JD–73–26
Olympia, WA

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

YWCA OF OLYMPIA

and **Case 19-CA-352644**

CHRISTINE YORBA, an Individual

Ann Marie Skov and *Kaitlin Tabor, Esqs.,*
for the General Counsel.
Ryan Kunkel, Esq. (Stoel Rives, LLP),
for the Respondent.

DECISION

STATEMENT OF THE CASE

ROBERT A. RINGLER, Administrative Law Judge. This case was heard in July 2026. The General Counsel's (the GC's) Complaint alleges that the YWCA of Olympia (the YWCA) violated §8(a)(1) of the Act by discharging employees Christine Yorba, Ayana Eagans, Teal Farias and Ollie Smyer (collectively called the employees) because of their protected concerted activities and by threatening them with discharge. As will be explained, the Complaint lacks merit.

FINDINGS OF FACT[1]

I. JURISDICTION

The YWCA is a not-for-profit entity, which provides community workshops and related services. It maintains an office and facility in Olympia, Washington. It annually derives gross revenues exceeding $250,000, and purchases and receives goods worth more than $5,000 directly from outside of Washington. It, therefore, meets the Board's jurisdictional standards and engages in commerce under §2(2), (6), and (7) of the Act.

II. UNFAIR LABOR PRACTICES

A. Record Evidence

The YWCA promotes the "social, political and economic status of all women and girls." (R. Exh. 2). At all relevant times, it was led by *Co-Executive Directors* Tali Economy and Alli Ewing. (JT Exh. 1). It is governed by an Executive Board, which was chaired by Amelia Watson.

[1] Unless otherwise stated, factual findings arise from joint exhibits, stipulations and undisputed evidence. In this case, the relevant record evidence is essentially undisputed.

Smyer was the *Director of Adult Education*; Eagans was the *Let's Talk Co-Facilitator*; Yorba was a *Youth Facilitator*; and Farias was a *Social Justice Youth Program Coordinator*. The YWCA was devastated by the loss of funding and programming opportunities caused by the COVID pandemic; this case involves the ongoing fiscal fallout from this crisis.

1. July and August 2023: First Restructuring Plan

On July 13, 2023, at a special Board meeting, the YWCA memorialized its financial problems and need to restructure its workforce. These meeting notes summarize its quandary:

> [T]he current amount of money in the bank will barely clear payroll this month. Historically, [the] Satturburg [grant] comes in late July or August … [but] has yet to be received. There are two outstanding Treatment Sales Tax invoices for the last two months …. The federal employee retention credit was submitted at the end of June for $112,000. Also [we] have a grant coming up at the end of August .... [T]here is currently … $20,000 in Heritage Bank that could be a support.
>
> [I]nput [was sought] on the … need to explore a reorganization. One option is … laying everyone off … with an opportunity to reapply for … available positions during the month of July ….
>
> lntercultural Foundations (IF) … is not sustainable ….
>
> Let's Talk appears to be gaining steam …. Youth programing … has been very successful ….
>
> Reorientation [involves] …. [l]etting go of IF and continuing with Let's Talk, Youth programming and the Racial Justice Series. Staff … would have opportunity to reapply for five positions …. The Board [approved the plan] ….

(R. Exh. 1). In August 2023, the YWCA acted, eliminated its IF program and laid off Smyer and 2 others. Only Smyer reapplied and was rehired as the *Director of Adult Education*.

2. Staffing After the 2023 Restructuring

The restructuring left the YWCA with 3 direct programming workers: Smyer, Eagans and Farias. On January 17, 2024, Yorba was added in a part-time role.

3. Early–2024: Group Wage Complaints

Employees Smyer, Eagans, Farias and Yorba grew disenchanted with their wages. They then commenced complaining to management about insufficient pay on a regular basis at staff meetings. Although management expressed sensitivity, *Co-Directors* Ewing and Economy replied that raises were not feasible given the YWCA's ongoing fiscal difficulties. Management offered that raises would be reconsidered if the financial situation improved. The employees, however, remained steadfast. Tensions grew over time as management grappled with being continuously

asked to resolve an issue that appeared to be unresolvable. In March, the parties sought mediation and enlisted former Board member Dr. Sarah Lloyd's assistance. Mediation did not yield a resolution.

4. May 2024: Field Trip Incident[2]

Economy testified about a field trip, where a minor was sexually assaulted in a YWCA van chaperoned by Farias and Yorba. Economy said that the incident, which occurred in the back row of the van, was facilitated because Farias and Yorba sat in the front row on the return commute and failed to properly supervise the back of the van. Management considered termination on this basis, but rejected this course in favor of added oversight, mentorship and revised policies. Ewing testified that the decision to retain Farias and Yorba was a difficult one. And, although she closely weighed firing them for this transgression, she chose retention and rehabilitation.

5. July 2024: Growing Wage Tensions

At an early–July staff meeting about an upcoming *Women of Achievement* fundraiser, the conversation spilled over to the employees challenging the viability of the event and seeking to reallocate its designated funds. This exchange prompted significant tension with management. At a late–July staff meeting, Farias repeated her ongoing wage concerns. *Co-Director* Economy erupted in response, voiced her ongoing frustration and stormed out of the meeting. This outburst prompted the employees to lodge a new complaint over what they now perceived to be a hostile work environment. Although *Co-Director* Ewing attempted to defuse the situation, the employees proved unrelenting. Ewing recollected that this exchange prompted her to make this announcement:

> I was frustrated that we … had multiple conversations … I had tried to convey the information in a few different ways, and [said] that … if people didn't feel like this was the place for them, … they had agency to make a change that was better for them if they needed to ….
>
> I remember saying … you can choose …. You can choose whether you are doing your job or not … employed here or not …. [N]obody is being held captive.

(Tr. 414-415).

The employees next elevated their concerns to the Board of Directors. (GC Exh. 3). On July 24, *Chairperson* Watson declined their meeting request and asked them to file a formal grievance. (Id.). On July 26, they filed a grievance, which was denied on August 17 and cited the budget shortfall. (GC Exhs. 4, 6-7).

[2] This incident touches upon the YWCA's *Wright Line* defense. The YWCA asserts that, if it truly sought to separate Farias and Yorba because of their wage complaints, it would have seized upon this serious incident as cover to fire them. It avers that the leniency it showed them demonstrates that its later actions were non-discriminatory.

6. July 2024: Second Restructuring Plan

The YWCA created another restructuring plan, which sought to address its ongoing losses. (R. Exh. 2). The plan envisioned changing the roles held by Smyer, Eagans, Farias and Yorba into part-time slots (i.e., 20 hours per week).[3] (Id.). *Chairperson* Watson testified about the YWCA's fiscal decline and explained how this dilemma prompted its 2023 and 2024 restructurings. She explained how COVID devastated its in-person programming and fundraising efforts. By mid–2023, most of the YWCA's loan funds were exhausted and it was posting monthly losses. She characterized the 2024 reorganization as a continuation of the 2023 restructuring. She said that both restructurings were driven by financial reality and denied retaliatory intent. Economy corroborated Watson's account and stated that the YWCA was "bleeding money at an alarming rate." Ewing corroborated Economy and Watson; she reiterated that the second restructuring was necessary to combat ongoing losses. Ewing, Economy and Watson were each highly credible and consistent; their unrebutted testimony regarding the financial necessity for the second restructuring was thoughtful, rational and supported by financial data; it has, accordingly, been credited.

7. August 19, 2024: Management Implements Second Restructuring

The YWCA advised the employees about the new restructuring plan with this memo:

> We want to … acknowledge … your hard work and dedication ….
>
> After careful consideration …, we will be restructuring ….
>
> This restructuring is … about ensuring that we can continue to serve our community …. This realignment will … stabilize our organization for long-term success.
>
> There will be changes … to include the elimination of our current program positions. **New positions have been defined, and we encourage you to apply for these new positions if you are interested and meet the qualifications of the role. We will share the new positions internally before posting them publicly on August 26th.**
>
> **Timeline:**
>
> August 23rd … Last Day for Current Roles ….
>
> August 26th … Job descriptions for new roles are posted externally ….
>
> [W]e will have availability … to schedule an individual meeting with you ….

[3] Prior to the restructuring, Smyer, Eagans and Farias were assigned 32 hours per week, while Yorba was assigned 20 hours per week. This restructuring reduced their collective workweek from 116 hours to 80 hours.

> [T]his reorganization will … stabilize our organization financially …. Your dedication and hard work are crucial … and we are confident that together we will make this transition as smooth and beneficial as possible ….

(GC Exh. 8)(emphasis added). Ewing credibly reiterated that this course of action was necessary to ensure the YWCA's viability.

8. Restructured Employees Fail to Reapply

Between August 19 and 26, none of the employees reapplied as internal or external candidates. (GC Exhs. 11-12). On August 19, Yorba announced an intention to depart, when Yorba emailed management and asked about unemployment and severance benefits. (GC Exh. 16). On August 19, Farias took a similar stance, when Farias requested a letter of recommendation "to use for my next endeavors." (Id.). Economy testified that, if any of the employees had applied, they would have been rehired. Economy explained that they were competent and it would have been cost prohibitive to train inexperienced applicants. Ewing corroborated Economy's account. Their testimony on these points was unrebutted and has been credited. The second restructuring proved ineffective and, by the time of the hearing, Ewing was the sole remaining YWCA employee.

B. Analysis

1. Layoff Allegation

The second restructuring was lawful. The framework for analyzing whether an employment action connected to protected activity violates the Act is set out in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. den. 455 U.S. 989 (1982), which requires the GC to show, by a preponderance of the evidence, that the worker's protected conduct was a motivating factor in the adverse action. This initial burden is satisfied by showing protected activity, knowledge and animus. If the GC meets this initial burden, the burden shifts to the employer to prove that it would have taken the same adverse action, absent the protected activity. *Mesker Door*, 357 NLRB 591, 591–592 (2011). The employer cannot meet its burden, however, merely by showing that it had a legitimate reason for its action; rather, it must demonstrate that it would have taken the same action, absent protected conduct. *Bruce Packing Co.*, 357 NLRB 1084, 1086, 1087 (2011). If the employer's proffered reasons are pretextual (i.e., either false or not relied upon), it fails to show that it would have taken the same action for those reasons regardless of the protected conduct. *Metropolitan Transportation Services*, 351 NLRB 657, 659 (2007). Further analysis is required if the defense is one of "dual motivation," i.e., the employer avers that, even if an invalid reason played some part in its motivation, it would have still taken the same action for permissible reasons. *Palace Sports & Entertainment, Inc. v. NLRB*, 411 F.3d 212, 223 (D.C. Cir. 2005).

The GC adduced a prima facie case. The employees engaged in extensive protected activity, when they made several complaints about their wages, workload and perceived harassment. Knowledge was also proven, given that complaints were made directly to management. The GC established animus via both direct evidence (i.e., Economy walked out of a meeting and expressed frustration) and indirect evidence given the timing between their

complaints and layoffs. See *Masland Industries,* 311 NLRB 184, 197 (1993) ("[t]iming alone may suggest … animus as a motivating factor.").

The YWCA established its affirmative defense and persuasively showed that it would have restructured the employees absent from their protected activities. *First*, every employee was offered the opportunity to reapply for internally posted roles before such roles were posted externally. This hardly paints the picture of an employer focused upon separating employees, who expressed wage concerns. If this was the YWCA's actual intention, it would not have allowed them to first apply internally and gain an edge over, or perhaps even preclude, outside competition. As noted, the testimony that they were competent and would have been rehired if they reapplied was credited. *Second*, the record does not depict an employer that utilized restructuring as a ploy to remove employees because of their protected concerted activities. It, instead, appears to demonstrate a financially troubled employer and its ongoing corrective efforts. The 2024 restructuring followed a 2023 restructuring that occurred *before* the employees' wage complaints. At this point, the YWCA *only employs Ewing*. If a financially troubled employer scaling down to a single worker after multiple layoffs does not substantiate a neutral motivation commanded by finances, what might? *Finally*, if the YWCA's true aim was to remove the employees because of their protected activities, it would have fired Yorba and Farias when a youth under their supervision was assaulted. Its decision to embrace leniency and not try to use this incident as an almost unimpeachable way to remove half of the complainants suggests even-handed motivation.

2. Threat Allegation

Ewing did not unlawfully threaten discharge, when she told the employees that, if they were dissatisfied with their wages, they could always find alternative work. The Board's general standard for assessing whether a remark constitutes an unlawful threat is whether it can reasonably be interpreted by employees as coercive of their §7 rights. *Hendrickson USA, LLC*, 366 NLRB No. 7 (2018); *Double D. Construction Group, Inc*., 339 NLRB 303 (2003). The intent of the speaker and the actual effect on the listener are immaterial. *Smithers Tire*, 308 NLRB 72, 72 (1992).

A reasonable employee would not have construed Ewing's comment as a threat. Employees were aware of the ongoing fiscal issues and the YWCA's position that raises were unaffordable. The YWCA allowed them to repeatedly raise their concerns, continuously engaged in dialogue, participated in mediation, and responded to a grievance. Under these circumstances, a reasonable employee would have objectively concluded that the YWCA could not offer raises and that Ewing was telling them the hard truth that, if a raise was their primary goal, they were free to find a better paying job. Ewing was solely attempting to realistically defuse tensions; this was not an implicit threat.

CONCLUSIONS OF LAW

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

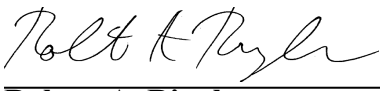
2. The YWCA did not violate the Act in the manner alleged by the Complaint.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended[4]

ORDER

The Complaint is dismissed in its entirety.

Dated Washington, D.C. October 30, 2026



Robert A. Ringler
Administrative Law Judge

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