JD–57–26
Ripley, WV

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

GO–MART, INC.

and **CASE 09–CA–365946**

MELISSA SAYLOR, an individual

Adam Drapcho,
for the General Counsel.
Jill E. Hall and *Grace E. Hurney,*
for the Respondent.

DECISION

STATEMENT OF THE CASE

REBEKAH RAMIREZ, Administrative Law Judge. On May 16, 2025, Melissa Saylor filed an unfair labor practice charge against Go–Mart, Inc. (Go–Mart or Respondent). The charge was amended on January 26, 2026. The General Counsel issued a complaint on March 16, 2026, and a trial was conducted on May 19, 2026, in Charleston, West Virginia.

The complaint, as further amended at trial, alleges that Respondent violated Section 8(a)(1) of the National Labor Relations Act (the Act) when it: (1) on April 2, 2025,[1] interrogated employees about their protected concerted activities of discussing wages; threatened to interrogate employees about employees' protected concerted activities of discussing wages; and threatened employees with unspecified reprisals because employees discussed wages; (2) orally promulgated and has since maintained a rule prohibiting the discussion of wages; and (3) issued Saylor a verbal warning, failed and refused to promote her, and altered her work schedule because she violated the rule prohibiting the discussion of wages and because she engaged in protected concerted activities by discussing wages, and, by these actions, constructively discharged Saylor.

Respondent denies most of the allegations in the complaint. Specifically, regarding the claim that a rule prohibiting the discussion of wages was orally promulgated, Respondent acknowledges that the conversation on April 2 represents a technical violation of the Act. However, Respondent maintains that no ongoing violation exists and asserts that any violation was remedied. Respondent further contends that Saylor's wage discussion was not intended for mutual aid and protection, that she declined the promotion that was offered to her, and that she voluntarily resigned from her employment. For the reasons discussed below, I find that Respondent violated the Act as alleged in the complaint.

[1] All dates are from 2025 unless otherwise indicated.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the posthearing briefs filed by the General Counsel and Respondent,[2] I make the following findings, conclusions of law, and recommendations.[3]

FINDINGS OF FACT

JURISDICTION

At all material times, Respondent has been a corporation with an office and place of business in Ripley, West Viginia (Respondent's facility), and has been engaged in the operation of a gasoline station and convenience store. In conducting its operations during the 12-month period ending February 1, 2026, Respondent derived gross revenues in excess of $500,000 and purchased and received goods valued in excess of $50,000 from points outside of the state of West Virginia. Accordingly, Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Based on the foregoing, I find that this dispute affects commerce and that the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

ALLEGED UNFAIR LABOR PRACTICES

A. Respondent's Operations

As noted above, Respondent operates a gasoline station and convenience store. The facility is open 24 hours a day, 7 days a week. The convenience store has a deli counter that offers food and is open Monday through Friday, from 4 a.m. to 8 p.m., and on weekends from 6 a.m. to 8 p.m. Respondent employs approximately six deli workers to staff the deli counter. The deli counter has a morning and an evening shift. The record evidence establishes that Respondent usually schedules three deli workers in the mornings, starting between 4 a.m. and 6 a.m., and ending between 12 noon and 1 p.m., and three deli workers in the evenings, starting at 12 noon and ending at 8 p.m. (Tr. 32, 183; R. Exh. 2.)

Elizabeth Blackburn is the store manager and is responsible for overseeing the day-to-day operations of the convenience store and the deli counter. Blackburn is also responsible for preparing employees' weekly work schedule. Blackburn reports to District Supervisor Fonda

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[2] The transcript and exhibits in this decision are referenced as follows: "Tr." for transcript, "GC Exh." for General Counsel's exhibit, and "R. Exh." for Respondent's exhibit. The post–hearing briefs are referenced as "GC Br." for the General Counsel's brief, and "R. Br." for Respondent's brief. Although I have included several citations in this decision to highlight particular facts or exhibits in the evidentiary record, I emphasize that my findings and conclusions are not based solely on those specific citations, but rather on my review and consideration of the entire record of the case.

[3] The General Counsel's June 23, 2026 unopposed motion to correct errors in the transcript is granted. Additionally, I hereby make the following additional transcript corrections: Tr. 139, line 4, "workout" should be "without"; Tr. 172, line 15, "will be" should be "moving"; Tr. 194, line 6 "score" should be "store."

Butler. Butler oversees seven stores and visits Respondent's facility about twice a week. Butler reports to Division Manager Glenna Stephenson, who oversees 38 stores. Stephenson visits Respondent's facility on occasion, depending on the store's needs. (Tr. 18–20, 23, 140, 162–163.) Respondent admits, and I find, that Blackburn, Butler, and Stephenson are supervisors within the meaning of Section 2(11) of the Act.

Respondent maintains a policy and procedure manual that details the responsibilities of the store manager and the shift manager. The manual states that the store manager and the shift manager are on call 24 hours a day, 7 days a week. It also states that the store manager is "totally responsible for the proper operation of the store" and is responsible for insuring that "store personnel are properly trained and supervised." The store manager's "personnel responsibilities" include the duty to "terminate or suspend store employees who commit clear cut violation of company rules." The shift manager serves as the store manager's assistant. (R. Exh. 4.)

The shift manager at Respondent's facility is Margetta Lafferty. Lafferty is not an alleged 2(11) supervisor.[4]

B. Saylor's Work Record and Schedule

Saylor was hired on August 6, 2024, to work as a full-time deli clerk reporting directly to Blackburn. As a deli clerk, Saylor was scheduled to work about 40 hours per week and was paid $11.20 per hour. She was responsible for preparing food for the deli, keeping the deli area clean, and interacting with customers. (Tr. 33–34, R. Exh. 1–2.)

In October 2024, Saylor received a performance review prepared by Blackburn. Saylor was evaluated on eight areas: job knowledge, communication, professional image, efficient use of resources, quality and quantity of work, interpersonal skills, safety and environment, and dependability. Saylor was rated as "exceeds expectations" on job knowledge and as "meets expectations" on all other areas. (Tr. 25, GC Exh. 12.) This is the only performance review in the record.

As reflected in the following table,[5] from January 27 until March 30, Saylor was regularly scheduled to work from 5 a.m. to 1 p.m. during the week. During this same time, Saylor was only scheduled to work over the weekend on eight occasions: six of such days were from 10 a.m. or 12 noon to 8 p.m. or 6 p.m., and she called off from work on three of those days—February 2 and 8, and March 1 (marked below*).

[4] At the hearing, the General Counsel amended the complaint, without objection, to withdraw the allegation that Lafferty is a 2(11) supervisor. (Tr. 8.)

[5] Blackburn prepares the work schedule the Thursday or Friday prior to the scheduled week. (Tr. 196.) The relevant work schedules are found in GC Exh. 2 and R. Exh. 2, which are identical exhibits except that Respondent's exhibit is Bates stamped. The work schedules indicate scheduled hours in black ink and actual hours worked in red ink.

Week	Weekdays	Hours scheduled	Weekend	Hours scheduled
1/27/25–2/2/25	Wed.–Fri.	5 a.m.–1 p.m.	Sat. Sun.	10 a.m.–8 p.m. 10 a.m.–6 p.m.*
2/3/25 –2/9/25	Wed.–Fri.	5 a.m.–1 p.m.	Sat., Sun.	12 p.m.–8 p.m.*
2/10/25–2/16/25	Mon.–Fri.	5 a.m.–1 p.m.		
2/17/25–2/23/25	Wed.–Fri.	5 a.m.–1 p.m.	Sat., Sun.	6 a.m.–2 p.m.
2/24/25–3/2/25	Wed.–Fri.	6 a.m.–2 p.m.	Sat., Sun.	12 p.m.–8 p.m.*
3/3/25–3/9/25	Mon.–Fri.	5 a.m.–1 p.m.		
3/10/25–3/16/25	Mon.–Thur.	5 a.m.–1 p.m.		
3/17/25–3/23/25	Mon.–Thur.	5 a.m.–1 p.m.		
3/24/25–3/30/25	Mon.–Thur.	5 a.m.–1 p.m.		

Store Manager Blackburn testified that she worked "quite a bit" with Saylor on accommodating her schedule. Blackburn stated that she would ask Saylor what days she needed off and prepared Saylor's work schedule taking into consideration things like Saylor's requests to have time off to be at her children's basketball practices and games, or if Saylor had to be home in the evenings with her children. According to Blackburn, at some point, Saylor requested not to be scheduled to work on weekends, and Blackburn granted her request. Blackburn also allowed Saylor to come in early to work so she could leave earlier. (Tr. 183, 190–191, 198–199, 203.)

District Supervisor Butler testified that Blackburn went "out of her way to accommodate every person in the store" and described her as being "a little too lenient sometimes . . . giving people too much time off or certain schedules." (Tr. 164–165.)

Respondent's work schedule reflects that during the weeks of March 17, 24, and 31, although Saylor was scheduled to work from 5 a.m. to 1 p.m., Monday through Friday, she came into work on most days at close to 4 a.m. and/or 4:30 a.m. and left between 12 noon and 12:30 p.m. (R. Exh. 2.) Saylor explained that she came in early to help an older deli employee, Mona Bennett, who was scheduled to work from 4 a.m. to noon. Saylor helped Bennett unload food delivery trucks and restock food in the freezers. (Tr. 94 and 96.)

C. Saylor Gets a Second Job to Supplement Her Pay

In late March, Saylor's partner was laid off from his job. Concerned about her ability to pay bills and support her children, Saylor decided to seek employment with higher pay. On March 27, Saylor notified Blackburn that she had secured another job offering $15 an hour and submitted her 2-weeks' notice. Blackburn instructed Saylor to finish working the week and assured her that she need not work the full 2 weeks of her notice period. The following day, Saylor received an offer for a full-time position from Boomer's Café (Boomer's), a gambling hall located in Ripley, West Virginia, near Respondent's facility. Boomer's offered Saylor a job working the 5 p.m. to 1 a.m. shift paying $7.50 an hour. On March 28, Saylor returned to speak with Blackburn and informed her about the offer from Boomer's. Saylor told Blackburn that she knew Blackburn did not want her to leave, Saylor liked working at Go–Mart and asked if she could be scheduled to work mornings, so she could accept the evening job at Boomer's and work the two jobs. Blackburn agreed to accommodate Saylor's request to work the morning shift. Saylor accepted the position at Boomer's and began training there on March 31, working from 12 noon to 2 p.m. That same day, Saylor worked at Respondent's from 3:59 a.m. to 12:05 p.m. (Tr. 36–42, R. Exhs. 2–3.)

D. Respondent Offers Saylor A Promotion and Pay Raise

On Tuesday, April 1, Division Manager Stephenson and District Supervisor Butler visited Respondent's facility for a special lottery event. Stephenson went to the deli counter and saw Saylor working there. Stephenson noted that Saylor "was making things pretty and nice." At some point, Stephenson started helping with food preparation and Saylor talked to her about the fact that things were not ready in the kitchen and that another deli worker, Te'a Webb, was always late. Saylor shared with Stephenson that she was frustrated with having to "pick up the slack" on top of holding a second job since her partner had lost his job. (Tr. 42–44, 51, 96–97, 142–143.)

Later in the day, Stephenson and Butler called Saylor to the side. Stephenson asked Saylor if she would be interested in taking on the role of deli manager.[6] Saylor asked Stephenson if she could continue working at Boomer's, her other job. Stephenson explained that the Deli Manager position would require Saylor to be on call at all times, meaning she would not be able to maintain a second job. Stephenson asked Saylor "what would it take" for Saylor to give up her second job. Saylor said, how does $15 an hour sound. Stephenson asked Saylor, are you sure that's all you want and Saylor said yes. Saylor told Stephenson she was okay with "dropping Boomer's" and accept the deli manager position. Stephenson told Saylor that they would take Saylor to Respondent's warehouse the following week to pick up necessary supplies for the kitchen. Stephenson also told Saylor that she would get back to Saylor about the deli manager job by Friday. (Tr. 44–45, 97–99, 143–144.)[7]

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[6] At the hearing, witnesses used the titles "deli manager" and "kitchen manager" interchangeably when discussing this position.

[7] According to Stephenson, when Saylor asked for $15 an hour, she told Saylor she could probably get her $13 an hour but "I'm not sure about the $15." Stephenson testified that as she explained to Saylor the specific responsibilities of the deli manager's job, including that she would have to come in to work anytime someone called off, she felt Saylor "kind of pulled back." Stephenson asserts that Saylor told her she would like to speak with her husband, and Stephenson told her to "go home . . . think about it. You talk about it with your husband, and then we can have a discussion at a later date when you get back with Fonda [Butler] about the pay rate." Stephenson stated that she would be on vacation the following week, so she told Saylor to "get back to [Butler] the following Monday." (Tr. 142–149.) Butler testified that Stephenson offered Saylor the deli manager position for "$13 to $15" an hour, and that Saylor said that she had to discuss the promotion with her partner and would get back to her or Stephenson with a decision by Monday. (Tr. 166, 177–178.) As will be explained fully in the credibility section, I credit Saylor's testimony over Stephenson's and Butler's regarding this conversation.

E. Saylor Discusses Promotion and Wage Increase Offer With Other Employees

After the conversation with Stephenson, Saylor went back to the deli counter to continue working with deli clerk Bennett. Saylor testified that Bennett asked her if she had gotten in trouble, and Saylor told her that she had been offered a promotion. Saylor told Bennet she was offered $15 an hour and asked Bennet if she thought that was fair. Bennet told her that $15 an hour seemed fair. About thirty minutes later, Saylor talked to shift manager Lafferty. Saylor told Lafferty that she had just been offered the deli manager job and asked Lafferty if she thought $15 an hour was fair. According to Saylor, Lafferty told her that she did not make $15 an hour, that she only made $14-something an hour, and became upset. Saylor told Lafferty that she could ask to be paid $15 an hour. Neither Bennett nor Lafferty testified. (Tr. 46–48, 101, 108.)

F. Respondent Informs Saylor of Rule Prohibiting Employees From Discussing Wages, Admonishes Her, and Asks Her Who Else She Talked To

At some point after Saylor talked to Lafferty, Lafferty went to talk to Store Manager Blackburn. According to Blackburn, Lafferty "was upset that [Saylor] . . . was saying that she had been offered. . . the deli manager position, and she would be making $15 an hour, which upset [Lafferty] who had been there [sic] and was not making that amount." Blackburn stated that Lafferty was upset that Saylor would "be making more money than her." Blackburn decided to meet with Saylor to "get the conflict under control" because she "did not want my assistant manager walking out on me over-over this." (Tr. 184–187.)

On April 2, Blackburn called Saylor into her office to address Lafferty's complaint. Lafferty was also present. Blackburn told Saylor that Lafferty was there to serve as Blackburn's witness. According to Blackburn, "I needed Margetta [Lafferty] as my witness. I don't talk to anybody alone. If there's something going on, I always have a witness in the room with me." (Tr. 48, 186, 188.)

Blackburn asked Saylor to have a seat and began the meeting by explaining that she was aware Saylor had been offered a promotion, and that Saylor had told Lafferty about the promotion and had discussed her pay. Saylor acknowledged that the promotion would not be finalized until the upcoming Friday. Blackburn stated to Saylor that Lafferty was upset about the pay discrepancy between her pay and Saylor's pay. Blackburn proceeded to inform Saylor that the company had a policy against employees discussing wages with other employees. She explained that discussing wages amongst employees can cause "a hostile environment," cause employees to become disgruntled and stop working as a team. At that point, Blackburn asked Saylor who else she had spoken to about her wage increase. Saylor did not answer. Blackburn then told Saylor that she would find out either way and would "go around and question the other employees." Additionally, Blackburn relayed that District Manager Stephenson had informed her that Saylor had complained about T'ea Webb's lateness.[8] Blackburn admonished Saylor, stating that she had no right to bring up the fact that other employees are late. Blackburn ended the conversation informing Saylor to

[8] Webb is a deli worker who is also the girlfriend of Blackburn's son. (Tr. 52, GC Exh. 4.)

"take everything I said as a warning and go back to work." The entire conversation lasted approximately 15 to 25 minutes. (Tr. 49–53, 186–187.)[9]

After her meeting with Blackburn, Saylor returned to the deli counter feeling very upset. She immediately shared with deli clerk Bennett the details of her meeting with Blackburn, warning her that Blackburn might approach her to ask whether Saylor had discussed wages with her.

At some later time, Saylor went to Respondent's office to examine the employee handbook. Upon review, she found no written rule prohibiting employees from discussing wages. (Tr. 53–54.)

On direct examination, Blackburn was asked "you admit, you know, now that you shouldn't tell an employee not to discuss wages in any way, right?" Blackburn said yes and admitted that she only learned "that" after Respondent was served "the papers" related to this matter. Similarly, Division Manager Stephenson testified that she was made aware of employees' right to discuss wages after the charge was filed in this case and that prior to the charge, she thought it was in the "best interest that people don't discuss" wages with each other. (Tr. 154–155.) Likewise, District Supervisor Butler testified that she was made aware of employees' right to discuss wages after the charge in this case was filed. (Tr. 170–171.)

G. Respondent Starts Scheduling Saylor to Work on Evenings, Promotion Is Never Mentioned Again, and Saylor Resigns

On April 4, Blackburn brought the following week's work schedule (week beginning on April 7) over to Saylor and informed her that she was scheduling her to work a couple of nights. Saylor told Blackburn that she could not work those evenings because she was already scheduled to work at Boomer's. Blackburn said, "can't work weekends, can't work nights, go figure" in front of customers and other employees. The work schedule for the week of April 7 reflects that Blackburn kept Saylor working her regular hours from 5 a.m. to 1 p.m. (Tr. 57, 59–60, GC Exh. 2, 5.) However, the schedule also indicates that Saylor was originally scheduled to work from 12 p.m. to 8 p.m., on Monday and Tuesday of that week. (GC Exh. 1, R. Exh. 2.)

On April 9, Saylor texted her supervisor at Boomer's stating that Blackburn "fucked me over after telling me she would work with me to keep mornings. . . has me working night shift 12–8 Monday and Tuesday this coming week." (GC Exhs. 5–6.) Saylor went to talk to Blackburn directly and explained that she would not be able to work the night shift on those days. Blackburn appeared upset but did not say anything. However, Blackburn adjusted Saylor's schedule and reverted it to her regular hours from 5 a.m. to 1 p.m. (Tr. 60–61.) The record shows that Saylor

[9] Respondent called Blackburn to testify. In response to leading questions, Blackburn denied she threatened or disciplined Saylor in any way. Notably, Blackburn was not questioned about whether: (1) she informed Saylor that the company had a policy against discussing wages with other employees; (2) she asked Saylor who else she had talked to about her wages, and when Saylor did not reply, told Saylor she would find out anyway, or (3) she informed Saylor to take everything she said as a warning. (Tr. 186–188.) As discussed more fully in the credibility section, I credit Saylor's account of her conversation with Blackburn.

worked from 4:36 a.m. to 12:09 p.m. on April 14 and called off from work on April 15. (GC Exh. 2.) Saylor worked at Boomer's on April 14 and 15 from 6 p.m. to 1 a.m. (R. Exh. 3.)

On another occasion in mid–April, Saylor informed Blackburn that she was making it harder for Saylor to work two jobs. Blackburn responded that Saylor only being available in the mornings was affecting Blackburn's pay, and that was all that she cared about, her pay. (Tr. 62.)

Blackburn was not questioned about, nor did she deny having the above conversations with Saylor on April 4, 9 and mid–April.

Blackburn scheduled Saylor to work on Wednesday, April 23, from 12 noon to 8 p.m. The record reflects that Saylor worked from 11:54 p.m. until 7:14 p.m. that day. (GC Exh. 2.) Saylor did not work at Boomer's on April 23. (R. Exh. 3.)

On April 25, Blackburn sent a text to Saylor asking, "do you know what days you will need off next week" and Saylor replied "honestly, if you're good with it, I'd like to drop to part–time. Like 3 to 4 days a week for now. But I know for sure I'm off [from Boomer's] Wednesday again." Blackburn did not reply. (GC Exh. 7.) Saylor testified that by April 25, she was suffering from lack of sleep due to working the two jobs, she was stressing out about Blackburn scheduling her to work on evenings she was supposed to work at Boomer's, and Boomer's having to rearrange her schedule on days Blackburn would not keep her on the morning shift, and she thought that requesting to work part-time would "appease" Blackburn. (Tr. 64–65.)

On April 26, Saylor asked deli clerk Webb to send her a picture of the work schedule for the next week. Saylor got a text with the work schedule that showed she was scheduled to work three days—on Thursday and Friday, May 1 and 2, from 5 a.m. to 1 p.m. and on Saturday, May 3, from 12 p.m. to 8 p.m. (GC Exh. 8 (a)–(b).) Saylor sent a text to Blackburn stating that she could not work on Saturday unless it was in the morning or if she could leave by 4 p.m., and that the only day she could work evenings for sure was Wednesday. (GC Exh. 9.) Blackburn did not reply. However, the record shows that Saylor worked on Wednesday, April 30, from 11:35 a.m. to 8 p.m., and was off from work on Saturday, May 3. (GC Exh. 2.) Saylor worked at Boomer's on Saturday from 6 p.m. to 1 a.m. and was off on Wednesday. (R. Exh. 6.) Blackburn testified that she allowed Saylor to change her work hours to accommodate her request to work Wednesday and not Saturday. (GC Exh. 2, Tr. 198.)

For the week starting on May 5, Blackburn scheduled Saylor to work 4 days. Specifically, Saylor was assigned to work on Tuesday and Wednesday May 6 and 7, from 10 a.m. to 4 p.m., and on Thursday and Friday, May 8 and 9, from 5 a.m. to 1 p.m. However, the actual hours Saylor worked differed from those posted on the schedule. On May 6, Saylor worked from 9:44 a.m. to 1:21 p.m., and on May 7, from 6:47 a.m. to 12:27 p.m. On May 8, she worked from 4:44 a.m. to 7:48 a.m., and on May 9, from 4:43 a.m. to 12:02 p.m. Saylor worked at Boomer's from 6 p.m. to 1 a.m. on May 5 and 6, and from 5 p.m. to 10 p.m. on Wednesday, May 7. (GC Exh. 2 and R. Exh 3.) There is no evidence in the record indicating any text messages or any communication between Saylor and Blackburn regarding Saylor being scheduled from 10 a.m. to 4 p.m., or whether she would or could work different hours than those scheduled.

For the week starting on May 12, Blackburn scheduled Saylor to work 5 days—May 12, 13, and 14, from 10 a.m. to 4 p.m. and May 15 and 16, from 5 a.m. to 1 p.m. The record shows that Saylor worked on May 12, from 5:47 a.m. to 12:05 p.m., on May 13, from 5:48 a.m. to 12:06 p.m., on May 14, from 6:59 a.m. to 12:11 p.m., and on May 15 and 16, from roughly 5 a.m. to 12 p.m. (GC Exh. 2.) Neither Saylor nor Blackburn testified regarding whether they discussed Saylor working different hours than those posted on the schedule that week.

The chart below summarizes the above facts regarding Saylor's work schedule from March 31 through May 18.

Week	**Weekdays**	**Hours scheduled**
3/31/25–4/6/25	Mon.–Fri.	5 a.m.–1 p.m.
4/7/24–4/13/25	Mon.–Fri.	5 a.m.–1 p.m.
4/14/25–4/20/25	Mon.–Fri.	5 a.m.–1 p.m.
4/21/25–4/26/25	Mon.–Tues. Wed. Thur.–Fri.	5 a.m.–1 p.m. 12 p.m.–8 p.m. 4 a.m.–12 p.m.
4/28/25–5/4/25	Wed. Thur.– Fri.	12 p.m.–8 p.m. 5 a.m.–1 p.m.
5/5/25–5/11/25	Tues.–Wed. Thur.–Fri.	10 a.m.–4 p.m. 5 a.m.–1 p.m.
5/12/25– 5/18/25	Mon.–Wed. Thurs–Fri.	10 a.m.–4 p.m. 5 a.m.–1 p.m.

Blackburn testified generally that she worked with Saylor on accommodating her schedule, including Saylor's requests to work mornings so Saylor could work at Boomer's in the evenings. Blackburn stated that at first Saylor was "a very good employee" but that towards the end of her employment, Saylor had to leave because she was working her other job "kind of left me hanging a few times but I worked with her . . . I would ask her what day she needed off, what she could work." (Tr. 183, 191.) However, Blackburn did not provide any explanation or rationale as to why: (1) she scheduled Saylor to work the evening shift on April 23 or 30; (2) why she scheduled Saylor to work 5 days a week during the week starting May 12, after Saylor had requested part-time work; or (3) why she scheduled Saylor to a 10 a.m. to 4 p.m. shift on May 5, 6, 12, 13, and 14.

The record has 19 weeks of work schedules, from January 27 through June 8. Between Monday through Friday, deli workers were consistently scheduled to work one of the following shifts: 4 a.m. to 12 p.m., 5 a.m. to 1 p.m., 6 a.m. to 2 p.m., 12 p.m. to 8 p.m., or 12 p.m. to 6 p.m. No other deli worker aside from Saylor was scheduled to work from 10 a.m. to 4 p.m. during the workweek during this period except for one instance on February 14. (GC Exh. 2.) On Wednesdays, Blackburn consistently scheduled two deli clerks to work the 12 p.m. to 8 p.m. shift —Mary or Te'a and Regina. On the two Wednesdays that Blackburn scheduled Saylor to work the 12 p.m. to 8 p.m. shift, she gave Te'a Webb the morning shift. (R. Exh. 2.)

Concerning the promotion to deli manager, Saylor never heard back from either Division Manager Stephenson or District Supervisor Butler. (Tr. 70.) On May 12, Saylor texted Butler

"Have y'all decided anything on management yet? I keep meaning to ask but I keep forgetting with everything going on right now." (Tr. 70, GC Exh. 10.) Butler did not reply. Butler testified that she did not receive this text despite the message reflecting two checkmarks under the text, which typically indicates that the message was sent and received. (Tr. 178.) Both Stephenson and Butler testified that they did not reach out to Saylor about the promotion because Saylor was supposed to get back to Butler the Monday after they spoke, and she never did. (Tr. 145, 150, 166).

On May 14, Saylor came to work and informed Blackburn that her partner had gotten a job, that she could not keep up with having two jobs, and that she "would go ahead and drop one job." Saylor asked Blackburn if she should put in a 2-weeks' notice or a 1-week notice, and Blackburn told her she should just work out the rest of the week. Saylor asked Blackburn if she would be eligible to be rehired, and Blackburn told her she did not see why not. Saylor's last day working for Respondent was May 16. (Tr. 71–72, 105, 189, 200.)

At the hearing, Saylor testified that she had intended to keep both jobs "to build our savings back up" but that she resigned because of the way Blackburn was treating her, altering her schedule and causing conflicts with her second job. (Tr. 72.) Saylor still worked at Boomer's as of the date of the hearing and has not held a second job since leaving Respondent's employment. (Tr. 117.)

H. Respondent's Post–Termination Actions

On May 16, Saylor filed the unfair labor practice charge related to this matter.

On May 19, Blackburn prepared a handwritten statement concerning Saylor's employment. In pertinent part, Blackburn wrote that Saylor "caused a lot of drama and chaos while working here. Other employees did not like working with her." Blackburn then wrote that on April 1, Saylor spoke to Stephenson and "claims was offered Deli Manager. She proceeded to tell other employees (myself and Margetta Lafferty) that she was going to make $15 hr. I had 3 employees threaten to walk out including my asst. [sic] manager. She [Saylor] is the one that [sic] talking about wages. I have never in my time as manager or before have heard any other employee discuss wages." Blackburn also wrote that regarding her "being related to any employees here . . . this is not true. . . . Te'a Webb is with my son but I do not show her any special treatment. I gave [Saylor] Te'a's day shifts because M. Saylor couldn't work 2 shift. Always excuses. I worked with her on the schedule as much as I could. Truthfully I worked to [sic] hard to make her happy. So now she wants to be a trouble maker. I stand by story 100 percent. I have no reason to lie and lose my job." (Tr. 27, GC Exh. 4.)

On May 30, District Supervisor Butler prepared Saylor's employee change of status report and marked Saylor as ineligible to be rehired. She wrote in the comments section that Saylor "quit with notice, no rehire . . . caused a lot of drama/ called off a lot." (Tr. 23, 153, GC Exh. 3.) Butler was asked on direct examination what she meant when she wrote that Saylor caused a lot of drama. Butler responded, "the drama is just the uproar that was caused in the store after the fact, after all this happened." Butler was then asked if by referring to "drama" she was referring to Saylor discussing wages. Butler replied, "Pretty much. And it caused an uproar in the store." On cross-examination, Butler was asked again if she was referring to Saylor discussing wages when she wrote that Saylor caused a lot of drama. Butler replied, "Yeah. This, I did because of how she left."

Again, Butler was asked, "and that was about discussing wages?" Butler replied, "This one, yes. Because it upset coworkers again." The General Counsel then asked Butler if that was why she marked Saylor as "no rehire" and Butler replied, yes. (Tr. 168–169, 177.)

Respondent moved into the record five other employee change of status reports from 2025, prepared by Butler, where she indicated that the former employees were not eligible for rehire. On all five reports Butler added in the comments section that the employees had given "no notice" and wrote "drama." (R. Exh. 7.)

Respondent's work schedules reflect that between January 27 and May 16, Saylor called off from work six times. During this same time, three other deli workers called off from work five, eight, and nine times, respectively. These three deli workers were still employed by Respondent as of June 8, the last work schedule in the record. (R. Exh. 2.)

DISCUSSION AND ANALYSIS

A. Credibility Findings

I found Saylor to be a very credible witness. She was straightforward in her testimony, and her testimony and demeanor were consistent on direct and cross. I found Blackburn, Stephenson and Butler to be partially credible. Their testimony was contradicted by documentary evidence in certain instances, and in other instances, was illogical, inconsistent, or incredible. Where any testimony conflicts, I credit Saylor because her testimony was the most detailed and consistent.[10]

Saylor testified that she was offered the deli manager position at a wage rate of $15 per hour. This testimony was corroborated by Blackburn, who both testified and documented in her May 19 handwritten statement, that Saylor informed Lafferty about the promotion and corresponding wage increase, and that the $15 per hour wage rate was the reason that Lafferty was upset. Stephenson acknowledged that the deli manager position was a step over the shift manager position warranting a higher rate of pay. Stephenson also indicated awareness that Saylor maintained a second job for financial reasons and as such, she recognized the need to offer Saylor enough of a wage increase for Saylor to be able to resign from her second job. Butler testified that Saylor was offered between $13 and $15 per hour. Given that Saylor's wage rate as a deli clerk was $11.20 per hour and her pay at Boomer's was $7.50 per hour, I find it is more credible that

[10] In making credibility determinations, all relevant factors have been considered, including the context of the witnesses' testimony, their interests and demeanor, whether their testimony is corroborated or consistent with the documentary evidence and/or the established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole. Credibility findings need not be all-or-nothing—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. See *Daikichi Sushi*, 335 NLRB 622, 623 (2001), enfd. 56 Fed. Appx. 516 (D.C. Cir. 2003); *Jerry Ryce Builders*, 352 NLRB 1262 fn. 2 (2008), citing *NLRB v. Universal Camera Corp*., 179 F.2d 749, 754 (2d Cir. 1950), reversed on other grounds 340 U.S. 474 (1951).

Saylor was offered $15 per hour (not $13) to entice her to resign from her second job and accept the deli manager position.

Saylor credibly testified that she accepted the deli manager offer and that she was told that either Stephenson or Butler would contact her by the following Friday to finalize the details of her promotion. I do not credit Stephenson's and Butler's testimonies that Saylor chose to discuss the promotion with her partner instead of accepting it or that she was instructed to reach out to Butler by the following Monday. Saylor was facing significant pressure managing two full-time jobs. I do not find it credible that Saylor would have delayed accepting a promotion that would have allowed her to resign from her second (much lower) paying job. Saylor's actions, including informing other employees about her promotion and the associated pay raise, are consistent with her understanding that she had accepted the promotion. Moreover, Saylor discussed the promotion during her April 2 closed–door meeting with Blackburn. Neither Blackburn nor Saylor testified that the promotion was contingent upon her discussing it with her partner or contacting Butler. Saylor was aware that the promotion was not effective immediately, which explains why Saylor did not resign from her job at Boomer's right away. Additionally, Saylor sent a text message to Butler inquiring whether a decision had been made regarding the management position, underscoring that she was waiting for Stephenson or Butler to follow up with her, rather than the other way around.

I also credit Saylor's account over Blackburn's concerning the April 2 closed-door meeting. Blackburn's testimony lacked consistency and logic. For instance, Respondent admits in its answer that during the April 2 meeting, Blackburn orally promulgated a rule prohibiting employees from discussing wages. Additionally, Blackburn acknowledged she "did not want my assistant manager walking out on me," in reference to Lafferty being upset that Saylor was offered a wage rate that was higher than hers. Blackburn also acknowledged that the goal of the April 2 meeting was to get this conflict "under control." Yet, in response to leading questions, Blackburn testified that she did not discuss "pay at all" during the meeting. Under these circumstances, I find it incredible that pay was not discussed.

Additionally, inconsistencies between Blackburn's testimony and her May 19 handwritten statement further undermine her credibility. Blackburn wrote that Saylor told "other employees (myself and Margetta Lafferty)" about her promotion and $15 per hour offer. However, she testified that she only found out about Saylor's promotion from Lafferty, not directly from Saylor. She also wrote that "3 employees threatened to walk out" over Saylor's disclosure. However, she testified that she was afraid Lafferty, alone, would "walk out" over the pay discrepancy. In her statement, Blackburn also addressed an apparent assertion that she was "related to any employees" stating that deli clerk Te'a Webb was dating her son but that she did not show Webb any special treatment. Then, Blackburn wrote that she gave Webb's day shifts to Saylor, apparently to show that she did not give special treatment to Webb. However, Respondent's work schedules do not corroborate this claim, and in fact, the schedules show Blackburn moving Webb into the morning shift when she scheduled Saylor to the afternoons. Based on the foregoing, I find Blackburn an unreliable witness.

In addition, I do not credit Blackburn's testimony that she neither disciplined Saylor on April 2, nor had the authority to do so. Blackburn is an admitted statutory supervisor. Respondent's manual clearly states that the store manager is responsible for terminating or suspending an employee that violates company rules. The manual further states that the store manager need only consult her supervisor over "questionable violations by an employee." Thus, this policy directly supports finding that Blackburn, as store manager, had the authority to discipline Saylor. Blackburn's actions further demonstrate her authority to discipline. She called Saylor to a closed-door meeting and deliberately ensured that she had a "witness" present during the meeting. She then admittedly informed Saylor that she was in violation of a company rule prohibiting the discussion of wages. The closed-door meeting, the presence of a witness, and the admonishment of Saylor for violating a rule Blackburn understood to be valid, all indicate that Blackburn had the authority to discipline employees, consistent with Respondent's manual. Additionally, in her May 19 handwritten statement, Blackburn appears to defend her actions by explaining that Saylor was "the one that [sic] talking about wages" and that this was the first time since being a manager that Blackburn had heard of any employee discussing wages. Finally, I do not credit Stephenson's and Butler's self-serving testimonies concerning Blackburn not having authority to discipline employees. Their testimonies were not substantiated by any factual examples demonstrating that employees at the store were disciplined by anyone other than Blackburn. Moreover, Butler's testimony that Blackburn could not discipline employees while simultaneously characterizing Blackburn as "too lenient" with employees, is inherently contradictory and illogical.

B. Did Saylor Engage In Protected Concerted Activities?

Section 8(a)(1) of the Act provides that it is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act. The rights guaranteed in Section 7 include the right "to engage in . . . concerted activities for the purpose of . . . mutual aid or protection." 29 U.S.C. § 158(a)(1).

In *Myers Industries (Myers 1)*, 268 NLRB 493 (1984), and in *Myers Industries (Myers II)* 281 NLRB 882 (1986), the Board held that "concerted activities" protected by Section 7 are those "engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself." However, it is well established that the activities of a single employee in enlisting the support of his fellow employees for their mutual aid and protection is as much concerted activity as is ordinary group activity. *Whittaker Corp.*, 289 NLRB 933, 933 (1988), quoting *Owens–Corning Fiberglas Corp. v. NLRB*, 407 F.2d 1357, 1365 (4th Cir. 1969). The Board in both *Meyers* cases emphasized that "the question of whether an employee has engaged in concerted activity is a factual one based on the totality of the record evidence." 281 NLRB at 886; 268 NLRB at 497. Furthermore, the object of inducing group action need not be express. For instance, "[i]t is obvious that higher wages are a frequent objective of organizational activity, and discussions about wages are necessary to further that goal." *Whittaker Corp.*, supra at 933, quoting *Jeannette Corp. v. NLRB*, 532 F.2d 916, 919 (3d Cir. 1976). "[D]issatisfaction due to low wages is the grist on which concerted activity feeds. Discord generated by what employees view as unjustified wage differentials also provides the sinew for persistent concerted action." *Jeannette Corp.*, Id.

Particularly regarding wages, the Board and the courts agree that "[f]ew topics are of such immediate concern to employees as the level of their wages." *Eastex, Inc. v. NLRB*, 437 U.S. 556, 569 (1978). The Board has long held that wage discussions among employees are inherently concerted and, as such, are protected, regardless of whether they are engaged in with the express object of inducing group action. See, e.g., *North Mountain Foothills Apartments, LLC*, 373 NLRB No. 26 (2024), enfd. 157 F.4th 1089 (9th Cir. 2025) (employee engaged in protected concerted activities when he discussed his compensation package with other employees where employer believed that discussion was a way to "rile up the work environment"); *Alternative Energy Applications, Inc.*, 361 NLRB 1203, 1206 fn. 10 (2014) (employee engaged in protected concerted activities when he complained that his pay was too low to coworkers); *Trayco of S.C. Inc.*, 297 NLRB 630, 634–635 (1990), enf. denied mem. 927 F.2d 597 (4th Cir. 1991) (contemplation of group action is not required when employee discussion concerns wages). See, also, *Hoodview Vending*, 359 NLRB 355 (2012), reaffd. 362 NLRB 690 (2015); *Automatic Screw Products Co.*, 306 NLRB 1072, 1072 (1992), enfd. mem. 977 F.2d 582 (6th Cir. 1992); *Scientific-Atlanta, Inc.*, 278 NLRB 622, 624–625 (1986). Wage discussions are inherently concerted and protected because wages are a "vital term and condition of employment" and "probably the most critical element in employment." *Triana Industries, Inc.*, 245 NLRB 1258, 1258 (1979), and *Aroostook County Regional Ophthalmology Center*, 317 NLRB 218, 220 (1995), enfd. in part on other grounds 81 F.3d 209, 214 (D.C. Cir. 1996).

Based on the above Board precedent, I find that Saylor's wage discussion with Shift Manager Lafferty was inherently concerted and protected. It is undisputed that Saylor discussed with Lafferty Respondent's offer to promote her to deli manager and the accompanying wage increase. Furthermore, Saylor wanted to know if Lafferty thought the $15 per hour offer was fair. Although Lafferty did not testify, and both Saylor's and Blackburn's testimony about what exactly Lafferty said to them is hearsay, both identically testified that Lafferty became upset when she learned from Saylor that Saylor was offered the deli manager position for $15 per hour because Lafferty made less than $15 per hour. Additionally, both testified that the wage disparity with Saylor resulted in Lafferty complaining to management.[11] Thus, this testimony is uncontroverted. "An employee who asks for help from coworkers in addressing an issue with management does, indeed, act for the purpose of mutual aid and protection, even where the issue appears to concern only the soliciting employee, the soliciting employee would receive the most immediate benefit from a favorable resolution of the issue, and the soliciting employee does not make explicit the

[11] Respondent asserts that Saylor's testimony that she also spoke with deli clerk Mona Bennett is hearsay, and that I should not give any weight to this testimony because the General Counsel failed to call Bennett to testify. There is no evidence in the record concerning whether Bennett is still employed by Respondent or whether Respondent knew that Saylor discussed her wages with Bennett. I am therefore not drawing an adverse inference against the General Counsel for failing to call Bennett. Also, since there is no evidence of Respondent's knowledge about Saylor discussing her wages with Bennett, I have given little weight to Saylor's testimony in this regard. On the other hand, the evidence established that Shift Manager Lafferty was still employed by Respondent at the time of the hearing and that Lafferty served as Respondent's witness when Saylor was admonished on April 2 for discussing her wages. Respondent failed to call Lafferty as a witness without explanation. I, therefore, draw an adverse inference that Lafferty would not have corroborated Blackburn's testimony that Lafferty supposedly told Blackburn she thought Saylor was "bragging." I have partially credited Blackburn's testimony where it corroborates Saylor's testimony regarding Lafferty being upset about their pay disparity.

employees' mutuality of interests." *Fresh & Easy Neighborhood Market, Inc*., 361 NLRB 151, 155 (2014).

Respondent argues that Saylor's discussion with Lafferty was not protected concerted activity because she was only concerned about herself. (R. Br. at 14.) It is well established that an employee may act partly from selfish motivations and still be engaged in concerted activity. *Fresh & Easy*, 361 NLRB at 154. Further, employees do not have to combine their efforts "in any particular way" for their actions to be concerted. Id. at 155. Communications among employees about wages and other employment conditions are inherently concerted "even if only one employee is the speaker while the other is merely a listener." *Belle of Sioux City, L.P.*, 333 NLRB 98, 101 (2001). Here, Saylor did not just inform Lafferty about her promotion and wage increase but was enlisting her assistance regarding Respondent's wage increase offer. Saylor sought advice from Lafferty about whether the $15 per hour was a fair offer, especially in comparison with Lafferty who as shift manager had the most similar position to the deli manager job. Undoubtedly, Saylor would have asked management for a higher wage rate if Lafferty had informed Saylor she was making more than the $15 per hour offer. However, since Lafferty was making less, Lafferty reacted with anger and Saylor suggested that Lafferty request a wage increase to $15 an hour. Their discussion resulted in Lafferty complaining to management about the wage disparity. "[E]mployee discussions in which advice about future action is sought or offered constitute concerted activity." *UniQue Personnel Consultants*, 364 NLRB 1628, 1630 (2016). The concerted nature of an employee's request for assistance does not turn on the solicited employees' response to the request. Id. citing *Fresh & Easy*, supra. Accordingly, Saylor's discussion with Lafferty was concerted.

Additionally, the evidence established that Respondent believed that Saylor's actions were protected concerted activities. Indisputably, Lafferty's complaint about the wage disparity resulted in Blackburn admonishing Saylor. Blackburn specifically informed Saylor that discussing wages can cause "a hostile environment" and cause employees to become "disgruntled." Blackburn also evidently wanted to shut down any additional wage discussions as demonstrated by her questioning Saylor about who else Saylor had talked to about wages. Both Blackburn and District Supervisor Butler believed that Saylor's action in discussing wages with her coworkers caused "drama" in the workplace, so much so that it warranted marking Saylor as ineligible for rehire. Moreover, at the hearing Butler described the impact of Saylor discussing her wages with others as causing an "uproar in the store." See *North Mountain Foothills*, supra (the employer's owner's testimony that she believed employee's compensation discussions were "being used as a way to rile up the work environment" established that employer believed employee's actions of discussing his compensation were protected concerted activities); *Lou's Transport, Inc.*, 361 NLRB 1446, 1447 (2014) (the operations manager's testimony that he believed an employee's actions were "stirring up the crowd" established that the respondent believed them to be protected concerted activities), enfd. 644 Fed.Appx 690 (6th Cir. 2016); *United States Service Industries*, 314 NLRB 30, 31 (1994) (vice president's statement that the respondent could not tolerate employee "stirring up the other workers" established its belief that she engaged in protected concerted activity), enfd. mem. per curiam 80 F.3d 558 (D.C. Cir. 1996).

Respondent argues that to find Saylor's discussion with Lafferty protected concerted activity would "render the definition of concerted activity meaningless" according to *Davis v. Benihana, Inc.,* 772 F. Supp. 3d 524, 540 (D.N.J. 2025), *Mushroom Transportation Co. v. NLRB*, 330 F.2d 683, 683 (3d Cir. 1964), *Krispy Kreme Doughnut Corp. v. N.L.R.B.*, 635 F.2d 304, 305 (4th Cir. 1980), and *TNT Logistics of N. Am., Inc. v. NLRB*, 413 F.3d 402, 407 (4th Cir. 2005). I find these cases inapposite. The district court in *Benihana* discussed concerted activity in the context of determining that an employee's claim that he was terminated for discussing wages with a coworker was preempted by the Act and could not proceed under New Jersey's Conscientious Employee Protection Act (CEPA). Thus, that case is wholly inapplicable to the facts of this case. In *Mushroom Transportation*, the United States Court of Appeals for the Third Circuit found that an employee did not engage in concerted activity when he advised coworkers regarding their rights (i.e., employee holiday pay, vacations, assignments) because no future group action was contemplated. This case is clearly distinguishable. Here, Saylor did not just inform Lafferty about the wage increase she was offered but she also asked Lafferty if she thought the wage offer was fair. The discussion that ensued resulted in Lafferty sharing her own wage rate, getting upset that Saylor was offered a higher wage rate than hers and going to management with this complaint. In *Krispy Kreme*, the Court of Appeals for the Fourth Circuit denied the enforcement of a Board order finding that the employee there was discharged for his careless attitude towards safety and "a preoccupation with filing claims for compensation" and not for his protected concerted activity. In *TNT Logistics*, the Court of Appeals for the Fourth Circuit again denied the enforcement of a Board order finding that the terminated employee was discharged based on his work record including a string of mishaps within his last 30 days of employment, with very limited evidence of protected concerted activity, and no evidence that the employer admonished the employee for any of it. In contrast, here Saylor was engaged in wage discussions, and Respondent admonished her for engaging in wage discussions—which the Board has consistently found to be inherently concerted and protected activity.

C. Did Respondent interrogate and threaten to interrogate employees about their protected concerted activities of discussing wages, and threaten employees with unspecified reprisals because they discussed wages?

The General Counsel alleges that on April 2, Respondent, by Store Manager Blackburn, interrogated Saylor about her protected concerted activities of discussing wages; threatened to interrogate other employees about Saylor's protected concerted activities of discussing wages; and threatened Saylor with unspecified reprisals because she engaged in protected concerted activities of discussing wages.

In determining whether the questioning of an employee constitutes unlawful interrogation, the Board applies a totality of the circumstances test, including whether the employee is an open and active union supporter; whether there is a history of hostility toward or discrimination against union activity; the nature of the information sought; the identity of the interrogator, i.e., his or her placement in the employer's hierarchy; whether the interrogated employee was an open or active union supporter at the time of the questioning; the place and method of the interrogation; and the truthfulness of the interrogated employee's reply. *Rossmore House*, 269 NLRB 1176, 1177 (1984), affd. sub nom. *Hotel Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). See also *Westwood Health Care Center*, 330 NLRB 935, 939 (2000). Another factor is whether adequate assurances against reprisal were provided. See *RHCG Safety Corp.*, 365 NLRB 852 (2017). These factors "are not to be mechanically applied;" they represent "some areas of inquiry" for consideration in evaluating an interrogation's legality. *Rossmore House*, supra, fn. 20. The core issue is whether the questioning would reasonably tend to interfere with, restrain, or coerce employees in the exercise of their statutory rights. This is an objective standard. *Multi-Aid Service*, 331 NLRB 1126 (2000), enfd. 255 F.3d 363 (7th Cir. 2001). Questioning an employee about how other employees knew how much he earned is an unlawful interrogation under the totality of circumstances test when the questioner is a high-ranking official and questions the employee without explanation and without assurances against reprisals. See *North Mountain Foothills Apartments, LLC*, supra, slip. op at 13.

The Board's standard for determining whether an unlawful threat was made is “whether the words could reasonably be construed as coercive, whether or not that is the only reasonable construction.” *Double D. Construction Group, Inc.*, 339 NLRB 303, 303–304 (2003). The intent of the speaker in making the statement and the actual effect the statement has on the listener are immaterial. *Smithers Tire*, 308 NLRB 72, 72 (1992); *Puritech Industries*, 246 NLRB 618, 622–623 (1979). The Board considers the totality of the circumstances in assessing the reasonable tendency of an ambiguous statement or a veiled threat to coerce. *Concepts & Designs*, 318 NLRB 948, 954–955 (1995). The Board has held that an employer violates Section 8(a)(1) by threatening employees with unspecified reprisals for engaging in protected activity. See, e.g., *Metro One Loss Prevention Services Group*, 356 NLRB 89, 89 (2010); *Alaska Ship & Drydock*, 340 NLRB 874, 878 (2003).

Applying the totality of the circumstances test here, I find that Blackburn violated Section 8(a)(1) as alleged. The evidence established that Blackburn called Saylor into her office on April 2, to confront her about discussing wages with Lafferty. Blackburn admitted that as of April 2, she did not know that employees cannot be prohibited from discussing their wages. Additionally, Respondent admits that at this meeting, Blackburn orally promulgated a rule prohibiting the discussion of wages. As discussed above, wage discussions among employees are inherently concerted and protected. Blackburn not only questioned Saylor about discussing wages with Lafferty but also asked her whether she discussed wages with anyone else. Thus, the nature of the information sought was undeniably employees’ protected concerted activity of discussing wages. Regarding the identity of the questioner, Blackburn is the highest-ranking official at this facility. As to the place and method of interrogation, Blackburn made it a point to meet Saylor in her office and inform her that Lafferty was there as Blackburn’s “witness.” Thus, Blackburn treated this meeting with substantial formality. Additionally, the object of the meeting was not only to admonish Saylor for breaking the “rule” against discussing wages but also to learn who else needed to be informed of this rule and possibly be admonished too. Regarding the truthfulness of the reply, Saylor did not feel comfortable telling Blackburn who else she had talked to about her promotion and wages, so she remained silent. Blackburn then stated that she would find out anyway by asking other employees.

Regarding evidence of hostility, Blackburn clearly was hostile towards Saylor’s protected concerted activity. Blackburn specifically informed Saylor to consider their April 2 discussion a warning. Hostility is also evident in Blackburn’s handwritten statement accusing Saylor of causing “a lot of drama and chaos,” when she was “the one that [sic] talking about wages” and “now she wants to be a troublemaker.” Aside from interrogating Saylor and threatening to interrogate other employees, Blackburn also coercively threatened Saylor and other employees with unspecified reprisals when she stated that she would find out who else Saylor had talked to and then told Saylor to consider their entire discussion a verbal warning.

Respondent argues that the allegation of unlawful interrogation should be dismissed because there is no evidence that Blackburn interrogated deli clerk Bennett. (R. Br. at 13, fn. 3.) This argument fails. The complaint explicitly alleges that Blackburn unlawfully interrogated employees in her office on April 2. Furthermore, the General Counsel made it abundantly clear at the hearing that the allegations of interrogation, threat to interrogate, and threat with unspecified reprisals pertain directly to Blackburn's April 2 meeting with Saylor, not with Bennett. Respondent's counsel crossed-examined Saylor about these specific allegations during the hearing, addressing both the interrogation and the threats. (Tr. 15, 110.) Thus, Respondent was fully informed that these allegations concern the April 2 meeting Blackburn held with Saylor and did not involve Bennett in any capacity.

Respondent also asserts that Blackburn did not threaten Saylor with any adverse action and further contends that Blackburn lacks the authority to take adverse action against employees. (R. Br. at 8.) I reject Respondent's generalized and self-serving assertion that Blackburn has no authority to take adverse action against employees. As fully discussed in the credibility section, I find there is ample evidence that supports finding that Blackburn has the authority to discipline employees. For the reasons discussed in the credibility section, I credit Saylor over Blackburn, I find that Blackburn interrogated Saylor about her protected concerted activities of discussing wages, threatened to interrogate employees about their protected concerted activities of discussing wages, and threatened its employees with unspecified reprisals for discussing wages.

D. Did Respondent orally promulgate and maintain a rule prohibiting the discussion of wages?

The General Counsel alleges that on April 2, Respondent orally promulgated and since then has maintained a rule prohibiting the discussion of wages.

An employer's unqualified rule prohibiting employees from discussing their wages violates Section 8(a)(1) of the Act. *Jeannette Corp.*, 217 NLRB 653, 656 (1975), enfd. 532 F.2d 916 (3d Cir. 1976). The Board has consistently held that verbally promulgating a rule prohibiting salary discussions among employees, and/or advising employees that such discussions are prohibited, violates the Act. See, e.g., *Automatic Screw Products Co.,* 306 NLRB 1072 (1992) (employer verbally promulgated and maintained rule prohibiting employees from discussing their salaries and disciplined them for violating the rule found unlawful); *Leather Center, Inc.*, 312 NLRB 521, 527 (1993) (rule barring employees from any discussion of wages unlawful); *Radisson Plaza Minneapolis*, 307 NLRB 94, 94 (1992), enfd. 987 F.2d 1376 (8th Cir. 1993) (finding an employer's warning that employees "shouldn't" discuss wages among one another unlawful); *Heck's, Inc.*, 293 NLRB 1111, 1119 (1989) (finding rule "requesting" that employees not discuss their wages with each other unlawful); and *Waco, Inc.*, 273 NLRB 746, 747–748 (1984) (finding that "admonishing" employees not to discuss wages among themselves violates the Act).

The credited evidence established that on April 2, Blackburn informed Saylor, in front of Lafferty, that Respondent prohibits employees from discussing wages with each other. In its amended answer to the complaint, Respondent admits that "the discussion on April 2, constitutes a technical violation of the Act" and asserts that "any violation was cured no later than on or about May 28, 2026, when the charge was received by Respondent." At the hearing, Respondent moved into evidence two memorandums addressed to its supervisors and managers. One of the memorandums is dated July 18 and the other one is undated. According to Division Manager Stephenson, she received the undated memorandum on April 29, 2026. (Tr. 156–157, R. Exhs. 5 and 6.) In pertinent part, both memorandums state that "this will serve as a reminder" . . . "that employees have the right to discuss wages. . ." and that supervisors may not "threaten employees with adverse consequences if they engage in protected, concerted activity. . ." Butler testified that she received the two memorandums. (Tr. 171.) Blackburn was not asked whether she received the two memorandums but acknowledged that after the charge was filed, she was told that she should not "tell an employee not to discuss wages." (Tr. 187.)

In *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978), the Board explained that in order to effectively repudiate unlawful conduct and relieve itself of liability, an employer must: (1) disavow the conduct in question in a timely and unambiguous manner, "specific in nature to the coercive conduct" itself; (2) adequately publish the repudiation to the employees involved; (3) ensure that there is no further proscribed conduct after publication; and (4) include in the repudiation assurances to employees that the employer will not interfere with their Section 7 rights in the future. Id. at 138–139.

I find that Respondent failed to satisfy the standards articulated in *Passavant Memorial*. Respondent's memorandums do not disavow the specific unlawful conduct at issue here. The memorandums served only as "reminders" to management regarding employees' Section 7 rights but did not specifically disavow the orally promulgated work rule prohibiting employees from discussing their wages. There is no evidence that the memorandums were distributed to employees. Moreover, even after receiving these memorandums, Butler insisted at the hearing that Saylor was ineligible for rehire because she created "drama" which Butler explained was because Saylor was "discussing wages" at work. Thus, evidently the memorandums did not have the intended effect on Butler. Based on the foregoing, I find that Respondent has not effectively repudiated its unlawful conduct and find that it orally promulgated and since then has maintained a rule prohibiting the discussion of wages in violation of Section 8(a)(1).

E. Did Respondent cause Saylor's Termination?

The General Counsel alleges that Respondent caused Saylor's termination when it: (1) issued Saylor a verbal warning; (2) failed and refused to promote her; and (3) altered her work schedule. Additionally, the complaint alleges that Respondent engaged in the above conduct because Saylor violated its rule against discussing wages and engaged in concerted activities by discussing wages with other employees.

Saylor's Verbal Warning

The credited evidence established that on April 2, Blackburn issued a verbal warning to Saylor for discussing wages with other employees. As discussed in the credibility section, I credit Saylor's testimony over Blackburn's concerning the April 2 meeting, and I also reject

Respondent's assertion that Blackburn could not have disciplined Saylor because she does not have the authority to discipline. Saylor credibly testified that after Blackburn told her she could not discuss wages with other employees, interrogated her about who else she talked to about wages, and threatened to interrogate other employees, Blackburn ended the meeting by stating that Saylor should take everything she said as a warning.

It is axiomatic that it is an unfair labor practice to discipline an employee for breaching a rule that is itself unlawful under the Act. *Automatic Screw Products,* supra, at 1072, citing *Scientific–Atlanta*, supra, 278 NLRB at 626. Furthermore, where the conduct for which an employer disciplines an employee is protected, concerted activity, the discipline violates Section 8(a)(1) and no analysis pursuant to *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied, 455 U.S. 989 (1982), is necessary.

Based on the foregoing, I find that on April 2, Respondent issued Saylor a verbal warning in violation of the Act.

Saylor's Promotion

The credited evidence established that Saylor was offered a promotion to deli manager on April 1, with a corresponding wage rate increase, and was told that Respondent would reach out to her to finalize the promotion in the following days. It is undisputed that Respondent did not follow up with Saylor about the promotion.

To establish an 8(a)(1) violation based on an adverse employment action where the motive for the action is disputed, the Board applies the *Wright Line* analysis. *Inova Health System*, 360 NLRB 1223, 1226 (2014). The burden is on the General Counsel to initially establish that a substantial or motivating factor in the employer's decision to take adverse employment action against an employee was the employee's union or other protected activity. In order to establish this initial showing of discrimination, the evidence must prove: (1) the employee engaged in concerted activities; (2) the concerted activities were protected by the Act; (3) the employer knew of or believed that the concerted activities occurred; and (4) the employer had animus against the protected activity, and the evidence is sufficient to establish a causal relationship between the employee's protected activity and the employer's adverse action against the employee. *North Mountain Foothills Apartments*, supra slip op. at 14, citing *Tschiggfrie Properties, Ltd.*, 368 NLRB No. 120, slip op. at 6, 8 (2019), and *Mondelez Global, LLC*, 369 NLRB No. 46, slip op. at 1–2 (2020). Animus can be established through direct evidence or inferred from circumstantial evidence. See *Medic One, Inc*., 331 NLRB 464, 475 (2000) (evidence supporting an inference of animus and discriminatory motivation includes suspicious timing, false reasons given in defense, failure to adequately investigate alleged misconduct, departures from past practices, tolerance of behavior for which the employee was allegedly fired, disparate treatment of the discharged employees, and shifting defenses).

If the General Counsel meets its initial showing that the protected conduct was a motivating or substantial reason in the employer's decision to take the adverse action, the employer has the burden to show it would have taken the same action in the absence of the protected concerted activity. *Wright Line*, 251 NLRB at 1089. An employer cannot simply present a legitimate reason for its action; rather, it must persuade by a preponderance of the evidence that the same action would have taken place in the absence of the protected conduct. See *Bruce Packing Co*., 357 NLRB 1084, 1086–1087 (2011), enfd. in pertinent part 795 F.3d 18, 417 U.S. App. D.C. 281 (D.C. Cir. 2015); *Donaldson Bros. Ready Mix, Inc*., 341 NLRB 958, 961 (2004). The General Counsel may offer proof that the employer's articulated reasons for the adverse action were false or pretextual. Where "the evidence establishes that the reasons given for the Respondent's action are pretextual —that is, either false or not in fact relied upon—the Respondent fails by definition to show that it would have taken the same action for those reasons, absent the protected conduct, and thus there is no need to perform the second part of the *Wright Line* analysis." See *Golden State Foods Corp.*, 340 NLRB 382, 385 (2003), citing *Limestone Apparel Corp*., 255 NLRB 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982)).

In applying the *Wright Line* analysis, I conclude that the General Counsel established a prima facie case of discrimination. It is undisputed that Saylor was qualified for the position of deli manager. Saylor was approached and offered the position because Division Manager Stephenson was impressed with Saylor's work in the deli and wanted to help Saylor by offering her a higher paying job that would allow her to resign from her second job. Saylor accepted the offer. Then right away, Saylor engaged in inherently concerted and protected activity by discussing her promotion and wage offer with other employees and by asking them if they thought $15 an hour was a fair offer. The very next day after Saylor discussed wages with other employees, Store Manager Blackburn reprimanded her for discussing wages with other employees. During this disciplinary meeting, Blackburn also mentioned to Saylor that she should not be talking about other employees' lateness with Stephenson. This shows that Blackburn and Stephenson discussed Saylor prior to Blackburn disciplining Saylor. Thus, knowledge of Saylor's protected concerted activity was not limited to Blackburn as Respondent asserts in its brief. Knowledge is further demonstrated by District Supervisor Butler's comments on Saylor's status change report and her testimony that Saylor was marked as ineligible for rehire because she created drama at the store when she discussed wages with other employees.

The final element of the prima facie case, that Respondent bore animus towards Saylor's protected activity, was also established. Blackburn issued a verbal warning to Saylor for engaging in protected concerted activity when she discussed wages with other employees. Blackburn also informed Saylor that discussing wages causes a "hostile environment" and causes employees to "become disgruntled" and not "work as a team." Further, Butler marked Saylor as ineligible for rehire because she caused "drama" and an "uproar at the store" when she discussed wages with other employees. Notably, Blackburn also described Saylor as causing "a lot of drama and chaos" on her May 19 written statement before going on to explain that Saylor discussed her promotion and wages with other employees. Neither Butler nor Blackburn testified about Saylor having any workplace issues apart from discussing her wages with other employees. Although Butler also asserted that Saylor "called off a lot," Blackburn did not state so. Notably, Respondent's work records do not reflect that Saylor called off from work more frequently than other deli employees —nor was there any evidence that Respondent ever raised any attendance issue with Saylor. Thus, animus was further demonstrated when Respondent provided false and shifting explanations regarding the reasons Saylor was marked as ineligible for rehire.

Additionally, Stephenson, Butler and Blackburn admittedly believed that employees were indeed prohibited from discussing wages with others at work at the time that Saylor was disciplined by Blackburn. It was only after Saylor filed the underlying charge that they were informed that employees have a protected right to discuss wages among themselves. Therefore, at the time that Saylor was expecting to be contacted to get her promotion finalized, Respondent was under the mistaken belief that she had violated a company rule. Moreover, both Blackburn and Butler believed Saylor's "misconduct" caused serious harm as demonstrated by them describing Saylor as causing "drama." Therefore, the evidence is sufficient to establish a causal relationship between Saylor's protected activity and Respondent withholding Saylor's promotion.

In its defense, Respondent argues that Saylor was instructed to let District Supervisor Butler know by the Monday following April 1, if she was accepting the deli manager offer, and she failed to do so. Respondent also argues that evidence that Saylor continued to work at her second job is indicative that she did not accept the promotion. As fully discussed in the credibility section, I have rejected these arguments and have not credited Stephenson's and Butler's testimonies regarding Saylor asking to discuss the offer with her partner prior to accepting the deli manager role or giving Saylor only until Monday to accept the promotion. Saylor's testimony that she accepted the promotion and was only waiting for confirmation from Respondent is the most credible testimony. Saylor indisputably informed others of the promotion and when weeks went by without any additional follow up from Respondent, she sent a text to Butler asking whether a decision had been made on the management position. Saylor did not resign from her job at Boomer's because she was waiting to hear back from Respondent about the promotion. Therefore, I conclude that Respondent has not met its burden under *Wright Line* to show that it would not have followed through on Saylor's promotion in the absence of her protected activity.

Changes to Saylor's Work Schedule

It is undisputed that Blackburn agreed to schedule Saylor to the morning shift so Saylor could work a second job. In addition, the evidence reflects that from March 3 through April 6, Saylor was scheduled to work from 5 a.m. to 1 p.m. The credited evidence also established that following the April 2 disciplinary meeting, Blackburn tried to schedule Saylor to work two nights the following week, and then again on April 14 and 15, knowing full well Saylor worked a second job in the afternoons. Then, Blackburn scheduled Saylor to work from 12 p.m. to 8 p.m. on April 23. Saylor requested that her work schedule be reduced to 3 to 4 days a week, hoping a part–time schedule would help her keep her two jobs. Blackburn reduced Saylor's work schedule but still scheduled Saylor to work 12 p.m. to 8 p.m. on May 3, and for the first time, from 10 a.m. to 4 p.m. on May 6 and 7. On Saylor's last week of work, Blackburn scheduled Saylor to work 5 days, including from 10 a.m. to 4 p.m. on May 12, 13, and 14. No one else in the deli area had been scheduled to work from 10 a.m. to 4 p.m. during the workweek during this period, and no one was scheduled to work these hours after Saylor resigned. Respondent did not offer any explanation or reason why it changed Saylor's work schedule from her regular shift of 5 a.m. to 1 p.m.

I find that the General Counsel has met her initial *Wright Line* burden showing that Saylor's protected activity was a motivating factor in Respondent changing her work schedule. As discussed above, the General Counsel established that Saylor was engaged in protected concerted activity, that Respondent knew about this activity, and that Respondent had animus toward Saylor's protected activity. The timing of the changes to Saylor's work schedule right after being disciplined for discussing her wages establishes a causal relationship between her protected activity and the schedule changes. Additionally, Respondent's departure from the past practice of scheduling Saylor to the 5 a.m. to 1 p.m. shift and from not scheduling any deli worker to the hours of 10 a.m. to 4 p.m. during the work week further establishes Respondent's actions were motivated by discriminatory animus.

In its defense, Respondent denies that it altered Saylor's schedule at all and argues that even when Saylor was scheduled for a later shift or later start time, Blackburn always allowed Saylor to leave her shift early and work the hours she wanted. As discussed in the findings of fact, Blackburn did not testify to this effect. Blackburn generally stated that she accommodated Saylor's requests and always asked her what days she could work before preparing the work schedule. However, there is no evidence in the record showing that Blackburn ever asked Saylor whether she could work from 10 a.m. to 4 p.m. There is also no evidence that Blackburn ever informed Saylor that it was acceptable to work different hours than the scheduled 10 a.m. to 4 p.m. shift. Additionally, there is no evidence that Blackburn communicated with Saylor prior to scheduling her to 5 days a week, after accommodating her request to work part-time hours. Given the timing of this change, the fact that it was only Saylor who got assigned a 10 a.m. to 4 p.m. shift, and particularly in light of the indisputable evidence of Blackburn's animus against Saylor's protected activity, I conclude that Respondent has failed to meet its burden. I, therefore, conclude that Respondent changed Saylor's work schedule in violation of Section 8(a)(1).

Saylor's Termination

As discussed above, I have found that the General Counsel presented sufficient evidence establishing that Respondent violated the Act when it: (1) issued Saylor a verbal warning because she engaged in protected concerted activities by discussing wages with other employees; (2) failed to promote Saylor; and (3) changed her work schedule. The General Counsel claims that by the above conduct Respondent also caused Saylor's termination. As further explained in the General Counsel's opening statement and posthearing brief, it is alleged that Respondent knowingly altered Saylor's work schedule to conflict with her second job and forced Saylor "to constantly scramble to salvage her work schedules," effectively causing her termination.

A constructive discharge "is not a discharge at all but a quit which the Board treats as a discharge because of the circumstances which surrounded it." *Remodeling by Oltmanns*, 263 NLRB 1152, 1161 (1982), enfd. 719 F.2d 1420 (8th Cir. 1983). The Board has recognized two constructive discharge theories: the "traditional" constructive discharge theory; and the "Hobson's Choice" theory.[12] Under the traditional theory, a constructive discharge occurs when an employee quits because his or her employer has deliberately made working conditions unbearable and it is proven that (1) the burden imposed on the employee caused, and was intended to cause, a change in the employee's working conditions so difficult or unpleasant that the employee is forced to resign, and (2) the burden was imposed because of the employee's protected activities. *Yellow Ambulance Service*, 342 NLRB 804, 807 (2004); *Intercon I (Zercom)*, 333 NLRB 223, 223 fn. 3 (2001), citing *Grocers Supply Co.*, 294 NLRB 438, 439 (1989), and *Crystal Princeton Refining*

[12] The General Counsel does not allege a "Hobson Choice" constructive discharge.

Co., 222 NLRB 1068, 1069 (1976). The Board has explained that regarding the first part of the legal standard, "the test for intent is not limited to whether the employer specifically intended to cause the employee to quit, but includes whether, under the circumstances, the employer reasonably should have foreseen that its actions would have that result." *Yellow Ambulance Service*, 342 NLRB 804, 807 (2004), citing *American Licorice Co*., 299 NLRB 145, 148 (1990). The Board generally applies the *Wright Line* framework to determine whether the employer imposed the burden that caused the constructive discharge because of the employee's union or protected concerted activities. See, e.g., *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101, 101–102 (2014).

Considering the particular circumstances present in this case, I find that the General Counsel has established by a preponderance of the evidence that Saylor's working conditions were changed to such degree as to force her to resign. As of April 1, Saylor was regarded as a valuable employee by Respondent. First, Respondent accommodated Saylor's request to work the morning shift, so she could accept a second job in the evenings. Thus, Respondent supported Saylor's request to work an 8-hour shift, from 5 a.m. to 1 p.m., so she could go home, sleep and rest, before reporting to work at another 8-hour shift, from 5 p.m. to 1 a.m. at her second job. Second, Respondent further supported Saylor by offering her a promotion, which was intended to allow her to earn enough income to leave her second job. Accordingly, Respondent's actions indicate that it cared about and supported Saylor during a difficult time in her personal life prior to her engaging in protected concerted activities.

After Saylor discussed her wages with other employees, Respondent indisputably changed how it treated Saylor. Respondent not only verbally disciplined her, but it failed to ever mention the promotion again, which meant that Saylor would have to continue working two full–time jobs to make ends meet. As if that was not enough, Respondent then immediately started changing Saylor's schedule. Remarkably, Respondent failed to provide any legitimate business reason for changing Saylor's schedule. Although Blackburn claimed she always considered employees' requests and needs when preparing the work schedule, she neither communicated with Saylor beforehand nor offered any explanation for assigning Saylor to the 10 a.m. to 4 p.m. shift. The evidence established that from Monday through Friday, Respondent always scheduled Mona Bennett and Saylor to the morning shift. When Blackburn suddenly scheduled Saylor to a 10 a.m. to 4 p.m. shift, she added Te'a Webb to the morning shift. Therefore, Respondent's needs to have two deli clerks open the deli remained unchanged. Although the 10 a.m. to 4 p.m. shift did not directly conflict with Saylor's schedule at Boomer's, it directly conflicted with her ability to sleep and/or rest between her shift at Respondent's and her 8-hour shift at Boomer's. This is especially significant given that Respondent was fully aware that Saylor was struggling with lack of sleep because of working two full-time jobs. Additionally, Blackburn did not provide any rationale for scheduling Saylor to five workdays after Saylor had explicitly requested a reduction to a part-time schedule due to the stress of balancing two jobs. Notably, after Saylor resigned, Blackburn did not schedule any deli clerks to work from 10 a.m. to 4 p.m. This evidence demonstrates that Respondent targeted Saylor when it assigned her this work schedule. Further, I find this evidence established that either Blackburn intended, or should reasonably have anticipated, that these changes would lead to Saylor's resignation.

Respondent maintains that, irrespective of any changes to Saylor's work schedule, Saylor was permitted to work the hours she preferred, and she resigned because she no longer needed to hold two jobs. As noted above, Respondent targeted Saylor with changes to her work schedule that were intended to force her to resign. There is no evidence that Blackburn ever informed Saylor that she could work any hours she pleased regardless of the work schedule. In addition, Saylor regarded her position with Respondent as her primary employment—as reflected in her initial conversation with Blackburn requesting the morning shift so she could work a second job in the evenings. Saylor devised a feasible plan to retain both jobs—work in the early morning hours for Respondent, then work at the end of the day for Boomer's. The purpose of obtaining a second job was to supplement the income earned from Respondent, not to replace it. As long as Respondent continued to schedule Saylor for early morning shifts—or later accommodated her request for part–time hours—Saylor could maintain both positions. The fact that Saylor ultimately resigned and retained her lower–paying job at Boomer's indicates that she found working for Respondent intolerable, not that she no longer needed two jobs.

Turning to the second prong of the test, as discussed above, Saylor engaged in inherently protected activity when she discussed her wages with other employees and Respondent verbally disciplined her for doing so. Further, Respondent changed Saylor's work schedule and failed to follow-through on her promotion in response to and because of Saylor's protected concerted activity of discussing wages. The General Counsel has met its burden under the traditional constructive discharge test. I find that Respondent failed to meet its rebuttal burden to show that Saylor would have been disciplined, not promoted, and her work schedule changed, absent her protected activity, I, therefore, find that Respondent constructively discharged Saylor for her protected concerted activity.

F. RESPONDENT'S OTHER AFFIRMATIVE DEFENSES

Respondent argues in its brief that the charge should be dismissed because Board members and administrative law judges (ALJs) are unconstitutionally insulated from removal. (R. Br. at 19.) In *Walgreens Co.*, 375 NLRB No. 14 (2026), the Board recently rejected this exact affirmative defense, stating that there was no evidence that the employer suffered any harm from the Board's members and ALJs removal protections. The Board further explained that the agency proceeding itself does not constitute "irreparable harm" citing *Amazon.com Services, LLC*, 374 NLRB No. 82, slip op. at 2– 3 fn. 5 (2026). Accordingly, I dismiss this affirmative defense.

Respondent also argues that any award of compensatory damages would violate its Seventh Amendment rights and asserts that the Act limits the Board's remedial authority to "equitable, not legal, relief" citing *NLRB v. Starbucks Corp.*, 125 F.4th 78, 95 (3d Cir. 2024). (R. Br. at 20.) In *Starbucks*, the Court of Appeals for the Third Circuit recognized that the Board may award monetary relief based on what the employer withheld as a result of an unfair labor practice but vacated the portion of the Board's order containing the Board's *Thryv* remedy (i.e., direct or foreseeable pecuniary harms, including reasonable search–for–work and interim employment expenses). The Board recently explained in *Tri–State Rigging, LLC*, 374 NLRB No. 21 (2025), that *Thryv* remains valid Board precedent under the Board's longstanding policy of nonacquiescence to adverse appellate court decisions. See *Airgas USA, LLC*, 373 NLRB No. 102, slip op. at 1 fn. 2 (2024), and cases cited there explaining the reasons for the policy. I must follow and apply Board precedent unless and until it is overturned by the Supreme Court or the Board itself. See, e.g., *Western Cab Co.*, 365 NLRB 761, 761 fn. 4 (2017); and *Pathmark Stores, Inc.*, 342 NLRB 378 fn. 1 (2004). I find that the remedies that the General Counsel seeks are part of the make–whole remedy that the Board may order under the Act and do not implicate the Seventh Amendment. Therefore, I dismiss Respondent's affirmative defense.

CONCLUSIONS OF LAW

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

2. Respondent violated Section 8(a)(1) of the Act by, on or about April 2, 2025, interrogating employees about their protected concerted activities of discussing wages; threatening to interrogate employees about employees' protected concerted activities of discussing wages; and threatening employees with unspecified reprisals because employees discussed wages.

3. Respondent violated Section 8(a)(1) of the Act by, on or about April 2, 2025, orally promulgating and since then maintaining a rule prohibiting the discussion of wages.

4. Respondent violated Section 8(a)(1) of the Act by, on or about April 2, 2025, issuing a verbal warning to its employee Melissa Saylor, and since then, failing and refusing to promote her, and changing her work schedule, because she discussed wages with other employees and otherwise engaged in protected concerted activities, and because she violated the unlawful rule prohibiting employees from discussing wages.

5. Respondent violated Section 8(a)(1) of the Act by causing the termination of Saylor.

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

REMEDY

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

Respondent, having constructively discharged Melissa Saylor, must offer her instatement to the position of deli manager or if that job no longer exists, to a substantially equivalent position without prejudice to her seniority and other rights and privileges she would have enjoyed absent the discrimination against her. Respondent shall also make Saylor whole for any loss of earnings and other benefits suffered as a result of the unlawful constructive termination.

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

In addition, the Respondent shall compensate Saylor for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 9, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years, in accordance with *AdvoServ of New Jersey, Inc.,* 363 NLRB 1324 (2016). In accordance with *Cascades Containerboard Packaging–Niagara*, 370 NLRB No. 76 (2021), as modified in 371 NLRB No. 25 (2021), the Respondent shall also be required to file with the Regional Director for Region 9 a copy of Saylor's W–2 form reflecting the backpay award.

The Respondent shall also be required to remove from its files any references to the unlawful verbal warning and discharge of Saylor, including all documents related to her resignation and the employee change of status report in her file, and to notify her in writing that this has been done and that her discipline and discharge will not be used against her in any way.

The Respondent shall post an appropriate informational notice, as described in the attached appendix. This notice, on a form provided by the Regional Director for Region 9, 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.[13] In addition to the physical posting of paper notices, the Respondent shall distribute the notice electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notice is not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed its facility, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at the facility at any time since April 2, 2025.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[14]

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[13] In her posthearing brief, the General Counsel's proposed order includes a requirement that the notice to employees be posted at Respondent's facilities nationwide. The General Counsel did not provide any case law or evidence supporting a nationwide posting. I, therefore, decline to order one.

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

ORDER

Respondent, Go-Mart, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

   a. Interrogating employees about their wage discussions and any other protected concerted activities.

   b. Threatening to interrogate employees about their wage discussions and any other protected concerted activities.

   c. Threatening employees with unspecified reprisals because they discussed wages and engaged in any other protected concerted activities.

   d. Maintaining a work rule that prohibits employees from discussing their wages and other terms and conditions of employment with coworkers.

   e. Disciplining employees because they discuss their wages or otherwise engage in protected concerted activities.

   f. Refusing to promote employees because they discuss their wages or otherwise engage in protected concerted activities.

   g. Changing the work schedule of employees because they discuss their wages or otherwise engage in protected concerted activities.

   h. Causing the termination of employees because they discuss their wages or otherwise engage in protected concerted activities.

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

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

   a. Within 14 days from the date of this Order, offer Melissa Saylor immediate employment to the deli manager position or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

   b. Within 14 days from the date of this Order, remove from its files any reference to the unlawful verbal warning and constructive discharge of Melissa Saylor, and, within 3 days thereafter, notify her in writing that this has been done and that the discipline and discharge will not be used against her in any way.

c. Make Melissa Saylor whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms, suffered as a result of her termination in the manner set forth in the remedy section of this decision.

d. Compensate Melissa Saylor for the adverse tax consequences, if any, of receiving a lump–sum backpay award, and file with the Regional Director for Region 9, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

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

f. File with the Regional Director for Region 9, within 21 days of the date the amount of backpay is fixed or such additional time as the Regional Director may allow for good cause shown, a copy of Melissa Saylor's corresponding W–2 form reflecting the backpay award.

g. Rescind the work rule that prohibits employees from discussing wages or any other terms and conditions of employment.

h. Within 14 days after service by the Region, post at its Ripley, West Virginia facility copies of the attached notice marked "Appendix."[15] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 2, 2025.

[15] 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."

i. Within 21 days after service by the Region, file with the Regional Director for Region 9 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS SO ORDERED.

Dated: Washington, D.C. August 27, 2026

G. Rebekah Ramirez
Administrative Law Judge

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO:

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

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

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

WE WILL NOT orally promulgate or maintain a work rule that prohibits you from discussing your wages and other terms and conditions of employment with your coworkers.

WE WILL NOT interrogate you or threaten to interrogate you about any discussions you have/had with your coworkers regarding wages and other terms and conditions of employment.

WE WILL NOT threaten you with unspecified reprisals because you discussed your wages and other terms and conditions of employment with your coworkers.

WE WILL NOT discipline you because you discuss your wages and other terms and conditions of employment with your coworkers.

WE WILL NOT refuse to promote you because you discuss your wages and other terms and conditions of employment with your coworkers.

WE WILL NOT change your work schedule or any other working conditions because you discuss your wages and other terms and conditions of employment with your coworkers.

WE WILL NOT discharge or constructively discharge you because you discuss your wages and other terms and conditions of employment with your coworkers.

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

WE WILL rescind the unlawfully promulgated rule prohibiting you from discussing your wages or other terms and conditions of employment with your coworkers.

WE WILL, within 14 days from the date of this Order, offer immediate employment to Melissa Saylor to the position of deli manager, or if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

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

WE WILL compensate Melissa Saylor for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 9 within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful verbal warning issued to Melissa Saylor, and to her constructive discharge, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the verbal warning and constructive discharge will not be used against her in any way.

GO–MART, INC.
(Employer)

Dated: __________________ By: __________________________
(Representative) (Title)

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

National Labor Relations Board, Region 9
John Weld Peck Federal Building
550 Main Street, Room 3-111
Cincinnati, Ohio 45202–3271
(513) 684–3686, Hours: 8:00 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/ 09-CA-365946 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 (513) 684-3733.