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

O'NEILL ASSET MANAGEMENT, LLC

and Case No. 07-CA-352673

SHAY BARBER,
An Individual

Patricia A. Fedewa, Esq., for the General Counsel.
Cameron D. Ritsema, Esq (Bodman PLC, Grand Rapids, Michigan) for the Respondent.

Decision

Arthur J. Amchan, Administrative Law Judge.

STATEMENT OF THE CASE

This case was heard in Grand Rapids, Michigan on July 14, 2026, Shay Barber filed the unfair labor practice charge in this matter on October 11, 2024. The General Counsel issued the complaint on April 9, 2026.

On the entire record, I make the following findings, conclusion of law, and recommendation.[1]

JURISDICTION

Respondent, O'Neill Asset Management, LLC, provides financial services to clients from its office in Grand Rapids, Michigan. In 2025, it derived gross revenues

[1] I have read and considered the briefs of the General Counsel and Respondent.

in excess of $500,000. In 2025, Respondent purchased and received goods and materials valued in excess of $5,000 directly from locations outside of Michigan.

At all material times, Respondent has been 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.

The General Counsel alleges that on about May 24, 2024, Respondent, by its President Andrew O'Neill, promulgated an overly broad rule by instructing employees not to discuss workplace issues with each other in violation of Section 8 (a)(1) of the Act. The General Counsel also alleges that Respondent violated Section 8(a)(1) by discharging Charging Party Shay Barber on August 26, 2024 and by maintaining and enforcing the following rules in its Employment Agreement which forbid employees from disclosing "Confidential Information."[2]

"Confidential Information" means information about the Company and its employees, customers, and/or suppliers that is not generally known outside of the Company, that Employee learns of or has learned of in connection with employment with the Company, and that would be useful to competitors of the Company.

Confidential Information includes, but is not limited to:

i. Company software and software codes or coding;

ii. Business and employment policies and/or strategies, customers lists, customer information, customer contacts, marketing and sales methods and the targets of those methods, finances, financial plans, business plans, promotional materials, and price lists;

iii. The nature, origin, composition, and development of the Company's products and

iv. The manner in which the Company provides products and services to its customers.

[2] Although not cited in the complaint the non-disclosure requirements appear in paragraph 6 pp 3-4 of the Employment Agreement, G.C. Exh. 4.

The Events of May 23-24, 2024 (Complaint paragraph 6 alleged promulgation of an overly broad rule)

Bridgett Hendrick worked for Respondent from March 2024 to May 24, 2024. She was an assistant advisor to Michael Potter, a financial advisor. On Thursday, May 23, the phone rang before Respondent's normal office hours. Hendrick did not answer the call. At some point, Respondent's CEO Andrew O'Neill sternly told Hendrick that she needed to answer the phone when it rang. Later that day, Respondent had a staff meeting. About 7 people were present including Hendrick, Charging Party Shay Barber, Andrew O'Neill and Joshua Willis, Respondent's Director of Operations.

At the meeting, Henrick objected to the manner in which O'Neill approached her that morning and his general behavior towards employees. Hendrick and O'Neill yelled at each other. O'Neill indicated he did not want to have a discussion about this with the full staff present. He also said that he was disappointed in Hendrick and thought that he could trust her. Charging Party Barber and other employees chimed in that they agreed with Hendrick. At some point, O'Neill told everyone that the meeting had to end because clients were coming to the office.

On Friday, May 24, Michael Potter summoned Hendrick to a 1-1 meeting and told Hendrick that she should feel comfortable coming to management individually with her concerns. Then, Ms. Hendrick sent a group chat to Respondent's employees, including O'Neill and Michael Potter, declining to meet with O'Neill and Potter without the rest of the employees present. G.C. Exh. 5. O'Neill responded, stating that Hendrick's concerns would not be discussed at a staff meeting. He stated further:

> You need to be able to talk with and communicate with your team lead to be part of our team…that isn't negotiable.

After sending her message, Hendrick left work for the day. On the next workday, Tuesday, May 28, the day after Memorial Day, she resigned her employment.

I dismiss this complaint item. The evidence does not show that O'Neill forbid Hendrick from discussing her concerns with coworkers or with management. It does not show that she was forbidden from addressing management with other employees. The record shows simply that O'Neill would not let Hendrick continue to discuss her concerns at a staff meeting, which is not a violation of the Act, see *Carrier Corp.,* 331 NLRB 126 (2000).[3] For this to be a statutory violation, the record would have to show an explicit prohibition against employees discussing wages, hours and working conditions with each other or against bringing group concerns to management. I do not find that this is established in this record.

Complaint paragraph 7: the discharge of Charging Party Shay Barber

While there is record evidence that Respondent was unhappy with Shay Barber prior to August 23, this evidence is largely irrelevant to the issue of whether Respondent violated the Act in discharging him. The record is clear that Respondent would not have discharged Barber on August 26 but for the events on the morning of August 23. If Barber's conduct on August 23 constituted protected concerted activity, his discharge would violate the Act.

As to what transpired, I rely almost exclusively on the testimony of Benjamin Dykstra, who appears to be a neutral witness. In September 2025, long after the events in this matter, Respondent terminated Dykstra, who filed an unfair labor practice charge against Respondent. Thus, he has no reason to be partial to the company. On the other hand, he does not appear to be aligned with Charging Party Barber, either. The General Counsel subpoenaed Dykstra to testify.

Friday, August 23, 2024 was Dykstra's third day at work. Dykstra worked in client relations, Barber worked in new business. On the morning of August 23, Barber entered Dykstra's office. So far as this record shows, Dykstra had not invited Barber in or asked to speak to Barber.

Barber told Dykstra that Andrew O'Neill was greedy. He told Dykstra that the commission-based incentive that Dykstra thought he would receive and

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[3] An analogous principle is that an employer is not required to let pro-union employees speak in favor of the Union at a management "captive audience" meeting, *Livingston Shirt Corp.,* 107 NLRB 400 (1953); *Electrolux Home Products,* 368 NLRB No. 34, slip op. at 4 ftns 13-14 (2019). The Act does not require an employer to allow employees to bring their concerns to it wherever and whenever they want. Moreover, it the instant case, Respondent was entitled to end the May 23, 2024 meeting when its clients arrived.

personal time off would not materialize and that O'Neill would not keep his word. Barber told Dykstra that O'Neill pitted one employee against another, telling one unflattering things another person had said about them.[4] Their conversation lasted about 20 minutes.

Dykstra immediately went in to see Andrew O'Neill. He told O'Neill that Respondent had an employee who did not like O'Neill and that his conversation with Barber made him uncomfortable. Dykstra recommended that O'Neill had to confront the employee or let him go. O'Neill told Dykstra that Barber had "gossiped" previously. Dykstra recommended that O'Neill look at audio/video footage of his conversation with Barber.

Later that day O'Neill told Dykstra that he had reviewed security camera footage in his office and decided to terminate Barber. Barber had already left for the day. That evening Dykstra and O'Neill exchanged text messages, G.C. Exh. 12.

On the morning of August 26, 2024, O'Neill terminated Barber. His access to his work computer programs and company phone had already been disconnected before he arrived at work. During a meeting in O'Neill's office with Barber and Michael Potter, both O'Neill and Barber raised their voices. Barber complained about employees having to clean toilets and raised other issues. At some point, O'Neill challenged Barber to a fight. O'Neill instructed Dykstra, who was standing in the doorway, to call the police. The police arrived either while Barber was leaving or afterwards.

The fact that later in his employment, Dykstra ended up agreeing with many of Barber's opinions about Respondent is irrelevant to the resolution of this case.

Applicable Board Law on Protected Concerted Activity

Section 7 provides that, "employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through

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[4] Dykstra did not testify about O'Neil telling him that Miguel Arjona-Rodriguez was blaming Dykstra for a client matter or that Barber discussed this with Dykstra. Dykstra did not testify that he mentioned this to O'Neill, either. In any event, Barber did not suggest that he and Dykstra take concerted action to rectify what he felt was O'Neill's penchant for pitting employees against each other.

representatives of their own choosing, *and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection ...* (Emphasis added)."

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, the activities of a single employee in enlisting the support of fellow employees in mutual aid and protection are as much concerted activity as are ordinary group activities.

In order to establish a violation of Section 8(a) (3) and/or (1), the Board generally requires the General Counsel to make an initial showing sufficient to support an inference that the alleged discriminatee's protected conduct was a 'motivating factor' in the employer's decision. Then the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of protected conduct, *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 889 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.,* 462 U.S. 393, 399-403 (1983); *American Gardens Management Co.*, 338 NLRB 644 (2002); *General Motors,* 369 NLRB No. 127 (2022).

This burden normally requires that the General Counsel establish that the discriminatee engaged in protected concerted activity, that the Respondent was aware of the activity and its concerted nature, that Respondent bore animus towards the discriminatee as a result of this awareness and was motivated by this animus in discharging or otherwise discriminating against the employee.

I dismiss this complaint item because the General Counsel has not established that Barber's conversation with Benjamin Dykstra on August 23, 2024 constituted protected concerted activity. Barber was not making common cause with Dykstra, who had shown no interest in the issues raised by Barber. Barber did not suggest any collective action to improve wages or working conditions at Respondent. His conversation with Dykstra was "mere griping" which is not protected. There isn't any suggestion in this record that Barber was contemplating group action to change working conditions at Respondent, *Daly Park Nursing Home,* 287 NLRB 710 (1987).[5]

The cases cited by the General Counsel for the proposition that Barber's conversation with Dykstra was "inherently concerted" and thus protected are distinguishable from the instant case. In *Component Bar Products, Inc.,* 364 NLRB 1901 (2016) and *Hoodview Vending Co.,* 362 NLRB 690 (2015) at least one employee was making or trying to make common cause with another.[6] In *Automatic Screw Products,* 306 NLRB 1073 (1992) an employee was terminated for violating a rule against discussing wages that was applicable to all the employer's employees. The language of Section 7 does not generally support finding a violation of the Act when an employee discusses wages and working conditions that are of concern only to that employee, e.g., "You got the raise (promotion) that should have gone to me."

One exception to the general rule would be when a single employee is attempting to enlist the support of others in taking action to improve their wages, hours or working conditions, something Shay Barber was not doing when he spoke to Dykstra. Another exception, also not present in this case, would be when an employer disciplines or discharges an employee in order to prevent the employee from engaging in protected activity (a preemptive strike), *Parexel International, LLC*, 356 NLRB 516, 519 (2011).

The Confidentiality Rule (Complaint Paragraph 9)

In *Stericycle, Inc.,* 372 NLRB No. 113 (2023) the Board adopted the current standard for determining whether a facially neutral provision violates Section 8(a)(1). First the General Counsel must show that the challenged provision has a

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[5] As Judge Bernard Ries noted in *Lutheran Social Services of Minnesota,* 250 NLRB 35 (1980) at 41: "The statue protects protests in which there inheres action or the possibility of action."

[6] In *Component Bar Products,* the discriminatee called another employee to warn him that his job was in jeopardy. In *Hoodview Vending,* the discriminatee talked to another employee about a possible termination. This is also true in *Whitehawk Worldwide,* 371 NLRB No.122 (2022) at 17. In that case the Respondent Employer did not file exceptions to the Judge's conclusion that the Respondent violated the Act in discharging the employee in question.

reasonable tendency to chill employees from exercising their Section 7 rights. The General Counsel meets this burden if an employee could reasonably interpret the provision to have a coercive meaning.

If the General Counsel meets its initial burden the employer may rebut the presumption of unlawfulness by showing that the provision advances a substantial business interest that the employer cannot protect with a more narrowly tailored provision.

There is no testimony in this record about whether an employee could reasonably interpret Respondent's confidentiality rules to have a coercive meaning. I am being asked to make such a finding in the abstract. I find the record does not establish that these rules could reasonably be interpreted to be coercive. There is no evidence as to how an employee would reasonably interpret the term "employment practices" as that is used in the Employment Agreement. I thus dismiss this complaint item.

Conclusions of Law

Respondent, O'Neill Asset Management, did not violate the Act in any manner as alleged.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

ORDER

The Complaint is Dismissed.

Dated: Washington, D.C. September 1, 2026

Arthur J. Amchan
Administrative Law Judge

[7] 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.