

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

UNITED CLEANUP OAK RIDGE, LLC

and

**Cases 10-CA-309298
10-CA-316619**

PATRICIA SEXTON, an Individual

and

Case 10-CA-316559

WENDY COLYER, an Individual

Katherine E. Miller, *Esq.*, for the General Counsel.

John E. Winters, *Esq.*, for the Respondent.

Matthew McGinley, *Esq.*, for the Respondent.

Decision

STATEMENT OF THE CASE

Christal J. Key, Administrative Law Judge. This case was tried in Knoxville, Tennessee, on April 20-23, 2026. The Regional Director for Region 10 issued an order consolidating cases, consolidated complaint and notice of hearing (complaint) in this case on June 24, 2025. (GC Exh. 1(i).) On July 8, 2025, Respondent filed an answer to the complaint and on April 1, 2026 it filed an amended answer. (GC Exhs. 1(k), 1(r).) Respondent denied the central allegations in the case. The complaint alleges that Respondent violated Section 8(a)(1) of the Act by issuing Patricia Sexton a last chance warning and transferring her into a less desirable job because she engaged in protected concerted activities. It alleges that Respondent violated Section 8(a)(1) and (4) of the Act by suspending and terminating Patricia Sexton and Wendy Colyer because they engaged in protected concerted activities, filed charges with the National Labor Relations Board (NLRB) and/or gave testimony under the Act. After the conclusion of the trial, the General Counsel and the Respondent filed briefs which I have read and carefully considered.¹

¹ Following the events of this case, Wendy Colyer changed her name to Wendy Bales. (Tr. 173-174.) I have referred to her as Wendy Colyer throughout this decision except in the remedy section where I have referred to her as Wendy Colyer Bales.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties, I make the following findings, conclusions of law, and recommendations.²

5

FINDINGS OF FACT

I. JURISDICTION

At all material times, United Cleanup Oak Ridge, LLC has been a Delaware limited liability company with facilities in Oak Ridge, Tennessee. During the 12-month period preceding June 24, 2025, Respondent provided services safely deactivating and demolishing nuclear facilities for the United States Department of Energy, a division of the United States Government, valued in excess of \$50,000. 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. (GC Exhs. 1(i), 1(k).) Based on the foregoing, Respondent admits and I find that this dispute affects commerce and that the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

15

II. ALLEGED UNFAIR LABOR PRACTICES

20

A. Background

1. Respondent's operations

Respondent has a contract with the Department of Energy (DOE) in Oak Ridge, Tennessee to provide environmental cleanup services at three sites on the Oak Ridge Reservation. (Tr. 432.) The three sites are: Y-12, the East Tennessee Technology Park (ETTP) which is also referred to in the transcript by its former name, K-25, and the Oak Ridge National Laboratory (ORNL). (GC Exh. 2, Tr. 432.) Respondent employs about 2400 employees and about 900 of them are represented by unions. (Tr. 441-442.) The facts of this case relate to landfills on the Y-12 site. The Environmental Management Waste Management Facility (EMWMF) has one operational, radiological landfill. The Oak Ridge Reservation Landfills (ORRL) consist of multiple operational and capped sanitary landfills. (GC Exh. 3, Tr. 25, 67-68, 326-327.) Up until April 10, 2023, Respondent employed two classifications of employees, laborers and grounds equipment operators who were represented by the Laborers' International Union of North America Local 818 (Laborers Local 818). About 12 laborers and 2 grounds equipment operators (GEOs) worked at the ORRL and about 14 laborers worked at EMWMF. (Tr. 484-485.) The laborers and grounds equipment operators perform work that includes mowing, groundskeeping, escorting trucks hauling waste, opening trucks at the waste sites, inspecting the leachate system that manages the water at the landfills, housekeeping and janitorial work. (Tr. 179, 327-328, 531-532.) Mowing work is part of

30

35

40

² The transcripts and exhibits in this case generally are accurate, but I hereby make the following transcript corrections: The cover page of the transcript lists the second case number as 10-CA-316919, it should be 10-CA-316619, page 84, line 16 moving should be mowing; page 193 line 2, extreme should be assuring; page 223 line 8 to should be two; page 235 line 23 mad should be moved; page 430, line 2, 2003 should be 2023; and page 537, lines 11 and 13 Eddie should be Patty.

Respondent's surveillance and maintenance program.³ When a landfill is full, it is capped and it must be maintained for a certain number of years. (Tr. 25, 34-35, 327, 330). Mowing the capped landfills is necessary so that they can be inspected. (Tr. 330.) The employees performing the surveillance and maintenance functions work out of the ORRL and their equipment is stored there. (Tr. 332.)

2. Status of Respondent's collective bargaining agreement with the Atomic Trades and Labor Council

Respondent has contracts with two unions which represent its employees, the Atomic Trades and Labor Council (ATLC) and the North American Building Trades Unions. (Tr. 330, 429, 441.) The ATLC is an umbrella labor organization which consists of multiple affiliate unions representing different crafts, including laborers and GEOs represented by Laborers Local 818. (R. Br. at 3, Tr. 52, 221, 329-330, 360.) Respondent and the ATLC were parties to a collective bargaining agreement which was effective by its terms from May 9, 2018, to June 30, 2021. (R. Exh. 29 at 401.) That contract covered all hourly paid production, maintenance, and service employees at the Y-12 site. (R. Exh. 29 at 401, 447.) The contract has an automatic renewal provision and it was set to expire on June 30, 2023. (R. Exh. 29 at 446, Tr. 77, 361-362, 429-430, 453.) In October 2022, the ATLC and Respondent reached an agreement for a successor contract, but employees working at the Y-12 landfills had voted against ratification of the contract. (Tr. 82, 221, 360-362.) Patty Sexton, Wendy Colyer and Adam Kilby all testified that some employees, including themselves, did not support ratification of the contract because the parties would not show them copies of the contract showing language changes. (Tr. 77-78, 82, 223, 318-319.) On April 10, 2023, the ATLC and Respondent agreed to a memorandum of understanding (MOU) under which the approximately 12 laborers at the ORRL and 14 laborers at the EMWMF landfill were promoted to GEO positions and given a raise from \$30.46 per hour to \$32.88. (GC Exh. 6.) The two employees who were GEOs prior to the MOU did not receive a wage increase or promotion.

Respondent's Administrative Services Manager, Charles Malarkey testified Respondent's management maintained an effective partnership with the unions which represent its employees. (Tr. 441-442.) Respondent maintained regular communications with union leadership through frequent meetings, including regular meetings between its President and CEO Kenneth Reuter and local union leadership, monthly steward meetings, monthly President's safety council meetings, and roundtables throughout the year. (R. Br. at 4, Tr. 441-443.)

3. Respondent's supervisors and managers

At the ORRL landfill, Patricia Sexton and Wendy Colyer reported to superintendents Cody Raby and Eddie Langley. (Tr. 32, 325.) Raby and Langley reported to ORRL Operations Manager Josh Pemberton. (Tr. 33, 326.) Pemberton reported to Project Manager Mark Cleveland who oversaw both the ORRL and the EMWMF landfill. (Tr. 323.) Cleveland reported to Waste Operations Project Manager Clint Mori. (Tr. 532.) Mori reported to Thomas Dieter.⁴ (Tr. 346.) During the relevant period, Kenneth Reuter was Respondent's President and Chief Executive

³ In the record, this is sometimes referred to as "S&M".

⁴ Dieter's title is not contained in the record.

Officer. (Tr. 505.) Reuter retired just prior to the hearing and he did not testify. (Tr. 505.) During the events relevant to this case, Samantha Dolynchuk served as Reuter's chief of staff. (Tr. 486.) Dolynchuk testified at the hearing. (Tr. 486.)

5 During the relevant period, Respondent employed Isaac De Los Santos as a labor relations operations manager. (Tr. 430, R. Br. at 14.) Ray Parrish also worked for Respondent as a labor relations manager. (Tr. 214, 343.) De Los Santos and Parrish reported to Labor Relations Director Len Morgan. (Tr. 430, 448.) Mary Alice Douglas served as Respondent's Human Resources Manager. (Tr. 431.) Morgan and Douglas reported to Administrative Services Manager, Charles
10 Malarkey. (Tr. 429.) Morgan resigned prior to the hearing and he did not testify.

4. Patricia Sexton and Wendy Colyer's work histories

15 Sexton worked primarily as a grounds equipment operator (GEO) at the ORRL since approximately 2000. (R. Br. at 12, Tr. 22.) She was included in the Laborers Local 818 bargaining unit. Sexton was promoted from a laborer position to a GEO position based on her seniority when a more senior GEO was promoted to a heavy equipment operator position. (Tr. 32.) When Respondent promoted Sexton, it required her to go through a class to be trained, and then she had to drive for an instructor. (Tr. 31.) Prior to April 10, 2023, Respondent employed one other GEO,
20 Kris Hagen. (Tr. 28.) Both Sexton and Hagen were assigned to the ORRL. As a GEO Sexton operated large tractors. (Tr. 22, GC Exh. 4.) All of Respondent's large tractors were housed at the ORRL. (Tr. 31.) Respondent did not employ any GEOs at the EMWMF landfill. (Tr. 31.) Sexton's regular work schedule was Monday through Thursday. During the mowing season, which starts in late March or early April, Sexton primarily operated a tractor to cut grass at the ORRL and she
25 also regularly performed mowing at the EMWMF, on Fridays at the overtime rate. During the non-mowing season, Sexton performed GEO duties at the ORRL operating a tractor with a bat wing attachment to clear vegetation along the fence and she also performed laborers' duties such as clearing brush. (Tr. 33, 35, 348-349.) On November 28, 2022, Respondent transferred Sexton from her GEO position to a laborer position at the EMWMF landfill. (Tr. 20-22, 26, 30-32, 67,
30 126-127.) Prior to that transfer, Sexton had never worked as a laborer at the EMWMF landfill. (Tr. 352.) On March 20, 2023, Respondent transferred her back to ORRL as a GEO to perform mowing. (GC Exh. 7.) On April 13, 2023, Respondent notified Sexton that it was transferring her back to EMWMF as a laborer effective April 17, 2023. On April 18, 2023, Respondent placed her on administrative leave, on April 20, 2023, it decided to terminate her and on April 24, 2023, it
35 issued her a termination notice. (GC Exh. 9.)

Respondent hired Colyer as a grounds service employee in 2016 at the ETPP facility. (Tr. 175.) At the ETPP Colyer performed mowing on a small non-tractor mower and weed eating. (Tr. 176.) About a year and a half later, she applied for a position and Respondent hired her as a laborer
40 at the EMWMF landfill. (Tr. 178.) Colyer worked at EMWMF for about 4 months. Respondent then transferred her to a laborer position at the ORRL landfills in 2018. (Tr. 182.) At ORRL Respondent assigned her to perform mowing and weed eating work, housekeeping, scanning and opening trucks, and inspecting the leachate system. (Tr. 183.) On April 18, 2023, Respondent placed her on administrative leave, on April 20, 2023, it decided to terminate her and on April 24,
45 2023, it issued her a termination notice. (GC Exh. 13.)

B. Respondent issues Sexton a last chance warning

1. Respondent's safety programs

Respondent's operation of a radiological landfill and sanitary landfills present significant safety concerns. Thus, Respondent maintains vigorous safety policies and procedures. It maintains a safety and health handbook and a safety conscious work environment policy. (R. Exhs. 36, 37.) The safety conscious work environment policy states:

Employees have, and are encouraged and expected to use, multiple venues to express safety concerns. These include, but are not limited to, their management chain and Employee Concerns.

Employees are encouraged to raise safety issues and concerns without fear of reprisal. The OREM/UCOR leadership team will address and resolve issues and concerns in a timely manner while exhibiting behaviors that foster employee confidence to raise concerns.

Employee involvement is the cornerstone of our safety culture and is essential to the successful implementation of the Integrated Safety Management System, Nuclear Safety, the Voluntary Protection Program, Behavior Based Safety and other EC&P, S&H and QA program elements. (R. Exh. 36 at 100.)

Respondent's health and safety handbook contains a list of basic safety and health practices. It states that all employees are to "Report all unsafe conditions, acts, and near miss incidents to your supervisor." (R. Exh. 36 at 116-117.) The handbook contains a description of Respondent's employee concerns program. It states that all personnel have the right and responsibility to openly and freely express work-related concerns. Safety is identified as one such concern. The document then lists six separate people or places where employees can report concerns.

The handbook also states:

Local Safety Improvement Teams (LSIT) provide an avenue for employees to contribute to the safety program, promote continuous safety improvement, promote safety awareness and sharing of lessons learned (LL), and provide an intense focus on safety issues from an employee perspective. The LSIT encourages employee feedback and involvement, fosters open communication, and develops mutual trust and confidence.

The handbook further states:

All workers are encouraged to have a conversation with a coworker if they observe a potential at-risk condition or behavior.

Discuss solutions on how to perform the task safely and compliantly.

Pause work and seek assistance if a safe resolution is not established.

- 5 Document the observation/conversation on a Safety Observation Card (SOC).
Workers' names are not to be used.

10 LSIT teams are one of the ways Respondent promotes safety. (R. Exh. 36 at 113, Tr. 369, 499.) Respondent's LSIT teams are comprised of employees from multiple crafts working in a specific facility. When employees see something that is unsafe they can fill out a safety information card and turn it into their LSIT chair who is an employee who works in their facility. (Tr. 39-40, 370.) The cards provide a way for Respondent to document safety concerns, monitor them and track the outcome. (Tr. 109-113, 369-370, 501, 538.) Respondent has noted a correlation between increases in the number of safety observation cards turned in with a decrease in recordable incidents. (Tr. 501.) Once a month, LSIT teams hold a meeting at which they discuss that month's cards. (Tr. 188-189.) Employees and managers, who testified on behalf of General Counsel and Respondent, all agreed that participating in the LSIT program by filling out safety information cards or attending LSIT meetings was voluntary but highly encouraged. (Tr. 39, 41, 117, 169, 187, 190, 262-263, 270, 369-370, 372-374, 500, 513.) Mark Cleveland, who oversaw both the EMWFM and ORRL landfills testified that employees could report safety concerns to their supervisor or fill out a safety observation card and submit it to their LSIT chair. (Tr. 370.) Cleveland testified that there were times that employees encountered urgent safety issues and, in these circumstances, employees did not have time to submit safety information cards. In these circumstances, the appropriate way to address urgent safety issues was for the employee to immediately call his or her supervisor. (Tr. 374.)

2. The ORRL LSIT team

30 The ORRL LSIT team was separate from the EMWFM team. (Tr. 370.) Each team had a mascot. Initially, employee participation in the LSIT program at the ORRL landfill had been minimal. (Tr. 168.) At some point, the ORRL team chose a donkey/ass as its mascot and the motto "Assuring Safety Success." A team member drew a cartoon picture of the front of the mascot and the team had tee shirts made which contained a picture of the mascot with the words "Team A.S.S." above the picture and the words Assuring Safety Success written below it. (GC Exh. 29.) Employees did not wear these shirts to work. (Tr. 43, 46.) During a plan of the day meeting, employees spoke with former Waste Operations Project Manager John Wrapp. During the meeting, Sexton told Wrapp that they would give 100 percent to the LSIT team if they were able to use their chosen mascot and Wrapp agreed. (Tr. 168.) After this meeting, employee participation, meaning employees submitting cards and attending LSIT meetings increased. (Tr. 43-44.) Sometime prior to mid-October 2022, management directed the team to change their name because they found it was noncompliant with its branding and disrespectful to the workforce. (R. Exh. 8 at 680.) About the first or second week of October 2022, Sexton and Reuter's chief of staff, Samantha Dolynchuk attended a PAPC (President's Accident Prevention Council) meeting along with other employees and managers. (R. Exh. 8 at 680, Tr. 536.) During the meeting, the ORRL LSIT team announced their new name CLASS (clean landfill assuring safety success.) Sexton brought her team tee shirt to this meeting. (Tr. 512.) Dolynchuk took offense to the connection to

a donkey's ass. (R. Exh. 8 at 680.) Following this meeting, management again advised the ORRL LSIT team that they would need to change their name. (Tr. 45-46, 375-376.) Sexton and Colyer testified that after the team had to change its name employees did not want to participate as much because they felt management had told them one thing, then done something different. (Tr. 47, 194.)

3. Sexton filed an NLRB charge against Laborers Local 818 and the ATLC

On March 4, 2022, Sexton filed a charge with the NLRB alleging that Laborers Local 818 and the ATLC had violated Section 8(b)(1)(A) of the Act by failing to process grievances for employee(s) relating to the qualifications of employees for work assignments and the maintenance of overtime lists.⁵ (GC Exh. 22.) The charge related in part to a claim that the unions had failed to process grievances related to job bidding. (GC Exh. 23 at 1.) Colyer provided an affidavit related to the charge. (Tr. 202.) The charge related to grievances about a lack of advancement for laborers, there was a claim that Respondent was posting jobs externally before posting them internally and that laborers were applying for jobs but not receiving interviews. (Tr. 202.) That charge remained pending until August 1, 2023, when the NLRB dismissed it. (GC Exh. 23.)

4. October 25, 2022, Sexton organizes an employee meeting with President and CEO
Kenneth Reuter

On October 25, 2022, Respondent held a catered picnic at the ORRL in the parking lot to celebrate a significant increase in the landfill's shipments. (Tr. 49, 532.) Respondent's CEO and President Kenneth Reuter attended the picnic. While Reuter was waiting in line to get his food, Sexton approached him and asked for a meeting. (Tr. 49, 553, R. Exh. 8.) After Reuter finished his lunch, he met with Sexton and some of her coworkers in a nearby break trailer. The following employees attended the meeting: Sexton, Wendy Colyer, Chuck Flowers, Justin Cunningham, Robert Broadus, Joe McCoy, Adam Kilby, and Jarvis Johnson. (Tr. 50-53, 119.) While Samantha Dolynchuk and Waste Operations Project Manager Clint Mori did not attend the entire meeting, they joined the meeting part way through. (Tr. 40.) Colyer walked into the meeting after it had started and she sat next to Sexton. Sexton and Colyer sat across the table from Reuter and Dolynchuk. (Tr. 271.)

During the meeting, employees raised concerns to Reuter that they felt were not being properly addressed by management. (Tr. 203, 534-535.) Joe McCoy, Justin Cunningham and other employees discussed their frustration with the way Respondent selected employees for promotions. Employees discussed that they were bidding on jobs that they were qualified for but those jobs were going to employees represented by the building trades union rather than the ATLC. (Tr. 52.) Employees raised concerns about having been passed over for promotions, the lack of diversity, the lack of opportunity for advancement and not receiving feedback regarding why they did not receive promotions for which they applied. (Tr. 200, 509, R. Exh. 8 at 679.) Sexton stated that they were missing a water truck at the ORRL which was leading to an increase in dust at their landfill and she asked for a water truck to be transferred from another facility to resolve the

⁵ I take administrative notice of Section 11702.1 of the NLRB's unfair labor practice case handling manual which provides for the General Counsel to serve a copy of the charge on the employer along with a letter and a commerce questionnaire.

problem. (Tr. 510-511, 535, 567, R. Exh. 8 at 679.) Mori responded that one of the water trucks was being fixed, that they were monitoring the dust mitigation issue, but management didn't feel like it was a big concern. Sexton was agitated by his response. (Tr. 510, 535.)

5 The third issue employees raised related to safety information cards. Sexton and other employees provided examples of occasions where they had filled out safety observation cards, for maintenance issues, but management failed to address those issues. (Tr. 510, 536-537, R. Exh. 8 at 679.) Sexton stated that she did not feel that safety observation cards were the most effective way to report safety concerns to management because some of her safety concerns could not wait
10 for the cards to be reviewed and addressed. (Tr. 205, R. Exh. 8 at 679.) Sexton gave examples of situations when employees needed to be able to call their supervisor to get the issue addressed in a timely fashion. (Tr. 204.) Mori testified that at the point that the participants discussed the LSIT program and the safety observation cards there was a level of anxiety and irritation from Sexton and some of the other employees. (Tr. 536-537.) Mori spoke up and said that he had just taken
15 over his position from John Wrapp and he asked for the opportunity to resolve some of the maintenance issues that employees had previously raised. (Tr. 510-511, R. Exh. 8 at 680.) Sexton stated she was frustrated with the LSIT safety program and she asked why employees should submit safety observation cards or spend their time as volunteers if "there's no fix to it". (Tr. 537-538.) Reuter asked Sexton whether she was saying she would not support the UCOR safety
20 program. (Tr. 53, 511, 537.) Sexton responded she was not going to support putting in LSIT cards or support participating in the LSIT program if management was not going to fix the issues raised in the cards. (Tr. 538.) Reuter's chief of staff Samantha Dolynchuk later wrote a memorandum about the meeting; she wrote that Sexton stated her "unwillingness to participate in the safety observation cards based on her opinion that it should not be the only mechanism by which safety
25 issues are reported to management." (R. Exh. 8 at 679.) Sexton also stated that she and other ORRL employees were upset that management would not allow them to keep their most recent LSIT team name "CLASS". (Tr. 52-53, 512, 535-536.) Sexton stated that Respondent had asked for 100 percent and employees had given that, but then management had refused to allow employees to use the name they had chosen for their LSIT team. (Tr. 52-53.) Sexton stated that
30 she would work safely every day, but she was not going to fill out safety information cards. (Tr. 53.)

 During the meeting, Colyer stated that when she had worked for Respondent at the K-25 site things were really good and she loved her job, but things were different at the ORRL and all
35 she could attribute it to was different upper management and a different union. (Tr. 200-201.) Sexton also made statements regarding her frustration with Laborers Local 818's leadership and their representation of employees. (Tr. 52, R. Exh. 8 at 679.) Reuter responded by leaning over to Sexton and Colyer and stating, I can't help you with any of your issues until this is settled between the NLRB and your union. (Tr. 55, 201.) During the meeting, Reuter listened patiently to
40 employees' complaints and appeared to take them seriously. (Tr. 118-119.) Sexton told Reuter that she did not feel that she had been able to adequately explain her concerns to him regarding the water truck so she asked him if she could write them down and give them to him. Reuter said yes. (Tr. 119-120, 539-540.) The following day, Mori asked Sexton if she had prepared a document setting forth her concerns to give to Reuter. Sexton told him that she no longer needed to write
45 down her concerns and she did not prepare a list. (R. Exh. 10, Tr. 120-122.)

In January 2023, Respondent's legal counsel asked Reuter's Chief of Staff, Samantha Dolynchuk to respond to written questions related to the meeting. (Tr. 516-518.) She responded and prepared a memorandum. (R. Exh. 8.) In the memorandum, Dolynchuk noted that after the meeting, Reuter and other managers exited the break trailer and were greeted by two individuals who spoke to Reuter in a positive manner. The memo noted that the demeanor of the workforce outside was vastly different from the atmosphere inside the break trailer and that Sexton exited the trailer at the same time and watched these two positive interactions. (R. Exh. 8 at 680.)

5. Sexton's last chance written warning

On October 27, 2022, Labor Relations Director, Len Morgan and Clint Mori called Sexton into a meeting. Sexton's shop steward, Rusty Laymance also attended the meeting. (Tr. 545.) Morgan issued Sexton a last chance written warning which stated:

On October 25, 2022, you stated that you would no longer follow safety protocols required of UCOR employees. You further stated that you would no longer raise safety concerns or identify recognized hazards as required by OSHA, UCOR Safety and Health Procedures, Safety Conscious Work Environment, and the Collective Bargaining Agreement, and additionally, is contrary to the UCOR Culture of Caring and UCOR Safety Culture.

UCOR Employee Standards of Conduct

A. EXTREMELY SERIOUS MISCONDUCT

1. Deliberate Disregard of safety rules or safety procedures. This includes conduct demonstrating reckless indifference or disregard for safety rules or procedures, including willful action or inaction resulting in injury to personnel or damage to property or equipment.

As a fully qualified grounds equipment operator, UCOR considers your refusal to participate in safety programs and your statements that you will not identify safety hazards as unacceptable and will not be tolerated.

As a result, you are being issued this Last Chance written disciplinary warning. Any refusal to identify safety issues will result in immediate termination of your employment. Any other future infractions for any reason may lead to additional discipline, up to and including, termination of your employment.

Morgan read the warning to Sexton and asked her if she agreed with it. (Tr. 545.) Sexton stated she would not sign the discipline because it was not true. (Tr. 62, 545.)

Respondent did not interview Sexton prior to issuing this discipline. (Tr. 61). This was the first time Respondent had ever issued Sexton any form of discipline. (Tr. 63.) The discipline references Sexton's statements about OSHA requirements. Mori testified that during the October 25, 2022 meeting Sexton had not mentioned anything regarding OSHA. He further testified that the discipline did not contain quotes of Sexton's exact statements. (Tr. 566-567.) On October 28,

2022, Sexton filed an NLRB charge regarding the final written warning and asked her steward, Rusty Laymance, to file a grievance over it. (Tr. 63-64, GC Ex. 24.)

6. Discipline Respondent issued other employees for violating the same standard of conduct

General Counsel subpoenaed discipline Respondent issued to other employees for violating the same standard of conduct for which Respondent disciplined Sexton, “extremely serious misconduct” for “deliberate disregard of safety rules or safety procedures.” (Tr. 424, GC Exhs. 30-35.) Respondent issued other employees the following discipline:

4-day unpaid suspension to a laborer for backing up a vehicle into another vehicle caused by not performing a required walk around.

Last Chance Warning and Removal as supervisor for failing to brief employees about requirement to use traffic cones and having multiple employees in violation of the requirement to use traffic cones.

Termination for operating a skid steer in a tight area without stopping the work activity. This was the employee’s second offense.

Termination for driving a government vehicle into a salt barrel. This was the employee’s second offense related to “a struck by incident”.

Last Chance Warning and 4-day suspension for operating a government vehicle and passing a dump truck on the truck’s right side while it was turning right resulting in the employee’s vehicle being struck by the dump truck and damaging government property.

Termination for employee leaving the “spotting work assignment during a work evaluation.” (GC Exhs. 30-35.)

C. Respondent transfers Sexton from ORRL to EMWMF landfill

On November 14, 2022, Clint Mori sent an email to Labor Relations Director Len Morgan and Labor Relations Manager Ray Parrish with a subject “ORRL ATLC Employee Resolution.” The email stated that effective Monday, November 21, 2022, Respondent was transferring Sexton from her GEO position to work as a laborer on the EMWMF dump ramp and that her EMWMF supervisors would be briefed on Mori’s expectations for her job assignments and the documentation of her performance. (GC Exh. 28.) Mori informed Mark Cleveland that Respondent’s labor relations department made the decision to transfer Sexton because she had filed a grievance against her union.⁶ (Tr. 341-342.) On November 21, 2022, Mori, Cleveland and Josh Pemberton met with Sexton to inform her of the transfer. Mori told Sexton that effective November 28, 2022, Respondent was transferring her to EMWMF. (R. Exh. 13, Tr. 65.) Mori told her they were transferring her to refresh her memory of working there. (Tr. 65.) Mori documented

⁶ Cleveland testified that he did not know all the aspects of her grievance. He only knew she had a grievance against her union. (Tr. 342.)

the meeting in an email to Morgan and Mori's boss, Thomas Dieter. (R. Exh. 13.) Mori stated that he told Sexton that "the mowing season is over, so she will be assigned to work as a laborer at EMWMF in the landfill." (R. Exh. 13.)

5 On November 23, 2022, Mori emailed Dieter, asking him to find time in his schedule for a meeting with ORRL managers and supervisors to discuss Sexton's transfer. In that email, Mori stated that during the meeting, their message to ORRL supervisors and managers would be that "...they need to manage the remaining craft and change the environment." (GC Exh. 15.) During the week of November 28, 2022, Respondent conducted a meeting with ORRL managers and supervisors to discuss Sexton's transfer. (GC Exh. 15, Tr. 346-347). Labor Relations Director Len Morgan, Waste Operations Project Manager Clint Mori, Mori's boss Thomas Dieter, Project Manager for Waste Operations Mark Cleveland, Operations Manager Josh Pemberton and the ORRL superintendents attended this meeting. Morgan led the discussion and stated that Sexton was being transferred because she had filed a grievance and because she was not needed at the ORRL in the winter because there was no need for mowing and that she could perform laborer duties at EMWMF. (Tr. 348.) That same week, Respondent held a second meeting with EMWMF's managers and superintendents. This meeting was attended by Morgan, Dieter, Mori, Cleveland, Operations Manager Jeff Grindstaff, superintendents Russell Hunsaker and Rodney Bradley, work planner/field engineer Mike Smith, engineering Gary Buttry. (Tr. 349, R. Exh. 60.) During the meeting, Morgan stated Sexton had filed a grievance, that she was on a last chance warning and if there were any issues with her work supervisors needed to document it and that Sexton would perform laborer duties. (Tr. 350-351.) Cleveland testified that he had never attended any meeting like these two regarding any employee while he worked for Respondent. (Tr. 351.)

25 Mori testified to a variety of reasons that Respondent transferred Sexton. First, he testified they transferred her from the ORRL because her primary job function was mowing and the mowing season was over and at the same time, work at the EMWMF was increasing in the winter for leachate-management and they needed additional laborer resources. (Tr. 570, R. Br. at 21 citing Tr. 568-569.) Second, he testified that Respondent transferred her so that she could mow at EMWMF without having to spend an hour of the workday moving a tractor from the ORRL to EMWMF. (Tr. 558, R. Br. at 21, citing Tr. 547-549.) Third, Mori testified that Respondent transferred Sexton from the ORRL to EMWMF based on an agreement between its labor relations managers and Sexton's union. (Tr. 569.) Fourth, on April 3, 2023, Mori sent Administrative Services Manager, Charles Malarkey an email stating, "I'm sure you recall that we moved Patty Sexton from ORRL to EMWMF on 11/28/2022 as a result of the issues she was causing at ORR landfill." (GC Exh. 26.)

40 Mark Cleveland oversaw the EMWMF landfill and the ORRL. He testified that at the time of Sexton's transfer, both the ORRL and the EMWMF landfill were staffed appropriately and there was no need for another laborer at EMWMF. (Tr. 347, 353.)⁷ He further testified that while there

⁷ I fully credit Cleveland's testimony. I credit his testimony over Mori's testimony, that operational considerations did not play a role in Sexton's transfer. I base this on the fact that Mori as a current supervisor had a monetary incentive to provide testimony which was favorable to Respondent's case. I also base my ruling on Cleveland and Mori's demeanor, Cleveland testified with a calm and even voice on direct and cross examination and he had a more candid demeanor than Mori. Mori provided contradictory testimony regarding the reasons that Respondent transferred Sexton. Further, Mori's testimony was inconsistent with

was no mowing work during the winter, this had been the case during Sexton's entire employment yet neither she nor any other GEO had been transferred to work as a laborer at EMWMF. (Tr. 340.) During prior winters, Sexton worked as a GEO at the ORRL using a tractor to clear brush along the fence and performing laborer duties. While Mori testified that Respondent transferred Sexton so that she could mow at EMWMF without having to spend time moving a tractor from the ORRL, Respondent never moved any of the mowing tractors from the ORRL to EMWMF while Sexton was assigned to work there. (Tr. 355-356.) Prior to November 28, 2022, Respondent had never temporarily or permanently assigned Sexton to perform laborer work at EMWMF. (Tr. 34, 65.) Cleveland testified GEOs were assigned to the ORRL because that is where the surveillance and maintenance program was based because it contained the larger portions of the areas that needed to be mowed. (Tr. 340-341.)

When laborer Wendy Colyer learned that Respondent was transferring Sexton to EMWMF, she went to Cleveland's office and spoke with him. She told Cleveland that since she had prior experience working at EMWMF as a laborer and Sexton had never worked there as a laborer, she would switch places with Sexton and transfer to EMWMF. (Tr. 210-211, 352.) Cleveland told Colyer that upper management had made the decision and it was out of his hands, stating, "it will be Patty and only Patty." (Tr. 211, 352.)

When Respondent transferred Sexton to EMWMF she maintained her GEO title and hourly wage rate of pay, but she performed laborer work. (Tr. 67, 343.) Sexton had to be trained on performing EMWMF laborer work. (Tr. 69-70.) While Sexton worked at EMWMF she did not have any performance issues. (Tr. 355.)⁸ On December 21, 2022, Sexton filed a charge with the NLRB alleging that Respondent had violated Section 8(a)(1), (3) and (4) of the Act by transferring her. (GC Exh. 1(a).)

1. Mark Cleveland transfers Sexton back to the ORRL to perform mowing and Respondent terminates him

While Sexton was assigned to the EMWMF, Cleveland attempted to get a large mowing tractor moved to that facility, but he was not successful and all the mowing tractors remained at the ORRL. (Tr. 355-356.) Therefore, in mid-March 2023, Cleveland decided to transfer Sexton back to the ORRL because he needed two people to operate the tractors for the mowing season and she was one of only two GEOs qualified to perform that work. (Tr. 358-359.) Cleveland did

Respondent's documents specifically, Mori's email which stated that Respondent transferred Sexton because of issues she was causing at the ORRL. (GC Exh. 26.) Finally, it is not logical for Respondent to have selected a GEO for the transfer if it needed a laborer at EMWMF. While Respondent had terminated Cleveland, he did not appear to give testimony slanted against Respondent. For example, when questioned by Respondent's counsel, he was honest about the importance and need for Respondent's safety programs. ⁸ I discredit Sexton's testimony that for the first two weeks after her transfer to EMWMF Respondent's managers had no job assignments for her. (Tr. 68-69.) I discredit this portion of her testimony because it is not logical and it is contradicted by Respondent's plan of the day records which list job assignments for her during this period. (R. Exhs. 61-62.) Credibility findings need not be all or nothing propositions. It is common for a judge to believe some, but not all, of the testimony of a witness. *Daikichi Sushi*, 335 NLRB 622 (2001) citing *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 754 (2d Cir. 1950), *revd. on other grounds* 340 U.S. 474 (1951).

not consult with managers in the labor relations department or his boss Clint Mori before making the transfer. Cleveland emailed his managers and superintendent teams on March 15, 2023, with the subject “Y-12 S&M Support.” His email stated:

5 Effective next Monday, March 20, 2023, Patty Sexton will be re-assigned back to
the ORRL to support full-time GEO for the Y-12 S&M [surveillance and
maintenance] program and ORRL operations. I have not been given any updates on
the direction from UCOR Labor Relations on the possibility of adding additional
10 GEO’s (sic) to landfill ops. Moving Patty back to the project will help ensure that
the S&M mowing schedule is kept on track. I have talked with Patty and she
understands that she might get re-assigned back to EMWMF during the next
offseason to support as a laborer. (GC Exh. 16.)

15 On April 3, 2023, President and CEO Kenneth Reuter called Clint Mori to discuss Sexton’s
transfer to the ORRL. (GC Exh. 26.) Mori documented Reuter’s call in an email to Administrative
Services Manager Charles Malarkey, stating, “You’ve probably already received a call from Ken
regarding his frustration with a decision that one of my managers, Mark Cleveland, made
pertaining to Patty Sexton (ATLC GEO) work location.” (GC Exh. 26.) Mori stated that he met
with Cleveland to better understand his decision and that during that meeting he did not allude to
20 “Ken’s frustration with Mark.”

 On April 3, 2023, Cleveland attended a meeting with Labor Relations Operations Manager
Isaac De Los Santos, who interviewed him about his decision to transfer Sexton. (Tr. 368.) During
the meeting, De Los Santos asked Cleveland whether he understood what was going on with
25 Sexton’s grievance, and her second chance notice. He asked Cleveland whether he understood
why Sexton had been transferred and the potential ramifications of his decision to transfer her back
to the ORRL. (Tr. 368). De Los Santos stated that Sexton had filed a lawsuit against Respondent.
Cleveland told him this was the first time he had heard about that. (Tr. 368-369.) Later that day,
Mori notified Cleveland that Respondent was placing him on administrative leave. (Tr. 369.)

30 On April 4, 2023, Cleveland drafted an email to send to Mary Alice Douglas to try and
save his job. He sent Mori a draft of the email for editing. Mori added and redacted some language.
(Tr. 380, GC Exh. 20.) Mori added a sentence stating, “I want to assure you that at no point was I
trying to undermine or derail the years of effort invested by Labor Relations and myself to properly
35 manage the issues and damage caused by Patty.” (GC Exh. 20 at 3.) Mori redacted a sentence
stating, “On Monday April 3, I met with a representative of UCOR Labor Relations, who informed
me that there are legal actions currently ongoing. Prior to that I was only aware that Patty was
moved to EMWMF temporarily in response to an issue that occurred earlier with senior
management.” (GC Exh. 20 at 3.) On April 4, 2023, Cleveland sent Douglas an email. (GC Exh.
40 21.) On April 6, 2023, Respondent terminated Cleveland. (Tr. 369.)

D. Respondent terminates Sexton and Colyer

1. Len Morgan's April 11, 2023 meeting to announce a memorandum of understanding (MOU) between Respondent and the ATLC

As of April 11, 2023, Respondent and the ATLC were attempting to finalize an agreement for a contract to replace the one that was set to expire on June 30, 2023. The group of employees working in the ORRL landfill, with whom Sexton and Colyer worked, had voted down the last contract offer in October 2022. (Tr. 77-78, 82, 221, 360-362.) Cleveland testified that in the spring of 2023, Respondent's management wanted to finalize that contract because it was concerned about a possible strike. (Tr. 360-361.)

On Tuesday, April 11, 2023, Len Morgan, Isaac De Los Santos and Laborers Local 818 Shop Steward Rusty Laymance met in the break room with the laborers and GEOs who work at the ORRL. (R. Exh. 26 at 511, Tr. 76, 219-220.) During the meeting, Morgan announced a new MOU that Respondent had reached with the ATLC, effective April 10, 2023. (GC Exh. 6.) The MOU stated that all laborers were reclassified to GEO positions and given a raise from \$30.46 to \$32.88 per hour. The MOU further stated that future work assignments would be made based on qualifications at Respondent's sole discretion and that seniority would no longer be used as a factor for such assignments. During the meeting, employees asked Morgan whether now that they were all classified as GEOs would they all be required to drive the tractors to perform mowing. (Tr. 225.) Morgan responded that the two prior GEOs would remain in their positions, but the MOU would give the company the right to choose upcoming GEOs. (Tr. 628.) Morgan stated that if employees did not want to drive the tractors they would not have to, but if they wanted the opportunity to try to learn they would be trained first by driving the flat areas rather than the more dangerous steep slopes. (Tr. 225-226.) Morgan stated that if employees did not feel safe operating the tractors they would not be required to do so. (Tr. 223, 225-226.) Morgan also stated that Respondent and the ATLC were currently trying to finalize contract negotiations. He said that employees should think long and hard about their next contract vote because a strike did not pay as well as their jobs and if they voted down the next contract offer and went on strike Respondent would have people doing their jobs by the next Monday.⁹ (Tr. 78, 221, 318-319.) Colyer spoke up and stated that she was upset that the company and the union were refusing to show employees the language changes to the contract and she stated that those changes could impact the whole meaning of something in the contract. (Tr. 223.) Morgan responded that he could not show it to employees until it was ratified. (Tr. 223.)¹⁰ Colyer asked Morgan why he was talking about a strike because it was her understanding that the parties were in a cooling off period. (Tr. 223-224.)

⁹ There is no dispute that Morgan made these statements. Sexton, Colyer and Adam Kilby all testified consistently about these statements. No witness rebutted their testimony. De Los Santos attended this meeting and he testified at the hearing. He did not rebut the statements.

¹⁰ Respondent marked the parties' contract as "CONTROLLED -SUBJECT TO THE PROTECTIVE ORDER." (R. Exh. 29.) Respondent filed a motion for a protective order and took the position that all its documents, including the union contract needed to be sealed and subject to a protective order. I granted Respondent's request for a protective order with regard to most documents, but I did not seal the contract. (Jt. Exh. 1.)

The MOU impacted the laborers/GEOs in several ways. It gave the approximately 26 laborers a promotion to the GEO position and a raise of just over \$2 per hour. It did not give a promotion or a raise to the two current GEOs, Patty Sexton and Kris Hagen. (R. Exh. 26 at 521.) Prior to the MOU, laborers could volunteer to be trained on the tractors. Once they were qualified, Respondent would put them on a temporary reassignment list and management could then select laborers from the list to operate the tractors and the laborers would receive a temporary pay increase when they did so. (Tr. 176-177, 550-551.) However, the MOU promoted all laborers to GEOs and stated work assignments would be made based on qualifications at the company's sole discretion rather than seniority. (GC Exh. 6.) Thus, following the MOU, if Respondent assigned an employee to perform a tractor mowing assignment, that assignment was no longer voluntary. The MOU states, "It is understood that a GEO is a higher classification of Laborer and will perform all duties of both Laborer / GEO as assigned." The MOU negatively impacted Sexton because prior to the MOU she had been only one of two GEOs and she was able to work a significant amount of overtime performing mowing. (Tr. 30-31, 130, R. Br. at 25 fn. 4.) However, under the MOU all the former laborers could now be trained on and assigned GEO mowing work. Clint Mori acknowledged this impact in an April 13, 2023 email. He stated that if management prioritized the training of the other laborers on the tractors there would no longer be a need for Sexton to perform any mowing work. (GC Exh. 27.)

Article XI of the parties' contract is entitled Continuity of Operations. It states:

There will be no strikes, lockouts, work stoppages, picket lines, slowdowns, secondary boycotts, or disturbances, even of a momentary nature. The Union guarantees to support the Company fully in maintaining operations in every way. Participation by any Company employee or employees in any act violating this provision in any way will be complete and immediate cause for discharge by the Company. (R. 29 at 430.)

2. Sexton and Colyer's April 12, 2023 conversations with their coworkers regarding contract negotiations and a possible strike

On Wednesday, April 12, 2023, Sexton, Colyer, Steven Fickey and Justin Cunningham worked together clearing brush and they discussed the MOU. (Tr. 89-90, 246-247, 293, 468, GC Exh. 40 at 2.)¹¹ Sexton and Colyer stated that they were mad about the MOU. (GC Exh. 40 at 2.) They discussed upcoming contract negotiations and what would happen if there was a strike. (R. Exh. 26 at 512.) They discussed Len Morgan's comments from the meeting the day before that employees should think hard about again voting down the contract because the company would hire replacements if they went on strike. (Tr. 89-91.) Sexton, Colyer, and Cunningham joked about

¹¹ There is conflicting evidence regarding whether this conversation took place on April 11 or April 12, 2023. The most reliable evidence shows it occurred on April 12, 2023. Justin Cunningham provided a statement on April 18, 2023, in which he said he worked with Sexton, Colyer and Steven Fickey on Wednesday, April 12, 2023. (GC Exh. 40 at 2.) That document is more reliable than Sexton's testimony almost three years later that employees discussed a strike and joked about it on the same day as Morgan's meeting. (Tr. 164-165.) It is also more reliable than Fickey's testimony that the conversations occurred on April 13, 2023. (Tr. 468.) On April 13, 2023, Fickey and Cunningham did not work with Sexton or Colyer rather they worked separately performing mowing. (Tr. 246.)

who would stand on the picket line and that they could rotate going out on a pontoon boat on a nearby lake. (Tr. 91.) Colyer stated she wondered if they would make them all stand on the picket line at the same time. (Tr. 247.) Cunningham joked that if they got to take turns he didn't want the morning shift. (Tr. 247.) He also joked about going fishing during a strike. (Tr. 247.) Fickey made a comment about purchasing a bass boat. Colyer responded "Lord have mercy" didn't you hear Len Morgan threatening to make you go on strike. (Tr. 247.)

Later during their shift, Sexton, Colyer, Fickey, and Justin Cunningham were riding together in a truck. Cunningham pulled the truck over near laborers James Lowe and Addison Bible. Colyer and Sexton joked with them about a strike. (Tr. 92, 248, GC Exh. 40 at 1-2.) Lowe leaned in the back of the truck and joked about what he would do if there was a strike. (Tr. 250.) Colyer reassured Lowe that if there was a strike his wife Heather would take care of him. (Tr. 250.)¹² Colyer noticed that Fickey looked kind of worried about the strike talk. (Tr. 248.) After they got back to the changing area Colyer mentioned to Justin Cunningham that surely Fickey knew they were joking. (Tr. 248-249.) Justin Cunningham said that a strike would kill Fickey and he would have to go work at Kroger. (Tr. 249.) Adam Kilby confirmed that he was present when Justin Cunningham told Steve Fickey he didn't know why he was buying a truck and a boat because Len Morgan just came and told them all there was going to be a strike. (Tr. 317.)

3. Respondent transfers Sexton back to EMWMF

On Thursday, April 13, 2023, Sexton and Colyer worked independently mowing. (Tr. 246.) At 2 p.m. Morgan, Mori, and De Los Santos called Sexton into a meeting and Morgan informed her that effective April 17, 2023, she would be transferred back to EMWMF. (Tr. 83, 136, 562.) Mori gave Sexton a memo entitled Notice of Assignment change. It stated in part:

This memo serves as formal notification that your recent assignment to ORRLF on March 20, 2023, was made without the required approval of Labor Relations. Your manager did not have the authority to transfer you from EMWMF back to ORRLF. (GC Exh. 7.)

Mori documented the meeting in an email to Josh Pemberton and EMWMF and ORRL supervisors. The email stated in part:

Patty was instructed in writing that she is to report back to EMWMF effective Monday April 17th, until further notice. Now that all the landfill laborers are GEO's Patty will be expected to fulfill any job assignment given to her that falls within the Laborer category. After you qualify more Laborers on the tractors, I expect Patty to be rotated through various Laborer duties such as landfill waste receipt and housekeeping at EMWMF. If needed, Patty can still be sent to work at ORRL for mowing or landfill operations, but she will start and end her day at EMWMF. If training the other laborers on the tractors is prioritized, there should be no need to send Patty back to the ORRL. (GC Exh. 27.)

¹² On April 18 and 20, 2023, Morgan and De Los Santos interviewed Bible and Lowe. Lowe and Bible both told them they took Colyer and Sexton's strike comments as a joke. (GC Exh. 40 at 1-2.)

4. Colyer encourages her coworkers to turn down mowing to get Sexton transferred back

On April 13, 2023, at the end of the day, in the changing room, in the presence of at least
 5 Jonathan Cunningham¹³ and Addison Bible, Colyer stated that employees should turn down
 mowing work in order to force the company to transfer Sexton back to the ORRL.¹⁴ (R. Exh. 29
 at 519, GC Exh. 40 at 2, Tr. 471, 473, 479.) Colyer testified that consistent with Len Morgan's
 April 11, 2023 statements, she told Jonathan Cunningham that if he didn't feel safe driving the
 tractor to perform mowing, he could turn it down. (Tr. 241.) While Colyer may have told Jonathan
 10 Cunningham he could use this as a pretext, I find that Colyer made statements which conveyed to
 Jonathan Cunningham that he should turn down mowing in order to force Respondent to transfer
 Sexton back to the ORRL. On April 18, 2023, Jonathan Cunningham reported Colyer's comments
 to Morgan and De Los Santos with shop steward Laymance present for the interview. When
 Jonathan Cunningham reported Colyer's conversations, he stated that his response to her was that
 15 he wasn't going to turn down the work and she could "kiss his ass." (R. Exh. 26 at 519.) In its
 brief, Respondent states that *Sexton* "engaged in strike-related discussions" with Jonathan
 Cunningham. (R. Br. at 26 emphasis added.) The record does not support this statement. Jonathan
 Cunningham did not testify at the hearing and neither Respondent nor the union's interview notes
 contain a statement from Jonathan Cunningham that Sexton spoke to him about a strike or turning
 20 down mowing. (R. Exh. 29 at 519, GC Exh. 40 at 2.)

During a later conversation after work, Colyer spoke to Jonathan Cunningham and said
 employees should meet on Monday, April 17, 2023, to vote on turning down mowing work. (R.
 Exh. 29 at 519, GC Exh. 40 at 2, Tr. 589.)

25

5. Employees report Sexton and Colyer's April 12 and 13, 2023, conversations to management

On Thursday, April 13, 2023, Steven Fickey went to superintendent Eddie Langley's office.
 Superintendent, Cody Raby was also present. (Tr. 476.) Fickey told them he was worried about
 30 Colyer and Sexton's non-stop talk regarding a strike. He said he was stressed out trying to figure
 out how he would provide for his family during a strike and he thought about seeking other
 employment in order to pay his bills. (Tr. 465, 467.) Fickey initially testified that he did not take
 Colyer and Sexton's statements about a strike as a joke. (Tr. 466-467.) He later testified that while
 discussing the possibility of a strike Sexton and Colyer made statements about going out on their
 35 pontoon boats and he took those comments as a joke. (Tr. 469.) Langley testified that on Thursday,
 April 13, 2023, Fickey reported that he had been riding around all week hearing from Wendy
 Colyer and Patty Sexton about striking going on over the contract and he was fed up with it. (Tr.
 476-477.) Langley testified Fickey appeared distressed and almost in tears. (Tr. 477-478.) Fickey
 testified that Sexton and Colyer talked about a strike for "around a week". (Tr. 465.)¹⁵

¹³ Jonathan Cunningham and Justin Cunningham are brothers. (Tr. 239-240.)

¹⁴ I discredit Colyer's testimony that she did not tell her coworkers they should turn down mowing. (Tr. 235.) I discredit her testimony on this point because it is inconsistent with the weight of the evidence. The evidence taken as a whole including superintendent Eddie Langley and Addison Bible's hearing testimony along with the Respondent and the union's interview notes of their meeting with Jonathan Cunningham and Morgan and De Los Santos' notes of their meeting with Langley, demonstrate Colyer made the statements.

¹⁵ I discredit Fickey's testimony that the conversations occurred for around a week for multiple reasons.

On Friday, April 14, 2023, Addison Bible called superintendent Langley. He told Langley that he had overheard Colyer say that employees should turn down tractor work if they were asked to do it. (Tr. 471, 473.) Bible was walking by to change clothes when he overheard Colyer make this statement and he did not know who she was talking to or if she said anything after the portion of her statement that he did hear. (Tr. 472.) Bible testified that he did not recall Colyer saying why they should turn down the work. (Tr. 471.) However, I credit Langley's testimony that Bible reported to him that Wendy had said employees should quit mowing or not mow because Patty got moved.¹⁶ (Tr. 479, R. Exh. 26 at 519.) Bible said he did not want to turn down mowing and get himself in a bind. Langley reassured him that he did not have to worry about that. (Tr. 479.) On April 14, 2023, Langley reported Fickey and Bible's statements to his boss Josh Pemberton. (Tr. 480.)

On April 14, 2023, a manager of waste operations, likely Pemberton contacted Labor Relations Operations Manager, Isaac De Los Santos and reported Fickey and Bible's reports to Langley. (Tr. 574.)¹⁷ De Los Santos then called his boss Len Morgan to advise him of the situation. (Tr. 576.) De Los Santos then contacted the area steward and business agent for Laborers Local 818 who "confirmed they had heard the same issues". They agreed that the business agent and steward would come to the plan of the day meeting on Monday to address "the potential of that vote and the ramifications of it." (Tr. 576.) On April 20, 2023, Morgan and De Los Santos prepared a summary of their investigation wherein they recommended that Respondent's managers terminate Colyer and Sexton. In that memo they wrote:

On April 14, 2023, Labor Relations (LR) was notified by Waste Operations Management, that employee Wendy Colyer (Laborer) was organizing a meeting onsite at the ORRL (Landfill) on Monday following the Plan of the Day (POD) meeting. The intent of the meeting was to organize a strike effort and to gain support to refuse job duties involving the operation of mowing tractors. Over the weekend, more information was provided that two additional employees Patty Sexton and Adam Kilby were also promoting the same agenda. LR contacted the ATLC and LIUNA Local 818 confirming that they had received the same information.

Beyond De Los Santos' testimony discussed above at page 576 of the transcript, during the hearing, Respondent did not present any evidence regarding what information De Los Santos and Morgan

First, in his testimony and his statements to Respondent Fickey did not provide specific information about the date, time and place of these conversations. He provided contradictory testimony first, testifying they talked about it for around a week and then later testifying that he reported their strike conversations to Langley and Raby on the same day Sexton and Colyer made the statements. (Tr. 465, 468.) The evidence, including Sexton and Colyer's credited testimony as well as statements Morgan, De Los Santos and Laymance later took, establish that the conversations regarding the strike started after Morgan's meeting on April 11, 2023 and Fickey did not work with Sexton or Colyer on April 13, 2023. (Tr. 246.)

¹⁶ Langley's testimony is corroborated by his April 18, 2023 statement. (R. Exh. 26 at 519.)

¹⁷ De Los Santos testified that Langley and Raby reported the information to him. However, Langley testified that he reported the information to his boss Josh Pemberton. (Tr. 479, 483.) The following week, on April 18, 2023, De Los Santos and Morgan interviewed Langley and Raby. (R. Exh. 26.)

learned that led them to write “Over the weekend, more information was provided that two additional employees Patty Sexton and Adam Kilby were also promoting the same agenda.”

6. Respondent investigates Colyer, Sexton and Kilby’s conduct

5 On Friday April 14, 2023, Colyer and Sexton were off work for their regular day off. On April 15, 2023, Colyer worked overtime at the ORRL. (Tr. 227-228.) On Sunday, April 16, 2023, Sexton sent a text message to the EMWMF superintendent, Russell Hunsaker, and stated she needed a vacation day for Monday. (Tr. 85, GC Exh. 8.) Hunsaker sent her a text message
10 confirming he would put her down for PTO. (GC Exh. 8.) Sexton testified that she took the day off to help her sister and brother-in-law catch up with mowing their five acres of land. (Tr. 86.) On Monday, April 17, 2023, at 5:34 a.m., Colyer texted superintendent Raby and asked him to put her down for PTO that day stating that her allergies were bothering her. Raby confirmed that he would put her down for PTO. (GC Exh. 11.) Colyer also texted Langley to let him know that she
15 would be out. (Tr. 228, GC Exh. 11.) At about 9:30 a.m., Langley called her and told her that she would need to report to the labor relations office on Tuesday because she and employee Adam Kilby had missed a briefing. (Tr. 232.) Later that day, Colyer called steward, Rusty Laymance, to see if he knew about why she had to report to labor relations. Laymance told her that he had heard that Colyer had been planning a strike meeting for Monday morning. (Tr. 233.) Laborer Adam
20 Kilby was also absent from work on Monday, April 17, 2023.

There is no evidence that any employee refused or turned down mowing work after Colyer's statements. On Monday, April 17, 2023, management and the union’s steward, Rusty Laymance met with all the laborers/GEOs in the plan of the day meeting. (Tr. 577, 599-600.)
25 Laymance talked to the employees about the no strike clause and he made it clear that the union did not condone employees engaging in a strike or refusal to perform work which would violate the no strike clause. (Tr. 577, 599-600.)

On April 18, 2023, Colyer met with Morgan and De Los Santos in the labor relations office
30 with Laymance present for the interview. Morgan advised Colyer that he was conducting an investigation of her. He asked her if she knew anything about a strike and she responded no. (Tr. 234.) She said it’s in the contract that they can’t strike and if there were to be a strike at some point the union would have to call for it. (Tr. 234-235.) Colyer told Morgan that while cutting down trees, she and her coworkers talked about ongoing contract negotiations and what would
35 happen if there was a strike, but nothing about initiating a strike or work disruption. (R. Exh. 26 at 517, Tr. 600-601, 604.) Morgan asked her what about the blue flu and she responded that she did not know what that was. (Tr. 235.) Morgan explained that is where people get together and call out on the same day. Morgan asked her if she knew Sexton and Kilby were going to be out the prior day and she said no. (Tr. 235.) Morgan then asked her if she told anybody not to drive
40 the tractors and she responded no. (Tr. 235.) She explained that some of the laborers had been concerned and fussing about driving the tractors on the hills and that she had told them that if they didn’t feel safe, they could say that. (Tr. 235.) Morgan asked her who had raised concerns about driving the tractors and she responded that she was not going to provide names. (Tr. 235.) She stated that employees were upset about Patty being moved. (Tr. 235.) Morgan asked her to provide
45 the names of those employees, and she refused to provide them. (Tr. 235-236.) Morgan advised Colyer that he was putting her on administrative leave and he asked for her badge. (Tr. 236.)

On April 18, 2023, Adam Kilby met with Morgan and De Los Santos in the labor relations office with Laymance present for the interview. Morgan conducted the interview. He asked him questions about his involvement in a wildcat strike. He told them that he had taken off work to attend his twins first checkup. He explained his twins had spent five weeks in the NICU. (Tr. 315.) He said he did not know anything about a wildcat strike. (Tr. 316.) They asked him if he knew anything about employees organizing a strike without the backing of the union and he said no. (Tr. 316.) He said he had heard a few of his coworkers say that they were not comfortable running tractors on the slopes. (GC Exh. 40.) Morgan told Kilby he was putting him on administrative leave. (Tr. 313.) Morgan and De Los Santos' notes state, through other interviews, it was determined that Kilby was not involved. (R. Exh. 26 at 517.) Respondent later brought Kilby back to work and paid him for the period that he was on administrative leave.

On April 18, 2023, Sexton reported to work at EMWMF. During her shift, a supervisor told her to report to the labor relations office. (Tr. 87.) When she arrived, Laymance was present along with De Los Santos and Morgan. (Tr. 88.) Morgan interviewed Sexton. He asked her whether she, Colyer, and Kilby had a plan to meet that morning at the ORRL to try to start a strike or a blue flu. (Tr. 88, 235.) Sexton responded that they have a no-strike clause and that she didn't know what he was talking about. (Tr. 88.) She said that management had already reassigned her to EMWMF. (Tr. 88.) She said she did not want to strike and it was in their contract that they could not strike. (Tr. 88.) Morgan then asked her if she and other employees were trying to "slow work" and Sexton responded that did not fit her and she did not have anything to do with anything like that. (Tr. 88.) Sexton told Morgan that he was the only one who had been talking about a strike. (Tr. 93, 95.) Morgan asked her if she was trying to organize a strike. Sexton responded, no she was not trying to organize a strike, she did not want one and nobody else did. (Tr. 163-164.) Sexton told Morgan that while she was working with Colyer, Steven Fickey and Justin Cunningham cutting down trees in the spoil area they had discussions about their concerns about a possible strike and they had had joking and laughing discussions about a strike. (R. Exh. 26 at 512, 518, GC Exh. 40 at 1.)¹⁸ She told Morgan that somebody mentioned buying a boat and Wendy said not to buy anything until they were sure there would not be a strike. (R. Exh. 26 at 518, GC Exh. 40 at 1, Tr. 91, 584-585, 602.) Morgan told Sexton that he was putting her on administrative leave.

After Respondent put Sexton, Colyer and Kilby on administrative leave, it conducted a further investigation. Below I have listed the supervisors and employees that they interviewed and a summary of the notes. I have quoted Respondent's notes of the interview with Jarvis Johnson.

¹⁸ I credit Sexton's testimony that the conversations about a strike with Colyer, Fickey and Justin Cunningham were made in a laughing and joking manner. (Tr. 91.) I credit this testimony based on her honest and forthright demeanor during her testimony regarding this issue. I also credit it because it is supported by her and Colyer's detailed testimony that they joked about going out on their pontoon boats on Melton Lake during a strike. (Tr. 91, 147, 247.) Further, Sexton's testimony is corroborated by Laymance's notes regarding what Sexton said to Morgan and De Los Santos on April 18, 2023. (GC Exh. 40 at 1.) It is consistent with Steven Fickey's testimony and statements to Morgan and De Los Santos that some of their discussions regarding a strike which occurred while they were cutting down trees involved joking conversations about Sexton and Colyer going out on their pontoon boats during a strike. (R. Exh. 26 at 519, GC Exh. 40 at 1.)

De Los Santos and Morgan's interview notes of superintendents Cody Raby and Eddie Langley.¹⁹ (R. Exh. 26 at 519.)

5 Eddie Langley

De Los Santos and Morgan: The previous week in the presence of Cody Raby, Steven Fickey told them that he was tired of all the constant strike talk from Wendy and Patty and he is at the point of quitting. Addison Bible called him and reported that Wendy Colyer tried to convince him to stop accepting tractor work. He was upset and not in agreement with her and did not want to be affiliated with it.

Cody Raby

15 De Los Santos and Morgan: Steven Fickey came into the office and said that he had heard strike talk all week while working with Patty and Wendy. He is considering quitting because of the stress of them pushing a strike. He had talked to his wife and was looking for another job.

20 On April 18, 2023, De Los Santos and Morgan interviewed employees with Laymance present. (R. Exh. 26 at 519-520, GC Exh. 40 at 1-2)

Addison Bible

25 De Los Santos and Morgan: None.²⁰

Laymance: He took Patty and Wendy's strike discussions as a joke. He and James Lowe were together, and Wendy did say something about a strike. Thursday Wendy was upset because Patty was being transferred. He was walking through the change house and heard Wendy talking about a strike but he didn't know exactly what was said. No one talked to him personally about anything.

Steven Fickey

35 De Los Santos and Morgan: Wendy and Patty are constantly pushing a strike. They push a negative agenda, spread bad information and promote conspiracies that the company does things for bad reasons. They are always joking about how they will be on their pontoon boats when they are on strike. Wendy was trying to convince him to turn down mowing to force the company to move Patty back to the ORRL. He is tired of their negativity and blamed them for employees voting down the last contract. He is looking for another job due to the stress they cause.

¹⁹ The notes of Morgan and De Los Santos indicate that Laymance was present for their interview of superintendents Langley and Raby. (R. Exh. 26 at 519.) It appears that he was not present because Laymance's notes do not include these interviews.

²⁰ De Los Santos and Morgan's notes do not contain any interview notes for Bible. However, I credit Laymance's testimony that they interviewed him. Laymance's testimony is corroborated by his handwritten and typed notes. Further, since Bible was one of the two employees who initially reported Colyer's conduct to Langley, it is logical that De Los Santos and Morgan would have interviewed him.

Laymance: Patty and Wendy kept talking about a strike and they were mad about the MOU. Wendy said there is a reason the company agreed to the MOU they never give something without wanting something in return. Wendy made a statement about turning down mowing to get Patty
 5 moved back to the ORRL. While they were cutting down trees there was nonstop talk about a strike, some joking involved but it was excessive and he was over hearing about it. It has gotten so bad that he turned down overtime.

Jonathan Cunningham

De Los Santos and Morgan: Wendy was trying to convince him to turn down mowing to force the company to move Patty back to the ORRL. Every day they are pushing something negative about the company. He tries to ignore them, but it's constant. Wendy reached out to him to tell him that she was pulling employees together on Monday, April 17, 2023, after the plan of
 15 the day meeting to vote on turning down mowing activities. As a qualified operator he was concerned about being put in a difficult situation and he had considered calling off work for Monday. He was glad Colyer did not show up for work on Monday and he was going to tell them that he was not turning down work and they could kiss his ass.

Laymance: Patty and Wendy absolutely drive him nuts! Patty found out she was going back to EMWMF and he witnessed Wendy say we need to turn down mowing to get Patty back to the ORRL. This concerned him because if everyone agreed with Wendy he would be the first one asked to run a tractor which he would and then he would be blackballed by the group. He heard Wendy say we all need to get together and vote regarding running equipment.

Justin Cunningham

De Los Santos and Morgan: While he was working with Wendy and Patty they were constantly talking about striking. They asked him to stop the truck to talk to Addison Bible and James Lowe. When he did, they were pushing a strike with them. Addison Bible called him upset because Wendy reached out to him pushing a vote to refuse mowing.

Laymance: He worked with Wendy and Patty on Wednesday, April 12, 2023, and they were talking back and forth about a strike. They stopped by and talked to Addison Bible and James
 35 Lowe and Wendy asked them, "what are ya[']ll going to do when we strike." He did not personally hear anything about running equipment, but Addison Bible called and said he heard Wendy say employees needed to turn down mowing to get Patty back. He heard Wendy was going to call a meeting Monday morning and employees should take up for Patty and turn down mowing.

On April 20, 2023, De Los Santos and Morgan interviewed employees with Laymance present.²¹ (R. Exh. 26 at 519-520, GC Exh. 40 at 1-2.)

²¹ Alan Jones, Joe McCoy, and Rodney Gallahar were also interviewed. I have not included a summary of those interviews because they basically said they did not hear any materially relevant information.

James Lowe

De Los Santos and Morgan: He and Addison Bible were working when Wendy and Patty stopped them to ask what they were going to be doing when they are on strike. He said he was tired of all their BS and something has to be done to stop all their bitching. He said they are always causing heartburn with everyone, and they need to be stopped.

Laymance: He was working with Addison Bible when Justin Cunningham, Steven Fickey, Patty and Wendy stopped and Patty and Wendy were kidding about a strike. He is tired of their constant griping and bitching. When he was hired, ORRL Operations Manager, Josh Pemberton told him to stay out of all Patty and Wendy's drama. Patty and Wendy made the whole group look bad during their lunchtime meeting with Kenneth Reuter. Everyone is sick of it and something has to be done. Josh Pemberton has bent over backwards to try and make Patty happy but still she does nothing but constant bitching. There was rumored to be a meeting for Monday morning, but Wendy never showed up for work.

Jarvis Johnson

De Los Santos and Morgan:

Wendy and Patty are retaliating against the company because of the MOU that was agreed to upgrading all the Laborers to GEO's. They are telling everybody that the company is up to something. He said they are instigators and always causing problems. They push conspiracy shit. He stated for example, as soon as LR [labor relations managers] left the MOU briefing, Patty stood up and said they are fucking liars. Everything they say and do is a lie. He said they just walked away and left them in the breakroom. He said that he went to change out and Patty was waiting for him coming out of the changing room and started telling him lies trying to convince to not trust the company.²² He said they don't influence him and that he told them both th[at] he doesn't play that shit, so they don't talk to him anymore. He said all the constant talk is affecting him and they are just poison. We are here to work. He finished with saying something needs to be done.

Laymance: He isn't part of Patty's click. Employees who sit at Patty's table are the instigators and they keep the drama going. When Len Morgan came to speak to employees he told them that he has an open-door policy, but Patty said he is lying and she doesn't trust him. The contract vote failed because of Patty. Adam was asking everyone how they were going to vote.

²² De Los Santos testified that Johnson told him that during his conversation with Patty Sexton when she told him not to trust the company, she discussed a vote after the plan of the day meeting regarding a strike. (Tr. 610-611.) I discredit De Los Santos' testimony because it is inconsistent with he and Morgan, and Laymance's notes. Further, it is inconsistent with Respondent's entire investigation all of which showed that Colyer was the one who engaged in these conversations. Morgan and De Los Santos were investigating whether Sexton and Colyer were trying to organize a strike. Had Johnson told them that Sexton had made comments regarding a vote, a Monday morning meeting, or a strike, Morgan and De Los Santos would have included those words in their notes. I further discredit his testimony because as a current employee De Los Santos had a monetary interest in providing testimony favorable to Respondent's case.

He thinks its personal they have it out for the company and all they do is gripe and will not listen to anyone.

Kristopher Hagen

5

De Los Santos and Morgan: He is the other GEO and he did not hear anything related to the meeting on Monday. He is already a GEO so it wouldn't affect him. He overhears their BS but doesn't socialize with them.

10

Laymance: He had not heard of a meeting or any talk of a refusal to work or a strike.

15

In its brief, Respondent contends that the first time Colyer and Sexton characterized their strike comments as a joke was at the hearing. (R. Br. at 2, 26, 30, 31, 33, 61.) This is not accurate. During Respondent's investigation, Sexton told Morgan and De Los Santos about the April 12, 2023, conversation with Fickey, Cunningham and Colyer and she told them that the comments about a strike were made in a joking and laughing environment. (GC Exh. 40.) During his hearing testimony and during Respondent's investigation, Fickey stated that some of Colyer and Sexton's strike conversations were made in a joking manner. (Tr. 469, R. Exh. 26 at 519, GC Exh. 40 at 4.) Lowe and Bible also told Morgan and De Los Santos that Colyer and Sexton jokingly made comments about a strike. (GC Exh. 40 at 1-2.)

20

7. Morgan and De Los Santos' summary and conclusions of their investigation

25

On April 20, 2023, De Los Santos and Morgan completed their employee interviews and prepared a document entitled Disciplinary Investigation Summary. (R. Exh. 26, Tr. 591.) They recommended that Kilby be returned to work and that a disciplinary review board vote to terminate Colyer and Sexton. (R. 26 at 515.)

30

Their conclusion regarding Colyer stated that she had been the organizer of an attempted work disruption. She had attempted to organize a meeting for Monday, April 17, 2023, to gain support for employees to refuse mowing assignments, but she had called off work negating that potential meeting. It stated that she had denied discussions of a strike with her coworkers, but Sexton had confirmed conversations with her coworkers regarding the subject of a strike or work disruption. It stated that Colyer's conduct was in violation of UCOR Standards of Conduct, UCOR Harassment Policy and the contract's no strike clause.

35

40

Their conclusion regarding Sexton stated that she was involved in the same conversations about a strike and work disruptions. Interviewees confirmed Sexton and Colyer were constantly promoting the need to strike and were relentless in promoting disruptive behavior. It stated that Sexton is currently on a last chance agreement stipulating that any further violation of UCOR work rules would result in her termination. Her involvement in disruptive activities has created a hostile environment impacting operations and her coworkers. It stated that Sexton's conduct was in violation of UCOR Standards of Conduct, UCOR Harassment Policy and the contract's no strike clause.

45

The final section of their conclusions states that Sexton and Colyer's behaviors and actions have resulted in a hostile environment including harassment and unwarranted peer pressure. Causing "an operational impact in addition to a financial impact on coworkers. Employees are refusing overtime to avoid working with them and stress levels have risen to a point that some employees are considering seeking employment elsewhere."²³ Both these employees' actions and behavior are in direct violation of the UCOR Standards of Conduct, Harassment Policy and the ATLC Y12 CBA, specifically Article XI – Continuity of Operations.

8. Disciplinary review board votes to terminate Sexton and Colyer

When an investigation results in a recommendation for discipline impacting pay, suspension or termination, Respondent convenes a disciplinary review board (DRB). (Tr. 447.) The voting members of Respondent's DRB consist of its president and CEO (or designee), administrative services manager, and the employee's level 1 manager. (R. Br. at 8, R. Exh. 30 at 502-503.) Morgan sent an invitation for a DRB to meet at 3 p.m., on April 20, 2023. (R. Exh. 4.) The invitation does not show when Morgan sent it. The following people attended the DRB: Isaac De Los Santos, Len Morgan, Charles Malarkey, Samantha Dolynchuk, Level 1 manager Scott Anderson, Attorney and General Counsel, Michael Brown, Clint Mori, Kerry Cox, and Mary Alice Douglas. The voting members of the board were Administrative Services Manager Malarkey, President Reuter's designee Dolynchuk, and Anderson. (Tr. 519.) Morgan and De Los Santos provided the DRB with a copy of their investigation summary which included all their interview notes and a recommendation that the DRB terminate Sexton and Colyer. (Tr. 578-579.) De Los Santos testified that their recommendation to terminate Sexton and Colyer was based on the fact that contrary to what they had said during Respondent's interview of them, Sexton and Colyer did in fact "try to organize a work stoppage to interfere with the negotiations that were happening at that time." (Tr. 596.) Further, the recommendation was based on the effect Sexton and Colyer's conduct had on the individuals that they were working with. (Tr. 596.) The three members unanimously voted to terminate Sexton and Colyer. (Tr. 595.)

Malarkey testified he voted to terminate Sexton and Colyer because the investigation report stated that they had initiated multiple efforts to get their coworkers not to follow through on work activities, specifically mowing to get Sexton moved back to the ORRL (Tr. 452.) Further, during their efforts to stop the work, they were harassing coworkers who had expressed no interest in going along with a strike yet, they continued to harass them. He testified that harassment is considered extremely serious misconduct and he also viewed their conduct as a violation of the contract which was immediate cause for termination. (Tr. 453-454.)

²³ No witness testified during the hearing that any employee was offered or turned down mowing or overtime during the relevant period. Respondent called Fickey and Langley to testify at the hearing. Neither of them testified to any facts regarding Fickey being offered or turning down any overtime. Laymance's notes state that Fickey said he had turned down overtime based on Sexton and Colyer's statements. (Tr. 629-630, GC Exh. 40 at 2.) I give this portion of the statement no weight because Fickey and Langley did not provide any testimony to support it.

Dolynchuk testified that the DRB voted to terminate Sexton and Colyer because they had engaged in extremely serious misconduct in trying to organize a strike, harassment of other individuals and lying during the investigation. (Tr. 521.) She testified both were working to organize a strike meeting for Monday, April 17, 2023, which was against the contract and they both had discussions about a strike. (Tr. 520-521.) She testified that Colyer lied about speaking about a strike. (Tr. 521.) She further testified that the DRB terminated Sexton in part because she had been issued a last chance letter which stated that any further infraction could lead to her termination. (Tr. 521.)

Sexton and Colyer's notices of termination dated April 24, 2023, state, in material part, as follows:

On April 20, 2023, a Disciplinary Review Board (DRB) was conducted following an investigation into your recent misconduct and inappropriate behavior. The behaviors you have demonstrated in the workplace have created a pervasive and hostile work environment for coworkers and risk to the company.

Based on the investigation, it has been determined that your actions were in direct violation of the UCOR Standards of Conduct as stated below.

UCOR Employee Standards of Conduct

A7. SERIOUS MISCONDUCT:

A7. Violations of any criminal or civil law (including immoral or obscene acts), on or off company/government property, which could likely have an impact on the employment relationship, the workplace, or the image/reputation of the company and/or the customer. This includes acts or behaviors that are determined to be harassment, intimidation, retaliation, or discrimination towards an individual or which result in an impact on the work environment.

UCOR considers your behavior as Extremely Serious Misconduct. As a result, your employment with UCOR LLC is hereby terminated, effective immediately. (GC Exhs. 9, 13.)

9. Other employees Respondent has disciplined for violating the same standard of conduct

In response to the General Counsel's subpoena, Respondent provided disciplinary notices issued to employees for violating the same standard of conduct that Respondent relied on for terminating Colyer and Sexton. (GC Exhs. 9, 13, 36-38.)

Those disciplinary notices show that Respondent issued the following discipline:

Termination for an individual directing a subordinate to contact the specific employees who raised work environment concerns during an anonymous and confidential focus group. Thus, the individual's action created a chilled

work environment and gave the perception of retaliation or reprisal. (GC Exh. 36).

Termination of an employee for “aggressive behavior and physical intimidation” during a “recent van incident and during multiple prior events.” (GC Exh. 37.)

Termination for being arrested offsite leading to four charges including two felony charges. (GC Exh. 38).

III. CREDIBILITY

I credit Sexton’s testimony that, during the October 25, 2022 meeting, the only thing she said about her participation in Respondent’s safety programs is that she would not attend LSIT meetings or fill out safety information cards. (Tr. 53, 62, 118.) I credit her testimony based on her candid and forthright demeanor, that her testimony was internally consistent and it was corroborated by other witnesses. Colyer and Mori corroborated that the only thing Sexton said about her participation in Respondent’s safety programs was that she was no longer going to fill out safety information cards or attend LSIT meetings. (Tr. 204-206, 537-538, R. Exh. 52.) Mori testified that when Reuter asked Sexton if she was going to support the safety program, Sexton responded that she was not going to support putting in LSIT cards if “there’s no fix to it”. (Tr. 537-538.) Further, Dolynchuk repeatedly testified that what Sexton said was that she would no longer participate in submitting safety observation cards. (Tr. 511, 515, 524-525.) To the extent that Dolynchuk’s memorandum regarding the October 25, 2022 meeting or her testimony indicates that Sexton said she was more broadly refusing to participate in Respondent’s safety programs, I give the memorandum no weight and I discredit such testimony. (Tr. 511.) I do so because it is inconsistent with Sexton, Colyer and Mori’s testimony and the statement in her own memorandum that during the meeting Sexton said she was unwilling to participate in safety information cards because it should not be the mechanism by which safety issues are reported to management. (R. Exh. 8 at 679.)

I give no weight to witnesses’ testimony and notes regarding Fickey’s reaction to Sexton and Colyer’s discussions about a strike because they were not supported by Fickey’s hearing testimony or other specific evidence. Morgan and De Los Santos concluded that Colyer and Sexton harassed their coworkers when they discussed a strike with them. Dolynchuk and Malarkey testified they voted to fire Colyer and Sexton because they engaged in this behavior. In reaching this conclusion Respondent relied heavily on Fickey’s April 13 and 18, 2023, statements to Langley, Raby, Morgan, De Los Santos and Laymance. Respondent called Fickey as a witness at the hearing. During his brief direct testimony, Fickey testified about what he reported to Langley and Raby regarding Sexton and Colyer’s statements. He further testified that their statements caused him stress because if their discussions regarding a strike were true, he was worried about how he would provide for his family. (Tr. 465-467.) However, Fickey did not testify to what specifically Sexton or Colyer said to him regarding a strike. On cross examination, the only specifics he testified to regarding Sexton and Colyer’s statements was that he took some of their comments about going out on their pontoon boats during a strike as a joke. (Tr. 468-469.) Respondent also called Langley. The only specifics Langley testified to were that Fickey reported

that, “he'd been riding around all week, and hearing striking, going on strike over the contract. And he said, I'm fed up with it. He said, it's driving me crazy and that he's had enough of it.” (Tr. 477.) Langley also testified that Fickey appeared upset, frustrated and distressed to the point of tears. (Tr. 477-478.) Here again, Langley did not testify regarding what specific statements Sexton or Colyer had made to Fickey regarding a strike. De Los Santos testified regarding he and Morgan’s interview of Fickey. He testified:

Mr. Fickey was upset, passionate, and expressed to us that these two individuals had approached him and there's been constant conversation about striking, strike initiative, and more importantly, that there was -- they²⁴ were trying to gather up a group to have a vote on Monday morning after POD, to vote, to refuse to perform mowing activities, specifically as an effort to attempt to get Patty reassigned back to that location. (Tr. 586-587.)

De Los Santos further testified that he found Fickey’s statement credible and he provided reasons for that conclusion. (587-588.) Shop steward Laymance was present for Morgan and De Los Santos interview of Fickey and he also testified. He testified that, “Mr. Fickey said Patty and Wendy kept talking about a strike and was mad because of the MOA.” (Tr 627.) Laymance also testified that Fickey said that Sexton and Colyer’s discussions about a strike had gotten so bad that he turned down overtime. (Tr. 629.) I give little to no weight to Fickey, Langley, De Los Santos and Laymance’s testimony or their notes about Fickey’s reaction to Colyer and Sexton’s discussions of a strike. I do so because when they testified they provided almost no testimony regarding what specifically Sexton and Colyer said to Fickey regarding a strike and the testimony they did provide did not support the alleged reaction. Further, their notes do not contain specific statements attributable to Colyer or Sexton which would reasonably support Fickey’s reported concerns. (R. Exh. 26, GC Exh. 40.)

IV. ANALYSIS

A. Sexton’s last chance written warning

1. Last chance warning analyzed under Wright Line

Complaint paragraph 5 alleges that Respondent violated Section 8(a)(1) by issuing Patricia Sexton a last chance written warning on October 27, 2022.

General Counsel alleges that Respondent issued Sexton the last chance warning because she engaged in protected concerted activities during the October 25, 2022, meeting with Reuter. Allegations that an employer discriminated based on protected union or concerted activity in

²⁴ Morgan and De Los Santos’ notes contradict De Los Santos’ testimony. The notes attribute the statement about the vote to turn down mowing only to Colyer, but during his testimony he attributed it to Colyer and Sexton. (R. Exh. 26 at 519, 586-587.) Further he testified Sexton was untruthful to Respondent during its investigation because she denied encouraging employees to turn down mowing. (Tr. 593.) I discredit his testimony because it is contradicted by he and Morgan and Laymance’s notes. The notes demonstrate that Colyer was the only person who said employees should down mowing or attempted organize a vote. (GC Exh. 40, R. Exh. 26.) No witness testified that Sexton attempted to get employees to turn down mowing.

violation of Section 8(a)(1) and 8(a)(3) of the Act, and which turn on motivation, are analyzed using the framework set forth in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied, 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983); see also *American Red Cross Missouri-Illinois Blood Services Region*, 347 NLRB 347, 349 (2006) (“The Board applies the *Wright Line* framework to alleged violations of Section 8(a)(1) that turn on employer motivation.”). The *Wright Line* analysis applies to “mixed-motive” cases, where it appears that unlawful considerations were a motivating factor in the discipline decision, but where the record supports the potential existence of one or more legitimate justifications for the decision. *Felix Industries*, 331 NLRB 144, 146 (2000), remanded on other grounds 251 F.3d 1051 (D.C. Cir. 2001). Under the *Wright Line* framework, the General Counsel bears the initial burden of showing that the Respondent's decision to take adverse action against an employee was motivated, at least in part, by employees' protected union or concerted activity. *Mondelez Glob., LLC*, 369 NLRB No. 46 (2020) (evidence must show a causal relationship between the employee's protected activity and the adverse action). The General Counsel can meet its initial *Wright Line* burden by showing that: (1) the employee engaged in union or protected concerted activity, (2) the employer knew of such activities, and (3) the employer harbored animosity towards the protected union and/or concerted activity, and there was a causal connection between the discipline and the protected activity. *Camaco Lorain Mfg. Plant*, 356 NLRB 1182, 1184-1185 (2011). If the General Counsel establishes a discriminatory motive, the burden shifts to the employer to demonstrate that it would have taken the same action even in the absence of the protected activity. *Id.*

I must first determine whether Sexton engaged in protected concerted activity. “To be protected under Section 7 of the Act, employee conduct must be both ‘concerted’ and engaged in for the purpose of ‘mutual aid or protection.’” *Fresh & Easy Neighborhood Market*, 361 NLRB 151, 153 (2014). The Board has held that activity is concerted if it is “engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself.” *Meyers Industries (Meyers I)*, 268 NLRB 493 (1984), revd. sub nom *Prill v. NLRB*, 755 F. 2d 941 (D.C. Cir. 1985), cert. denied 474 U.S. 948 (1985), on remand *Meyers Industries (Meyers II)*, 281 NLRB 882 (1986), affd. sub nom *Prill v. NLRB*, 835 F. 2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988). Sexton organized the meeting between President and CEO, Reuter and about seven of her coworkers. (Tr. 50-53, 119, R. Exh. 8.) General Counsel and Respondent’s witnesses all testified that the purpose of the meeting was for employees to raise concerns to Reuter that they felt were not being properly addressed by management. (Tr. 203, 534-535.) During the meeting employees, including Sexton, discussed that they had submitted safety observation cards regarding various issues, but management had not addressed those issues. (Tr. 510, 536-537, R. Exh. 8 at 679.) Mori acknowledged that prior to this meeting he was aware of those issues, but he had just recently taken over his position, and he asked for the opportunity to resolve those issues. (Tr. 510-511, 567, R. Exh. 8 at 680.) Employees including Sexton discussed their frustration with the LSIT safety program questioning why employees should submit safety observation cards or spend their time as volunteers if “there’s no fix to it”. (Tr. 537-538.) Sexton raised a safety concern related to dust suppression issues arising from the fact that a water truck had been diverted away from the ORRL. (Tr. 510, 535, 567, R. Exh. 8 at 679.) Multiple employees raised concerns related to Respondent’s job bidding process, that they were applying for jobs and not receiving feedback from labor relations. (R. Exh. 8 at 679, 680.) Employees discussed that they were bidding on jobs that they were qualified for, but those jobs were going to employees represented by the building

trades union rather than those represented by the ATLC. (Tr. 52.) At the time of the meeting, Sexton had a charge pending with the NLRB, which related in part to a claim that Laborers Local 818 and the ATLC had failed to process grievances related to job bidding, lack of advancement for laborers, and a claim that Respondent was posting jobs externally before posting them internally and that laborers were applying for jobs but not receiving interviews. (Tr. 202, GC Exhs. 22, 23 at 1.) During the meeting Colyer and Sexton made statements regarding their frustration with Laborers Local 818's representation of employees. (Tr. 52, 200-201, R. Exh. 8 at 679.) Reuter responded by telling Sexton and Colyer, I can't help you with any of your issues until this is settled between the NLRB and your union. (Tr. 55, 201, R. Exh. 52 at 816.) Thus, General Counsel established that Sexton engaged in protected concerted activities by raising group concerns regarding terms and conditions of employment and safety issues to management. Further, General Counsel established that Reuter was aware of the NLRB charge Sexton had filed against the unions who represented her.

The final element of the prima facie case—i.e. that Respondent bore animus towards Sexton's protected activity is demonstrated by multiple types of evidence. General Counsel demonstrated animus through timing. Respondent issued Sexton the final warning just two days after she engaged in protected concerted activity during the meeting with Reuter. Prior to issuing Sexton the last chance warning, it did not interview her. It only investigated the matter after Sexton filed a charge against Respondent with the NLRB. (R. Exhs. 8, 52 at 815-816, GC Exhs. 1(a), 24, 25, Tr. 517.)

General Counsel demonstrated animus because Respondent provided a false reason for Sexton's discipline. Sexton's disciplinary notice states that she made the statement that she would no longer follow safety protocols required of UCOR employees and that she said she would no longer raise safety concerns or identify recognized hazards. (GC Exh. 5, R. Br. at 50-51.) Those statements are false. During the October 25, 2022 meeting, Sexton stated that she would no longer fill out safety information cards because: 1) there was no reason for employees to fill out the cards if management was not taking steps to fix the issues raised on the cards; 2) she believed verbally alerting her supervisor was the most effective way to get her safety concerns addressed in a timely manner; and 3) that she and other employees were upset with management that they made them change the name of their LSIT team. (Tr. 52-53, 204-205, 510, 512, 535-536, 537-538, R. Exhs. 8, 52 at 815.) Sexton told Reuter she would work safe every day, but she would no longer fill out the safety information cards. (Tr. 53, 118.) Respondent's safety protocols do not require that employees fill out safety information cards or participate in LSIT meetings. All witnesses testified that the program is voluntary and Respondent's policies state the same. (Tr. 39, 41, 117, 169, 187, 190, 513, R. Exh. 36 at 113.) Respondent's health and safety handbook states all employees are to "Report all unsafe conditions, acts, and near miss incidents to your supervisor." (R. Exh. 36 at 116-117.) As discussed in the credibility section, Sexton, Colyer and Mori all testified that Sexton limited her comments to a refusal to fill out LSIT safety information cards or participating in the LSIT program, including LSIT meetings. To the extent Samantha Dolynchuk testified that Sexton said she would not participate in Respondent's safety programs I have discredited her testimony. While Sexton's statement that she would not fill out safety information cards because management made them change the name of their LSIT team was childish and petty, it was just one of multiple reasons she stated for not supporting the LSIT program. Thus, Respondent's stated reason for disciplining Sexton, that she would no longer raise safety concerns or identify recognized hazards, was false.

General Counsel established that Respondent engaged in disparate treatment by issuing Sexton the last chance warning. Prior to Respondent issuing Sexton the last chance warning it had never issued her any discipline. (Tr. 63.) The last chance warning Respondent issued Sexton cited the UCOR Employee Standards of Conduct provision for “Deliberate Disregard of safety rules or safety procedures,” including conduct demonstrating a reckless indifference or disregard for safety rules or procedures. (GC Exh. 5.) The disciplinary notices Respondent issued to other employees for violating the same standard of conduct all involved employees or supervisors causing an accident or engaging in unsafe activities. (GC Exh. 30-35.) Here Sexton did not engage in an unsafe activity or fail to report an unsafe condition. Rather, she said she would work safely every day, but she would no longer participate in Respondent’s voluntary LSIT program. General Counsel proved disparate treatment because Sexton’s conduct was objectively less severe than that of other employees disciplined for violating the same standard of conduct.

General Counsel established animus through: 1) timing; 2) the pretextual nature of the discipline; and 3) disparate treatment. Accordingly, the General Counsel has met her initial *Wright Line* burden. The burden now shifts to the Respondent “to demonstrate that the same action would have taken place even in the absence of the protected conduct.” *Wright Line*, supra, at 1089. The employer cannot carry this burden merely by showing that it also had a legitimate reason for the action, or that it could have taken the action, but must persuade by a preponderance of the evidence that the action would have taken place absent the protected activity. *Dentech Corp.*, 294 NLRB 924, 956 (1989); *Structural Composites Industries*, 304 NLRB 729, 730 (1991). Where the General Counsel makes a strong showing of discriminatory motivation, the employer’s defense burden is substantial. See, e.g., *Bally’s Park Place, Inc.*, 355 NLRB 1319, 1321 (2010) (reversing judge and finding violation because judge “did not consider the strength of the General Counsel’s case in finding that the Respondent met its *Wright Line* rebuttal burden”), enfd. 646 F.3d 929 (D.C. Cir. 2011); *East End Bus Lines*, 366 NLRB No. 180 (2018). Given the strong evidence that Respondent disciplined Sexton in direct response to protected concerted statements she made to Reuter during the employee meeting, Respondent’s defense burden is substantial.

Respondent established that Reuter listened patiently to employees’ concerns and appeared to take their complaints seriously. (Tr. 118-119.) However, as discussed above, General Counsel presented evidence that Respondent engaged in disparate treatment by issuing Sexton a last chance agreement based on mere statements rather than unsafe acts. Moreover, the Respondent did not come forward with any evidence of comparative employees to whom it issued similar discipline under similar circumstances. Thus, Respondent did not meet its burden to prove that it would have disciplined Sexton absent her protected activity.

Separately, where an employer’s proffered reasons are pretextual - either false or not actually relied on - the employer fails by definition to meet its burden of showing it would have taken the same action for those reasons absent the protected activity. See *Boothwyn Fire Co. No. 1*, 363 NLRB No. 191, slip op. at 7 (2016); *Pro-Spec Painting, Inc.*, 339 NLRB 946, 949 (2003); and *Hays Corp.*, 334 NLRB 48, 49 (2001). The evidence demonstrates that the reason Respondent proffered for issuing Sexton the last chance warning was disingenuous considering the totality of the circumstances here, and therefore, I find the defense to be pretext for its unlawful discipline of her in retaliation for her protected concerted activity. Respondent has not met its burden under

Wright Line, and it cannot prove it would have taken the same action against Sexton in the absence of her protected activity.

2. Last chance warning analyzed under *Burnup & Sims*

I also make an alternative finding based on *NLRB v. Burnup & Sims, Inc.*, in which the Supreme Court ruled that,

8(a)(1) is violated if it is shown that the discharged employee was at the time engaged in a protected activity, that the employer knew it was such, that the basis of the discharge was an alleged act of misconduct in the course of that activity, and that the employee was not, in fact, guilty of that misconduct. 379 U.S. 21, 23 (1964).²⁵

Sexton was engaged in protected concerted activity during the October 25, 2022 meeting with Reuter and Respondent knew that. The basis of Sexton's final written warning is an alleged act of misconduct during that activity, and Sexton was not guilty of that misconduct. The disciplinary notice Respondent issued to Sexton states that during the meeting Sexton said that she:

...would no longer raise safety concerns or identify recognized hazards as required by OSHA, UCOR Safety and Health Procedures, Safety Conscious Work Environment, and the Collective Bargaining Agreement and, additionally, is contrary to the UCOR Culture of Caring and UCOR Safety Culture. (GC Exh. 5.)

As discussed above in the fact, credibility and *Wright Line* analysis sections of this decision, Sexton did not say she would no longer raise safety concerns or identify recognized hazards. Rather she said she would no longer participate in Respondent's voluntary LSIT program by filling out safety information cards and attending LSIT meetings. Dolynchuk's notes from the meeting state that what Sexton said during the meeting is that she was unwilling to participate in the LSIT program. (R. Exh. 8 at 679.) Thus, General Counsel proved the final prong of the *Burnup & Sims* analysis because she proved Sexton was not, in fact, guilty of the misconduct for which Respondent states it disciplined Sexton.

²⁵ In *Lion Elastomers LLC III*, 375 NLRB No. 41 (2026) the Board returned to its holding in *General Motors LLC*, under which *NLRB v. Burnup & Sims, Inc.*, remains valid law. 369 NLRB No. 127 slip op. at 17, fn. 27 (2020).

General Counsel established that on October 27, 2022, Respondent violated Section 8(a)(1) of the Act by issuing Patricia Sexton a last chance warning as alleged in paragraph 5 of the complaint.

B. Sexton's transfer from the ORRL to the EMWMF

5

Complaint paragraph 6 alleges that Respondent violated Section 8(a)(1) by imposing less desirable working conditions on Patricia Sexton by transferring her from the ORRL to EMWMF.

10 The issue of whether Respondent unlawfully transferred Sexton to the EMWMF landfill requires an analysis under the framework set out in *Wright Line* supra. Here, prior to her transfer, Sexton had engaged in a variety of activities protected under the Act and Respondent was aware of that conduct. On March 4, 2022, Sexton filed a charge with the NLRB against Laborers Local 818 and the ATLC. (GC Exh. 22.) Reuter knew about the charge against the unions because he mentioned it to Sexton and Colyer during the October 25, 2022 meeting. Sexton engaged in
15 protected concerted activity during the employee meeting with Reuter. On October 28, 2022, Sexton filed an NLRB charge against Respondent regarding the last chance written warning. She also asked Laymance to file a grievance over that discipline. (Tr. 63-64, GC Ex. 24.)

20 General Counsel demonstrated animus through timing. On November 14, 2022, Respondent decided to transfer Sexton to the EMWMF landfill. This was less than three weeks after she engaged in protected concerted activity during the October 25, 2022 meeting and October 28, 2022, when she filed an unfair labor practice charge against Respondent.

25 General Counsel established animus because Respondent provided shifting and false reasons for transferring Sexton. When Morgan and Mori met with Sexton to announce the transfer, Mori told Sexton they were transferring her to EMWMF to refresh her memory about working there. (Tr. 65-66.) This was false because prior to her transfer Sexton had never performed any laborer duties at the EMWMF. (Tr. 65, 127, 352.) Citing Mori's testimony, Respondent's brief asserts it transferred Sexton to the EMWMF because her primary job function at the ORRL was
30 mowing and the mowing season was over but work at the EMWMF was increasing in the winter for leachate-management work and they needed additional labor resources. (Tr. 570, R. Br. at 21 citing Tr. 568-569.) However, Cleveland, who oversaw both the ORRL and EMWMF landfill, credibly testified that at the time of Sexton's transfer, both the ORRL and EMWMF were staffed appropriately, and there was no need for another laborer at EMWMF. (Tr. 347, 353.) Further if
35 Respondent needed a laborer at EMWMF it would have been logical for Respondent to have selected a laborer rather than GEO Sexton for the transfer. In fact, Colyer, who had worked at EMWMF as a laborer, offered to take the transfer in place of Sexton. (Tr. 210-211, 352.) However, Cleveland told Colyer that upper management had made the decision, that it was out of his hands, and it would have to be Sexton and only Sexton who was transferred. (Tr. 210-211, 352.) While
40 there was no mowing work at the time of Sexton's transfer, this had been the case during every winter that Sexton worked for Respondent. Despite the lack of mowing work, prior to this, neither she, nor any other GEO, had ever been transferred to work at EMWMF during the winter. (Tr. 340.) Rather, in past winters, she had worked at the ORRL performing some work as a GEO on the tractors removing brush and other work as a laborer at the ORRL.

Mori also testified Respondent transferred Sexton to EMWMF because having her there would allow her to mow at that location without having to spend an hour of the workday to move a tractor from the ORRL to EMWMF. (Tr. 558, R. Br. at 21, citing 547-549.) However, when Respondent transferred Sexton to EMWMF it was during the winter season when there was no mowing work. (Tr. 558.) Further, when it transferred Sexton, all the mowing tractors were at the ORRL and Respondent never transferred any of the tractors to EMWMF. (Tr. 29, 31, 355-356.) Thus, General Counsel demonstrated animus because Respondent provided false or shifting reasons for Sexton's transfer.

General Counsel demonstrated a nexus between Sexton's activity of filing NLRB charges and Respondent's decision to transfer her. In addition to the operational reasons Mori provided for Sexton's transfer, he also testified that Respondent transferred Sexton to EMWMF based on an agreement between Respondent's labor relations managers and Sexton's union. (Tr. 569.) Consistent with that testimony, Mori testified that Cleveland's error in transferring Sexton back to the ORRL in the spring of 2023, was that he failed to alert Respondent's labor relations managers who then could have consulted with the union, to see if everybody was in agreement regarding the transfer. (Tr. 569.) At the time of Sexton's transfer, she had filed NLRB charges which were pending against both her union and Respondent and Respondent was aware of those charges. Charles Malarkey testified Respondent maintained an effective partnership with the unions who represent its employees and that Reuter set regular meetings with local union and international leaders and stewards. (Tr. 441-442.) When Mori notified Cleveland of Sexton's transfer, he told him that "Labor Relations" had made the decision and that she was being transferred in part because she had filed a grievance. (Tr. 342.) Thus, General Counsel demonstrated a nexus between the NLRB charges Sexton had filed and Respondent's decision to transfer her.

Statements and actions by Respondent's managers establish a nexus between Sexton's protected activity and her transfer. When Respondent transferred Sexton, Morgan and Mori found it necessary to hold separate meetings with the ORRL and EMWMF's managers to discuss the transfer. Prior to those meetings, Mori emailed his boss Thomas Dieter and advised him of the two meetings. Mori told him, "Patty Sexton is relocating to EMWMF starting 6:30 a.m. on Monday (11/28) so our message to my supervisors is that they need to manage the remaining craft and change the environment." (GC Exh. 15.) During the ORRL and EMWMF meetings regarding Sexton's transfer Morgan advised the supervisors that Sexton had filed a grievance. (Tr. 348, 350.) During the EMWMF meeting Morgan discussed Sexton's last chance warning and he stated that if there were any issues with Sexton's work, they needed to document it. (Tr. 350-351.) Cleveland testified that he had never attended any meeting similar to these two regarding any employee while he worked for Respondent. (Tr. 351.) Thus, statements by Respondent's managers demonstrate a nexus between Sexton's protected activities and Respondent's decision to transfer her.

Additional testimony and Respondent's documents provide further evidence that Respondent transferred Sexton to EMWMF because she engaged in protected concerted activity during the meeting with Reuter and because she filed charges with the NLRB. Cleveland transferred Sexton back to the ORRL on March 20, 2023, for operational reasons. (GC Exh. 16 at 2.) It was mowing season, the vast majority of the mowing work was at the ORRL, all of the mowing equipment was there and she was one of only two GEOs who operated the mowing tractors. Cleveland did not notify Mori or labor relations of his decision. However, by April 3, 2023, President and CEO, Reuter learned of Sexton's transfer and called Mori to discuss it. (GC Exh. 26.) During the call Reuter expressed his frustration with Cleveland regarding the transfer.

(GC Exh. 26.) Mori told his boss Dieter that he had probably already received a call from Reuter regarding his frustration over the transfer. Mori told Dieter, "I'm sure you recall that we moved Patty Sexton from ORRL to EMWMF on 11/28/2022 as a result of the issues she was causing at ORR landfill." (GC Exh. 26.) On April 3, 2023, labor relations manager Isaac De Los Santos interviewed Cleveland regarding the transfer. During that meeting De Los Santos asked Cleveland whether he understood why Sexton had been transferred and the potential ramifications. (Tr. 368). De Los Santos told Cleveland that Sexton had a last chance warning, and that she had filed a grievance and a lawsuit against Respondent. (Tr. 368-369.) On April 4, 2023, Cleveland sent a draft of an email to Mori for review, that he intended to send to labor relations to try and save his job. Mori added a sentence stating, "I want to assure you that at no point was I trying to undermine or derail the years of effort invested by Labor Relations and myself to properly manage the issues and damage caused by Patty." (GC Exh. 20 at 3.) Mori, redacted a sentence stating, "On Monday April 3, I met with a representative of UCOR Labor Relations, who informed me that there are legal actions currently ongoing." Mori also redacted a sentence stating that Sexton had been transferred "...in response to an issue that occurred earlier with senior management." (GC Exh. 20 at 3.) On April 6, 2023, Respondent terminated Cleveland. (Tr. 369.) Thus, statements and actions by Respondent's managers demonstrate a nexus between Sexton's protected activity and her transfer.

Respondent's documents demonstrate that it transferred Sexton to EMWMF based on a directive from its labor relations managers rather than for operational purposes. On Thursday April 13, 2023, Morgan informed Sexton that effective April 17, 2023, she would be transferred back to EMWMF. (Tr. 136, 562.) Mori gave Sexton a memo stating the decision to transfer her to the ORRL had been made without the required approval of Labor Relations and that her manager, Mark Cleveland, did not have the authority to transfer her back to the ORRL. (GC Exh. 7.) Mori documented that meeting in an email to Josh Pemberton and EMWMF and ORRL supervisors. The email stated in part:

Patty was instructed in writing that she is to report back to EMWMF effective Monday April 17th, until further notice. Now that all the landfill laborers are GEO's Patty will be expected to fulfill any job assignment given to her that falls within the Laborer category. After you qualify more Laborers on the tractors, I expect Patty to be rotated through various Laborer duties such as landfill waste receipt and housekeeping at EMWMF. If needed, Patty can still be sent to work at ORRL for mowing or landfill operations, but she will start and end her day at EMWMF. If training the other laborers on the tractors is prioritized, there should be no need to send Patty back to the ORRL. (GC Exh. 27.)

This memo demonstrates that Respondent's decision to transfer Sexton had nothing to do with transferring a GEO over to EMWMF so that she could perform mowing duties and avoid driving a tractor an hour from ORRL to EMWMF as Mori testified. Instead, Respondent was willing to assign Sexton, a trained GEO to perform laborer duties and train other employees to perform GEO duties in order to keep Sexton away from the ORRL.

Sexton engaged in protected concerted activity on October 25, 2022, when she and other employees raised safety concerns and other issues to Reuter that they felt were not being addressed by management. Less than 3 weeks later, Respondent decided to transfer her to the EMWMF

radiological landfill. (GC Exh. 28.) The fact that Reuter who was the President and CEO of a company that employed 2400 employees became so personally involved with the transfer of a single grounds equipment operator provides evidence that Respondent transferred her because of her conduct during her meeting with him and because she filed NLRB charges against the union and Respondent. (Tr. 441-442.) Respondent's documents show that Reuter was so "frustrated" with Cleveland's conduct regarding Sexton's transfer that Respondent fired him. The evidence shows Respondent did not transfer Sexton because of any operational needs. Respondent's documents state they transferred Sexton in order to properly manage the issues she was causing at the landfill and in order to change the environment at the landfill. (GC Exhs. 15, 26.) Those statements and the timing of Sexton's transfer indicate that the "issues" and "environment" related to Sexton spearheading a meeting with Reuter and filing charges against Respondent and her union.

Respondent contends the transfer was not an adverse employment action and thus Respondent has not violated the Act. In support of its contention, Respondent cites *Bull Street the Movie, LLC*, 2025 WL 2659066 (2025). (R. Br. at 55.) That case was not decided by the Board and thus is not binding precedent. General Counsel established the transfer constituted an adverse employment action. Sexton kept the same title and wage rate after the transfer. However, Respondent transferred Sexton from a landfill that handles clean waste to a more hazardous landfill that handles radioactive waste. Further, during the winter months Sexton performed different laborer work at the EMWMF than the GEO and laborer work she had performed at the ORRL during the winter. (Tr. 67-68, 127-128.) Mori's April 13, 2023 memo, establishes that Respondent intended to permanently change Sexton's primary job duties from using a large tractor to perform mowing to performing EMWMF laborer duties such as landfill waste receipt and housekeeping. (GC Exh. 27.) Finally, had Respondent not terminated Sexton, the transfer would have resulted in her losing the overtime that she had been able to work most Fridays operating a tractor at EMWMF during the mowing season. (Tr. 15, 31, 130.) Thus, General Counsel established the transfer constituted an adverse employment action.

General Counsel having established a discriminatory motive for Respondent's transfer of Sexton, the burden shifts to the Respondent to prove that it would have taken the same actions in the absence of the employee's protected concerted activity. *General Motors LLC*, supra. However, where an employer's proffered reasons are pretextual - either false or not actually relied on - the employer fails by definition to meet its burden of showing it would have taken the same action for those reasons absent the protected activity. See *Boothwyn Fire Co. No. 1*, supra; *Pro-Spec Painting, Inc.*, supra; and *Hays Corp.*, supra. Respondent's proffered operational reasons for transferring Sexton were false. Therefore, I find them to be pretext for its unlawful transfer of her in retaliation for her protected concerted activity and for having filed charges against her union and Respondent. Therefore, I find that Respondent has not met its burden under *Wright Line*, and that it cannot prove it would have taken the same action against Sexton in the absence of her protected activity.

General Counsel established that Respondent violated Section 8(a)(4) and (1) of the Act by transferring Sexton to the EMWMF on November 28, 2022 as alleged in paragraph 6 of the complaint.²⁶

C. Sexton's termination

5

1. Sexton's termination analyzed under *Burnup & Sims*

Compliant paragraphs 7, 8 and 9 allege that Respondent violated Section 8(a)(1) and (4) of the Act by suspending and terminating Sexton.

Most cases involving alleged discriminatory discharges are analyzed under *Wright Line*,
 10 supra. However, the *Wright Line* analysis applies only in so-called "mixed-motive" cases, where
 it appears that unlawful considerations were a motivating factor in the discipline decision, but
 where the record supports the potential existence of one or more legitimate justifications for the
 decision. *Felix Industries*, supra. The Board explained in *General Motors* that the application of
 the *Wright Line* standard "presupposes that the employee actually engaged in the misconduct," and
 15 stated that nothing in its decision should be read as conflicting with *NLRB v. Burnup & Sims, Inc.*,
 379 U.S. 21 (1964). *General Motors*, 369 NLRB No. 127 slip op. at 10 fn. 27 (2020); See also
Nexstar Broadcasting, 370 NLRB No. 68 (2021). "*Burnup & Sims*, not *Wright Line*, governs
 where . . . an employer disciplines an employee for allegedly engaging in misconduct during the
 course of union activity, and the General Counsel contends that the employee did not, in fact,
 20 engage in misconduct." *Nexstar Broadcasting*, above, at fn. 1, citing *La-Z-Boy Midwest*, 340
 NLRB 80, 80 (2003), enfd. in pertinent part 390 F.3d 1054 (8th Cir. 2004). Under *Burnup & Sims*,
 an adverse action will be found unlawful if: (1) the employee was engaged in protected activity,
 (2) the employer knew the employee engaged in protected activity, (3) the basis of the discharge
 was an alleged act of misconduct in the course of the protected activity, and (4) the employee was
 25 not in fact guilty of that misconduct.

On Tuesday, April 11, 2023, Morgan held a meeting with the ORRL laborers and GEOs
 during which he announced a new MOU. During that meeting, Morgan told the employees that
 they should think hard before they again voted down the union contract because striking did not
 30 pay as well as their jobs and if they went on strike the company would hire replacements by the
 following Monday. On April 12, 2023, Colyer and Sexton worked with Justin Cunningham and
 Steven Fickey. While they worked together, Colyer and Sexton discussed ongoing contract
 negotiations and what would happen if there was a strike and they joked about a strike. Sexton
 and Colyer also discussed that they were mad about Respondent and their union's MOU. On April
 35 18, 2023, Sexton, Colyer, and Fickey reported to De Los Santos and Morgan that Sexton and
 Colyer had discussed ongoing contract negotiations and the possibility of a strike and that they

²⁶ The complaint pleads only that Respondent violated Section 8(a)(1) of the Act by transferring Sexton. However, a judge may consider unalleged allegations when they are fully litigated and closely related to other complaint allegations. *Pergament United Sales*, 296 NLRB 333, 334 (1989), enfd. 920 F.2d 130 (2d Cir. 1990). I find the 8(a)(4) allegation was closely related to the 8(a)(1) allegation and that the issue of the motivation for Sexton's transfer was fully litigated. Further, my finding is supported by the fact that paragraph 9 of the complaint alleges Respondent terminated Sexton in violation of Section 8(a)(4) of the Act.

were mad about the MOU. (R. Exh. 26 at 517-519, GC Exh. 40 at 2.) Malarkey and Dolynchuk served as two of the managers on the DRB who voted to terminate Sexton. They testified they voted to terminate Sexton because she and Colyer had attempted to get their coworkers to refuse to perform mowing and during these efforts to stop the work, they had harassed their coworkers. (Tr. 452-454, 520-521.) Respondent's brief also states it terminated Sexton because she harassed her "co-workers to refuse mowing work". (R. Br. at 1, 62.)²⁷ Thus, the basis of Sexton's discharge was an alleged act(s) of misconduct during the course of protected activity. However, Sexton was not in fact guilty of trying to get her coworkers to refuse mowing. As discussed in the fact section, on April 13, 2023, Colyer made statements to her coworkers that they should turn down mowing work to force Respondent to transfer Sexton back to the ORRL. However, Sexton did not engage in that activity. Respondent inaccurately conflates Sexton's April 12, 2023 conversations with her coworkers regarding a strike with Colyer's April 13, 2023 statements that employees should turn down mowing. Respondent cannot establish that it had an honest, good faith belief that Sexton solicited her coworkers to turn down mowing, because not a single employee told Morgan, De Los Santos, or any other manager that Sexton engaged in this conduct. The evidence demonstrates that Sexton was not in fact guilty of trying to get her coworkers to turn down mowing or harassing them during such conversations, which is the very conduct Respondent asserts was a basis for her termination. Thus, pursuant to *Burnup & Sims*, General Counsel established that Respondent violated the Act by terminating Sexton.

2. Sexton's termination analyzed under *Wright Line*

a. General Counsel's prima facie case

Sexton engaged in protected activities and Respondent was aware of those activities. Prior to Respondent transferring Sexton to EMWMF on November 28, 2022, she engaged in activities protected by 8(a)(1) and (4) by organizing and speaking at the meeting with Reuter and filing unfair labor practice charges. On December 21, 2022, she filed a second unfair labor practice charge against Respondent. (GC Exhs. 1(a), 24.) Further, two days before Respondent decided to terminate Colyer and Sexton, employees told Morgan and De Los Santos that Colyer and Sexton had engaged in additional activities protected by Section 8(a)(3) of the Act. On April 12, 2023, Sexton and Colyer worked with Steven Fickey and Justin Cunningham. While working, Sexton and Colyer discussed ongoing contract negotiations, the possibility of a strike and their opposition to the MOU. In October 2022, a group of employees, which included the laborers and GEOs at the ORRL voted against ratifying the union contract. (Tr. 360.) On April 18 and 20, 2023, Jarvis Johnson and Steven Fickey told Morgan and De Los Santos that Sexton and Colyer regularly spoke negatively about the company, they were to blame for employees voting down the contract in October 2022 and that Colyer and Sexton had talked to them about the April 10, 2023, MOU and stated they opposed it. (R. Exh. 26 at 519-520, GC Exh. 40 at 2.) On April 20, 2023, James Lowe also reported to De Los Santos and Morgan, that Colyer and Sexton frequently spoke negatively about the company and "something has to be done to stop all their bitching." (R. Exh. 26 at 520.)

²⁷ Statements by counsel in an opening statement or a brief may be used against the party as admissions. See *Performance Friction Corp.*, 335 NLRB 1117, 1149 (2001); *McGaw of Puerto Rico, Inc.*, 322 NLRB 438, 448 (1996), *enfd.* 135 F.3d 1 (1st Cir. 1997); and *Molon Motor and Coil Corp.*, 302 NLRB 138, 139 *fn.* 7 (1991), *enfd.* on other grounds 965 F.2d 523 (7th Cir. 1992).

b. Respondent's reliance on Sexton's October 27, 2022 last chance written warning for her discharge

The disciplinary investigation summary that Morgan and De Los Santos prepared for the DRB contained a conclusion regarding Sexton which stated that she was on a last chance agreement with a stipulation that any further violation of work rules would result in the termination of her employment. (R. Exh. 26 at 513.) Dolynchuk testified that one of the reasons the DRB voted to discharge Sexton was that Respondent had previously issued her a last chance letter and based on that letter "any other infraction could lead to termination." (Tr. 521.) When an employer "disciplines an employee based on prior discipline that was unlawful, any further and progressive discipline based in whole or in part thereon must itself be unlawful." *The Hays Corp.*, 334 NLRB 48, 50 (2001); *NLRB v. RELCO Locomotives, Inc.*, 734 F.3d 764, 787 (8th Cir. 2013) ("An adverse employment decision is unlawful if it relies upon and results from a previous unlawful action."). Because Sexton's termination was based, in part, on her October 27, 2022 final written warning, which was found unlawful, her discharge was unlawful.

c. General Counsel established animus

The testimony of Respondent's witnesses and its documents demonstrate a causal relationship between Sexton's protected activity and her termination. The termination letter Respondent issued Sexton stated it terminated her for harassing her coworkers during her strike related conversations with her coworkers. Malarkey and Dolynchuk testified they voted to fire Sexton because of this. (GC Exh. 9, Tr. 452-454, 457, 521.) In *Lion Elastomers LLC III*, the Board returned to the legal standard set forth in *General Motors LLC*, 369 NLRB No. 127 (2020), for evaluating alleged abusive conduct by an employee which occurred during the employee's protected activities. 375 NLRB No. 41 (2026). However, the Board's holdings in those cases did not overturn or modify its long held precedent that "[l]egitimate managerial concerns to prevent harassment do not justify . . . discipline on the basis of the subjective reactions of others to [employees'] protected activity." *Consolidated Diesel Co.*, 332 NLRB 1019, 1020 (2000) enfd. 263 F.3d 345 (4th Cir. 2001). None of the statements that De Los Santos and Morgan gathered during their investigation contain statements attributed to Sexton which rose to the level of harassment or abusive conduct. (R. Exh. 26.)²⁸ The only day that Sexton talked to her coworkers about a strike was April 12, 2023. On that day, she spoke to Colyer, Fickey, Justin Cunningham, Lowe and Bible. Addison Bible testified at the hearing. Bible did not testify to any statements made by Sexton about a strike. In the statements Bible and Lowe provided to De Los Santos and Morgan they stated they took Colyer and Sexton's April 12, 2023, comments about a strike as a joke. (GC Exh. 40.) Steven Fickey testified at the hearing. Fickey did not testify that Sexton made any statements to him which rose to the level of abusive conduct or harassment. (Tr. 463-469.) On April 13, 2023, Fickey reported to Langley and Raby that Sexton and Colyer were "constantly"

²⁸ Jarvis Johnson reported that Sexton and Colyer's "constant talk is affecting him and they are just poison." However, the statements and conduct Johnson attributed to them are protected by the Act. (R. Exh. 26 at 520.) In its brief, Respondent relies in part on Jonathan Cunningham's statement that "Patty and Wendy drove them nuts" to support the harassment allegation. (R. Br. at 42, GC Exh. 40 at 2.) However, in his statement Jonathan Cunningham does not attribute any harassing comments to Sexton. (R. Exh. 26 at 519, GC Exh. 40 at 2.) Rather he said that "Every day they are pushing something negative about the company." (R. Exh. 519.) Sexton and Colyer had a legally protected right to engage in this conduct.

5 talking about a strike and he was considering looking for another job. He testified, “if the strike talk was true, then I would have to try and find a way to provide for my family. I’ve got bills to pay.” (Tr. 467.) Sexton and Colyer’s April 12, 2023, conversations included a discussion of Len Morgan’s April 11, 2023 statements about the prospect of a strike if employees again voted down the contract and his threat to replace employees if they went on strike. Sexton and Colyer had a legally protected right to discuss these issues with their coworkers. Respondent’s contention that Sexton and Colyer’s statements caused Fickey to consider getting another job to pay his bills ignores that Morgan’s statements almost certainly contributed to Fickey’s fears about a strike. Even assuming all Fickey’s concerns arose out of his conversations with Sexton and Colyer regarding a strike, which he reported were “constant”, the Board has ruled that employees’ statements or solicitations do not lose the Act’s protection simply because they are repeated or persistent, as long as they are not said in an offensive or threatening manner. *Frazier Industrial Co.*, 328 NLRB 717, 718-719 (1999), *enfd.* 213 F.3d 750 (D.C. Cir. 2000). Respondent’s legitimate managerial concerns to prevent harassment do not justify it terminating Sexton for Fickey or any other employee’s subjective reaction to Sexton’s discussion of a strike because there is no evidence that she made statements which rose to the level of harassment. Thus, General Counsel demonstrated a causal relationship between Sexton’s union activities and her termination.

20 General Counsel established animus through timing. In October 2022 the group of employees, which included the laborers and GEOs at the ORRL had voted against ratifying the union contract. (Tr. 360.) Morgan’s April 11, 2023, comments about the contract during the meeting regarding the MOU demonstrate that Respondent’s management was highly concerned about finalizing a new contract with the ATLC. Further the MOU itself was likely aimed at garnering employees’ support for a contract because it provided a wage increase from \$30.46 to \$32.88 per hour and a promotion to the approximately 26 landfill laborers. (Tr. 484-485, GC Exh. 6.) Cleveland testified that in the spring of 2023, Respondent’s management was concerned about getting the contract finalized. (Tr. 360-361.) On April 18 and 20, 2023, employees Fickey and Johnson told Morgan and De Los Santos that Sexton and Colyer were responsible for employees voting down the last contract and that they openly discussed their opposition to the MOU. (R. Exh. 25, GC Exh. 40.) Thus, Respondent’s DRB voted to terminate Colyer and Sexton within 2 days of Respondent’s managers learning they were to blame for employees voting down the contract.

35 General Counsel established animus because one of the reasons Respondent provided for Sexton’s termination was false. De Los Santos testified he recommended Sexton’s discharge in part because his investigation demonstrated that she was attempting to get employees to turn down mowing work and she lied about it. (Tr. 593, 595.) Malarkey and Dolynchuk testified they voted to terminate Sexton for this conduct. (Tr. 452.) While the evidence demonstrates that Colyer engaged in this conduct, no one testified at the hearing that they heard Sexton engage in this conduct and not a single employee reported to Respondent’s managers that Sexton engaged in such conduct. (R. Exh. 26, GC Exh. 40.) As discussed more fully above in the *Burnup & Sims* analysis, Respondent provided false reasons for terminating Sexton.

45 General Counsel established that Respondent provided additional false reasons for terminating Sexton and Colyer. Dolynchuk and Malarkey testified they voted to terminate Sexton and Colyer because they engaged in conduct which violated the no strike clause in the contract. (Tr. 452-454, 520-521.) As discussed more fully below, Colyer encouraged her coworkers to turn

down mowing and this conduct would have violated the contract's no strike clause. However, under Board law her conduct of discussing a strike is protected under the Act. However, neither Colyer nor Sexton engaged in conduct which violated the contract which prohibits "strikes, lockouts, work stoppages, picket lines, slowdowns, secondary boycotts, or disturbances even of a momentary nature." (R. Exh. 29 at 430.) There is no evidence that any employee turned down any mowing work. Instead, on Monday, April 17, 2023, union representatives attended the plan of the day meeting and told employees that they should not engage in any unauthorized strike activity. (R. Exh. 26 at 511, Tr. 576.) Thus, Respondent's stated basis for terminating Sexton and Colyer, that they violated the no strike clause, was false.

General Counsel demonstrated animus based on its managers' statements and conduct regarding her filing of unfair labor practice charges against Respondent and her union. Reuter was aware Sexton had filed a charge against her union in March of 2022, because he discussed it with her during the October 25, 2022 meeting. On October 28, 2022, Sexton filed a charge against Respondent related to her last chance warning. (GC Exh. 24.) By November 14, 2022, Respondent decided to transfer Sexton from the ORRL to EMWMF. Mori testified that Respondent decided to transfer Sexton based on an agreement between Respondent's labor relations managers and Sexton's union. (Tr. 569.) Mori's statement establishes that Respondent's labor relations managers and Sexton's union agreed to take an adverse employment action against Sexton while she had pending NLRB charges filed against both of them. On April 3, 2023, Cleveland was called into a meeting with De Los Santos to investigate whether to fire Cleveland regarding his decision to transfer Sexton back to the ORRL. During the meeting, De Los Santos asked Cleveland whether he understood that Sexton had filed grievances and a lawsuit against Respondent. (Tr. 368-369.) On April 4, 2023, Cleveland drafted an email to try and save his job. Prior to Cleveland sending it, Mori revised Cleveland's draft email by redacting a sentence stating that on April 3, 2023, Respondent's labor relations manager had told him that there were ongoing legal actions involving Sexton. (GC Exh. 20 at 3.) The statements and actions of Respondent's managers establish a nexus between Sexton's activities protected by Section 8(a)(4) of the Act and its adverse employment actions and termination of her.

General Counsel established animus through disparate treatment. Sexton's termination notice states, "The behaviors you have demonstrated in the workplace have created a pervasive and hostile work environment for coworkers and risk to the company." (GC Exh. 9.) Sexton's termination notice goes on to state that she had violated section A.7 of UCOR Employee Standards of Conduct entitled "Serious Misconduct" which is defined as:

Violations of any criminal or civil law (including immoral or obscene acts), on or off company/government property, which could likely have an impact on the employment relationship, the workplace, or the image/reputation of the company and/or the customer. This includes acts or behaviors that are determined to be harassment, intimidation, retaliation, or discrimination towards an individual or which result in an impact on the work environment.

General Counsel demonstrated disparate treatment because the other employees Respondent fired for violating this standard of conduct, engaged in conduct more severe than Sexton's conduct in this case. On March 20, 2024, Respondent terminated an employee for a violation of this policy

after he exhibited aggressive behavior and physical intimidation during a van incident and during multiple prior events while employed by Respondent. (GC Exhs. 37 and 39.) On September 19, 2024, it terminated an employee because he was arrested offsite and charged with four counts, including two felony charges. (GC Exh. 38.) Sexton's conduct of discussing ongoing contract negotiations and the possibility of a strike with her coworkers was protected by the Act, did not rise to the level of harassment and was much less severe than other employees who Respondent fired for felony charges and aggressive behavior and physical intimidation. Thus, General Counsel demonstrated animus through disparate treatment.

Independent from the animus set forth above, General Counsel established animus based on Respondent's other violations of Section 8(a)(1), and (4) directed at Sexton. *Richardson Bros. South*, 312 NLRB 534, 540 (1993). On October 27, 2022, Respondent unlawfully issued Sexton a last chance warning. On November 28, 2022 it unlawfully transferred her from the ORRL to EMWMF and demoted her and then on April 13, 2023, it continued this unlawful conduct by transferring Sexton back to EMWMF.

d. Respondent's *Wright Line* defense

The burden now shifts to the Respondent "to demonstrate that the same action would have taken place even in the absence of the protected conduct." *Wright Line*, supra, at 1089. The employer cannot carry this burden merely by showing that it also had a legitimate reason for the action, or that it could have taken the action, but must persuade by a preponderance of the evidence that the action would have taken place absent the protected activity. *Dentech Corp.*, supra.

Respondent cannot meet its burden because it acknowledges that in deciding to issue Sexton the more progressive termination notice it relied in part on her final written warning that was itself unlawful. (Tr. 521.) *Hays Corporation*, supra.

The termination notice Respondent issued Sexton states Respondent terminated her for creating a pervasive and hostile work environment for her coworkers and created a risk to the company. Malarkey and Dolynchuk testified they voted to terminate Sexton because she initiated multiple efforts to get her coworkers to turn down mowing and during her efforts to stop the work, she was harassing her coworkers who expressed no interest in going along with a strike yet, she continued to harass them. Sexton's conduct violated the contract's no strike clause. (Tr. 452-454, 520-521.) Respondent did not meet its burden because on April 12, 2023, Sexton did discuss ongoing contract negotiations and the potential for a strike, however these discussions are protected under the Act. Further, Respondent did not establish that during these discussions, that Sexton engaged in any conduct which rose to the level of harassment of her coworkers or threats directed toward them. While Respondent's investigation showed that Colyer attempted to get her coworkers to turn down work, not a single employee attributed such statements to Sexton. Thus, Respondent did not establish that Sexton attempted to get her coworkers to turn down mowing or that she harassed them during such conversations. Further, Sexton did not violate the no strike clause because no employee turned down mowing and she did not ask them to do so. Where an employer's proffered reasons are pretextual - either false or not actually relied on - the employer fails by definition to meet its burden of showing it would have taken the same action for those reasons absent the protected activity. See *Boothwyn Fire Co. No. 1*, supra; *Pro-Spec Painting, Inc.*,

supra; and *Hays Corp.*, supra. Therefore, I find Respondent's defense to be a pretext for its unlawful discharge of her in retaliation for her activities protected by Section 8(a)(1), (3) and (4) of the Act.

5 General Counsel established that on April 18 and 20, 2023, Respondent violated Section 8(a)(1), (3) and (4) of the Act by suspending and then terminating Patricia Sexton as alleged in paragraphs 7, 8 and 9 of the complaint.²⁹

D. Colyer's termination

10 Complaint paragraphs 7, 10 and 11 allege Respondent violated Section 8(a)(1) and (4) of the Act by suspending and terminating Colyer.

15 General Counsel established that Colyer engaged in activity protected by Section 8(a)(1), (3) and (4) of the Act and that Respondent was aware of that conduct. During the October 25, 2022, meeting with Reuter, Colyer engaged in protected concerted activities. During that meeting, Colyer sat next to Sexton and across from Reuter and Dolynchuk. She discussed the negative environment at the ORRL which she attributed to upper management and her union. (Tr. 200-201.) Colyer along with other employees spoke about safety information cards. (Tr. 205.) On December 20 6, 2022, Respondent's labor relations managers interviewed Colyer regarding Sexton's NLRB charge related to the October 25, 2022 meeting. (GC Exh. 24, R. Exh. 52 at 815-816, Tr. 213-214.) In her statement, Colyer reported that during the meeting, Reuter had told Sexton that he could not help her with her concerns regarding her union when she had a charge pending with the NLRB. (R. Exh. 52 at 816.)³⁰

25 Further, on April 11, 2023, during the meeting regarding the MOU, Colyer engaged in conduct protected by Section 8(a)(3) of the Act. During that meeting, Morgan cautioned employees against again voting the contract down because doing so could result in a strike. In response, Colyer spoke up and stated that she had doubts about supporting the contract because the company and the union would not show employees the language changes in the contract which 30 could change the whole meaning of something. (Tr. 223.) Further, on April 12, 2023, Sexton and Colyer engaged in activity protected by the Act when they discussed with employees their opposition to the MOU and the issue of ongoing contract negotiations and the possibility of a strike.

²⁹ The evidence demonstrates that in the days before their discharge Respondent learned, among other things, that Colyer and Sexton were to blame for employees voting down the last contract offer and that they talked to their coworkers about their opposition to the MOU. On April 11, 2023, during the meeting with Morgan, Colyer stated her opposition to the contract. This activity is protected by Section 8(a)(3) as well as 8(a)(1) of the Act. The complaint pleads only that Respondent violated Section 8(a)(1) and (4) of the Act by terminating them. However, a judge may consider unalleged allegations when they are fully litigated and closely related to other complaint allegations. *Pergament United Sales*, supra. I find the 8(a)(3) allegation was closely related to the 8(a)(1) and (4) allegations and that the issue of the motivation behind Sexton and Colyer's terminations was fully litigated.

³⁰ Colyer engaged in activity protected by Section 8(a)(4) and Respondent knew about that activity. However, I do not find the evidence demonstrates a connection between that particular activity and her discharge. Thus, I dismiss paragraph 11 of the complaint.

General Counsel established animus through timing. Respondent suspended Colyer just one week after she spoke up in the meeting with Morgan and stated her opposition to the contract. Further, on April 18 and 20, 2023, employees reported to Morgan and De Los Santos that Sexton and Colyer were to blame for employees voting the contract down in October 2022. Further during
 5 Morgan and De Los Santos' interviews employees also told them that Colyer and Sexton opposed the MOU because the company did not give anything without wanting something in return, that they regularly try to convince employees not to trust management, they push negative things about the company, and they had spoken negatively about Respondent's management. (R. Exh. 26, GC Exh. 40.) General Counsel demonstrated timing because Respondent terminated Colyer within
 10 days of learning she had engaged in activities protected by Section 8(a)(3) of the Act.

General Counsel established animus because Respondent admits it terminated Colyer based in part on her activities protected under the Act. Respondent states it terminated Colyer because she encouraged her coworkers to turn down tractor mowing to force Respondent to
 15 transfer Sexton back to the ORRL. The record does not establish that any employee turned down any mowing. On Monday, April 17, 2023, management and the union's steward met with all the laborers/GEOs in the plan of the day meeting and told them that engaging in a strike or refusal to perform work would violate the contract.³¹ Colyer's statements, which she made within hours of Respondent notifying Sexton that it was continuing its unlawful conduct by transferring her back
 20 to EMWME, were protected by the Act. The Board has ruled that an employee's discussion of a work stoppage constitutes protected activity, even if the work stoppage would be unprotected. *Can-Tex Industries*, 256 NLRB 863, 872 (1981) (employee's "mere talk" in support of a shutdown is protected activity, even if shutdown itself was not protected), *enfd.* in relevant part 683 F.2d 1183 (8th Cir. 1982). See also *KQED, Inc.*, 238 NLRB 1, 2 (1978) *enfd.* mem. 605 F.2d 562 (9th
 25 Cir. 1979). In arguing Colyer's conduct is not protected Respondent cites *Moore v. Sunbeam Corp.*, 459 F.2d 811 (7th Cir. 1972). In that underlying case, the Board ruled that an employee violated a no strike clause where he distributed a petition which encouraged a strike and a consumer boycott. The Board ruled that the employee's conduct violated the contract's no-strike clause because his petition for a consumer boycott employed economic pressure to support his
 30 grievance. *Sunbeam Corp.*, 184 NLRB 950, 951 (1970).³² However, the facts of that case are not analogous, because Colyer's conduct was mere talk and did not result in a strike or any form of

³¹ Up until April 10, 2023, when the parties signed the MOU, it appears that it was voluntary for laborers to work as GEOs performing mowing. Laborers could choose to become qualified to operate the equipment and be placed on a temporary reassignment list to operate the equipment. (Tr. 176-177, 550.) Respondent would then select laborers off that list for temporary reassignments to operate equipment. (Tr. 176-177, 550-551.) However, following the MOU, if Respondent assigned an employee to perform mowing that assignment was no longer voluntary because the MOU states, "It is understood that a GEO is a higher classification of Laborer and will perform all duties of both Laborer / GEO as assigned." (GC Exh. 6.)

³² Respondent cites *Consolidated Communications Holdings, Inc.*, 366 NLRB No. 172, slip op. at 2 fn. 5 (2018) for the proposition that an employee's "...instigation of a slowdown while the CBA's strike and slowdown prohibition was effective was unprotected and supplied a reasonable disciplinary basis." (R. Br. at 59.) However, in that case, the Board ruled that the employee's conduct was protected and her employer violated the Act by disciplining her for it. *Id.* In support of its position, Respondent also cites a Division of Advice memorandum (R. Br. at 61.) In that case, Advice determined that a complaint should issue where a union encouraged employees to engage in conduct which would violate the parties' no strike clause. However, that case involved conduct by a union who signed the contract while this case involves an employee. Further, I am bound by Board precedent rather than any Advice Memoranda.

economic pressure. Respondent also cites *Kraft Foods Co.*, 108 NLRB 1164 (1954) for its position that Colyer's conduct is not protected under the Act. However, the employee's conduct in that case was different from Colyer's conduct. In that case, the Board ruled that the employee's conduct lost the protection of the Act because he caused a disturbance when he left his work area at least three times while engaging in a "morning-long period of agitation and protest..." Id at 1165-1166. Here, there is no evidence that Colyer's discussions about turning down mowing interfered with work or caused a disturbance. Addison Bible's statement and testimony establish that Colyer was in the "change house" at the end of the day when she made the statement about turning down mowing. (GC Exh. 40 at 1, Tr. 472.) Thus, the location and timing of the conversation indicates that it did not take place while employees were performing work. Colyer reached out to Jonathan Cunningham after work to discuss turning down mowing. (Tr. 589.) Thus, there is no evidence that Colyer caused a disturbance or interfered with employees performing their work. Because Colyer's discussions regarding a strike are protected under the Act General Counsel established that Respondent violated the Act by terminating her for that conduct.

General Counsel established animus because Respondent provided false reasons for Colyer's termination i.e. that she harassed her coworkers. As discussed above regarding Sexton's termination, Colyer and Sexton did not engage in conduct rising to the level of harassment during their April 12, 2023 conversations related to a strike while they worked with Justin Cunningham and Steven Fickey or when the four of them stopped their truck near James Lowe and Addison Bible. Further, Colyer's statements, that she made after she learned Respondent was transferring Sexton back to EMWMF, wherein she encouraged employees to turn down mowing work did not rise to the level of harassment. Bible testified that while walking through the changing room he overheard Colyer say employees should turn down mowing work if they were asked to do it. (Tr. 472.) He testified that Colyer was not speaking to him when she made this statement and he did not hear what she said before or after the comment he overheard. (Tr. 473.) No other employee testified about Colyer asking them to turn down mowing work. Jonathan Cunningham provided Respondent a statement wherein he reported Colyer asking him to turn down mowing. He told Morgan and De Los Santos that he was concerned that if Colyer's plan for a meeting on Monday had gone forward and employees voted to turn down mowing work he would have been one of the first people management asked to perform the work and therefore he considered calling off work on Monday. (GC Exh. 40 at 2, R. Exh. 26 at 519.) He reported that he had made the decision that he was not going to turn down the work and they could "kiss his ass", but he was concerned about the possibility of his coworkers ostracizing him for such a decision and therefore he was relieved when Colyer was absent from work on April 17, 2023. (GC Exh. 40 at 2, R. Exh. 26 at 519.) Taken as a whole, Jonathan Cunningham reported to management that Colyer's statements led him to be concerned about hypothetical events which never came about. In these circumstances, Colyer's comments were protected by the Act because they did not rise to the level of harassment and she did not make statements in an offensive or threatening manner. *Frazier Industrial Co.*, supra and 328 NLRB 717, 718-719 (1999). See also *Consolidated Diesel Co.*, 332 NLRB 1019, 1020 (2000) enfd. 263 F.3d 345 (4th Cir. 2001).

As discussed above in the analysis section regarding Sexton's termination, General Counsel established animus through disparate treatment. Colyer and Sexton's termination notice contained the same language. (GC Exh. 9 and 13.) In addition to the conduct that Sexton engaged in, Colyer also discussed with her coworkers that they should turn down mowing to force

Respondent to transfer Sexton back to the ORRL and during Respondent's investigation, she lied to them about this conduct. However, the other employees that Respondent fired for violating the same standard of conduct engaged in more severe conduct. Those employees were charged with four criminal counts including two felony charges and engaged in aggressive behavior and physical intimidation. That conduct was more severe than the conduct for which Respondent fired Colyer.

Independent from the animus set forth above, General Counsel established animus based on Respondent's other violations of Section 8(a)(1), and (4). *Richardson Bros. South*, supra.

The burden now shifts to the Respondent "to demonstrate that the same action would have taken place even in the absence of the protected conduct." *Wright Line*, supra, at 1089. Colyer's conversations with her coworkers about refusing to perform mowing were protected under the Act. The Board has held that in some circumstances employees are not required to respond to questions seeking to uncover protected activities. *Paragon Sys., Inc. & Arthur J. Blake*, 362 NLRB 1561, 1565 (2015) citing *United Services Automobile Assn.*, 340 NLRB 784, 786 (2003) (finding no obligation to respond truthfully to employer's questioning that lacked a valid purpose), enfd. 387 F.3d 908 (D.C. Cir. 2004); *St. Louis Car Co.*, 108 NLRB 1523, 1525-1526 (1954). Here, Respondent had a valid purpose for questioning Colyer regarding whether she asked employees to turn down the mowing because had employees done so they would have likely violated the contract's no strike clause. Respondent established Colyer lied to Morgan and De Los Santos when she told them that she had not attempted to coordinate a meeting to vote on employees turning down mowing work and that she had not told anybody not to run equipment. (GC Exh. 40 at 1, R. Exh. 26 at 517.) However, Respondent did not establish that in the absence of Colyer's protected activity that it would have fired her for lying during the investigation. Sexton, unlike Colyer, did not encourage her coworkers to turn down mowing or lie during Respondent's investigation. Despite this, Respondent terminated Sexton. Thus, Respondent did not persuade by a preponderance of the evidence that it would have terminated Colyer absent her protected activity. *Dentech Corp.*, supra; and *Structural Composites Industries*, supra.

Additionally, Respondent, which employs 2400 employees did not come forward with any evidence of comparative employees to whom it issued similar discipline under similar circumstances.

Further, Respondent provided false reasons for terminating Colyer. Thus, it fails by definition to meet its burden of showing it would have taken the same action for those reasons absent the protected activity. See *Boothwyn Fire Co. No. 1*, supra; *Pro-Spec Painting, Inc.*, supra; and *Hays Corp.*, supra. Two of the reasons Respondent proffered for terminating Colyer were false. The false reasons were that she engaged in conduct rising to the level of harassment while talking to her coworkers about turning down mowing or otherwise talking to them about a strike and that she engaged in conduct which violated the no strike clause in the contract. Therefore, I find Respondent's defense to be a pretext for its unlawful discharge of her in retaliation for her activity protected by Section 8(a)(1) and (3) of the Act. Respondent has not met its burden under *Wright Line*, because it cannot prove it would have taken the same action against Colyer in the absence of her protected activity.

General Counsel established that on April 18 and 20, 2023, Respondent violated Section 8(a)(3) and (1) of the Act by suspending and then terminating Wendy Colyer as alleged in paragraph 10 of the complaint. I dismiss paragraph 11 of the complaint.

E. Respondent's Affirmative Defenses

5 In its answer Respondent raised nine affirmative defenses. Its first defense is that the Complaint fails to state a claim upon which relief may be granted. During the hearing and in its brief, it neglected to present any evidence or arguments regarding that defense. Thus, Respondent failed to meet its burden to establish that affirmative defense. *Starbucks Corp.*, 373 NLRB No. 48 slip op. at 9 fn. 6 (2024). Defenses 3, 4, 8, and 9 relate to damages. The NLRB bifurcates liability and remedial determinations between unfair labor practice hearings and compliance hearings. Thus, Respondent may raise those defenses at the appropriate time in a subsequent compliance hearing. To the extent Respondent's answer states that it should not be liable for damages arising from delay during the Board's litigation process, it is well established that the consequences of such delays should be borne by the wrongdoer, not the employees who suffered the wrongdoer's discrimination. *NLRB v. J. H. Rutter-Rex Mfg. Co.*, 396 U.S. 258, 264–265 (1969). Respondent raised four challenges to these proceedings under the U.S. Constitution, contending that: 1) any relief requested either in the complaint or a subsequent pleading should be denied to the extent the requested relief violates Article III and the Seventh Amendment to the Constitution of the United States of America; 2) any relief requested in the Complaint or a subsequent pleading should be denied to the extent it is not constitutional for the NLRB's Administrative Law Judge and/or the NLRB Board to hear and/or decide the case under Articles II and III of the Constitution; 3) Any relief requested in the Complaint, a subsequent pleading or at the administrative trial should be denied to the extent UCOR's due process rights or other constitutional rights have been or will be violated by the NLRB's hearing procedures; and 4) any relief requested in the complaint or subsequent proceedings should be denied to the extent they do not permit a jury to be empaneled to decide the issues in the case. The Board has rejected similar constitutional challenges in *Commonwealth Flats Development Corp. d/b/a Seaport Hotel Boston*, 373 NLRB No. 142, slip op. at 1 fn. 1 (2024), See also *Walgreens Co.*, 375 NLRB No. 14, slip op. at 1 fn. 4 (2026) and I am bound by that authority. Further, since ruling on Respondent's constitutional challenges could entail halting (at least in part) the operation of the agency, and such a step would be in tension with my duty to faithfully administer the Act, I deny Respondent's constitutional challenges with the understanding that federal courts will likely address the issues at some point in the future. See *National Association of Broadcast Employees & Technicians—Broadcasting & Cable Television Workers Sector of the CWA, AFL–CIO, Local 51 (NABET)*, 370 NLRB No. 114, slip op. at 1–2 (2021) (setting forth similar reasoning in declining to rule on a challenge to the constitutionality of the President's removal of the General Counsel and the appointment of an Acting General Counsel).

CONCLUSIONS OF LAW

1. The Respondent United Cleanup Oak Ridge, LLC is an employer within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Respondent interfered with employees' exercise of their Section 7 rights and violated Section 8(a)(1) of the Act by:
 - a. Issuing Patricia Sexton a last chance written warning on October 27, 2022;
 - b. Imposing less desirable working conditions on Patricia Sexton by transferring her from its Oak Ridge Reservation Landfill to its Environmental Management Waste Management Facility on about November 28, 2022;
 - c. Suspending Patricia Sexton on about April 18, 2023;
 - d. Terminating Patricia Sexton on about April 20, 2023;
 - e. Suspending Wendy Colyer Bales on about April 18, 2023, and
 - f. Terminating Wendy Colyer Bales on about April 20, 2023.
3. The Respondent discriminated against Patricia Sexton by imposing less desirable working conditions on Patricia Sexton by transferring her from its Oak Ridge Reservation Landfill to its Environmental Management Waste Management Facility on about November 28, 2022 for filing charges or giving testimony under the Act in violation of Section 8(a)(1) and (4) of the Act.
4. The Respondent discriminated against Patricia Sexton by suspending her on April 18, 2023 and terminating her on April 20, 2023, for engaging in union activities and for filing charges or giving testimony under the Act in violation of Section 8(a)(1) (3) and (4) of the Act.
5. The Respondent discriminated against Wendy Colyer Bales by suspending her on April 18, 2023 and terminating her on April 20, 2023, for engaging in union activities in violation of Section 8(a)(1) and (3) of the Act.
6. The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.
7. Respondent did not otherwise violate the Act as alleged in the complaint

REMEDY

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

The Respondent, having unlawfully discharged Patricia Sexton and Wendy Colyer Bales, must offer them reinstatement to their former jobs or if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority and other rights and privileges they would have enjoyed absent the discrimination against them. The Respondent shall also make Patricia Sexton and Wendy Colyer Bales whole for any loss of earnings and other benefits.

Having found Respondent unlawfully transferred Sexton from the Oak Ridge Reservation Landfill, I shall order the Respondent to make her whole for the loss of any wages or benefits resulting from that transfer. Backpay during her employment, related to the transfer, shall be computed as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971).³³

The make-whole remedy related to the discharges 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 Patricia Sexton and Wendy Colyer Bales for any other direct or foreseeable pecuniary harms incurred as a result of the unlawful terminations, 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 Patricia Sexton and Wendy Colyer Bales for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 10, 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 10 a copy of each backpay recipient's corresponding W-2 form reflecting the backpay award.

The Respondent shall also be required to remove from its files any references to the unlawful last chance warning, transfer from the Oak Ridge Reservation Landfill to the Environmental Management Waste Management Facility, suspensions and discharges it issued to Patricia Sexton and Wendy Colyer Bales and to notify them in writing that this has been done and

³³ Having found that Respondent unlawfully transferred Sexton I shall order that any backpay related to her discharge should be computed as if Respondent had never unlawfully transferred her.

that the discipline, negative employment action, suspensions and discharges will not be used against them in any way.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³⁴

ORDER

The Respondent, United Cleanup Oak Ridge LLC, Knoxville, Tennessee, its officers, agents, successors, and assigns, shall

1. Cease and desist from

Issuing last chance warnings to employees because they engage in protected concerted activities or because they file charges with the National Labor Relations Board or give testimony under the Act.

Transferring employees to less desirable work locations or demoting them to perform work in a lower job classification because they engage in protected concerted activities or because they file charges with the National Labor Relations Board or give testimony under the Act.

Suspending or discharging employees because they engage in protected concerted activities, they choose not to support agreements reached between the Atomic Trades and Labor Council and Respondent and/or they discourage other employees from supporting such agreements or they file charges with the National Labor Relations Board or give testimony under the Act.

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

Within 14 days from the date of this Order, offer Patricia Sexton and Wendy Colyer Bales full reinstatement to their former jobs at the Oak Ridge Reservation Landfill or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

Make Patricia Sexton and Wendy Colyer Bales whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms, suffered as a result of the discrimination against them in the manner set forth in the remedy section of this decision.

Compensate Patricia Sexton and Wendy Colyer Bales for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 10

³⁴ 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.

within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year(s).

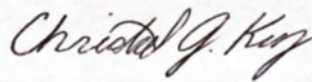
Within 14 days from the date of this Order, remove from its files any reference to Patricia Sexton's unlawful final written warning, transfer, suspension and discharge, and Wendy Colyer Bales' unlawful suspension and discharge and, within 3 days thereafter, notify the employee(s) in writing that this has been done and that the final written warning, transfer, suspensions and discharges will not be used against them in any way.

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 amounts due under the terms of this Order.

Within 14 days after service by the Region, post at its Oak Ridge Reservation Landfill and Environmental Management Waste Management Facility in Knoxville, Tennessee copies of the attached notice marked "Appendix."³⁵ Copies of the notice, on forms provided by the Regional Director for Region 10, 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 October 27, 2022.

Within 21 days after service by the Region, file with the Regional Director of Region 10 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.

Dated, Washington, D.C. October 29, 2026



Christal J. Key
U.S. Administrative Law Judge

³⁵ 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."

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 issue any of you discipline, including a last chance warning because you organize a meeting between employees and management or speak with management about you and your coworkers concerns about your terms or conditions of employment or safety related concerns and WE WILL NOT take such action because you file a charge with the National Labor Relations Board or give testimony under the Act.

WE WILL NOT transfer any of you to less desirable work locations or demote you because you organize a meeting between employees and management or speak with management about you and your coworkers concerns about your terms or conditions of employment or safety related concerns and WE WILL NOT take such action because you file a charge with the National Labor Relations Board or give testimony under the Act.

WE WILL NOT suspend or terminate you because you organize a meeting between employees and management or speak with management about you and your coworkers concerns about your terms or conditions of employment or safety related concerns or because you choose not to support an agreement we reach with Atomic Trades and Labor Council or because you discourage other employees from supporting such an agreement and WE WILL NOT take such action against you because you file a charge with the National Labor Relations Board or give testimony under the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL remove from our files all references to Patricia Sexton's Last Chance Written Warning, and her transfer from the Oak Ridge Reservation Landfill to the Environmental Management Waste Management Facility and WE WILL notify her in writing that this has been done.

WE WILL remove from our files all references to the termination of Wendy Colyer Bales and Patricia Sexton and WE WILL notify them in writing that this has been done.

WE WILL, within 14 days from the date of the Board's Order, offer Patricia Sexton and Wendy Colyer Bales full reinstatement to their former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed including medical and retirement benefits.

WE WILL make Patricia Sexton whole for any loss of earnings and other benefits resulting from our transfer of her from the Oak Ridge Reservation Landfill to the Environmental Management Waste Management Facility and reinstate her to her position at the Oak Ridge Reservation Landfill.

WE WILL make Patricia Sexton and Wendy Colyer Bales whole for any loss of earnings and other benefits resulting from their discharges, less any net interim earnings, plus interest, and WE WILL also make them whole for any other direct or foreseeable pecuniary harms, suffered as a result of the unlawful discharges, including reasonable search-for-work and interim employment expenses, plus interest.

WE WILL make Patricia Sexton whole for any loss of earnings, if any, and other benefits resulting from her transfer from the Oak Ridge Reservation Landfill to the Environmental Management Waste Management Facility.

United Cleanup Oak Ridge LLC
(Employer)

Dated: _____ By: _____
(Representative) (Title)

he 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.nlr.gov.

401 W. Peachtree Street, N.W., Suite 2201, Atlanta, GA 30308
(404) 331-2896, Hours: 8:00 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/10-CA-309298 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, (470) 343-7498.