

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

THE METHODIST HOSPITALS, INC.

and

Case 13-CA-333764

LATIEEAH HEMPHILL

Ashley Meeder and Sylvia Posey, Esqs.,
for the General Counsel.

Steven J. Scott, Esq.,
for the Respondent.

DECISION

STATEMENT OF THE CASE¹

ANDREW S. GOLLIN, ADMINISTRATIVE LAW JUDGE. This case was tried on August 3, 2026, in Hammond, Indiana, over allegations that The Methodist Hospitals, Inc. (the Respondent) violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act) when it discharged union steward Latieeah Hemphill.

In late 2023, Hemphill's supervisor, Lyndsay Simpson, received complaints about Hemphill's job performance and her interactions with coworkers. In mid-December 2023, and again in early January 2024, Simpson told Hemphill to come to her office to discuss the complaints, and to bring a union steward with her. Both times Hemphill failed to follow Simpson's instructions, claiming that the collective-bargaining agreement gave the Respondent 10 days to discipline her, and that time had passed by the time Simpson instructed her to meet. In January 2024, the Respondent's labor relations director, Jamie Serrano, informed the union that Hemphill had been insubordinate in failing to follow Simpson's instructions and the Respondent planned to take corrective action. Later that month, Serrano and Simpson met with Hemphill, along with union stewards Verna Wilson and Mekeda Henderson, to announce that they planned to discharge Hemphill. At the stewards' request, Serrano offered Hemphill the opportunity to remain employed under a last-chance agreement, but Hemphill refused to agree to the terms, and the Respondent eventually discharged her.

Hemphill later filed the underlying charges. (GC Exh. 1(a)-(d)). On March 20, 2026, the Regional Director for Region 13, on behalf of the General Counsel, issued a complaint alleging the Respondent violated Section 8(a)(1) and (3) of the Act when it suspended and later discharged Hemphill because she asserted the agreement's 10-working day time limit and because of her role and performance as a steward. (GC Exh. 1(e)-(f)). On March 30, 2026, the Respondent filed its answer denying these allegations. (GC Exh. 1(g)).

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

At the hearing, all parties were afforded the right to call and examine witnesses, to present any relevant documentary evidence, and to orally argue their legal positions. Counsel for the General Counsel and the Respondent each filed post-hearing briefs, which I have carefully considered.²

For the reasons discussed below, the General Counsel has failed to establish the alleged violations. I, therefore, recommend dismissing the complaint.

FINDINGS OF FACT³

A. Jurisdiction

At all material times, the Respondent has been operating a hospital providing inpatient and outpatient medical care at 8701 Broadway, Merrillville, Indiana (the Southlake campus). It also operates a hospital at 600 Grant Street, Gary, Indiana (the Northlake campus). During the past twelve months, a representative period, the Respondent derived gross revenue in excess of \$250,000, and it purchased and received goods and materials valued in excess of \$5,000 at its Southlake campus directly from points outside the State of Indiana. As such, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and it has been a health care institution within the meaning of Section 2(14) of the Act. Based on the foregoing, this dispute affects commerce, and the National Labor Relations Board (the Board) has jurisdiction pursuant to Section 10(a) of the Act.

B. Collective-Bargaining Agreement

The SEIU Healthcare Illinois, Indiana, Missouri and Kansas (the Union) is the collective-bargaining representative for the service and maintenance employees working for the Respondent at

² The General Counsel's brief does not address the suspension allegations. Thus, the General Counsel appears to have abandoned those allegations *sub silentio*. To the extent those allegations were not abandoned, the findings and conclusions regarding the discharge apply equally to the suspension.

³ The findings of fact are a compilation of the credible testimony and other evidence, as well as logical inferences drawn therefrom. To the extent evidence conflicts with the findings, such evidence has been discredited either as in conflict with more credible evidence or because it was unworthy of belief. In assessing the witnesses' credibility, I relied upon their demeanor, the context of their testimony, the quality of their recollection, testimonial consistency, the presence or absence of corroboration, the weight of the respective evidence, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. See *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), *enfd. sub nom.*, 56 Fed. Appx. 516 (D.C. Cir. 2003).

The four witnesses who testified were Latieceah Hemphill, Mekeda Henderson, Lyndsay Simpson, and Jamie Serrano. I found Simpson and Serrano to be largely credible and Hemphill and Henderson to be partially credible. Simpson and Serrano had candid and straightforward demeanors, and they provided clear, consistent and logical testimony. Simpson admittedly struggled to recall certain conversations and was not questioned about others. But for the conversations she could recall and was questioned about, her testimony was clear, responsive, and supported by credible evidence. Henderson had an honest and sincere demeanor, but her recollection was limited, and key portions of her testimony lacked context, were uncorroborated, or were at odds with the more credible evidence. Unlike the others, Hemphill lacked a fully candid and forthright demeanor. Her testimony was often selective, self-serving, unsupported, or inconsistent with the credible evidence and the logical inferences drawn from it. Specific credibility findings are set forth below.

its Northlake and Southlake campuses. The most recent agreement between the Respondent and the Union is dated July 4, 2021, through July 6, 2024 (the Agreement). (GC Exh. 2, pg. 63).

Article 2 of the Agreement contains the Management Rights provision. It authorizes the Respondent to make and enforce reasonable rules consistent with the terms of the Agreement, and to discipline, suspend, or discharge employees for just cause. (GC Exh. 2, pg. 4).

Article 21 of the Agreement, which is entitled “Discharge and Penalties,” sets forth certain requirements when the Respondent conducts investigatory interviews and disciplinary meetings with the bargaining unit employees. It reads, in relevant part, as follows:

21.3 Disciplinary Meeting. Discipline shall be imposed as soon as possible after the Employer is aware of the event or action giving rise to the discipline and has a reasonable period of time to investigate the matter.

In any event, the actual date upon which discipline is imposed may not exceed ten (10) working days (Monday through Friday), unless the parties agree to an extension of time.

Prior to imposing the measure of corrective action, the Employer shall inform the Employee reasonably in advance of such disciplinary meeting and of his/her rights to Union representation.

21.4 In the event that any member of Management has reason to have an investigatory interview that may result in disciplinary action of an Employee, it will be done not later than one hour prior to the end of the Employee’s shift. The Employee shall have the right for a Union Delegate to be present. If there is no Union Delegate available, Management shall postpone the investigatory interview until such time as a Union Delegate can be present.

Management will not conduct an investigatory interview of an Employee if no Union Delegate is available. If the investigatory interview is delayed pursuant to this provision, the time period set forth in this Article shall be extended for the period of time it takes to get a Union Delegate present for the investigatory interview.

...

21.6 All time limits herein specified shall be deemed exclusive of Saturdays, Sundays and holidays.

....

(GC Exh. 2, pgs. 41-42).

Article 24.4(c) of the Agreement states the Union must provide the Respondent with a current list of all Union delegates, and the Respondent is prohibited from recognizing an employee as a delegate who is not on the list. (GC Exh. 2, pg. 46).

C. Fair and Just Culture Action System

Consistent with Article 2 of the Agreement (Management Rights), the Respondent maintains a Fair and Just Culture Action System (the FJCA System), which is a written policy setting forth the

“action steps” management follows when dealing with rule violations. (GC Exh. 10, pg. 1). It states that Group I violations (e.g., attendance, dress code, failure to meet job requirements) result in progressive discipline (documented verbal warning, documented written warning, final written warning/suspension and discharge); Group II violations (e.g., sleeping on the job, neglect of duty, discourteous or rude treatment of employees or staff) result in more stringent progressive discipline (final written warning, suspension, and discharge); and Group III violations (e.g., insubordination, harassment, gross neglect of duty) result in discharge. (GC Exh. 10, pgs. 2-4).⁴ The FJCA System states that management will investigate alleged violations before acting and that will include interviewing all pertinent witnesses and the employee who is the subject of the investigation. (GC Exh. 10, pg. 5).

D. Alleged Unfair Labor Practices

1. Background

Latieeah Hemphill began working for the Respondent in July 1999. (Tr. 51). In 2022, she was elected to be a Union steward. (Tr. 54). The Union had multiple stewards at both campuses, and they reported to Deother Cook, the Union’s lead organizer. (Tr. 57). Cook trained Hemphill on the terms of the Agreement and on her role. (Tr. 56-57; 142-143). As a steward, Hemphill spoke with management about workplace issues, filed grievances, and attended Article 21 investigatory interviews and disciplinary meetings. (Tr. 54). She estimated attending about 10 of these interviews/meetings as a steward. (Tr. 100-101). She also was familiar with Article 21’s 10-working-day period for issuing discipline and the extension process. (Tr. 71-72; 115-116). She knew of situations in which the parties agreed to extensions to allow the Respondent more time to investigate and decide what, if any, disciplinary action to take. (Tr. 115-116).

During her 25-year employment, Hemphill held positions at the Northlake and Southlake campuses. At the time she was elected steward, she was a health unit partner (HUP) on the renal unit at the Northlake campus. Toward the end of 2022, she transferred to a HUP position on the intensive care unit (ICU) at the Southlake campus. (Tr. 96-97). As a HUP in the ICU, Hemphill primarily answered the phones, stocked supplies, cleaned equipment, assisted the nurses and processed the discharge of patients through the Respondent’s computerized record-keeping system. (Tr. 52). She worked 12-hour day shifts, from 6 a.m. to 6:30 p.m. (Tr. 98). Her immediate supervisor was Lyndsay Simpson, the ICU manager. Simpson’s supervisor was Sheila Pochron, the ICU director. (Tr. 53).

2. Initial Issues Between Hemphill and Her Coworkers

Shortly after Hemphill began working in the ICU, Simpson received complaints from and about her. (Tr. 181-182). Hemphill’s coworkers complained she was not performing assigned tasks, and Hemphill complained they were not respecting her. Simpson handled the complaints informally, by speaking with those involved and helping them resolve their issues. There was no discipline issued. (Tr. 182). In May 2023, human resources received additional complaints from and about Hemphill. (Tr. 183-184). The complaints were investigated and addressed with group coaching. Again, there was no discipline issued. (Tr. 208-209).⁵

⁴ The FJCA System does not define what constitutes “insubordination.”

⁵ Hemphill testified she was not informed about these complaints until December 2023. (Tr. 102). I do not credit this testimony. Simpson and Serrano both credibly testified the Respondent investigated these complaints at the time, and that included discussing them with Hemphill. (Tr. 183-185; 207-209).

3. *Grievance for Lydia Wright*

On about December 5, 2023, Lydia Wright, a certified nursing assistant at the Southlake campus, approached Hemphill with an issue about her work assignments. Wright believed management had “floated” her out of seniority, and she asked Hemphill to investigate. (Tr. 58-59). Hemphill later spoke with Simpson, and Simpson stated Wright was properly floated. (Tr. 60). Hemphill informed Wright what Simpson stated, and Wright asked Hemphill to file a grievance. (Tr. 61). On December 11, 2023, Hemphill prepared and filed a written grievance on Wright’s behalf. (GC Exh. 3). Hemphill told Simpson later that day that she had filed the grievance, and Simpson responded, “Okay.” (Tr. 62). Nothing else was said.

4. *Simpson’s December 13 Request for Investigatory Meeting*

On December 13, 2023, Simpson called Hemphill in the ICU and told her she had received additional complaints about her. Simpson told Hemphill to get a Union steward and come to her office where they would meet and discuss the complaints. (Tr. 63; 109-110).

Hemphill asked the chief Union steward, Bernita Drayton, to attend the meeting with her as her Union delegate, but Drayton was unavailable. (Tr. 64; 110). The record does not reflect whether Hemphill asked any other Union steward/delegate to attend the meeting. Hemphill next asked Natalie Holland, a HUP who was not a steward/delegate, to attend the meeting with her as a “witness.” Holland agreed. (Tr. 64).

Later that afternoon, Hemphill and Holland went to Simpson’s office. When they arrived, Simpson told Hemphill that she could not discuss the complaints without a Union steward/delegate present. (Tr. 65; 111). Hemphill then changed topics and asked Simpson when she first received the complaints at issue. Simpson stated the complaints were made on about November 27. (Tr. 66-67). Hemphill noted that Article 21 of the Agreement provided the Respondent with a 10-working-day period to discipline her, and it had been more than 10 days since November 27. Simpson responded, “Okay.” Hemphill and Holland then left Simpson’s office and returned to work. (Tr. 67).⁶

⁶ Hemphill testified that she told Simpson during their December 13 meeting that if employees are unable to get the steward/delegate of their choice to attend a meeting/interview, they are allowed -- based on past practice -- to have another employee present as “a witness.” (Tr. 111). According to Hemphill, Simpson responded that she would need to check with human resources to find out whether they could proceed with Holland instead of a steward/delegate. (Tr. 66; 111). The implication was that Hemphill and Holland left Simpson’s office expecting to hear back from Simpson once she had an answer from human resources. I do not credit this. There was no evidence presented supporting Hemphill’s claim of an alleged past practice allowing an employee to attend an investigatory interview in lieu of a steward/delegate. Such a practice would be in direct conflict with the terms of the Agreement. Article 21.4 gives employees the right to have a Union steward/delegate present for the interview, and it prohibits the Respondent from conducting the interview without one when one has been requested. Holland was not a steward or delegate. (Tr. 129). Article 24.4(c) prohibits the Respondent from recognizing an employee as a delegate if they are not listed as such by the Union. As a steward, Hemphill was familiar with the terms of the Agreement and, according to Serrano, she was very adamant and aggressive in making sure its terms were followed when she was acting in her role as a steward. (Tr. 218).

Furthermore, while Article 21.4 states an employee has the right to have a Union delegate present during an investigatory interview, there was no other evidence supporting Hemphill’s claim of a past practice allowing employees to insist on the delegate of their choice. While Board law allows an employee to have a union representative of their choice at an investigatory meeting that may result in discipline, that representative must

5. *December 19 Emailed Complaints*

On December 20, 2023, Simpson received an email from an ICU charge nurse raising issues he recently had with Hemphill. (R Exh. 1, pgs. 1-2). The nurse explained he had been responsible for caring for a patient who had to be emergency airlifted to another hospital. Caring for this patient, as well as his other duties, prevented the charge nurse from completing certain tasks, including his charting. He informed Hemphill of this and asked her not to discharge the patient from the computerized record-keeping system until he could complete his charting. Hemphill waited some time but ultimately discharged the patient without checking back in with the nurse. The nurse explained he had similar issues with Hemphill in the past, and that he had spoken to her about it. He expressed his frustration with having Hemphill effectively tell him how he needs to care for his patients. He concluded by stating he would no longer work on days when Hemphill was working out of concern that this behavior would continue.

Later that day, Simpson forwarded the charge nurse's email to Jamie Serrano, director of labor relations. Simpson wrote that the email described the environment that Hemphill created in the ICU, and that her conduct was detrimental to the unit's success. Simpson concluded by stating:

The [ICU] is a different environment than most units and is very demanding and some people are just not a good fit...We have had similar conversations with nurses that have transferred and now are thriving in their new environment. At this point I believe we need to discuss a possible transfer to a different unit that would benefit [Hemphill].

(R Exh. 1, pg. 1).

After reviewing the emails, Serrano instructed Simpson to investigate the charge nurse's complaints, including holding a meeting with Hemphill with a Union steward present. (Tr. 191; 211). Serrano later learned Simpson had an upcoming vacation scheduled around the holidays. To ensure she had enough time to investigate the additional complaints, Serrano emailed the Union on December 26, 2023, requesting an extension of time under Article 21.3 of the Agreement. He explained the Respondent needed time to investigate a "new issue" involving Hemphill. The Union responded later that day granting Serrano's request for an extension. (GC Exh. 8).

6. *Simpson's January 2 Request for an Investigatory Interview*

On January 2, 2024, following her return from vacation and the holidays, Simpson called Hemphill while she was at work in the ICU to inform her the Respondent had received additional complaints about her from nurses, and they needed to meet to discuss those complaints. (Tr. 70; 191). Hemphill asked Simpson when the complaints were made, and Simpson told her. (Tr. 70).⁷ Hemphill

be an agent of the Union and be available to attend the meeting. See *PAE Applied Technologies, LLC*, 367 NLRB No. 105 (2019). Drayton was not available, and Holland was not an agent of the Union.

Considering all this, I do not credit that Hemphill believed she was complying with Simpson's instructions or the Agreement when she brought Holland, rather than a steward, to the December 13 interview.

⁷ As discussed, Simpson received the additional complaints against Hemphill on December 20, 2023, and she instructed Hemphill to meet about those complaints on January 2, 2024. There were no more than eight "working days" between them (Monday, December 25 and Monday, January 1 were holidays), which meant Simpson's January 2 instructions to Hemphill about meeting over the late December complaints were timely.

again stated that Article 21 of the Agreement precluded management from disciplining an employee more than 10 days after learning of her alleged misconduct. Simpson replied that management had spoken with the Union and received an extension. (Tr. 71-72). Hemphill responded “Okay.”⁸ That was the end of the conversation.⁹ Hemphill never met with Simpson to discuss the additional complaints. (Tr. 72-73).¹⁰

7. January 5 Email to the Union

On January 5, 2024, Serrano emailed the Union stating the Respondent was once again having an issue with Hemphill. (GC Exh. 9). He explained that management had never had issues like this with any Union member, let alone a steward, adding that Hemphill’s actions were “unacceptable.” He described that Hemphill had a “misunderstanding regarding management rights” in that she had repeatedly refused to meet with her manager as requested. He stated that in her most recent refusal, Hemphill incorrectly quoted the Agreement without understanding that the 10-working day limit contained therein concerned the finalization of disciplinary action, and the meeting requests she had refused were investigatory. Serrano also stated that Hemphill had a misunderstanding regarding her duties as they relate to teamwork and providing the best patient care possible, noting that she consistently refused to assist with emergency requests from nurses, claiming that her job description does not allow it. Serrano advised the Union that because Hemphill would not meet with management to discuss these issues, it would either finalize its disciplinary decisions regarding “the last incident”

Hemphill testified that during their January 2 conversation Simpson gave her a specific date for when she first learned about the late December complaints, but Hemphill stated she could not recall what that date was. (Tr. 71). In contrast, Hemphill testified that during their December 13 meeting she asked Simpson the same question about the late November complaints, and Simpson told her November 27. From a credibility standpoint, it was telling that Hemphill was able to remember the November 27 date, which favored her untimeliness argument, but she could not recall the December 20 date, which undermined that argument.

⁸ Hemphill offered conflicting responses about when she first learned the Respondent and the Union had agreed to an extension of the contractual time limits. On direct examination, she testified Simpson told her about it during their January 2 call. On cross examination, Hemphill testified she did not learn about it until the January 9 meeting. (Tr. 115-116). I credit that it was January 2, because it is consistent with Simpson’s testimony and more logical that Simpson would have raised in response to Hemphill again raising the timing as a defense.

⁹ Hemphill testified that at no time during their January 2 call did Simpson schedule any meetings, tell Hemphill to come to her office, or tell Hemphill to get a Union representative. (Tr. 72-73). I do not credit this testimony. While Simpson admittedly struggled to recall certain details about this call, I credit from her statements and the surrounding circumstances that she told Hemphill that they needed to meet and discuss the additional complaints made against her, and that Hemphill needed to bring a Union steward. These were the instructions Simpson and Serrano credibly testified they discussed Simpson giving Hemphill after receiving the charge nurse’s December 19 email. Serrano’s email communications with the Union shortly thereafter confirm that he contacted the Union to request an extension to allow the Respondent more time to investigate those additional complaints, and his testimony confirms he knew Simpson would need more time to meet with Hemphill and investigate because Simpson would be away on vacation at the end of the year. Furthermore, the sole purpose of Simpson’s January 2 call to Hemphill was to initiate a meeting to discuss the additional complaints. It is logical that she would have given these instructions during the call. It also is consistent with what Simpson did during their December 13 call to Hemphill regarding the late-November complaints. The only difference between these two calls is that Hemphill raised the contractual 10-working-day period during their January 2 conversation, and Simpson promptly informed her that the parties had agreed to an extension of those time limits.

¹⁰ Hemphill testified she tried to contact Deother Cook and Jamie Serrano following her January 2 call with Simpson, but neither was available. (Tr. 73). Hemphill did not testify why she tried to contact them. In her testimony, Hemphill did not indicate that she had any questions or was confused or dubious about what Simpson said to her about the extension or what it meant.

without Hemphill's input or write her up for insubordination, which is a Group III violation. He concluded by stating the manager's next meeting would be mandatory and it would be to issue corrective action.

8. *January 9 Meeting*

On January 8, 2024, Serrano called Hemphill to inform her there would be a mandatory meeting the following day. He explained the purpose of the meeting was to discuss her insubordination, and she needed to have a Union steward present with her. (Tr. 74). The following day, Hemphill attended the meeting accompanied by Union stewards Verna Wilson and Mekeda Henderson. Serrano attended, along with Simpson and ICU director Sheila Pochron. (Tr. 75). The details of what was said during this meeting are limited and vague. Serrano stated that Hemphill had been insubordinate when she refused to meet with Simpson for an investigatory interview. Hemphill denied this. (Tr. 76). There was a discussion about what she and Simpson said to one another during their January 2 call. Similar to what he wrote in his January 5 email to the Union, Serrano commented that he never had a Union steward act the way Hemphill had. (Tr. 77-79). He made this statement while discussing Hemphill's repeated failure to follow Simpson's instructions about meeting to discuss the complaints against her.

At some point, Hemphill was asked to excuse herself from the meeting. She left and waited in another office, and the meeting continued without her.¹¹ Later, Wilson and Henderson came out and told Hemphill that management had scheduled another meeting for January 15, when it would determine what action to take. (Tr. 80). At the conclusion of the January 9 meetings, Hemphill returned to work, and she continued to work for the next week.

9. *January 15 Meeting*

The same participants were present for the January 15, 2024 meeting. (Tr. 81-83). Serrano began by stating the Respondent had decided to discharge Hemphill for insubordination. Hemphill was later presented with a corrective action form dated January 2, 2024. (GC Exh. 4). The form stated that on that day Hemphill refused Simpson's request to meet as part of an investigation into complaints and work issues. It further stated that Hemphill was advised of her right to representation, and that management had obtained an extension of the contractual time limits to conduct the investigation.

After Serrano announced that Hemphill would be discharged, Union steward Verna Wilson stated that Hemphill had worked for the Respondent for nearly 25 years and had no prior discipline.

¹¹ Henderson testified that during the January 9 meeting, after Hemphill had been excused, Serrano made a comment that Hemphill was "one of the worst stewards" he had ever dealt with, and she was "unreasonable." (Tr. 153). I do not credit this testimony even though Serrano did not testify about it. While I generally found Henderson to be an honest and forthright witness, her recollection was, at times, limited and vague. Her testimony about Serrano's alleged statements lacked context, corroboration, and was inconsistent with Serrano's other statements about Hemphill's performance as a steward. As noted above, Serrano viewed Hemphill as an aggressive and knowledgeable steward, not a poor or unreasonable one. His only stated criticism about her, which was in his January 5 email to the Union and stated earlier during the January 9 meeting, was her repeated failure to meet with Simpson to discuss the complaints against her. It was that behavior that he never saw from any other employee, let alone a steward, and which he characterized as "unacceptable." Based on these factors, I find Henderson was mistaken in her recollection and likely conflated Serrano's comments from earlier in the meeting about Hemphill's unprecedented failure to meet with management about the complaints against her, rather than a random and generalized criticism about her performance as a steward.

Wilson asked whether there were any alternatives to discharging Hemphill. (Tr. 83-84). Serrano responded that management had considered that. He stated it was willing to allow Hemphill to remain employed under a last-chance agreement, but she could not remain in the ICU at the Southlake campus. (Tr. 84).

Wilson, Henderson, and Hemphill excused themselves from the meeting and spoke privately. Wilson and Henderson urged Hemphill to consider signing the last-chance agreement. Hemphill refused, stating she was not going to sign such an agreement for something she did not do. (Tr. 87). Wilson and Henderson then went back into the meeting with Serrano, Simpson, and Pochron. Hemphill stayed behind. Wilson or Henderson later came back and told Hemphill that management stated she should not return to work that day. (Tr. 88). Hemphill then gathered her belongings and left.

10. January 25 Discharge

About a week after the January 15 meeting, lead organizer Deother Cook called Hemphill and asked if she was going to sign the last-chance agreement. He told her there was a night-shift HUP position available in the emergency department at the Northlake campus. (Tr. 90; 130-131). Hemphill responded that she was not interested in a night-shift position. (Tr. 131-133).

On January 25, 2024, the Respondent issued Hemphill a discharge letter. (GC Exh. 6). It stated Hemphill had been presented with a last-chance agreement for her consideration and signature in lieu of discharge for her insubordination on January 2. Based on the terms of the agreement, the Respondent offered her a HUP position in the Northlake emergency department, which she declined.

LEGAL ANALYSIS

A. Overview

The complaint alleges the Respondent violated Section 8(a)(1) and (3) of the Act when it discharged Hemphill. The General Counsel contends the Respondent discharged Hemphill because she engaged in protected, concerted and union activity (1) when she asserted during her December 13, 2023 and January 2, 2024 conversations with Simpson that the 10-working-day period in Article 21 of the Agreement prevented the Respondent from disciplining her, and (2) when she performed her role as a Union steward. The Respondent denies the alleged violations and argues it discharged Hemphill because of the complaints it received about her work performance and interaction with coworkers and her repeated failure to follow Simpson's instructions to meet to discuss those complaints.

When assessing the lawfulness of an adverse action that turns on employer motivation, the Board applies the framework set forth in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved by *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 395 (1983). Under this framework, the General Counsel has the initial burden of establishing by a preponderance of the evidence that the employee's protected activity was a motivating factor in the employer's decision, i.e., that a causal relationship existed between that activity and the adverse action. The elements required to sustain the General Counsel's initial burden are: (1) the employee engaged in protected activity; (2) the employer had knowledge of that activity; and (3) the employer had animus against the protected activity. *Id.* See also *Intertape Polymer Corp.*, 372 NLRB No. 133 (2023), enfd. 2024 WL 2764160 (6th Cir. 2024). Proof of discriminatory motivation (animus) can be based on direct evidence or can be inferred from circumstantial evidence based on the record. *Tschiggfrie Properties Ltd.*, 368 NLRB No. 120, slip op. at 1 (2019). Circumstantial evidence

may include, among other factors: the timing of the action in relation to the protected activity; contemporaneous unfair labor practices; shifting, false, or unsupported reasons offered for the adverse action; failure to conduct a meaningful investigation; departures from past practices; or disparate treatment of the alleged discriminatees. *Intertape Polymer Corp.*, supra slip op. at 6.

If the General Counsel establishes these factors, the burden shifts to the employer to show it would have taken the same adverse action in the absence of statutorily protected activity. *Intertape Polymer Corp.*, supra slip op. at 7. The employer cannot carry this burden merely by showing that it also had a legitimate reason for the action, but must persuade, by a preponderance of the evidence, that the adverse action would have taken place absent the actual or suspected activity. *Id.* The General Counsel may offer proof that the employer's reasons for the adverse action were false or pretextual. When the employer's stated reasons for the action are found to be pretextual -- that is, whether false or not in fact relied upon -- discriminatory motive may be inferred, but such an inference is not compelled. *Electrolux Home Products*, 368 NLRB No. 34, slip op. at 3 (2019).

B. Hemphill Was Not Engaged in Protected, Concerted or Union Activity When She Knowingly and Repeatedly Failed to Follow Simpson's Instructions About Meeting to Discuss the Complaints Against Her

The General Counsel argues that Hemphill was engaged in protected, concerted and union activity on December 13 and January 2, when she asserted that the time limits in Article 21 of the Agreement prevented the Respondent from disciplining her, and that Hemphill's alleged insubordination in failing to follow Simpson's instructions about meeting to discuss the underlying complaints was inextricably intertwined with that protected activity. The General Counsel argues that because Hemphill was discharged, in part, based on this insubordination, it was discriminatorily motivated, in violation of Section 8(a)(1) and (3).

To establish that Hemphill was engaged in protected, concerted and union activity, the General Counsel relies upon *NLRB v. City Disposal Systems*, 465 U.S. 822 (1984), and *Interboro Contractors*, 157 NLRB 1295, 1298 (1966), *enfd.*, 388 F.2d 495 (2nd Cir. 1967). In *Interboro*, the Board held an individual employee's assertion of a right grounded in a collective-bargaining agreement constitutes concerted activity protected by Section 7 of the Act. In adopting this interpretation of the Act, the Supreme Court in *City Disposal* held that "[a]s long as the employee's statement or action is based on a reasonable and honest [even if mistaken] belief that [he/she] is being, or has been, asked to perform a task that [he/she] is not required to perform under the collective-bargaining agreement, and the statement or action is reasonably directed toward the enforcement of a collectively bargained right, ... the employee is engaged in concerted activity ..." 465 U.S. at 837, 840. The Court, however, warned that just because an activity is concerted does not mean the employee can act with impunity, and an employee can engage in concerted activity in such an abusive manner that he/she loses the protection of Section 7. *Id.* at 837.

To prove a violation under *City Disposal* and *Interboro*, the General Counsel must establish that (1) Hemphill had a reasonable and honest (even if mistaken) belief that she was being, or had been, asked to perform a task(s) she was not required to perform under the Agreement; and (2) her statement, action, or inaction was reasonably directed toward enforcement of the Agreement. The "tasks" Hemphill was instructed to perform on December 13 and January 2 were: (1) to come to Simpson's office to meet and discuss the complaints made against her; and (2) to bring a Union steward with her to the meeting. For the reasons outlined above, Hemphill failed to bring a steward/delegate to the

December 13 meeting when she brought Holland, and she failed to meet with Simpson on January 2 to discuss the additional complaints against her.

5 The issue, therefore, is whether the General Counsel has established that Hemphill had a reasonable and honest (even if mistaken) belief that Article 21 applied and justified her failure to perform the above tasks.¹² Article 21 addresses two types of meetings: disciplinary meetings (Article 21.3) and investigatory interviews (Article 21.4). As for deadlines, Article 21.3 states discipline “shall be imposed as soon as possible after the Employer is aware of the event or action giving rise to the discipline and has a reasonable period of time to investigate the matter.” It further states that “[i]n any event, the actual date upon which discipline is imposed may not exceed ten (10) working days (Monday through Friday), unless the parties agree to an extension of time.” Article 21.4 does not contain a deadline, only that the interview must occur at least one hour before the end of the employee’s shift.

15 As discussed more fully below, I conclude Hemphill did not have a reasonable and honest (even if mistaken) belief, particularly not after Simpson informed her during their January 2 call that the parties had agreed to an extension of Article 21’s time limits to allow the Respondent additional time to investigate the late December complaints against her.

20 First, Hemphill never claimed during her conversations with Simpson, during her subsequent meetings with management, or during her testimony that Article 21 of the Agreement allowed her not to follow Simpson’s instructions about meeting (with a steward/delegate) to discuss the complaints against her. She instead claimed she believed that Article 21 imposed a deadline for the Respondent to discipline her, and those deadlines had passed by the time Simpson spoke to her on December 13 and on January 2. The only language in Article 21 that arguably allows an employee not to participate in an investigatory interview is if management fails to inform the employee of his/her right to have a Union steward/delegate present, or if there is not a Union steward/delegate available to attend. There is no evidence that either of these exceptions applied on January 2.¹³

30 The General Counsel argues that to the extent Simpson called Hemphill on January 2 with the intent of initiating an investigatory interview under Article 21.4 rather than a disciplinary meeting under Article 21.3, the Respondent never informed Hemphill of that, which is significant because an investigatory interview carries different procedural obligations, including advance notice and informing the employee of their right to representation -- none of which, according to Hemphill, Simpson provided during her January 2 call. According to Hemphill, Simpson only stated she had a

¹² In *City Disposal*, the Supreme Court remanded the case to the Sixth Circuit to determine whether there was substantial evidence to support the Board’s finding that the discriminatee in that case had a reasonable and honest belief that he was asserting a contractual right when he refused to operate a vehicle he thought was unsafe. In making this determination, the Sixth Circuit held an employee’s statement or action is concerted if it is both subjectively honest and objectively reasonable, regardless of whether it turns out to be correct. See *City Disposal Systems, Inc. v. NLRB*, 766 F.2d 969, 972 (6th Cir. 1985). It examined the language of the collective-bargaining agreement creating the alleged right, the objective evidence known to the employee indicating that a right was being violated, and the employee’s own words and actions. *Id.* Although the Sixth Circuit’s decision is not binding authority in the present case, it provides guidance in evaluating whether Hemphill had a reasonable and honest belief that she was being instructed to perform tasks she had a contractual right not to perform.

¹³ There also is no evidence that either of these exceptions applied on December 13. Simpson told Hemphill to bring a steward to that meeting. Hemphill asked steward Bernita Drayton to attend, but she was unavailable. The record does not reflect that Hemphill informed Simpson that Drayton was unavailable or requested a postponement to a time when Drayton was available. The record also does not reflect that Hemphill asked any other stewards/delegates to attend, or that there were no other stewards/delegates available to attend.

complaint from some nurses, without specifying when the alleged conduct occurred, whether discipline was being contemplated, or whether Hemphill needed to obtain Union representation. Given this lack of information, Hemphill's belief that the Respondent was attempting to meet to impose discipline based on an untimely complaint was entirely reasonable.

5

As stated, I credit that Simpson told Hemphill on January 2 to come to her office to meet and discuss the additional complaints against her, and to bring a Union steward. Hemphill acknowledged that Simpson gave her these same instructions on December 13. Based on Hemphill's failure to comply with those instructions when she brought Holland rather than a steward/delegate to the meeting, I find it is more likely, not less likely, that Simpson reiterated those instructions when she spoke with Hemphill on January 2.

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As for Hemphill's belief that Simpson was attempting to discipline her on January 2, there was no evidence to support this.¹⁴ Simpson never mentioned discipline, or the possibility of discipline, when she spoke with Hemphill. Even if Hemphill believed the Respondent might discipline her for her alleged misconduct, she knew from the Agreement, the FJCA System and her experience as a steward that the Respondent would not discipline her without first interviewing her.¹⁵

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¹⁴ The General Counsel contends Hemphill reasonably believed the Respondent was "again" attempting to discipline her based on an untimely complaint. (GC Br. 21 fn. 17). There is no evidence the Respondent previously attempted to discipline Hemphill. When the Respondent received the initial complaints when Hemphill began working in the ICU, Simpson met with her to investigate, and no discipline was issued. When the Respondent received the May 2023 complaints, human resources met with Hemphill to investigate, and no discipline was issued. When the Respondent received the late November complaints, Simpson attempted to meet with Hemphill to investigate. And even though Hemphill failed to follow Simpson's instructions about bringing a steward/delegate to that December 13 meeting, no discipline was issued.

¹⁵ The General Counsel cites *King Soopers, Inc.*, 364 NLRB 1153 (2016), *enfd.* in relevant part, 859 F.3d 23 (D.C. Cir. 2017), *Omni Commercial Lighting, Inc.*, 364 NLRB 612 (2016), and *Tillford Contractors*, 317 NLRB 68 (1995) for support. In *King Soopers*, the employer unlawfully suspended and discharged a barista after she refused a manager's directive to bag groceries, claiming that it was work that belonged to a different bargaining unit and was covered under a separate agreement. The Board found the barista's interpretation of the agreements to be reasonable and honest, albeit mistaken, based on evidence that the union representative agreed with the barista's interpretation, an assistant manager acknowledged it was unusual for employees outside the retail unit to bag groceries, and the disciplining supervisor admitted that a barista's duties did not include bagging groceries. In *Omni Commercial Lighting*, the employer unlawfully discharged an electrician for protesting his pay based on his incorrect belief that he was covered under a different collective-bargaining agreement. The Board held the electrician's belief was reasonable and honest, albeit mistaken, because the employer and union made statements indicating he would be covered under that other agreement. In *Tillford Contractors*, the employer unlawfully discharged a steward for aggressively questioning a foreman to determine if he had been assigned to the project in violation of the collective-bargaining agreement. The Board held the steward was engaged in protected activity because he was a steward enforcing the agreement and his statements were directly related to that activity, and the statements were not so flagrant, violent or extreme as to render him unfit for further service.

These cases are distinguishable. In each, the employees had a reasonable and honest (even if mistaken) belief that they had a contractual right to engage in, or refrain from, the specific conduct at issue, and they asserted that right. There is no evidence or argument that Hemphill believed Article 21 provided her with the right to disregard Simpson's instructions about meeting to discuss the complaints. A failure to meet to discuss the complaints against her is different than a failure to meet to receive discipline for them. Furthermore, unlike the cited cases, there was no other evidence presented supporting that Article 21 arguably applied and excused Hemphill's insubordination. On the contrary, according to Serrano's January 5 email to the Union and his statements during the January 9 meeting, there were no other instances of employees, let alone stewards, acting in the same manner.

Second, even if Hemphill believed that Article 21.3 applied and justified not meeting with Simpson prior to January 2, the reasonableness and honesty of that belief was lost when Simpson told her on January 2 that the Respondent and the Union had agreed to an extension of the time limits to allow the Respondent more time to investigate the additional complaints against her.

The General Counsel argues Simpson's notice to Hemphill about the extension was somehow flawed. This argument is based upon Simpson only mentioning the extension after Hemphill again raised the 10-working-day period as a defense. The General Counsel also points to Simpson providing Hemphill with no further details or explanations about the extension, such as what it covered, who approved it or why it applied. Based upon this, the General Counsel argues Hemphill's continued reliance on the contractual 10-working-day period was entirely reasonable because an employee cannot be expected to assume the existence, validity, or scope of an extension management never disclosed.

The General Counsel fails to identify what information Hemphill was expected to assume regarding the extension, or how that contributed to her continued failure to comply with Simpson's instructions. Hemphill acknowledged on direct examination that Simpson told her about the extension during their January 2 call. Hemphill was familiar with how the extension process worked, and that the parties previously agreed to extensions to allow the Respondent more time to investigate and decide whether to act. Hemphill did not ask Simpson any questions about the extension, and she did not express any confusion or doubt about what it meant. As of January 2, Hemphill knew that Article 21's time limits no longer applied or excused her continued failure to follow Simpson's instructions.

An employee's belief that he/she is asserting a contractually bargained right is not reasonable or honest when it is shown to be knowingly false, unfounded, or inapplicable. See *Newark Morning*

The facts in this case are closer to those in *Mead Corp.*, 275 NLRB 323 (1985). In *Mead Corp.*, the employer directed employees, including one steward, to perform maintenance work that would require them to work overtime (called a forceover). One of the employees performed the work but stated he was doing so under protest. The steward, however, refused to work the forceover, claiming that the agreement precluded the directive once his replacement clocked in. The employer suspended the steward for insubordination. The Board held:

There is no evidence here that the [r]espondent disciplined [the steward] for the content of his complaint. His manner of complaining was the sole reason for his suspension. In this regard, we emphasize that [the steward] refused a direct forceover order while still on the job. Had he followed [his coworker's] example and worked under protest, he could have subsequently grieved the order. Eschewing the grievance system or other protected forms of protest, however, [the steward] sought to dictate the terms of his employment by refusing to honor the [r]espondent's mandatory forceover practice. The Board has repeatedly held such conduct to be unprotected insubordination and legitimately subject to discipline.

275 NLRB at 324 (footnotes and citations omitted).

Like in *Mead Corp.*, the issue here is not whether Hemphill had a reasonable and honest belief that Article 21.3's time limits prevented the Respondent from disciplining her for her alleged misconduct; it is whether her knowing and repeated failure to follow Simpson's instructions about meeting to discuss the alleged misconduct constituted unprotected insubordination. Assuming the Respondent decided to discipline her -- which there is no evidence it planned to do without first interviewing her -- resolving the (un)timeliness of the discipline would appropriately be handled through the grievance-arbitration process. See also *Specialized Distribution Management*, 318 NLRB 158 (1995); *Carolina Freight Carriers Corp.*, 295 NLRB 1080 (1989); and *Jos. Schlitz Brewing Co.*, 240 NLRB 710 (1979) (each recognizing the "obey now; grieve later" approach except for directives that pose a threat to employee health and safety).

Ledger, 316 NLRB 1268 (1995) (union vice chapel chairman who disregarded directive about assignments not honestly and reasonably acting to enforce agreement but rather was attempting to unilaterally change the agreement and past practice by his actions); *Mead Corp.*, supra; *ABF Freight Systems*, 271 NLRB 35 (1984) (driver's repeated brake complaints, refuted by mechanics, other drivers, and his own union agent, found obstructive and not honest). Cf. *K-Mechanical Services*, 299 NLRB 114 (1990) (employee's mistaken belief about overtime rights was reasonable where employer failed to enlighten him). Once Simpson told Hemphill during their January 2 conversation that the parties had agreed to an extension of the contractual time limits to investigate the complaints against her, any reasonableness or honesty surrounding Hemphill's belief that the time limits provided a reason for her not to comply with Simpson's instructions was lost. Yet, Hemphill continued not to comply, without a good-faith basis that it was protected under the Agreement.¹⁶

Based on the foregoing, I conclude the General Counsel failed to prove that Hemphill was engaged in statutorily protected activity under *City Disposal* and *Interboro*. Hemphill was not discharged for asserting a contractual right; she was discharged for knowingly failing to follow Simpson's instructions about meeting, particularly after she was informed about the extension.

C. The Respondent Did Not Have Animus Toward Hemphill for Performing Her Role as a Union Steward

The General Counsel also argues the Respondent discharged Hemphill because of her protected, concerted and union activities as a steward. (GC Br. 24). The General Counsel argues the Respondent exhibited animus toward Hemphill for these activities. Specifically, the General Counsel points to Serrano's statements in his January 5 email to the Union in which he stated he had "never had issues like this with any union member, let alone a Steward," his similar statements during the January 9 meeting, and his testimony that he viewed Hemphill as very adamant and aggressive when she performed her role as a steward.¹⁷

Regarding Serrano's statement in his January 5 email to the Union, which he reiterated during the first part of the January 9 meeting, the wording and the context of these statements establish that Serrano was referring to Hemphill's repeated failure to follow Simpson's instructions about meeting about the complaints against her, not her general performance as a steward. Furthermore, the Board has recently held that a passing reference to an employee's protected activity as "aggressive" merely reflects a subjective perception and, without more, would not be coercive or otherwise support a finding of animus. See *Starbucks Corp.*, 375 NLRB No. 49, slip op. at 3 (2026).

The General Counsel also argues animus should be inferred because the Respondent concluded without fully investigating whether Hemphill failed or refused to follow Simpson's instructions about meeting. This argument ignores that Serrano communicated directly with Simpson regarding her interactions with Hemphill, and she relayed directly what happened when she instructed Hemphill that

¹⁶ The General Counsel argues that Hemphill's unsuccessful attempts to call Deother Cook and Jamie Serrano following her January 2 conversation with Simpson underscores the honesty of her belief in the timeliness requirement and her reasonable effort to confirm any change affecting her right. (GC Br. 19). The flaw with this argument is Hemphill never testified why she called Cook or Serrano or that she was somehow unclear about what Simpson told her regarding the extension.

¹⁷ The General Counsel also relies upon Henderson's testimony about Serrano's alleged comments during the portion of the January 9 meeting after Hemphill had been excused. For the reasons stated above, I do not credit that testimony and will not consider the alleged statements as evidence of animus.

they needed to meet to discuss the complaints with a Union steward present. The General Counsel again disputes that Hemphill refused to meet with Simpson and argues that when Simpson informed her about the complaints, Hemphill merely asserted that Article 21.3's 10-working-day period for disciplining her had passed. The argument presumably is based upon the belief that because Simpson did not continue to press Hemphill to meet, Hemphill was not being insubordinate when she knowingly failed to follow Simpson's instructions. When a supervisor instructs an employee to meet and discuss complaints against him/her, and the employee repeatedly fails to follow those instructions without a good-faith reason and explanation, that is insubordination. And Hemphill's insubordination in response to Simpson's instructions about meeting meant the complaints against Hemphill went unchallenged and unrefuted.¹⁸ Serrano noted as much in his January 5 email to the Union.

The General Counsel separately argues animus should be inferred based on close timing of the Respondent's efforts to begin disciplining Hemphill almost immediately after she filed Lydia Wright's grievance. Hemphill filed Wright's grievance on December 11, and Simpson first contacted her about the complaints against her on December 13. The flaw with the General Counsel's argument is that the complaints Simpson was investigating on December 13 were made on about November 27, about two weeks before Hemphill spoke with Simpson or filed the grievance.

Finally, the General Counsel argues animus should be inferred because the Respondent's reasons for discharging Hemphill were pretextual. As stated, the General Counsel contends the Respondent's failure to prove that Hemphill refused to meet with management, its cursory and inadequate investigation, and Serrano's contemporaneous statements, discussed above, demonstrate that Hemphill's protected, concerted or union activity was the sole reason for the discharge. As stated, these arguments are without merit. Simpson instructed Hemphill on December 13 and January 2 to meet and discuss complaints against her, and to bring a Union steward to the meeting. Hemphill failed or refused to follow these instructions, both times. The credited statements by Serrano relate solely to Hemphill's refusal to meet, not her status or performance as a steward. Furthermore, the Respondent was prepared to allow Hemphill to remain employed under a last-chance agreement, but she refused to agree to the terms.

For these reasons, I conclude the General Counsel also failed to meet their burden of establishing that the Respondent had animus toward Hemphill for performing her role as a Union steward, or that it was a motivating factor in the Respondent's decision to eventually discharge her.

CONCLUSION OF LAW

Based on the foregoing, I conclude the General Counsel has failed to establish the Respondent committed the alleged violations under either theory. On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁹

ORDER

¹⁸ I make no findings or conclusions regarding the validity of the complaints regarding Hemphill's work performance or interactions with coworkers.

¹⁹ 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.

The complaint is dismissed in its entirety.

Dated, Washington, D.C. October 26, 2026

A handwritten signature in black ink, reading "Andrew S. Gollin". The signature is written in a cursive style with a horizontal line extending from the end of the name.

Andrew S. Gollin
Administrative Law Judge