Cruz told him that Blea told her to put her transfer date to another store, not her start date at her original store, on her job application so she would not have to pay back dues. Lay sought and obtained a statement from Cruz.[77]

[77] Tr. 439–448; R. Exhs. CF, AJ.

At the hearing, I overruled the General Counsel's hearsay objection to the admission of Lay's testimony about what Cruz said to him and Cruz' statement. However, I did not admit them for the truth of any statements made therein absent corroboration.[78] I reaffirm that ruling here. Cruz did not testify at the hearing and the Respondent offered no explanation for why she did not do so, other than she no longer was a union member. The Respondent did not assert that it had attempted to subpoena her or take any other steps to obtain her testimony. Beyond that, none of the testimony from Lay and Zuniga corroborated Cruz' claims, because neither of them personally observed the alleged conversation between Blea and Cruz. The Respondent did not present any other corroborating evidence. Under these circumstances, Lay's uncorroborated hearsay testimony about Cruz and Cruz' statement are entitled to "little weight." *W. D. Manor Mechanical Contractors, Inc.*, 357 NLRB 1526, 1527 (2011). At most, they are admissible to explain the steps Lay and Zuniga took thereafter, but not for the truth of the matters asserted therein. *Salem Hospital Corp.*, 363 NLRB 515, 515 fn. 1 (2015). They are not admissible to strike the traditional remedies of reinstatement and full backpay.

The Respondent also argues that Cruz' statement is a business record under Federal Rule of Evidence 803(6). However, the testimony elicited from Lay and Zuniga is insufficient to meet that exception's requirements.[79] Lay stated that he obtained and retained the statement from Cruz and passed it along to the Respondent's executive committee. Zuniga testified that he obtained Cruz' statement from Lay, forwarded it on to members of the Respondent's executive committee, and retained the statement in his email account. But Cruz wrote her statement in December 2023, which was not at or near the time of her June 2023 conversation with Blea. And the testimony does not address whether Lay routinely requested statements from employees whenever a back dues issue arose.

In any event, I credit Blea's testimony regarding his interaction with Cruz and his denial that he told Cruz to falsify her start date.[80] Blea described the steps that he took to address the start date discrepancy. He had vivid recall of those events and his testimony appeared trustworthy. Moreover, the notion that Blea would tell an employee to falsify a start date to avoid paying back dues is nonsensical. With all his experience as a union representative, Blea would have known better than anyone that the Respondent eventually would check its membership records and figure out that Cruz owed back dues. Any delay in payment of those dues would have come back on him.

Accordingly, I conclude that the Respondent did not prove Blea engaged in misconduct which warranted discharge. *Tschiggfrie Properties*, 365 NLRB 251, 253 (2017); *Berkshire Farm Center*, 333 NLRB 367, 367 (2001). The traditional reinstatement and backpay remedies are proper in this case.

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[78] Tr. 442–443, 564–565

[79] Tr. 447–448; 564–565.

[80] Tr. 637–647.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[81]

ORDER

The Respondent United Food and Commercial Workers Local 7, AFL–CIO, its officers, agents, successors, and assigns, shall

1. Cease and desist from

    a. Suspending or discharging employees for engaging in union activity or for testifying in a Board trial.

    b. Attempting to cause an employer to discipline or discharge an employee due to the employee's dissident union activities.

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

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

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

    b. Make Randy Blea whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms suffered as a result of his unlawful suspension and discharge, in the manner set forth in the remedy section of this decision.

    c. Compensate Randy Blea for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director of Region 27, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

    d. File with the Regional Director for Region 27, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional

[81] 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.

time as the Regional Director may allow for good cause shown, a copy of Randy Blea's corresponding W-2 form(s) reflecting the backpay award.

e. Within 14 days from the date of this Order remove from its files any references to the unlawful suspension and discharge of Randy Blea, and within 3 days thereafter, notify him in writing that this has been done and that the suspension and 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 amount of backpay due under the terms of this Order.

g. Post at its facility in Wheat Ridge, Colorado, copies of the attached notice marked "Appendix."[82] Copies of the notice, on forms provided by the Regional Director for Region 27, 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 e-mail, posting on an intranet or 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 facilities 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 September 7, 2024.

h. Within 21 days after service by the Region, file with the Regional Director of Region 27 a sworn certification of a responsible official on a form provided

[82] 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."

by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., August 5, 2026.

Charles J. Muhl
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Mailed 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 suspend or discharge employees for engaging in union activity or for testifying in a National Labor Relations Board trial.

WE WILL NOT attempt to cause an employer to discipline or discharge an employee due to the employee's dissident union activities.

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

WE WILL, within 14 days from the date of this Order, offer Randy Blea 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 Randy Blea whole for any loss of earnings or other benefits resulting from his suspension and 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 suspension and discharge, including reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Randy Blea for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 27, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

WE WILL file with the Regional Director for Region 27, within 21 days of the date of 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 Randy Blea's corresponding W-2 form(s) reflecting the backpay award.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any references to our unlawful suspension and discharge of Randy Blea and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the suspension and discharge will not be used against him in any way.

UNITED FOOD & COMMERCIAL WORKERS LOCAL 7, AFL–CIO
(Respondent)

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.

Bryon Rogers Federal Office Building, 1961 Stout Street, Suite 13-103, Denver, CO 80294-5433
(303) 844-3551, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/ 27-CA-327689 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, (720) 598-7398.