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

TRUE NORTH OF UTAH, LLC
D/B/A THE FLOWER SHOP

and Case 27–CA–340860

UNITED FOOD AND COMMERCIAL WORKERS,
LOCAL 99

Nathan Higley, Esq.,
for the General Counsel.

Jeffrey Toppel, Esq.,
for the Respondent.

Sarah L. Anderson, Esq.,
for the Charging Party.

Decision

GEOFFREY CARTER, Administrative Law Judge. The General Counsel asserts in this case that, in 2024, True North of Utah, LLC d/b/a The Flower Shop (Respondent) violated the National Labor Relations Act (the Act) by: terminating employees Bridget Hughes, Sara Rueda, Zoe Ruthven, and Todd Wagner because they engaged in union activities; banning Hughes and Rueda from Respondent's pharmacies in Utah; and failing and refusing to recognize and bargain with Charging Party United Food and Commercial Workers, Local 99 (Union) as the exclusive collective-bargaining representative of employees in a contemplated bargaining unit of all nonsupervisory employees (except guards) in Respondent's pharmacy in South Ogden, Utah. As explained below, I have found that Respondent violated the Act, but only by terminating Hughes, Rueda, and Wagner, and by banning Hughes and Rueda.

STATEMENT OF THE CASE

The trial in this case was held in person on July 21–22 and August 19–21, 2026, in Salt Lake City, Utah. The Union filed the unfair labor practice charge in this case on April 25, 2024, and filed amended charges on the following dates: June 7, 2024; April 15, 2026; and May 12, 2026.

In an "amended complaint" issued on July 13, 2026 (hereafter referred to as the complaint), the General Counsel alleged that Respondent violated Section 8(a)(3) and (1) of the Act by:

(a) Discharging employee Zoe Ruthven on about March 22, 2024, for discriminatory reasons and thereby discouraging membership in a labor organization;

(b) Discharging employee Todd Wagner on about April 22, 2024, for discriminatory reasons and thereby discouraging membership in a labor organization;

(c) Discharging employee Bridget Hughes on about April 25, 2024, for discriminatory reasons and thereby discouraging membership in a labor organization;

(d) Banning Bridget Hughes from entering Respondent's property on about April 25, 2024, for discriminatory reasons and thereby discouraging membership in a labor organization;

(e) Discharging employee Sara Rueda on about May 10, 2024, for discriminatory reasons and thereby discouraging membership in a labor organization; and

(f) Banning Sara Rueda from entering Respondent's property on about May 10, 2024, for discriminatory reasons and thereby discouraging membership in a labor organization.

The General Counsel also alleged that Respondent violated Section 8(a)(5) and (1) of the Act by, since about March 21, 2024, failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the contemplated bargaining unit of all nonsupervisory employees, except guards, employed by Respondent at its South Ogden, Utah pharmacy.

Respondent filed a timely answer denying these alleged violations.

PROCEDURAL ISSUES

A. Respondent's Objections to Agency Proceedings Under the U.S. Constitution

In its answer and in its posttrial brief, Respondent objected to the proceedings in this case by asserting that the removal protections for Board Members and for Administrative Law Judges are unconstitutional, and by asserting that agency proceedings violate its Seventh Amendment right to a trial by jury. (R. Posttrial Br. at 28 fn. 2; Jt. Exh. 3 (par. 2).) Respondent waived its arguments on these points by not fully explaining them or providing supporting evidence. See *Commonwealth Flats Development Corp. d/b/a Seaport Hotel Boston*, 373 NLRB No. 142, slip op. at 1 fn. 1 (2024).

Even if I were to reach the merits of Respondent's constitutional challenges, however, the challenges would fall short. In *Commonwealth Flats Development Corp. d/b/a Seaport Hotel Boston*, the Board rejected constitutional challenges to agency proceedings based on Board Members' and Administrative Law Judges' removal protections and based on the Seventh Amendment. As part of its rationale, the Board noted the lack of evidence that the employer suffered any harm from the removal protections. 373 NLRB No. 142, slip op. at 1 fn. 1 (2024); see also *Trump v. Slaughter*, 609 U.S. 422, 431, 454, 456 (2026) (finding that the removal protections for members of the Federal Trade Commission violate the separation of powers

enshrined in the Constitution, but not addressing the permissibility of tenure protections for non-Article III courts or the harm from removal protections that a party needs to show as a predicate for relief); *Troutbrook Company, LLC d/b/a Brooklyn 181 Hospitality, LLC*, 373 NLRB No. 125, slip op. at 2 (2024) (rejecting employer's argument that agency proceedings violated the employer's Seventh Amendment right to a jury trial). Since Respondent's constitutional challenges here lack supporting evidence and since I am bound to follow the Board's precedent, I deny Respondent's constitutional challenges.[1]

B. *Respondent's Challenge to Agency Jurisdiction*

Respondent, a medical cannabis[2] pharmacy, argues that the Board does not have jurisdiction over Respondent in this matter. At the start of trial, Respondent stipulated that, in the 12 months before the complaint was filed, Respondent had gross revenue in Utah that exceeded $500,000 and received goods and services from points outside of Utah that were worth $5000.[3] (Tr. 7–9; see also Jt. Exh. 3 (pars. 8–9).) While those stipulated facts normally would establish that Respondent qualifies as an employer under the Act, Respondent argues that it operates within a restrictive framework established by Utah's medical marijuana program. Among other parameters, Utah's framework precludes Respondent from distributing marijuana products outside of the state and requires Respondent's employees to be licensed by the state. Due to those restrictions, Respondent contends that Federal courts must exercise independent judgment to decide whether the Board has acted within its authority under the Act in asserting jurisdiction over Respondent. (R. Posttrial Br. at 28–31.)

The Board previously has exercised jurisdiction over medical marijuana pharmacies similar to Respondent, albeit without necessarily addressing the specific arguments that Respondent raises here. See, e.g., *Beleaf Medical, LLC*, 374 NLRB No. 100 (2026); *Healing Healthcare 3, Inc. d/b/a Curaleaf Camelback Dispensary*, 373 NLRB No. 31 (2024); *Absolute Healthcare d/b/a Curaleaf Arizona*, 372 NLRB No. 16 (2022), enfd. in part and denied in part on other grounds, 103 F.4th 61 (D.C. Cir. 2024). Although Respondent asked me to dismiss the complaint based on the jurisdictional arguments described above, it is clear that Respondent's request is more appropriate for the Board and the Federal courts.[4] Accordingly, relying on existing Board precedent, I will deny Respondent's jurisdictional challenge with the

[1] Alternatively, since granting 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 provide further guidance on these 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).

[2] For the remainder of this decision I will use the familiar term "marijuana" instead of "cannabis."

[3] In connection with the stipulation, Respondent did not waive any jurisdictional arguments, claims, or defenses concerning the complaint, the National Labor Relations Board, or related proceedings. (Tr. 8.)

[4] I note that Respondent raised these jurisdictional arguments in a July 20, 2026 motion to dismiss that Respondent submitted to the Board. That motion was still pending when this decision issued.

understanding that Respondent may raise the issue again with the Board or with the Federal courts.

C. Respondent's Objection to July 13, 2026 Complaint Amendment

On July 15, 2026, Respondent filed a motion to continue the trial date from its scheduled date of July 21, 2026. Essentially, Respondent filed its motion to object to the fact that on July 13, 2026, the General Counsel filed an amended complaint (the complaint described above) that: added the allegation that Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union; and asserted that the remedy in this case should include a bargaining order under *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), because "the possibility of erasing the effects of past practices and of ensuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order." Id. at 614–615. Respondent contended that its ability to mount a defense would be prejudiced if we proceeded to trial on July 21 because Respondent would have limited time to investigate and prepare how it would litigate the new Section 8(a)(5) allegation and new request for a bargaining order.

In preparing my ruling on Respondent's motion (and in a July 17, 2026 order), I recognized that the addition of the Section 8(a)(5) allegation and the demand for a *Gissel* bargaining order would require the General Counsel to present additional evidence to prove the new allegation and prove that a *Gissel* bargaining order is appropriate. I also recognized that the additions to the complaint would require Respondent to prepare a defense to the Section 8(a)(5) allegation and proposed bargaining order (e.g., by questioning witnesses, calling witnesses of its own, and presenting relevant exhibits). Accordingly, before issuing my ruling I asked the parties to consider two options: (a) start the trial on July 21, 2026, by videoconference, but only to handle procedural issues before adjourning to a later date for in-person proceedings; or (b) start the trial on July 21, 2026, in person, but only for the General Counsel to present its case in chief before adjourning to a later date (with, upon resumption during its defense case, Respondent retaining the right to recall and cross examine any witnesses that the General Counsel called, except for 611(c) witnesses, which Respondent could recall but not cross examine). The General Counsel and the Union expressed a preference for option "b," while Respondent preferred option "a."

In a July 17, 2026 order, I denied Respondent's motion to postpone the trial date and implemented option "b," noting that either option gave Respondent more time to prepare its defense to the new complaint allegation and proposed bargaining order. (GC Exh. 1(v).) Consistent with my order, the General Counsel presented its case in chief on July 21–22, 2026, and Respondent reserved the right to recall and cross examine the General Counsel's witnesses. During proceedings on August 19–20, 2026, Respondent recalled several witnesses for additional testimony, including recalling witnesses for cross examination where permitted. I stand by my ruling that this approach to trial proceedings gave Respondent sufficient time to prepare and present its defense.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Union, and Respondent, I make the following findings, conclusions of law, and recommendations.[5]

FINDINGS OF FACT

I. JURISDICTION

Respondent True North of Utah, LLC d/b/a The Flower Shop, a limited liability corporation with facilities in Arizona, New Jersey, New Mexico, and Utah, has been operating as a medical marijuana pharmacy and has an office and place of business in South Ogden, Utah. In the 12–month period preceding July 13, 2026, Respondent derived gross revenues in excess of $500,000 within the State of Utah and purchased and received goods or services at its South Ogden, Utah facility that have a value of $5000 and came directly from points outside the State of Utah. (See Tr. 7–9 (stipulation); Jt. Exh. 3 (pars. 8–9).) Based on those facts, I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Based on the evidence presented during trial, I find that the Union has been a labor organization within the meaning of Section 2(5) of the Act. (See, e.g., Tr. 263–272.)

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

1. Respondent's operations, employees, and managers

Since about April or May 2020, Respondent has operated a medical marijuana pharmacy in South Ogden, Utah. To operate, Respondent must have a license in Utah and comply with applicable regulations issued by the Utah Department of Agriculture and Food (UDAF), including regulations for handling and distributing marijuana and related products. (Tr. 150–151, 368–371, 441–442, 465–466, 545, 612–613; see also Tr. 55, 543–544 (noting that Respondent also has a pharmacy in Logan, Utah), 467–469 (explaining that UDAF periodically conducts audits to verify Respondent's compliance with regulations).)

Respondent's customers, referred to as "patients," must have a medical card and also (if they are a new patient) consult with the pharmacist before filling prescriptions for marijuana and related products either in person at the pharmacy or by placing an online order and using Respondent's delivery service. For in-store sales, Respondent relies in part on "pharmacy agents" (also referred to as "wellness experts") to assist patients with selecting and purchasing

[5] The transcripts and exhibits in this case generally are accurate, but I hereby make the following transcript corrections: Throughout: "Highley" should be "Higley" and "Hutley" should be "Hundley"; p. 167, l. 1: "hears" should be "here is"; p. 264, l. 17: "cart" should be "card"; p. 340, l. 24: "pick" should be "PIC" [pharmacist in charge]; p. 354, ll. 5, 12, 15: Mr. Toppel was the speaker; p. 354, l. 22: "responded" should be "Respondent"; p. 407, l. 15: "Werth" should be "work"; and p. 442, l. 22: "pick" should be "PIC" [pharmacist in charge].

items from Respondent's line of products. For online orders, Respondent has some pharmacy agents serve as delivery drivers to (with the assistance of the delivery manager and a security guard at the store) pick the correct items needed to fill each patient's order, package the items, transport the delivery to the customer, and verify the accuracy of the delivery to the patient. Specifically, the delivery driver or delivery manager uses the online order to select (or "pick") the products for the order and then scans the products at the cash register. Next, the delivery driver places the products in a box and then the security guard verifies that the products in the box match the items that were ordered and that are listed on the outside of the box. Once the order is verified, the security guard seals the box with packing tape and gives it to the driver for delivery. The delivery driver is not permitted to open the box after it has been sealed.[6] (Tr. 28–30, 100–103, 141–142, 151, 281, 316–317, 330–331, 365–367, 370, 378, 467, 473–474, 487–490, 613–614; R. Exh. 16 (procedure pars. 2(i), 9); see also Tr. 125 (a $100 minimum is required for delivery orders; most delivery orders had an average cost of $150–500).)

Between about March 1 and May 10, 2024, Respondent employed the following managers who had authority at the South Ogden pharmacy:

Justin Jennings – director of retail operations
Jarrod Freeman – pharmacist in charge (PIC)
Desirae Robison – pharmacy manager
Trevor Hundley – assistant manager
Ryan Ratigan-Allen – delivery manager
Marla Williams – director of human resources
Mellissia Yonk – human resources manager of Utah[7]

(Tr. 15, 71, 133, 312, 346–347, 363, 380–381, 440–441, 463, 472, 494–495, 497, 543–546, 548, 561–562, 611, 631–632; R. Exh. 1.) Respondent admits, and I find, that each of those managers was a supervisor as defined in Section 2(11) of the Act. (Jt. Exh. 3 (Respondent's answer to the complaint, par. 14).)

2. Disciplinary policy and practices

In early 2024,[8] Respondent's disciplinary policy included the following steps: coaching; warning; final warning; and recommendation for termination of employment. Respondent

[6] The written procedures for delivery drivers state as follows, in pertinent part:

> Two agents verify order for accuracy, box up, and seal order. . . .
>
> Delivery agents pick and process their orders; 2 agents verify that the contents are correct. Then upon leaving for their deliveries, a manager, pharmacist, or security guard checks all contents of boxes and cross references what is on the order receipt, transaction receipt and accuracy of manifest

(R. Exh. 16 (procedure pars. 2(i), 9).)

[7] Williams and Yonk were not based at the South Ogden pharmacy.

[8] In about October 2023, Respondent overhauled its human resources procedures and practices

reserved the right to follow the steps when taking disciplinary action and reserved the right to skip one or more disciplinary steps or add steps depending on the circumstances. (Jt. Exh. 1 (discipline provisions in employee handbook); Tr. 16, 32, 149, 500–503, 550–551.) Notably, Respondent generally followed separate disciplinary "tracks" for different types of infractions. Thus, for example, an employee who previously received a coaching and warning for attendance infractions could receive a coaching (instead of a higher level of discipline) for a safety violation or another infraction unrelated to attendance. (Tr. 18, 428–429, 508–509.)

In about May 2024, Respondent issued a revised employee handbook. The disciplinary policy in that handbook is similar to the previous version, though Respondent renamed the disciplinary steps as: verbal warning; written warning; final warning; and termination. (Jt. Exh. 2 (pp. 16–17); Tr. 16–17, 502, 504–505, 507–508, 536–537, 551–552.)

As an additional tool, Respondent may place employees on performance improvement plans (PIPs), usually after an employee has been written up several times for a certain type of misconduct or infraction. Performance improvement plans typically specify a timeframe (e.g., 30 days) for the employee to address the issues identified in the plan, but the length of the timeframe depends on the circumstances. An employee who successfully completes a performance improvement plan will still have any prior discipline on their disciplinary record. (Tr. 17–18, 434–436, 505–506.)

There are no exhibits in the record that specify how long a disciplinary action or performance improvement plan remains "active" on an employee's record and thus available for managers to consider when addressing future similar infractions. Human resources director Williams, however, testified that a disciplinary action or performance improvement plan remains active for 12 months. (Tr. 18–19, 436, 537–539.)

For most terminations and also for disciplinary action that has some complexity (e.g., an infraction that would require more than a coaching and/or might warrant skipping disciplinary steps), Respondent's pharmacy manager confers with other managers at the shop and makes disciplinary recommendations to human resources. Human resources then conducts an independent investigation of the alleged infraction. Ultimately, director of human resources Williams (with input from human resources manager Yonk) makes the final decision on discipline, though the pharmacy manager's recommendation receives high weight since the pharmacy manager and other managers at the shop are more familiar with the circumstances. (Tr. 22–26, 34–35, 64–65, 138–139, 196, 374, 426–428, 499–500, 552–553.)

3. Anti-harassment policy and practices

Respondent's May 2024 employee handbook[9] includes the following anti-harassment policy, in pertinent part:

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because, among other issues, Respondent was not applying or documenting its disciplinary rules consistently. The overhaul included drafting revisions to the employee handbook and disciplinary policy and improving recordkeeping. Robison became the pharmacy manager at the beginning of this overhaul process. (Tr. 373–374, 498, 547, 549–550.)

[9] The evidentiary record does not include a copy of any anti-harassment policy that was in effect

> The Flower Shop is committed to providing a work environment conducive to equality, respect, and dignity. In keeping with this commitment, The Flower Shop has adopted a policy of "zero tolerance" with regard to employee harassment, which applies to conduct both in and out of the workplace. Harassment is defined under federal law as unwelcome conduct that is based on race, color, religion, sex (including pregnancy, sexual orientation and gender identity), national origin, age (40 or older), disability, or genetic information. Harassment becomes unlawful when: (1) enduring the offensive conduct becomes a condition of continued employment; or (2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. . . . Harassment of any other person . . . is grounds for immediate termination.
>
> . . .
>
> Procedures for Reporting and Investigating Harassment: Employees should report incidents of inappropriate behavior or sexual harassment to Human Resources or their Manager as soon as possible after the occurrence. . . . All complaints of harassment, sexual harassment, or other inappropriate sexual conduct will be promptly, thoroughly, and impartially investigated by the Company. . . . Employees who believe they have been unjustly charged with harassment may defend themselves verbally or in writing at any stage of the investigation.
>
> Penalties for Violation: If it is determined that inappropriate conduct has occurred, the Company will act promptly to eliminate the offending conduct and take such action as is appropriate under the circumstances. Such action may range from counseling to termination of employment and may include such other forms of disciplinary action (such as, for example, suspension) as the Company deems appropriate under the circumstances and in accordance with applicable laws.

(Jt. Exh. 2 (pp. 20, 22–23); Tr. 509; see also Tr. 32–33, 504 (depending on the severity, a harassment infraction could lead Respondent to accelerate or skip disciplinary steps or immediately discharge an employee).)

4. Attendance policy and practices

Respondent's May 2024 employee handbook lists excessive absenteeism, excessive tardiness, absences or tardiness without notice, and unauthorized absence from the workstation during the workday as examples of employee misconduct that may result in disciplinary action up to and including termination. (Jt. Exh. 2 (pp. 24–25); see also GC Exh. 8 (quoting Respondent's 2025 employee handbook as stating, "Where appropriate, a policy of progressive employee discipline will be followed by supervisors to address attendance and punctuality

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before May 2024. (See Tr. 536–537; Jt. Exh. 1 (excerpt of pre-May 2024 handbook that does not include an anti-harassment policy).) There is no contention, however, that Respondent did not have such a policy before May 2024, or that the terms of any earlier policy were materially different than the May 2024 policy.

issues. The Flower Shop reserves the right to administer discipline in such a manner as it deems appropriate to the circumstances, and may, in its sole discretion, eliminate any or all the steps in the discipline process.").)

In a staff meeting on about September 8, 2023, Respondent instructed employees to call or text their managers if the employees needed to call out or miss work. Specifically, management communicated the following instructions:

> Calling out/missing work – CALL or TEXT BOTH [pharmacy manager Lacy Bagshaw] and [assistant manager Desirae Robison]. Delivery agents please reach out to Lacy, Dez and Gabbi. Save our numbers. Do not notify through ONLY GroupMe. Also, you must at least try to reach out and find coverage. Not just show up without asking people to cover you. Also, the attendance tracker is still in effect. Disciplinary action WILL be taken with excessive absences or tardies.

(R. Exh. 11 (staff meeting agenda; emphasis in original); Tr. 411–412; see also Tr. 364–365, 373, 549 (Lacy Bagshaw was pharmacy manager up to about October 2023; Robison was assistant manager before replacing Bagshaw as pharmacy manager in October 2023).)

In a staff meeting on about January 19, 2024, Respondent reiterated the procedure for employees to use regarding absences or tardies. Management communicated the following instructions:

> Calling out – I have said this many times – You need to reach out to the [assistant manager] AND [pharmacy manager] when calling out. Please make a group message with [Robison's and assistant manager Hundley's] phone number so we both get the message and can pass it along to any other leaders needing to know. It's good practice to text the leader or shift lead on duty if [Hundley or Robison] isn't there. Posting in the group chat does NOT count as notification of your missed shift! A conversation with your coworker does NOT count as notification. This includes getting shifts covered, you need to let us know who to expect in your place. A text or conversation saying you may or may not be coming doesn't count. You need to be clear and communicate with the correct people. Remember that when you fail to notify management or do not attempt to find coverage, your coworkers have to pick up the slack. . . .

(R. Exh. 12 (staff meeting agenda; emphasis in original); Tr. 413–414, 417.)

Attendance and the call-out procedure came up again in a staff meeting on about February 29, 2024. Managers relayed the following message to employees:

> WHEN YOU CALL OUT TEXT BOTH MANAGERS!! This is the 4th team meeting that this expectation has been set. We're gonna have to start doing disciplinary actions if this isn't followed moving forward. MAKE A GROUP TEXT with [Robison and Hundley]. We both need to know regardless of whether we are here or not for tracking purposes. Please don't make me have to start bringing down the hammer I would really

> rather not. . . . The expectation is to contact management no later than one hour before your scheduled shift. . . .

(R. Exh. 13 (staff meeting agenda; emphasis in original); Tr. 414; see also Tr. 183–184 (noting that a phone call to managers would also be acceptable, and that employees are okay if they are absent but have a coworker cover their shift).)

5. Pharmacy procedures and employee mistakes

Since the state of Utah has several laws and regulations that apply to marijuana pharmacies, Respondent provides compliance training to employees and has implemented standard operating procedures (SOPs) for employees to follow. (Tr. 371–372, 470–471, 612–616; R. Exh. 16 (delivery driver standard operating procedures).)

Notwithstanding the written procedures and initial employee training, employee mistakes were a recurring issue at the store, including mistakes that affected Respondent financially. (Tr. 217–218, 307–308, 318–320.) Accordingly, at staff meetings management reminded all employees about proper procedures, including the following examples (among others):

> Putting back failed deliveries and pickups – if an item has a label on it with patient info, REMOVE IT BEFORE PLACING BACK IN THE DRAWER. There have been several items found in the cupboard with patient labels on them, and this is common sense. Stop doing this. (R. Exh. 11 (September 8, 2023 meeting agenda; emphasis in original).);
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> PICKUPS – We need 2 agents that are interested in leading online order processes & the I Heart Jane menu. This means you take ownership of updating menu, picking, and processing pickup orders accurately while other agents are focusing on their registers and patients in the store. [ELABORATE] ON PICK UP ERRORS – FINAL AGENT WHO CASHES THE TRANSACTION IS RESPONSIBLE FOR ERRORS! Double scanned items, wrong items, and missing items. This is not okay. If you are the agent cashing out a pickup, YOU NEED TO LOOK AT EVERY ITEM IN THAT BAG AND MATCH WHAT IS ON THE SCREEN BEFORE CASHING OUT. (R. Exh. 11 (September 8, 2023 meeting agenda; emphasis in original).);
>
> Reviews and One on Ones – Your accuracy, error rates, attendance and register discrepancies are being tracked and communicated to you. A lot of registers EVERY night have issues, and YOU are responsible for that cash in the register you are working on. COUNT! ACCURATELY! RECOUNT IF NEEDED. Any discrepancy over $20 is reported, if it is a constant issue, disciplinary action will be taken. Count accurately. Enter payments accurately. Debit vs Cash. Pay attention. Slow down, focus on accuracy please. (R. Exh. 11 (September 8, 2023 meeting agenda; emphasis in original).);
>
> Do not leave money in an empty till!!! There were 3 times in one week that money was placed in an empty register and left there overnight. This causes us to report money missing out of your tills, with no explanation as to why it is missing. Everyone check their registers before going home for the night and make sure you didn't leave anything

in there. Put the money in the till you've been moved to toward the end of the night. (R. Exh. 12 (January 19, 2024 meeting agenda; emphasis in original).); and

SCAN EVERY ITEM!! EVERY TIME!! EVERY ORDER!! This includes pickups and deliveries. A lot of discrepancies are from deliveries or pickups not getting scanned. . . . Moving forward we will have to crack down on this, if we track a discrepancy back to you and see that you did not scan items, Disciplinary action will have to be taken. This is serious as it leaves us having to communicate to the state, take way too much time investigating discrepancies, and could get us in trouble (R. Exh. 12 (January 19, 2024 meeting agenda; emphasis in original).)

B. March 2024 - Union Organizing Campaign Begins

In about late February or early March 2024, several employees began discussing (in person and via messages posted on Discord) the possibility of forming a union. At the suggestion of pharmacy agent G.Y., on March 11, 2024, employees Sara Rueda, Zoe Ruthven, and Todd Wagner contacted Perri Byrd, a representative with the United Food and Commercial Workers International Union. Byrd agreed to assist employees with a union organizing campaign. Rueda, Ruthven, and Wagner subsequently communicated with several additional coworkers to find out whether the coworkers might be interested in unionizing. (Tr. 103–104, 198–201, 247–249, 263–264, 266, 281–285, 458, 573, 590–591, 620; see also Tr. 265–266 (explaining that Byrd was assisting Local 99 with the organizing campaign at Respondent's pharmacy), 249–250, 284 (explaining that employees spoke in person with each other about unionizing while they were on breaks across the street from the South Ogden pharmacy).)

C. March 14, 2024 – First Union Meeting

On about March 14, 2024, 13–15 employees (including Rueda, Ruthven, and Wagner) met at pharmacy agent Wagner's home for a meeting with union representative Byrd, who appeared by videoconference. Byrd described how the Union worked and explained the process for employees to sign union authorization cards. Byrd also explained that the next step (after signing authorization cards) would be for employees to send a letter to director of retail operations Jennings. (Tr. 200, 202–203, 249, 285–286.)

Assistant manager Hundley was present at Wagner's home when the union meeting occurred. Hundley, who was present because Wagner invited him to what Hundley thought was a casual gathering and barbecue, was taken aback when he realized that employees were having a union meeting. Hundley asked Wagner not to tell anyone that he (Hundley) was present for the union meeting and expressed concern that he should not be at the meeting and would get fired if director of retail operations Jennings found out.[10] (Tr. 203, 250, 254, 448–449; see also Tr. 203,

[10] Hundley admitted to attending a barbecue at Wagner's home but denied attending a union meeting. (Tr. 447–448.) I do not credit Hundley's testimony to the extent that he denies being present when employees discussed unionizing while at Wagner's home on about March 14. During trial, Hundley frequently testified that he did not recall when questioned by counsel for the General Counsel but asserted more certainty when questioned by counsel for Respondent. (Compare Tr. 314–320, 323, 331–332, 336–337, 340, 342–343 (examples of Hundley testifying, in response to questions posed by counsel for

250 (Hundley was at Wagner's home for at least 30 minutes after all other attendees had arrived), 449, 458 (Hundley did not "meet" representative Byrd while at Wagner's home).)

D. March 15–23, 2024 – Employees Sign Authorization Cards and Respondent Receives Reports About the Organizing Campaign

From March 15–22, nineteen[11] of Respondent's employees electronically signed union authorization cards, including pharmacy agents Bridget Hughes, Rueda, Ruthven, and Wagner. (Tr. 108–109, 200–201, 268–271, 459–460; GC Exh. 31 (pp. 4–5, 10, 15) (showing that Ruthven and Rueda signed cards on March 15, while Hughes and Wagner signed on March 18).)

In about the same time period (March 16–22), Respondent's managers received reports from employees and an anonymous source that a union organizing campaign was underway. Pharmacy manager Robison, for example, indicated that she first found out about the union organizing campaign when an employee notified her that employees were having secret meetings about unionizing. Robison subsequently notified human resources, pharmacist in charge Freeman, and other managers about the organizing campaign.[12] (Tr. 73–74, 157–158, 378, 478–480; see also Tr. 384–385 (Robison received a copy of a text message, discussed below, on about March 23, about 1–2 weeks after learning about the union organizing campaign).)

In addition, on March 23, 2024, pharmacist in charge Freeman received the following message:

> Anonymous: Just wanted to give you an anonymous heads up, this union thing has gotten out of control. There is a lot of talk about following management after work and at their homes to get as much dirt or evidence on them to get them fired or taken to the labor board. I don't believe any of the personal allegations, I feel like it has become disgusting, but I don't feel like anyone should be followed home or spied on no matter what is happening or not happening. Thank you
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> Freeman: Thank you for the heads up

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the General Counsel, that he did not recall) with Tr. 447–449, 452 (responding "absolutely" or "absolutely not" to various questions posed by counsel for Respondent).) Further, Hundley demonstrated a willingness to provide favorable (but unreliable) information to Respondent during his employment and when he testified. As one example, Hundley joined pharmacy manager Robison in claiming that Hughes communicated in an aggressive manner even though that characterization conflicted with the performance review that Respondent gave to Hughes shortly before the union organizing campaign began. (See FOF, sec II(J)(1)–(2), infra.)

[11] One of the nineteen employees who signed a union authorization card was a guard and thus not part of the contemplated bargaining unit. (Compare GC Exh. 31 with R. Exh. 1.)

[12] Respondent's managers already had some general information about union organizing campaigns and employee/employer rights from a training session that Respondent held on October 20, 2023. Respondent scheduled that training session because of "discussions of unions involvement in the cannabis industry." (GC Exh. 36; Tr. 375–378, 453, 455–456, 519–520, 556–557.)

(GC Exh. 32; Tr. 72, 384–385, 479–480; see also Tr. 73–74, 479–480 (Freeman learned about the union organizing campaign a few days to a week before receiving the March 23 text message).)[13] Freeman did not know which employees were allegedly talking about following managers after work but, based on conversations with employees who spoke with managers about being uncomfortable with the organizing campaign, he identified pharmacy agents Rueda and Wagner as employees who were most active in recruiting or pushing other employees to join in the organizing campaign. (Tr. 75–76; see also Tr. 76–77, 479–480 (noting that Respondent did not investigate or find evidence to confirm that an employee had recommended following managers after work), 232 (Rueda agreed that she, Wagner, and pharmacy agent G.Y. were the most active union supporters).)

E. March 22, 2024 – Respondent Terminates Zoe Ruthven

1. Ruthven - background

Zoe Ruthven began working for Respondent as a pharmacy agent in about October 2022. (Tr. 281, 387.) In 2023, Ruthven received the following disciplinary action:

May 1, 2023:	Verbal counseling for tardiness and unauthorized absence from her work area (late for several shifts as documented on Respondent's "attendance tracker"; spoken to about not leaving her assigned station without being relieved by a coworker);
June 6, 2023:	Written warning for attendance and tardiness (late 2 times and called in twice since the May 1, 2023 discipline, which had set an expectation of no tardies for 60 days);
August 11, 2023:	First warning for delivery vehicle driving incident (poor judgment call while driving resulted in damage to the delivery car's passenger side mirror and the other driver's side mirror); and
November 9, 2023:	Final warning for attendance, missing mandatory meetings, attitude, and leaving work area (2 tardies and 5 unscheduled absences in the last 60 days; 4 no call/no shows for mandatory meeting days[14] in the last 5 months; left work station and sat in car

[13] Consistent with Freeman's testimony that managers learned about the union organizing campaign a few days to a week before the March 23 text message, I note that the anonymous text message referred to "this union thing" as something that Freeman was already aware of. Specifically, the text message did not announce that an organizing campaign had started but rather described the campaign as something that Freeman already knew about but had now "gotten out of control." Freeman's response, which does not indicate that he was caught off guard by news about the organizing campaign, also indicates that he was aware of the organizing campaign before receiving the message. (GC Exh. 32.)

[14] Respondent required employees to attend mandatory meetings even if the meetings were scheduled on a date that the employee did not have a scheduled shift. Missing mandatory meetings under those circumstances generally counted as missing a scheduled shift. Mandatory meetings appear on the work schedule that Respondent posted at the store and distributed using the GroupMe app. (Tr. 90, 163–164,

> for 42 minutes before opening after verbal direction from leadership).

(R. Exhs. 2–5; see also Tr. 387–394, 428–429, 591–592.)

In about January or February 2024, Ruthven attempted to make a delivery at an apartment building (labeled building "A") and on two occasions ended up marking the delivery as not completed (a/k/a listing it as a "failed delivery") because the customer did not respond while Ruthven tried to reach them for 10 minutes. Ruthven then received a call from employee N.L., who relayed the patient's telephone request that Respondent attempt the delivery again. Ruthven initially objected but then agreed to try again after N.L. explained that there were two apartment buildings labeled "A" and that the patient lived in a different "A" building than where Ruthven made the initial delivery attempts. Ruthven successfully completed the delivery and, moving forward, made several additional successful deliveries to the same patient. There is no evidence that Respondent spoke to or took disciplinary action against Ruthven when this delivery incident occurred. (Tr. 302–306, 309–310, 595; see also R. Exh. 16 (procedure par. 29) (standard operating procedure states that delivery drivers must attempt to contact the patient and then must wait 10 minutes before failing a delivery order).)

On February 14, 2024, pharmacy manager Robison met with Ruthven for a yearly review. During that review, Robison gave notice that Respondent was placing Ruthven on a performance improvement plan. The performance improvement plan stated as follows:

> During the past year, it had become increasingly evident that you have not been performing your work in accordance with what is expected of your position as a wellness expert. You were counseled on this unacceptable performance on 5/1/23, 6/6/23, 8/17/23, 10/2023.[15] The Flower Shop values you as an employee, and it is our intent to make you fully aware of this situation and to assist you in improving your work performance. The responsibility to improve, however, is yours alone.
>
> You are being placed on a written performance improvement plan. For the next 30 days, Feb. 14, 2024 to March 15, 2024, your work will be closely monitored. You must demonstrate immediate improvement in the following areas:
>
> > Zoe should continue to improve attendance by reporting to each shift on time, unless given direct approval from the pharmacy manager. This includes all mandatory meetings.
> >
> > Zoe must stay at her work station unless on a scheduled break or if helping perform other duties as assigned by management.[16]

411; R. Exh. 5 (noting that a no-call/no show on a mandatory meeting day is considered an absence).)

[15] I find that the "8/17/23" counseling listed here is the "first warning" that Ruthven received for a delivery vehicle driving incident. That warning has a typewritten date of August 11, but the signatures on the warning are dated August 17. (R. Exh. 4.) The evidentiary record does not include a disciplinary action form for Ruthven from October 2023.

[16] A few weeks earlier, in a January 19, 2024 staff meeting, Robison reminded all employees to stick

> Zoe must continue to have a good attitude, and help her team within the pharmacy. Maintain good customer service and relationships with her coworkers. Take management feedback without becoming combative.
>
> Zoe must maintain a good driving record with the company, and should not have any other vehicle incidents moving forward.
>
> Your manager (Desirae Robison) will review your progress on each of the above items requiring improvement every 30 days. Improvement must begin immediately and be maintained. If any objective of this improvement plan is not met at any time during the specified time frame, disciplinary action, to include separation from The Flower Shop, may occur. A decrease in performance after successfully completing the improvement plan may also result in dismissal from The Flower Shop without the issuance of another warning or improvement plan.

(R. Exh. 6; Tr. 395–396, 592–593, 595–596; see also Tr. 596 (noting that during the meeting, Robison said that Ruthven's attitude included being pushy about the delay in receiving the yearly review, which should have occurred in October 2023).)

As previously noted, Ruthven was one of the employees who initiated the union organizing campaign by texting union representative Byrd on about March 11. Ruthven also attended the first union meeting on March 14 and signed a union authorization card on March 15. (Findings of Fact (FOF), sec. II(B)–(D).)[17]

2. March 18, 2024: Ruthven's argument with Robison

On about March 18, 2024, Ruthven and pharmacy agent Rueda were at work when Ruthven voiced her frustrations about working with employee N.L. Specifically, Ruthven thought that N.L. wasted time at work and "stepped on her toes" at work by re-doing some of Ruthven's work even though Ruthven had worked for Respondent longer than N.L. Other employees had vented to Ruthven about similar problems with N.L. Ruthven also thought that Robison let certain employees (including N.L.) get away with a lot at work. Rueda, who agreed that N.L. could be arrogant and condescending with coworkers, suggested that Ruthven talk to pharmacy manager Robison about these concerns. (Tr. 204–207, 290–295, 309, 582–583; see

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with their scheduled breaks and lunches as closely as possible and to not leave their workstation until the employee replacing them had returned from their own break. Robison also noted in the meeting that Respondent would be "paying attention to and following up with people taking long or unscheduled breaks as it hurts the whole team." (R. Exh. 12 (p. 1).)

[17] On March 6, 2024, Ruthven posted a video to Snapchat to express (with several expletives) her frustration about being asked to stay and work inside the store after completing her deliveries while another pharmacy agent who was handling deliveries was allowed to leave early. (GC Exh. 27; Tr. 286–290 (explaining that delivery drivers are typically able to leave work after completing their deliveries); see also GC Exh. 28.) There is no evidence in the record about who Ruthven sent this Snapchat video to, and there is no evidence that any of Respondent's managers saw or heard about the video.

also Tr. 155–156 (Robison knew employee N.L. before N.L. was hired to work for Respondent).) There is no evidence that any managers knew about the employee conversations regarding N.L.

When Ruthven spoke with Robison a few minutes later in an office area near the front of the store, Ruthven asked if Robison could stop scheduling Ruthven and N.L. to work together because Ruthven felt like N.L. was sabotaging Ruthven's work. Robison said she could not grant Ruthven's scheduling request and added that she doubted that N.L. was trying to sabotage Ruthven. As the discussion continued, it became heated and both Ruthven and Robison raised their voices at each other. Ruthven then said that she (Ruthven) was getting upset and tried to end the conversation by walking away from the office area and onto the sales floor. Robison followed and yelled at Ruthven to not walk away from her, but Ruthven said that the conversation was not going anywhere and that she did not want to argue with Robison. Ruthven then resumed preparing for her deliveries and shortly thereafter left the store for a delivery run. When Ruthven returned to the store after completing her morning deliveries, Respondent sent Ruthven home and subsequently human resources manager Yonk texted Ruthven that she (Ruthven) was being placed on administrative leave. (Tr. 156–157, 207–209, 295–301, 396–397, 558, 583, 593–597; see also Tr. 157 (Robison agreed that some of Ruthven's complaints about N.L. were valid).)

3. March 18–22, 2024: decision to terminate Ruthven

While Ruthven was on administrative leave, Respondent's human resources department evaluated whether to approve Robison's recommendation that Ruthven be terminated based on the March 18 confrontation with Robison and Ruthven's alleged refusal to deliver medication.[18]

[18] I give limited weight to Robison's testimony about why Respondent terminated Ruthven. Initially, Robison testified that she did not remember what specifically led to Ruthven's termination. Robison then testified that Respondent primarily terminated Ruthven for attendance issues, even though there is no documentation in the evidentiary record of any such issues after Ruthven was placed on a performance improvement plan February 14, 2024, and no other witness testified that attendance factored into Ruthven's termination. Finally, Robison landed on the rationale that Respondent terminated Ruthven because of the March 18 confrontation and allegedly refusing to deliver medication to patients. (Compare Tr. 196, 396, and 397.)

There are two additional points related to Robison's credibility. First, I note that Robison testified that she learned about the union organizing campaign from an employee [S.S.] in about mid-to-late March. Robison also said that she could not recall whether this occurred before or after Respondent decided to terminate Ruthven but then asserted that she did not have any knowledge of union activity at the pharmacy before Ruthven was terminated. (Tr. 378–379, 398; see also Tr. 384–385 (Robison testimony that she learned about employees' union activities 1–2 weeks before receiving the March 23, 2024 text message described in FOF, sec. II(D), supra).) I do not credit Robison's contradictory testimony about whether she was aware of employees' union activities before Respondent terminated Ruthven.

Second, Robison offered few specifics about Ruthven's alleged refusal to deliver medication to patients. Indeed, Robison's testimony in support of the alleged misconduct was limited to stating that other employees in the delivery department told Robison about two incidents involving Ruthven (on unspecified dates), and during one of the incidents Ruthven said, "I already went that way today; I'm not going that way again." (Tr. 397–398, 429–430.) At most, that testimony corroborates Ruthven's testimony about the failed and later completed delivery in January/February 2024. I accordingly have

Human resources manager Yonk testified that, as part of her review, she watched a security camera video of the March 18 confrontation, spoke with managers, and considered statements from other employees.[19] (Tr. 68, 196, 526–528, 558, 563–564.)

By March 20, 2024, Respondent had decided to terminate Ruthven and human resources was discussing the process for issuing Ruthven's final paycheck. Respondent did not interview Ruthven before deciding to terminate her. (R. Exh. 17; Tr. 526–527, 558–560; see also Tr. 522–523.)

On March 22, 2024, human resources manager Yonk and director of human resources Williams telephoned Ruthven to advise that Respondent was terminating Ruthven based on the March 18 confrontation and Ruthven's alleged refusal to deliver a patient's medication. This was the first time that Ruthven had heard about an allegation that she refused to deliver medication. Respondent also sent Ruthven a short letter that: stated, "This letter is to inform you that your position with The Flower Shop has been terminated effective March 22, 2024"; described how Ruthven's benefits and final pay would be handled; and referred Ruthven to the human resources department for any questions. (GC Exh. 16; Tr. 301–302, 306, 521; see also Tr. 67–69.)

4. Comparator evidence

The evidentiary record includes the following examples of Respondent issuing disciplinary action to employees for confrontations with patients, coworkers, or management:

Employee	**Date of discipline and description of infraction**	**Disciplinary action taken (exhibit)**
M.F.	December 4, 2025: used the word "faggot"[20] after a telephone conversation	Documented discussion (GC Exh. 37.)
C.P.	August 29, 2024: refusing to help a patient with standard operating procedures, thereby making the patient feel uncomfortable and disrespected	Final warning (GC Exh. 4 (noting that C.P. completed a performance improvement plan one day before this incident; this incident violated the expectations described in the plan).)
T.M.	April 23, 2025: had an altercation with a patient that resulted in yelling across the pharmacy	Written warning (GC Exh. 3 (p. 2).)
T.M.	January 16, 2026:[21] yelled unprofessionally on the pharmacy	Final warning (GC Exh. 3 (p. 1).)

credited Ruthven's detailed account of that incident and find that it is the only such incident established in the record. (See FOF, sec. II(E)(1), supra.)

[19] The evidentiary record does not include the security camera video or any written statements from employees regarding the March 18 confrontation or Ruthven's alleged refusal to deliver medication.

[20] Any future refences to this epithet in this decision will be abbreviated as "f-----".

[21] The final warning shows a typewritten date of January 16, 2025, but I find that the correct date is January 16, 2026. The warning was signed in January 2026, and also references an earlier warning on

	floor when a coworker declined to move to a different cash register	
J.P.	July 24, 2023: failure to text or call pharmacy manager for authorization to seek schedule change; condescending comments to human resources staff (both infractions followed prior discussion with management about similar issues)	Final warning (GC Exh. 5 (p. 4); see also Tr. 385 (noting that J.P. was "creating a lot of hostility in the work environment").)

F. March 25, 2024 – Second Union Meeting

On about March 25, 2024,[22] approximately 10 employees (including Hughes, Rueda, and Wagner) met at pharmacy agent Rueda's home for another meeting with union representative Byrd, who appeared by Zoom (an additional employee, A.B., also appeared on Zoom). Since several employees in the contemplated bargaining unit[23] had signed authorization cards, Byrd worked with employees to draft a letter to send to Respondent to ask Respondent to recognize the Union. Each of the 10 employees at Rueda's home signed a copy of the letter that Rueda printed out. Employee A.B., however, said that they could not believe that employees were "attacking management," which prompted other employees to respond that they were not attacking management and just wanted to unionize. (GC Exhs. 12, 20; Tr. 104–108, 210–212, 250–252, 273, 278–279, 458–459, 586.)

The letter to Respondent, which is dated March 25, 2024, states as follows:

> Dear Justin Jennings,
>
> We are the union organizing committee at The Flower Shop Pharmacy in Ogden, Utah and we formally ask True North Organics to recognize our union. We are joining [the Union] and we want the [Union] to be our partner on the job and our representative as we bargain our contract. . . .

April 25, 2025.

[22] Some witnesses testified that the second union meeting occurred on March 21, 2024. The difference in dates (March 21 vs. March 25) is not material to my analysis. I recognize that pharmacy agent Wagner missed work on March 25 because he was sick (see FOF, sec. II(I)(3), infra), but that is not inconsistent with my finding that the second union meeting occurred "on or about" March 25.

[23] The complaint alleges that the bargaining unit included all nonsupervisory employees (e.g., pharmacy agents, pharmacy leads, and pharmacists), except for guards, at the South Ogden pharmacy. (GC Exh. 1(p) (par. 7(a).); see also Tr. 271–272, 460.) As of about March 25, 2024, the contemplated bargaining unit included approximately 31 employees, of which 16 signed union authorization cards and were still working for Respondent. (R. Exh. 1; GC Exh. 31; see also id. (showing that while 19 employees signed cards between March 15–22, 1 of them was a guard and thus not in the contemplated bargaining unit, and 2 employees were no longer working for Respondent as of March 25.)

> As we truly believe that we, as unionized employees, and the company can have a productive partnership, we will give True North Organics three days to consider our request for recognition. We hope that the company will allow us to form a union without an election.
>
> We ask that you contact [Union] representative Aidan Coffey . . . within 3 calendar days to continue this process. While we prefer to avoid an election, we will file for our election with the NLRB. We look forward to moving forward with this process.
>
> [Signed by 10 employees, including Hughes, Rueda, and Wagner.]

(GC Exh. 20; Tr. 106, 211–212, 251–252, 279; see also GC Exh. 12 (unsigned version of GC Exh. 20).) There is no evidence that any employees or the Union sent the March 25 letter to Respondent, or that the Union otherwise asked Respondent to recognize the Union. (Tr. 379–380, 450, 460, 481, 524–525, 561–562, 584, 635–636.)

G. March 26–April 1, 2024 – Union Organizing Campaign Fizzles Out

Over the next 1–2 days after the March 25 union meeting, at least three employees in the contemplated bargaining unit who signed authorization cards notified union representative Byrd and/or pharmacy agent Rueda that they no longer supported the union organizing campaign. One of those employees, A.B., indicated that they no longer supported the campaign because they did not want to go against or hurt management. Former employee G.Y. subsequently deleted the Discord group chat that union supporters had been using. Byrd started a new group chat but only 5 employees joined the chat. (Tr. 276–277, 279, 584–586; see also Tr. 273 (14–15 employees were on the Discord chat that G.Y. deleted); R. Exh. 1 (showing that G.Y.'s last date of employment with Respondent was on March 24, 2024).)

On about April 1, Byrd came to Respondent's parking lot, but pharmacy agent Hughes was the only employee to come outside to speak with Byrd.[24] Byrd also observed that employees were not answering her calls. At that point (April 1), Byrd believed that the union organizing campaign at Respondent's store was effectively over. Consistent with Byrd's assessment, the loss of at least three supporters meant that the Union no longer had majority support among the 31 employees in the contemplated bargaining unit. (Tr. 275–276; fn. 23, supra; see also Tr. 588 (Rueda testimony that "it just took two or three people to pull out [of the organizing campaign] and then everything fell apart").)[25]

[24] Byrd also visited Respondent's parking lot at some point in the latter part of March 2024. Pharmacy agent Wagner and employee G.Y. came out to speak with Byrd but no additional employees joined them. (Tr. 274–275.)

[25] Rueda also testified that the union organizing campaign faltered after Respondent terminated Ruthven, Wagner, and Hughes. (Tr. 232–233.) That testimony, however, is outweighed by Byrd's testimony and Rueda's testimony that the campaign faltered after two or three people pulled out in about late March 2024.

H. April 1, 2024 – Respondent's Labor Consultant Visits the Store

Also on April 1, director of retail operations Jennings emailed all employees about the union organizing campaign. Jennings stated as follows:

> Dear Flower Shop Team
>
> Some of you may be aware that there are union organizing efforts at The Flower Shop's Ogden location. The Flower Shop team respects the employee's right to form a union, and while we prefer to continue working directly with you, our priority is to ensure you have all of the facts before making a decision as important as this.
>
> An Employee Rights Educator will be available at the pharmacy this week to review your rights under the law and answer any questions you may have regarding the unionization process. Your manager will be reaching out to schedule you for these sessions and we hope you will take advantage of this opportunity.
>
> We strongly urge you to do your own research and hear from both sides to ensure you are fully informed when you make your decision.

(GC Exh. 22; Tr. 213, 562.)

Consistent with Jennings' email, on April 1, pharmacy manager Robison asked all employees on duty to take at least 5 minutes to speak with Respondent's labor consultant.[26] Robison described the meetings as voluntary[27] and subsequently notified individual employees when it was their turn to meet with the consultant. (Tr. 109, 158–162, 276, 382–383, 557; see also Tr. 562 (the labor consultant who visited the facility in this time period was not the consultant who led the October 2023 training session for Respondent's managers as described in FOF, sec. II(D), supra).)

Pharmacy agent Hughes met with the labor consultant for about 15 minutes on about April 1 and told the consultant that she (Hughes) was very interested in the Union because it sounded like the Union had employees' rights at heart and lined up with what employees wanted. The labor consultant, meanwhile, asked if Hughes knew about paying dues and added that sometimes unionizing does not work in employees' best interests.[28] (Tr. 109–111; see also Tr. 627–628.)

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[26] When arranging these meetings, Robison stated that employees would be meeting with someone from the "Labor Board." (Tr. 159–161, 382.) There is no complaint allegation that this description of the labor consultant was misleading and violated the Act.

[27] Pharmacy agent Hughes testified that Robison did not say the meetings with the consultant were optional. Robison's testimony that she described the meetings as voluntary, however, was equally credible as Hughes' on this point, and thus I have given the benefit of the doubt to Respondent since the General Counsel has the burden of proof. (Compare Tr. 110 with Tr. 161.)

[28] I do not give weight to Hughes testimony that the labor consultant warned that there was a possibility of Hughes losing her job if employees unionized. Hughes conceded that she did not recall the labor consultant's exact words on that point. (Tr. 111, 627–629.)

I. April 2, 2024 – Respondent Terminates Todd Wagner

1. Wagner - background

Todd Wagner began working for Respondent as a pharmacy agent in about December 2022. In that capacity, Wagner assisted patients with figuring out their medication and rang up patients' purchases at the cash register. In about May 2023, Respondent named Wagner "Employee of the Month," with pharmacy manager Bagshaw complimenting Wagner for working well with patients, being a leader for younger coworkers, and having strong sales. (Tr. 183, 247, 256–257, 409; GC Exh. 26.)

On occasions when Wagner would be tardy or absent, he would generally call the store to notify the manager on duty and would try to find a coworker to cover his shift. Wagner initially did not text managers about these issues because he preferred speaking with managers directly, but he began sending text messages after a staff meeting when managers stated that employees needed to text managers about absences and tardies. (Tr. 258–260, 599–601; see also Tr. 260, 598–599 (Wagner admitted to having attendance issues but also often filled in for coworkers who needed their shifts covered).)

From about May through December 2023, Wagner had 8 "unexcused absences" and 4 tardies. The evidentiary record does not include any disciplinary forms that correspond to the 12 attendance incidents in this timeframe. (GC Exh. 14; see also Tr. 58–59, 191 (explaining that managers at Respondent's South Ogden pharmacy used trackers like GC Exh. 14 to record employees' attendance infractions), 62–63, 184 (Respondent would not mark an absence as "unexcused" if the employee found a coworker to cover their shift).)[29]

In 2024, Wagner had "unexcused absences" on the following dates between January 1 and March 20, 2024, with accompanying notes entered by a manager:

February 1: (no notes);
February 19: (no notes);
March 1: (no notes);
March 7: ("Said he was stepping out around 4 PM for a second but didn't come back");
March 8: ("Said he is going to the ER"); and
March 18: ("Left around 12, did not return after informing [management] he would be back").

(GC Exh. 14; Tr. 59–60, 602–603.) The evidentiary record does not include any disciplinary forms that correspond to the 6 attendance incidents in this timeframe.

[29] Wagner expressed surprise during trial that his attendance tracker showed several unexcused absences because he believed he always found a coworker to cover his shift. (Tr. 602.) In the absence of more evidence to corroborate this testimony, and since the testimony of Respondent's witnesses (Yonk and Robison) was at least equally credible, I have found that Respondent only marked absences (including Wagner's) as unexcused when the absent employee did not find coverage for their missed shift.

Wagner was one of the first employees to contact union representative Byrd on about March 11, 2024, to explore the possibility of unionizing. A few days later, on March 14, Wagner hosted the first union meeting that several employees and assistant manager Hundley attended. By about mid–March 2024, pharmacist in charge Freeman had identified Wagner as one of two employees who were most active with the union organizing campaign. (FOF, sec. II(B)–(D), supra.)[30]

2. March 20, 2024: Respondent places Wagner on a performance improvement plan

On about March 20, 2024,[31] pharmacy manager Robison, pharmacist in charge Freeman, and director of retail operations Jennings met with Wagner and placed him on a performance improvement plan. The plan states as follows:

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[30] Wagner testified that managers Freeman, Hundley, and Robison each separately made comments that sought to discourage him from engaging in union activities. I do not credit Wagner's testimony about the content of these alleged statements because Wagner was inconsistent in his testimony about which managers made these remarks and/or what precisely each manager said. (Compare Tr. 254, 606 (Wagner testimony that assistant manager Hundley said that the union organizing campaign was "not a good idea") with Tr. 262 (Wagner testimony that Hundley said employees would get fired if they unionize) and Tr. 252–253, 605 (Wagner testimony attributing the "not a good idea" remark to pharmacist in charge Freeman and pharmacy manager Robison, as well as remarks that employees would be fired if they unionized). Freeman, Hundley, and Robison denied making remarks such as the ones that Wagner attributed to them (see, e.g., Tr. 383–384, 452, 484), and I credit those denials in light of the shortcomings in Wagner's testimony about the remarks.

[31] Wagner, Robison, and Freeman each had difficulty with establishing the date of the meeting when Respondent notified Wagner of the performance improvement plan. While the plan itself has a typewritten date of February 20, 2024, Robison and Freeman wrote February 2, 2024, by their signatures, while Wagner wrote March 20, 2024. (GC Exh. 18; Tr. 96–98, 185–187, 255, 415–416, 485–486, 604, 607–610.) I have credited Wagner's testimony about the date, however, because there are credibility issues with the performance improvement plan. First, there is no documentation that Respondent ever disciplined Wagner for attendance (or any other issue) as a precursor to the performance improvement plan. (Compare FOF, sec. II(A)(2) (Respondent usually implements a performance plan after the employee has been disciplined several times for similar conduct); id., sec. II(E)(1) (Ruthven's performance improvement plan followed multiple prior disciplines that are in the evidentiary record).) Wagner's improvement plan does refer to a counseling and text message in late 2023, but there is no documentation of those purported disciplinary measures and Robison could not shed any light on them when she testified. Robison also testified that she believed that Wagner "was on a final [warning] for attendance at some point," but no such final warning is in the evidentiary record. (Tr. 187; see also Tr. 435–436 (Robison testimony that a performance improvement plan "is essentially when something very serious is going on . . . they've already had several warnings").)

Second, although staff meeting agendas from 2023 and early 2024 indicate employees as a whole were not properly notifying management about call outs and tardies (see FOF, sec. II(A)(4)), Robison testified that Wagner was significantly worse than other employees with notifying management and with attendance in general. (Tr. 410–411, 414.) That testimony cannot be reconciled with the fact that Respondent had all employees on "attendance trackers" (spreadsheets that kept track of each employee's attendance issues) and that Robison documented both Hughes and Ruthven as also having attendance issues. (See R. Exh. 11 (noting that the "attendance tracker is still in effect"); GC Exh. 19 (p. 2) and Tr. 136–137 (Hughes' February 16, 2024 performance review, noting that Hughes "sometimes has to leave early or take time off without proper notice. Would like to see more advance planning"); FOF, sec.

Notice of Performance Improvement Plan

You were counseled on unacceptable performance on 12/1/23 and via text on 11/29/23. To date, significant improvement has not been made. The Flower Shop values you as an employee, and it is our intent to make you fully aware of this situation and to assist you in improving your work performance. The responsibility to improve, however, is yours alone.

You are being placed on a written performance improvement plan. For the next 30 days, 2/20/2024 to 3/20/2024, your work will be closely monitored. You must demonstrate immediate improvement in the following areas:

> **Todd must maintain a positive attitude while at work and around his fellow wellness experts and managers.**
>
> **Todd must show willingness to improve his attendance and use the proper avenues (texting management directly) when calling out or being late for his scheduled shifts no less than one hour before his scheduled shift.**
>
> **Todd must communicate effectively with his leadership team and communicate any issues or areas of concern in a swift and professional manner.**
>
> **Todd must attempt to find coverage for any and all scheduled shifts he may need to miss by utilizing the employee contact list. As has been discussed in many team meetings, usage of the groupme app does not qualify as an effective way of finding coverage or notifying management team of his intent to miss the shift.**

Desirae Robison and Jarrod Freeman will review your progress on each of the above items requiring improvement every 30 days. Improvement must begin immediately and be maintained. If any objective of this improvement plan is not met at any time during the specified time frame, disciplinary action, to include separation from The Flower Shop, may occur. . . .

(GC Exh. 18 (emphasis in original); Tr. 61, 193, 255–256, 410–411, 484–487, 603.)

During trial, Robison explained that the attitude issues noted in Wagner's performance improvement plan related to Wagner being "very down" and verbalizing complaints with coworkers (some of whom shared his concerns) in around early 2024, about air quality, the temperature, and pay. Respondent did not explain its concerns about Wagner's attitude when managers met with Wagner to notify him about the performance improvement plan. (Tr.

II(E)(1) (describing Ruthven's disciplinary history and performance improvement plan regarding attendance and other issues); see also Tr. 184–185 (Robison drafted Wagner's performance improvement plan), 191 (explaining that if an employee did not show up for their shift, a manager would update the employee's attendance tracker).

187–189, 256.) As for Wagner's communications with managers about tardies and absences, Robison testified that Wagner did notify managers about these issues via text and GroupMe messages. Robison, however, characterized Wagner's messages as "chaotic" because Wagner could be unclear about whether he would miss an upcoming shift (e.g., by rambling and saying that he "might not be there"). (Tr. 410–411, 416–417, 433–434.)

3. Decision to terminate Wagner

On March 25–26, 2024, Wagner did not work his scheduled shift because he was sick. Wagner called the store to notify a manager that he would miss his shifts those days but did not text a manager about these absences. (GC Exh. 14 (Wagner's attendance tracker, showing "unexcused" absences for March 25–26, and a no-call/no-show for March 28; also showing that Wagner took a 35–minute break on March 21 instead of the allotted 15–minute break); Tr. 419–421, 604–605; see also Tr. 184 (it is acceptable for an employee to call management about an absence).)

After Wagner missed his shifts on March 25–26, Robison recommended that Wagner be terminated for attendance, including not properly communicating with management about absences. Human resources manager Yonk and director of human resources Williams approved Robison's recommendation after reviewing Wagner's performance improvement plan and reviewing the schedule and Wagner's timecard to confirm that he missed the shifts in question. The human resources department did not speak to Wagner as part of its investigation. (Tr. 65–67, 189–191, 194, 416–417, 520–521, 527–529, 536.)

On April 2, 2024, Respondent sent a letter to Wagner to advise that he was being terminated. The termination letter stated:

> This letter is to inform you that your position with The Flower Shop has been terminated effective April 2, 2024, due to violation of the attendance policy. On February 20, 2024 you were placed on a Performance Improvement Plan, [where] it was explained that you must communicate directly to management when calling out or being late. It was further explained that communicating via the groupme app is not an acceptable means by which to communicate absences to management.
>
> On March 25 and 26 you did not show up for your scheduled shift and failed to properly communicate to management that you would not be working your scheduled shift either of those days. . . .
>
> Should you have questions, please direct all your communications to the HR department.

(GC Exh. 15; Tr. 58, 63–64, 183, 194, 260.) Wagner subsequently telephoned Williams and then pharmacist in charge Freeman, each of whom confirmed that Respondent terminated Wagner for missing work on March 25–26. (Tr. 260–261.)

4. Comparator evidence

The evidentiary record includes the following examples of Respondent issuing disciplinary action to employees for attendance infractions:

Employee	Date of discipline and description of infraction	Disciplinary action taken (exhibit)
C.H.	January 8, 2025: Attendance policy violation (no details or background specified)	Termination (GC Exh. 7.)
D.M.	August 17, 2024: missed 5 mandatory staff meetings on March 21 and 28, May 2 and 31, and June 21, 2024 without notifying management	Final warning (GC Exh. 2)
J.P.	July 24, 2023: failure to text or call pharmacy manager for authorization to seek schedule change; condescending comments to human resources staff (both infractions followed prior discussion with management about similar issues)	Final warning (GC Exh. 5 (p. 4).)
F.T.	January 6, 2025: arrived over 4 hours late for shift	Final warning (GC Exh. 8 (p. 1).)
A.W.	February 4, 2025: called out for 2 shifts and went home for the last half of 2 shifts; employee still in 90–day probationary period	Documented discussion (GC Exh. 9 (p. 3).)

The evidentiary record also includes pharmacy agent Ruthven's discipline for attendance infractions in 2023. (FOF, sec. II(E)(1), supra.)

J. April 25, 2024 – Respondent Terminates Bridget Hughes

1. Hughes - background

Bridget Hughes began working for Respondent as a pharmacy agent on about September 8, 2023. Hughes did not receive any discipline during her employment with Respondent apart from the termination and facility ban at issue here. (Tr. 22, 32, 99, 130–131, 149; see also GC Exh. 19 (p. 1) (showing Hughes' hire date).)

On about February 16, 2024, pharmacy manager Robison prepared a 90–day performance review for Hughes. Pharmacist in charge Freeman and assistant manager Hundley met with Hughes to discuss the review since Robison was not available. The performance review included the following comments, among others, about Hughes' work performance:

Team Work Skills:	Struggles with communication and confrontation. Sometimes seems on her own island and can improve on teamwork
[Judgment]:	Sometimes gets discouraged when issues arise, says she has solutions but is hesitant to share
Initiative:	Gets discouraged when sharing ideas and solutions. "Not my place" attitude when her ideas could be beneficial & helpful to the whole team. Would like to hear more of her ideas for change
[Dependability]:	Generally on time and a great team member. Sometimes has to leave early or take time off without proper notice. Would like to see more advance planning
Progress:	Bridget is a great wellness expert and kicks butt on delivery. Can improve on teamwork and approaching issues and team mates. I would love to encourage sharing thoughts and solutions with tact and respect for co-workers. Always looking for something to do to contribute. Has great feedback when she feels comfortable to speak up. Keep up the good work!
Overall rating:	Meets Standards: Satisfactory performance in meeting employee objectives[32]

(GC Exh. 19 (awarding Hughes a $1/hour merit increase based on the 90–day performance review); Tr. 129–130, 134–137, 423–424, 622–623; see also Tr. 137 (noting that Respondent never disciplined Hughes for attendance issues).)[33]

In March 2024, Hughes signed a union authorization card and attended the second meeting that employees had with union representative Byrd. On about April 1, Hughes met in person with Byrd in the pharmacy parking lot and, during a meeting with Respondent's labor consultant, told the consultant that she (Hughes) was very interested in the Union. (See FOF, sec. II(D), (F)–(H), supra.)

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[32] The following performance review ratings were possible (from highest to lowest): exceeds standards; meets standards; meets minimum standards; and below standards. (GC Exh. 19.)

[33] To the extent that Robison indicated that Hughes would share her ideas and then become upset when Respondent did not adopt her ideas (see Tr. 135), I give little weight to Robison's testimony. The performance review, which Robison wrote, faulted Hughes for not speaking up when she had ideas that could be beneficial and encouraged Hughes to speak up more often. (GC Exh. 19.)

Relatedly, I note that when Robison testified, she did not explain or provide examples of how Hughes struggled with communication and confrontation (as noted in the performance review comments about teamwork). Considering the review as a whole, I find that Hughes' struggles with these issues primarily related to being too reserved and hesitant to communicate, as indicated by (among other things) Robison's observations that Hughes was hesitant to share ideas and could be "on her own island." (See GC Exh. 19 (p. 1).)

2. April 19, 2024: email asserting Hughes spoke in an aggressive manner

On April 19, assistant manager Hundley sent an email to Respondent's human resources department and copied pharmacy manager Robison and pharmacist in charge Freeman. Hundley stated, in pertinent part:

> I'm writing this email due to an incident I had with an employee yesterday, Bridget Hughes. In the morning before we opened some of our employees and I were getting pick up orders picked and processed, Bridget came in the drive through area and very aggressively said "People need to start paying attention to what they're doing. [T]his order was supposed to be 1 ounce not a 5 gram[.]" Then maybe 15 min later, she came back again and basically did the same thing and said "who did this? The receipt is marked as processed but it isn't[.]" I replied, "I did and I know it was processed so let's look at it[.]" [I]t ended up being in payment.

(GC Exh. 29; Tr. 313–318, 320–321.) During trial, although Hundley did not recall the details of this incident, Hundley stated that it was "fairly typical" for Hughes to be "kind of aggressive with situations rather than approaching them with a level head."[34] (Tr. 314–315, 320, 322.)

3. April 23, 2024: Hughes charges patient a lower amount for a delivery

On April 23, delivery manager Ratigan-Allen selected items for a delivery order and brought them to Hughes to scan at the register and place them in a box. Hughes completed those tasks and then the security guard checked the order. When Hughes delivered the box of products to the patient and requested payment, however, the patient objected because the price shown on the patient's online order was lower than the price shown on the receipt attached to the box of products. Hughes called the store at least twice in an effort to reach Ratigan-Allen for assistance but was not able to reach him. Accordingly, Hughes decided to charge the patient the lower price shown on the patient's online order and gave the box of products to the patient after processing the lower payment. During trial, Hughes explained that she believed that delivery

[34] When asked if he had ever observed an employee being even more aggressive than the incident described in Hundley's April 19 email, Hundley replied that on an unspecified date, Hughes raised her voice and said (to delivery manager Ratigan-Allen): "I'm not going to fucking help you and teach you how to do your job. Maybe they should have chosen somebody for this position who actually knew what the fuck they were doing." Hundley added that he believed Hughes was "mad" because she applied for the delivery manager position and Respondent instead hired Ratigan-Allen. (Tr. 342 (asserting that Hughes made a similar comment to Ratigan-Allen on another occasion); compare Tr. 621 (Hughes admitted that she applied for the delivery manager position in March 2024 and admitted to being disappointed that she did not get the promotion but denied telling Ratigan-Allen that she would not help him); see also Tr. 31, 346–347 (Respondent hired Ratigan-Allen in about March 2024).)

I do not credit Hundley's testimony about these statements. As a preliminary matter, it is suspect that Hundley emailed human resources about the alleged April 19 incident with Hughes but did not do so when Hughes made the alleged statements to Ratigan-Allen (which Hundley offered as an example of something worse than what he reported on April 19). Perhaps more important, Ratigan-Allen testified twice during trial and said nothing about such confrontations with Hughes. (See Tr. 347–348 (Ratigan-Allen testified that he and Hughes had "some differences" but did not describe any arguments or confrontations that they had).)

drivers could use their discretion under these circumstances because Respondent encouraged employees to use their discretion to resolve similar issues.[35] Robison, Ratigan-Allen, and Hundley, however, testified that when Hughes could not reach a manager she should have failed the delivery order and offered to deliver the correct products the following day. (Tr. 115–119, 122, 127, 141–143, 149, 425, 445–446, 618–619, 623–626, 629–630; see also Tr. 330–331 (noting that the security guard should have checked the order for accuracy before it went out for delivery).)

When Hughes returned to the store, Ratigan-Allen told her that the same patient had called and was upset because the order that Hughes delivered had the wrong items. Ratigan-Allen told Hughes that he addressed the patient's concerns by placing discounts on the patient's account (for future use) and encouraging the patient to place another order for the correct items. Hughes, meanwhile, told Ratigan-Allen about the problem with the order that she delivered to the patient. (Tr. 119–120, 123–124, 616–617.)

Later, Hughes discovered that her register was short. Since Ratigan-Allen had left for the day, Hughes notified assistant manager Hundley about the issue.[36] While discussing the problem with Hundley, Hughes figured out that her register was short because of the lower price that she charged for the delivery order. When Hughes expressed concern to Hundley and pharmacy agent Rueda about being fired because of the shortage, Hundley assured Hughes that she had nothing to worry about and that the situation would be figured out.[37] (Tr. 114–115, 120–123,

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[35] In a February 29, 2024 staff meeting, Robison advised employees as follows regarding making decisions without consulting with management:

> Please stop taking it upon yourselves to make management decisions and calls. If anything out of the ordinary needs to happen, management needs to make that call, not wellness experts. I do want you guys to feel empowered to make hard calls regarding patients, such as discounts, returns, etc. however when it comes to policy or closing time, turning away patients, shutting down drive through, refusing to service a patient, etc.[,] stop making executive decisions without asking someone who is in charge. We have several people in leadership roles. They make those calls period. We appreciate the initiative and the drive to help, but management is here for a reason and we need to go through the proper channels.

(R. Exh. 13 (pp. 1–2).)

[36] Hughes testified that the discussion with Hundley began when he interrupted a conversation that Hughes was having with employee A.B., who had asked for information about the Union. (Tr. 111–114.) I do not credit that testimony because it conflicts with other evidence that A.B. signed a union authorization card in March and a few days later decided to withdraw the card because A.B. did not want to go against management and no longer supported the union organizing campaign. (FOF, sec. II(G), supra.)

[37] Hundley denied reassuring Hughes that she had nothing to worry about. While that specific issue (whether or not Hundley reassured Hughes) is not particularly probative, I have noted the discussion here because the testimony relates to Hundley's credibility and to why Rueda confronted management after Hughes was terminated. Regarding Hundley's credibility, Hundley initially testified that he did not remember what he said to Hughes after learning of the problem with the April 23 order other than saying that he would have to report the issue with the order. (Tr. 340.) It wasn't until later in the trial that Hundley denied reassuring Hughes that she had nothing to worry about. (Tr. 447.) That inconsistency undercuts Hundley's credibility, particularly when both Hughes and Rueda credibly testified that Hundley

214–217, 337, 444, 446–447, 454; see also GC Exh. 13 (p. 2) (group chat message in which pharmacist in charge Freeman noted that Rueda was present when Hundley spoke to Hughes about the April 23 delivery).)

On April 24, Hundley emailed human resources, Ratigan-Allen, and pharmacist in charge Freeman about the issues with the order that Hughes delivered. Hundley stated:

> I'm writing today to report an incident we had last night with Bridget Hughes. We had a delivery that was supposed to be 10 strawberry lemonade squeezes, 1 HV Snooze pills, and 1 Highlight Orange Citrus 1000mg edibles. When Bridget arrived to the patient's house, Bridget and the patient were reviewing the order, they realized that they had given her 10 Strawberry lemonade dragonfly mints, 1 HV Snooze Pills, and Highlight Orange Citrus 1000mg edibles. The procedure when there is an incorrect order is, the driver is to call the manager on duty, then from that point we make one of two calls. If the patient is okay with the items being wrong, we would proceed with the delivery like normal and charge them the amount for said products in hand. The other option would be to fail the delivery and reschedule with the correct items for the following business day. Bridget told me that what she ended up doing was charging her the amount it would've been had she got the correct items, there was [also] a 25% birthday discount applied for the patient's birthday. The item total for what she had on hand [after the discount] came to $359.25, the total it would've been for the correct order . . after the discount was $239.25[.] Bridget decided on her own without any attempt to contact management that she was only going to charge her the $239.25 instead of the $359.25 she was supposed to pay, making it a difference of $120 worth of product that the patient did not technically pay for.

(GC Exh. 30 (p. 2); Tr. 328–333, 336–338; see also Tr. 31–32.)

Ratigan-Allen followed up on Hundley's email with his own email, stating:

> I just wanted to add a little bit of additional information. I was in the office with [Robison] when another employee told me that there was someone calling in to inform that there was something wrong with their delivery order. I spoke with the patient on the phone and provided 2 options based on not having any knowledge or being aware of anything that may have been done by Bridget. I let the patient know that we could pick up the product and correct the delivery or that if they were willing to keep the product that we would provide a 30% discount . . . toward their next order (without discount to the current order). The patient chose to take the discount and I applied that to the patient's account[.]
>
> Later that day I spoke with [Hundley] and he informed me that Bridget noticed that her till would be off by a significant amount. That was when she mentioned to [Hundley] that she applied a 25% off birthday discount. This discount was not done in [the point of

reassured Hughes about her job security. (See Tr. 114–115, 122, 214–217; GC Exh. 13 (p. 2) (group chat message noting that Rueda was present when Hundley spoke to Hughes).)

> sale system] as it should have. This discount was done by Bridget using her phone and calculator to adjust the pricing for the patient.[38]
>
> All in all, we have the potential to lose the $120 along with any additional money that would be lost in the application of the 30% discount for a future order. Please let me know if you have any questions or concerns.

(GC Exh. 30 (p. 1); Tr. 347–351; see also Tr. 335 (describing the point of sale system).)

4. Decision to terminate Hughes and ban her from Respondent's facilities

During trial, human resources manager Yonk and director of human resources Williams explained that with some terminations, Respondent will also ban an employee from company premises. A ban bars the terminated employee from visiting Respondent's pharmacies, even as a patient. Respondent generally considers banning an employee when the company is terminating the employee for discrimination, harassment, and/or creating a hostile work environment, because the ban serves the purpose of preventing future confrontations with the terminated employee. (Tr. 54–55, 511–512, 514–516.)

On about April 24, Robison (with input from other managers) recommended that Hughes be terminated for improperly charging the patient the lower price for the April 23 delivery.[39] The human resources department approved Robison's recommendation that Hughes be terminated, and also decided to ban Hughes from Respondent's pharmacies in Utah because it "had received complaints that [Hughes] was creating a hostile work environment" by making work uncomfortable and hostile for other employees (though this alleged misconduct was not the reason for Hughes' termination). Respondent did not speak to Hughes before deciding to terminate and ban her. (Tr. 22–27, 33–34, 139–140, 341, 351, 424–426, 510–511, 515–517, 527–528, 534–536, 541–542; see also Tr. 182 (explaining that when considering whether to ban an employee from company facilities, managers communicate with human resources about the pros and cons of the terminated employee coming back on the property); R. Exh. 16 (standard operating procedures for delivery drivers).)[40]

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[38] To the extent that Robison (in testimony, see Tr. 140, 145–146) and Ratigan-Allen (in his August 24 email) asserted that the $120 shortage resulted from Hughes improperly applying discount to the patient's order, I give that evidence little weight. The information that Ratigan-Allen and Robison had about the delivery order was second-hand (see Tr. 141, 350–351, 616), and both Hughes and Hundley agree that the $120 shortage resulted from Hughes charging the patient the price of the products shown on the online order instead of the price of the products erroneously placed in the delivery box. Further, Robison admitted that the birthday discount was applied at the store before the delivery. (See Tr. 146–147; compare GC Exh. 30 (p. 1) (Ratigan-Allen asserted that the shortage resulted from Hughes improperly applying a birthday discount).)

[39] Robison also asserted that Respondent terminated Hughes for improperly giving the patient a discount during the April 23 delivery, but as noted above (see fn. 37, supra) I have given little weight to that testimony.

[40] The operating procedures do not address the specific circumstance that Hughes encountered with the April 23 delivery (arriving at a patient's home and discovering that the online order price and delivery price do not match). The procedures do specify, however, that "any products not delivered to the patient for any reason will be returned to the Ogden pharmacy as part of the reconciliation process." (R. Exh.

On April 25, 2024, Respondent sent a letter to Hughes to advise that she was being terminated and also banned from Respondent's pharmacy locations in Utah. The termination/ban letter stated, in pertinent part:

> This letter is to inform you that your position with The Flower Shop has been terminated effective April 25, 2024.
>
> You are no longer allowed on the property at the Ogden or Logan locations of The Flower [S]hop. If you are found to be trespassing on the property, the authorities will be notified.

(GC Exh. 10; Tr. 27, 125–126; see also Tr. 55.)

Williams, along with Yonk and delivery manager Ratigan-Allen, also notified Hughes by telephone that Hughes was being terminated and banned. During the call, Williams stated that Hughes cost Respondent a lot of money. Hughes pointed out that Ratigan-Allen was the employee who picked the wrong products for the April 23 order and asked why Ratigan-Allen did not speak up since he was on the call. Ratigan-Allen began a halting reply, but Williams intervened and stated that Hughes was terminated and would be arrested for trespassing if Hughes came to Respondent's pharmacy premises. Williams then ended the telephone call. (Tr. 126–128, 516–518, 627; see also Tr. 142–143 (Respondent did not take disciplinary action against either Ratigan-Allen or the security guard for not catching that the April 23 delivery order contained the wrong products).)

5. Comparator evidence

The evidentiary record includes the following examples where Respondent took disciplinary action against employees for mishandling or making mistakes with products:

Employee	**Date of discipline and description of infraction**	**Disciplinary action taken (exhibit)**
T.M.	June 18, 2025: opened the "5 gram" cabinet and left the cabinet unsecured	Documented discussion (GC Exh. 3 (p. 3).)
F.T.	May 28, 2025: oversold medication amount to patient by 1.5 grams	Documented discussion (GC Exh. 8, p. 2).)
H.T.	January 7, 2025: left vault open and unattended	Documented discussion (GC Exh. 6 (p. 1).)
H.T.	October 20, 2025: left medication cabinet unlocked; stocked gummies on pharmacy floor without high dose sticker; stocked	Final warning and placed on a performance improvement plan (GC Exh. 6 (pp. 2–4).)

16.)

	tinctures on pharmacy floor without high dose stickers	
A.W.	January 15, 2025: oversold medication amount to patient by 0.766 grams	Documented discussion (GC Exh. 9, p. 2).)

Pharmacy manager Robison did not know of any employees who were terminated for not following one of Respondent's standard operating procedures. Robison also testified that she would likely issue a documented discussion to an employee who gave a discount to a patient without permission from management. (Tr. 143–144, 150.)

Regarding confrontations with patients, coworkers, and/or managers, the evidentiary record includes the comparators listed above in connection with pharmacy agent Ruthven's termination. (See FOF, sec. II(E)(4), supra.) The evidentiary record also includes Ruthven's performance improvement plan that asserted, among other points, that Ruthven needed to take management feedback "without being combative," and Ruthven's termination (without a facility ban) after an argument with Robison about 33 days after the beginning of the performance improvement plan. (FOF, sec. II(E)(1)–(3), supra.)

There are no written examples of employee bans in the evidentiary record apart from Respondent's bans of Hughes and Rueda. Williams testified that Respondent banned two or three other employees in connection with their terminations (employees S.W., J.P., and possibly a third unidentified employee who Respondent terminated for "intimidation and harassment"), but Williams did not testify about the specific conduct that led Respondent to ban those employees. (Tr. 510–511, 515; see also Tr. 385 (Robison testimony that J.P.'s termination related in part to "creating a lot of hostility the work environment").)

K. May 10, 2024 – Respondent Terminates Sara Rueda

1. Rueda - background

Sara Rueda began working for Respondent as a pharmacy agent on about March 30, 2022. (Tr. 34, 198.) Rueda received the following disciplinary action between her hire and about February 2024:

November 16, 2022: Placed on a performance improvement plan that called for greater attention and accuracy with inventory. (R. Exh. 7; Tr. 399–400, 431, 580);

May 17, 2023: Verbal counseling for using Respondent's GroupMe chat to post a message that the company was mistreating employees in a way that was similar to "raping us . . . without lube ya'll" (GC Exh. 23 (stating that Rueda should "convey feelings to management or HR, not in a company group chat, or hostile way"); Tr. 92–93, 179–180, 400–401, 403, 577, 579, 581–582; see also Tr. 229–230

(Rueda posted the message after employees had been talking about being overworked and underpaid));

October 10, 2023: Second warning, citing: an issue with inventory; leaving for a 2–hour lunch break for an appointment and not returning to work; and arriving 46 minutes late for her shift without notifying management (R. Exh. 9; Tr. 402–403); and

December 5, 2023: Final warning, stating that Rueda arrived 2 hours and 18 minutes late for her shift and did not notify management (R. Exh. 10 (noting that management texted Rueda 1 hour and 45 minutes into the shift and Rueda replied that she had a bad night but would come in); Tr. 404–405; see also Tr. 227–228 (Rueda worked an 8–hour shift after coming in late)).[41]

Rueda was one of the first employees to contact union representative Byrd on about March 11 to discuss the possibility of unionizing at the South Ogden pharmacy. Rueda also attended union meetings on March 14 and 25, and pharmacist in charge Freeman identified Rueda as one of the two most active employees in encouraging employees to support the union organizing campaign (Wagner was the other). (See FOF, sec. II(B)–(D), supra.)

In about early April 2024, Rueda asked assistant manager Hundley to write a recommendation for her because she planned to apply for a part-time job with another company. Hundley agreed, and included the following remarks in his recommendation:

> I have had an opportunity to observe [Rueda's] participation and interaction on the sales floor and with patients to evaluate her knowledge and expertise while employed [for Respondent]. She is an outstanding employee in all respects. Sara has proven that through hard work, follow through, and team work, she can accomplish tasks in a courteous and timely manner. . . . We are a very high volume pharmacy and Sara still makes sure to give each patient her full attention as well as the best information possible about all forms of product. . . .

(GC Exh. 17; Tr. 224–226, 451–452; see also R. Exh. 12 (p. 4) (January 19, 2024 staff meeting agenda that included a customer review complimenting Rueda's customer service); R. Exh. 13 (p. 4) (same; Feb. 29, 2024 staff meeting agenda).)

At some point also in April 2024, Rueda texted Hundley to ask what she (Rueda) had to do to get fired by Respondent. Rueda sent the text sarcastically because she believed that Respondent was firing her coworkers for "dumb little things." (Tr. 450–451, 582.)

[41] Rueda explained that her attendance issues in this time period related, at least in part, to serious medical issues that a family member was experiencing. Rueda added that Respondent was aware of these issues at the time of the attendance infractions. (Tr. 579–580.)

2. Late April 2024: Rueda objects to Hughes' termination

In about late April 2024, Rueda posted on Respondent's GroupMe chat[42] to object to Respondent's decision to terminate pharmacy agent Hughes. The following discussion, primarily with pharmacist in charge Freeman, ensued on the chat platform:

Rueda:[43] Bridget [Hughes] is a single mother of 6 kids and the flower shop did her dirty for firing her for some new guys mistake[.] maybe this company should train [people] properly before letting them [manage] anything!!!!! God put it on my heart to say something!!!
I'm not the type of person to keep my mouth shut[.] this company is a [bunch] of sad [people]

Freeman: Sara, you were there when Bridget spoke to [Hundley] about the incident, about HER own actions. She was the most trained in delivery so I don't want to hear "lack of training". She knew exactly what she was doing when she made that call. People need to start being accountable for their poor decisions. I am getting really tired of this narrative that management is seeking vengeance and favoritism. People need to grow up and take accountability. If you are going to violate policy, or make bad decisions, or demand to get things in return for doing nothing for those things, there are consequences.

Rueda: There is a lack of training and you know it!!

Freeman: This was not a training incident and you know that

Rueda: You alone seen it before you entered that crowd and you became their best friends. You were the one that told me that we should get unionized and now you're all for them go team management.

Tell me I'm lying [Jarrod]

Freeman: I've always been an advocate for the team. I don't care if you unionize or not, that doesn't affect me. End of conversation, talk to me in private if

[42] Respondent set up the GroupMe chat that included all managers and non-supervisory employees at the South Ogden pharmacy. Respondent used the chat to distribute the weekly schedule to employees and employees also posted scheduling requests on the chat. As previously noted, although the chat was used to discuss scheduling, Respondent instructed employees to call or text managers about absences or tardies. (Tr. 56–57, 77–78, 164–165, 218–219, 632–633, 636–638; FOF, sec. II(A)(4); see also Tr. 638–639 (pharmacy manager Robison and pharmacist in charge Freeman were the managers in charge of the chat).)

[43] The first message in the chat is preceded by the following quote that Rueda also posted: "There's no need for vengeance, those with a corrupt heart destroy themselves." (GC Exh. 13 (p. 1); Tr. 179, 222.) It is unclear whether Rueda posted the quote on the same or a different day than the discussion set forth herein.

you have concerns about this company and the leadership, this group chat is not here to get everyone worked up.

Rueda: I for one am not a [liar]!!!

We have had this conversation already [] in private and nothing has ever been done so there's no point of talking to you in private.

Freeman: You have supported a narrative that is a lie

Rueda: You and everyone else sees the favoritism!!!! And the buddy buddy system happening[.]

S.W.: Please stop

Rueda: Stop what speaking my mind

. . .

S.W. No use proper channels please

Freeman: Thank you [S.W.] I apologize everyone

S.W. It's not your fault

Rueda: Shame on you All for not caring about the next person or your co worker[.] I will [pray] for you All.

PRAY FOR YOU ALL GOD KNOWS YOU NEED IT!!!

(GC Exh. 13 (emphasis in original); Tr. 41–42, 78–85, 165–167, 220–221, 574; see also Tr. 83 (Freeman acknowledged that Rueda's comments about Hughes' discharge were part of what was getting employees "worked up").) Robison and Freeman subsequently discussed this group chat and someone (unidentified) notified human resources. (Tr. 86–87.)

3. Early May 2024: Rueda misses a staff meeting and posts a bible passage

On about May 2, 2024, Rueda missed a mandatory staff meeting and did not call a manager to advise that she would be absent.[44] (GC Exhs. 11, 24 (p. 3); Tr. 229; see also GC Exh. 2 (noting mandatory staff meetings on 5 dates, including May 2, 2024).)

[44] Rueda testified that she missed the May 2 staff meeting because Respondent removed her from the group chat and thus Rueda could not see the weekly schedule. (Tr. 223–224, 229.) I do not credit Rueda's explanation for why she missed the meeting because her testimony cannot be squared with the fact that Rueda had access to the group chat at least until May 5, 2024 (as described below). For the same reason, I do not credit Rueda's testimony that Respondent removed her from the group chat in late April after she argued with pharmacist in charge Freeman about Hughes' termination. (See Tr. 224.)

In about early May 2024, Rueda posted a bible passage on Respondent's group chat. The bible passage reads, in part:

> Do not fret because of those who are evil or be envious of those who do wrong; for like the grass they will soon wither, like green plants they will soon die away
>
> Trust in the Lord and do good; dwell in the land and enjoy safe pasture. Take delight in the Lord and he will give you the desires of your heart . . .
>
> A little while, and the wicked will be no more; though you look for them, they will not be found. But the meek will inherit the land and enjoy peace and prosperity.
>
> The wicked plot against the righteous and gnash their teeth at them; but the Lord laughs at the wicked, for he knows that their day is coming.

(GC Exh. 35; Tr. 407, 438–439, 481–482, 577; see also Tr. 432, 439 (pharmacy manager Robison believed that Rueda's biblical passage referred to Respondent's leadership as evil and took issue with the "religious nature" of the post).) Rueda followed up on the bible passage posting with a May 5 group chat post that observed that her bible passage post had "no likes." (GC Exh. 35.) At some point after Rueda's May 5 group chat post, Respondent removed Rueda from the group chat. (Tr. 169–170, 223, 436–437.)

Two employees emailed Respondent's human resources department to complain about Rueda's posts on the group chat. The emails stated as follows:

> May 5: I feel uncomfortable with religious texts being shared [on] the group me app
>
> May 7: My assistant manager at the Ogden store, Trevor Hundley, recommended I reach out to you both directly about a complaint regarding one of my coworkers. Sara Rueda has been using combative, targeted, and religiously charged language in our group chat. She's been asked multiple times to stop, and has continued to use[] aggressive threatening language, saying things like "the wicked will [wither] and die", and actively telling us that we need God and she will be praying for us. I find it to be incredibly uncomfortable harassment, directed at all of us coworkers. She's actively creating a hostile work environment.
>
> I hesitated to reach out at all, as I'm not normally someone to escalate matters like this without first speaking directly to the person in question, but multiple people have asked her to stop and she has continued the inappropriate behavior.
>
> Please let me know if you have any further questions, or if you need me to sign a statement. I appreciate your support!

(GC Exhs. 33–34 (sent by employees S.W. and N.V., respectively); Tr. 37–39, 173–174, 179, 406–408, 513–514, 531.)[45]

4. Decision to terminate Rueda and ban her from Respondent's Utah pharmacies

Having seen Rueda's late April and early May posts to the group chat, Respondent's managers consulted with each other and the human resources department regarding how to address the issue. The group chat posts, written and verbal employee complaints, and Rueda's disciplinary record were all part of the discussion. Pharmacy manager Robison recommended that Rueda be terminated, at least in part because of verbal complaints that Rueda was making coworkers uncomfortable by constantly texting them to get them to support the Union. Human resources manager Yonk and director of human resources Williams agreed that Rueda should be terminated and banned from Respondent's pharmacies in Utah for violating the attendance policy and violating the anti-harassment policy by sending messages to coworkers that were "religious in nature."[46] Respondent did not interview Rueda as part of the investigation. (Tr. 34–40, 47–52, 54–56, 91–92, 94–96, 167–169, 171, 174–182, 405, 408, 512–514, 527, 529–530, 634–635; see also Tr. 55, 512 (explaining that Respondent banned Rueda because Respondent found that she engaged in harassment).)

On May 10, 2024, Respondent sent a letter to notify Rueda that she was being terminated from her position with the pharmacy. Respondent stated as follows in the letter, in pertinent part:

> This letter is to inform you that your position with The Flower Shop has been terminated effective May 10, 2024, due to violation of the Attendance Policy and violation of the Anti-Harassment policy.

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[45] Robison and Freeman testified that they also received verbal complaints from a few employees that Rueda "bullied" or "harassed" them about the union or otherwise "targeted" them and/or made them feel uncomfortable. (Tr. 171–173, 177–182, 406, 482–483; see also Tr. 177 (Robison testimony that employees complained about Rueda constantly texting them to get on the side of the Union; Robison never saw any such text messages and none are in the evidentiary record), 222, 575–576 (Rueda testimony that no one ever approached her about speaking about religious matters).) I give the testimony about those verbal complaints little weight because Robison and Freeman provided little detail about content of the complaints, and the complaints were not memorialized in writing (either by the employees or by Respondent). At most, the testimony about the verbal complaints established that Rueda's remarks bothered additional employees beyond the employees that emailed complaints in May 2024.

[46] To the extent that Robison, Yonk, Williams, and the May 7 employee complaint indicated that coworkers and managers asked Rueda "multiple times" to stop posting "combative, targeted, and religiously charged" posts in the group chat (see Tr. 39–40, 43–45, 47, 175–176, 530–532; FOF sec. II(K)(3), supra), I find that to be overstated. In the late April posts, employee S.W. asked Rueda to stop posting in the group chat because S.W. wanted Rueda to "use proper channels" to raise her concerns. In that same exchange, pharmacist in charge Freeman posted that Rueda should speak to him privately because the group chat was not meant to be used to "get everyone worked up." (FOF sec. II(K)(2), supra.) The evidentiary record does not include any other examples of employees or managers asking Rueda to stop posting in the group chat (apart from the verbal counseling that Rueda received in May 2023 for the "[sexually assaulting] us without lube" post, see FOF, sec. II(K)(1), supra), and does not include any examples of employees or managers asking Rueda to stop posting religious messages. (See Tr. 222, 589.)

> On December 5, 2023, you were placed on a First Warning after your first no call no show on November 21, 2023. At that time, you had previously been disciplined in connection with attendance issues. You failed to report to work on May 2, 2024, and did not contact your supervisor as you have been directed on multiple occasions. This is the second occurrence of a no call no show.
>
> In addition, we received multiple complaints from co-workers that you directed comments towards those employees that made them feel uncomfortable, in violation of the company's Anti-Harassment Policy.
>
> You are no longer allowed on the property at the Ogden or Logan locations of The Flower shop. If you are found to be trespassing on the property, the authorities will be notified.

(GC Exh. 11; Tr. 36, 226–227, 229.)

In an August 9, 2024 decision regarding Rueda's application for unemployment insurance benefits, the Workforce Appeals Board adopted the Administrative Law Judge's finding that Respondent terminated Rueda without just cause. In support of that finding, the Workforce Appeals Board noted that Respondent did not take disciplinary action against Rueda for unexcused absences that occurred on January 2 and March 15, 25–26, 28–29, 2024. (GC Exh. 24 (pp. 2–3).)

5. Comparator evidence

Comparator evidence regarding disciplinary action for employee confrontations with coworkers, patients, and/or management is set forth above in FOF, sec. II(E)(4), (J)(5). Yonk and Williams testified that had they seen Rueda's group chat posts in the absence of any complaints, they would have asked Rueda to stop making similar posts and considered some type of disciplinary action. (Tr. 54, 532–533.) More generally, it was not uncommon for employees and managers to use profanity or make remarks such as "Jesus Christ!" or "holy f-ing God!" in the workplace. There is no evidence that Respondent took disciplinary action against any employees in response to those types of remarks. (Tr. 222–223; see also Tr. 51–52.)

Comparator evidence regarding disciplinary action for attendance is set forth above in FOF, sec. II(I)(4).

DISCUSSION AND ANALYSIS

A. Credibility Findings

A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. Credibility findings need not be all-or-nothing propositions — indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a

witness' testimony. *Starbucks Corp.*, 372 NLRB No. 122, slip op. at 17–18 (2023) (noting that an administrative law judge may draw an adverse inference from a party's failure to call a witness who may reasonably be assumed to be favorably disposed to a party, and who could reasonably be expected to corroborate its version of events, particularly when the witness is the party's agent), enfd. in pertinent part, 159 F.4th 455 (6th Cir. 2025). To the extent that credibility issues arose in this case, my credibility findings are reflected in the finding of fact above.

B. Did Respondent Unlawfully Terminate and/or Ban Employees for Engaging in Union Activities?

1. Complaint allegations

The General Counsel alleges that Respondent violated Section 8(a)(3) and (1) of the Act by taking the following adverse employment actions against employees for discriminatory reasons, and thereby discouraging membership in a labor organization:

(a) On about March 22, 2024, terminating employee Zoe Ruthven;

(b) On about April 22, 2024, terminating employee Todd Wagner;

(c) On about April 25, 2024: terminating employee Bridget Hughes and banning Hughes from entering Respondent's property; and

(d) On about May 10, 2024, terminating employee Sara Rueda and banning Rueda from entering Respondent's property.

2. Applicable legal standard

The legal standard for evaluating whether an adverse employment action violates Section 8(a)(3) of the Act is generally set forth in *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). To sustain a finding of discrimination, the General Counsel must make an initial showing that the employee's union or other protected activity was a motivating factor in the employer's decision. The elements commonly required to support such a showing are union or protected concerted activity by the employee, employer knowledge of that activity, and animus against union or other protected activity on the part of the employer. *Intertape Polymer Corp.*, 372 NLRB No. 133, slip op. at 6 (2023), enfd. 2024 WL 2764160 (6th Cir. 2024); see also *General Motors LLC*, 369 NLRB No. 127, slip op. at 1–2 (2020) (overruling cases that applied "setting-specific" standards aimed at deciding whether an employee has lost the Act's protection due to alleged misconduct).[47] Proof of discriminatory motivation (animus) can be based on direct evidence or can be inferred from

[47] The Board recently ruled that *General Motors* remains valid precedent because the United States Court of Appeals for the Fifth Circuit vacated the Board's decision in *Lion Elastomers*, 372 NLRB No. 83 (2023) (which overruled *General Motors*). See *Lion Elastomers LLC*, 375 NLRB No. 41, slip op. at 1–5 (2026) (citing *Lion Elastomers, LLC v. NLRB*, 108 F.4th 252 (5th Cir. 2024)).

circumstantial evidence based on the record as a whole. Circumstantial evidence of discriminatory motivation may include, among other factors: the timing of the action in relation to the union or other protected conduct; contemporaneous unfair labor practices; shifting, false, or exaggerated reasons offered for the action; failure to conduct a meaningful investigation; departures from past practices; and disparate treatment of the employee. *Intertape Polymer Corp.*, 372 NLRB No. 133, slip op. at 6–7; *Medic One, Inc.*, 331 NLRB 464, 475 (2000).

If the General Counsel makes the required initial showing, then the burden of persuasion shifts to the employer to establish, as an affirmative defense, that it would have taken the same action even in the absence of the employee's union or protected activity. In order to meet that burden in circumstances where the employer maintains that the employee engaged in misconduct, the employer need not prove that the disciplined employee committed the misconduct alleged. Instead, the employer only needs to show that it had a reasonable belief that the employee committed the alleged offense and that it acted on that belief when it took the disciplinary action against the employee. *Intertape Polymer Corp.*, 372 NLRB No. 133, slip op. at 7; *McKesson Drug Co.*, 337 NLRB 935, 937 fn. 7 (2002); see also *Bally's Atlantic City*, 355 NLRB 1319, 1321 (2010) (explaining that where the General Counsel makes a strong initial showing of discriminatory motivation, the respondent's rebuttal burden is substantial), enfd. 646 F.3d 929 (D.C. Cir. 2011). The General Counsel may offer proof that the employer's reasons for the personnel decision were false or pretextual. When the employer's stated reasons for its decision are found to be pretextual – that is, either false or not in fact relied upon – discriminatory motive may be inferred but such an inference is not compelled. *Electrolux Home Products*, 368 NLRB No. 34, slip op. at 3 (2019) (noting that the Board may infer from the pretextual nature of an employer's proffered justification that the employer acted out of union animus where the surrounding facts tend to reinforce that inference). A respondent's defense does not fail simply because not all the evidence supports its defense or because some evidence tends to refute it. Ultimately, the General Counsel retains the burden of proving discrimination. *Starbucks Corp.*, 372 NLRB No. 122, slip op. at 18.

3. Analysis – Ruthven's termination

The evidentiary record shows that on about March 22, 2024, Respondent terminated pharmacy agent Ruthven. In support of that decision, Respondent maintained that Ruthven (on a date that Respondent did not specify) refused to deliver medication to a patient, and also engaged in misconduct on about March 18, 2024, by arguing with and raising her voice to pharmacy manager Robison after Robison said that she could not accommodate Ruthven's request to not be scheduled to work with employee N.L. (FOF, sec. II(E)(2)–(3).)

I find that the General Counsel made an initial showing that Respondent terminated Ruthven because she engaged in union activities. There is no dispute that Ruthven engaged in union activities, as she: was one of the first employees to reach out to the Union on about March 11; attended the first union meeting on about March 14; and signed a union authorization card on March 15. While the evidence does not show that Respondent was aware that Ruthven contacted the Union and signed an authorization card, the evidence does show that Respondent knew that Ruthven attended the March 14 union meeting because assistant manager Hundley was also at that meeting after all other attendees were present and thus learned who attended. Since Hundley

is an admitted supervisor under Section 2(11) of the Act, his knowledge of Ruthven's union activities is imputed to the managers who made the decision to terminate Ruthven.[48] *Nitro Construction Services*, 374 NLRB No. 120, slip op. at 1 (2026); see also FOF, sec. II(A)(1), (B)–(D), (E)(1).

The General Counsel also provided sufficient evidence of animus. First, the timing of Ruthven's termination is suspicious and demonstrates animus because Respondent decided to terminate Ruthven about 1 week after learning (through Hundley) of Ruthven's union activities. Second, pharmacy manager Robison gave shifting reasons during trial for why Ruthven was terminated, initially stating that she did not recall why Ruthven was terminated, then testifying that attendance was the issue, and then testifying that Respondent terminated Ruthven for refusing to deliver a patient's medication and for misconduct during the March 18 argument. Since Robison was the manager who recommended that Ruthven be discharged and therefore had direct input into the termination decision, her animus is imputed to Respondent, including human resources manager Yonk and director of human resources Williams. See *Bruce Packing Co.*, 357 NLRB 1084, 1086 (2011) ("[T]he Board's case law is clear that the anti-union motivation of a supervisor will be imputed to the decision making official, where the supervisor has direct input into the decision"), enfd. in pertinent part, 795 F.3d 18 (D.C. Cir. 2015). And third, the allegation that Ruthven refused to deliver medication is itself suspect because Respondent did not document such an incident or discipline Ruthven when it occurred (in January or February 2024), perhaps because Ruthven ultimately completed the delivery in question without further incident after learning that she had been going to the wrong "building A" in the patient's apartment complex. Thus, Respondent tolerated Ruthven's conduct with this delivery when it happened but later relied upon it as a basis for terminating Ruthven after learning that she was engaging in union activities. (FOF, sec. II(E)(1), (3).)

Before turning to Respondent's affirmative defense, I pause to address the General Counsel's argument that Ruthven engaged in union or protected concerted activity during her March 18 argument with Robison by raising a "group complaint" about coworker N.L. with Robison. (See GC Posttrial Br. at 45.) While the evidentiary record does show that Ruthven spoke with other employees about issues with working with N.L., there is no evidence that Respondent knew about those discussions. Further, Ruthven did not present any group concerns about N.L. to Robison. Instead, Ruthven made an individual request that she not be assigned to work on shifts with N.L., and the argument developed when Robison said she could not accommodate that request. (FOF, sec. II(E)(2).) The General Counsel, therefore, fell short of proving that Ruthven presented group concerns to Robison as part of the March 18 argument. See *Fresh & Easy Neighborhood Market*, 361 NLRB 151, 152–153 (2014) (explaining that "concerted" activity includes not only activity that is engaged in with or on the authority of other employees, but also activity where individual employees seek to initiate or to induce or to prepare for group action (including preliminary discussions towards that end), as well as individual employees bringing truly group complaints to the attention of management).

[48] Respondent may also have been aware of Ruthven's union activities based on the reports that some employees were providing to managers about the union organizing campaign starting at some point between about March 16–22. (See FOF, sec. II(D).) The finding above regarding Hundley's knowledge, however, is sufficient to establish that Respondent was aware of Ruthven's union activities before Respondent decided to terminate her.

As its affirmative defense, Respondent maintains that it would have terminated Ruthven even in the absence of her union activities. (See R. Posttrial Br. at 38–40.) As previously stated, I do not put much stock in Respondent's explanation that it terminated Ruthven for allegedly refusing to deliver medication to a patient in January or February 2024. There is merit, however, to the argument that Respondent would have terminated Ruthven based on the March 18 argument with Robison even in the absence of Ruthven's union activities. Ruthven had an extensive disciplinary record before the union organizing campaign began. While most of the discipline on her record related to attendance, on February 14, 2024, Respondent placed Ruthven on a performance improvement plan that warned Ruthven that she could be terminated if she engaged in misconduct in a variety of areas either during the initial 30–day monitoring period or even after successfully completing the improvement plan and then slipping back towards poor performance. Notably, the performance improvement plan stated that Ruthven needed to "[t]ake management feedback without becoming combative." (FOF, sec. II(E)(1).) By arguing with Robison and raising her voice after Robison denied Ruthven's request to not be assigned to shifts with employee N.L., Ruthven engaged in conduct that ran afoul of the performance improvement plan and opened the door for Respondent to terminate her. Indeed, since Respondent has a track record of taking at least some disciplinary action against employees who argue with managers, coworkers, or patients (see, FOF, sec. II(E)(4)), I cannot fault Respondent for doing so here and terminating Ruthven when she was on a performance improvement plan that warned that termination could result from such misconduct. Accordingly, I recommend that the complaint allegation concerning Ruthven's termination be dismissed.

4. Analysis – Wagner's termination

As set forth in the Findings of Fact, Respondent terminated pharmacy agent Wagner for attendance on about April 2, 2024, after Wagner missed work on March 25 and 26 because he was sick. A few days before those absences, on about March 20, Respondent had placed Wagner on a performance plan that was primarily focused on Wagner improving his attendance (including communicating about attendance via text or phone call to management) and maintaining a positive attitude. Wagner had not previously received disciplinary action for attendance or any other issue before being placed on the performance improvement plan. (FOF, sec. II(I)(1)–(3).)

The General Counsel made an initial showing that Respondent terminated Wagner because he engaged in union activities. Wagner was clearly involved in union activities, including contacting the Union on about March 11, and hosting the first union meeting on March 14. Respondent was aware of Wagner's union activities, as demonstrated by the fact that assistant manager Hundley attended the March 14 union meeting, and by the fact that between March 16–22, pharmacist in charge Freeman believed that Wagner was one of the two most active employees in the union organizing campaign (pharmacy agent Rueda was the other). (FOF, sec. II(C)–(D); see also *Nitro Construction Services*, 374 NLRB No. 120, slip op. at 1 (supervisor's knowledge of an employee's union activity is imputed to the supervisor(s) that made the adverse employment decision).) There is also evidence of animus, including the fact that: Respondent tolerated Wagner's absences and other attendance issues before the union organizing campaign but then terminated Wagner based on attendance after learning of his union

activity;[49] Robison admitted that the issues with Wagner's attitude (as set forth in the performance improvement plan) included Wagner speaking to coworkers about pay and other working conditions; Respondent departed from its usual practice of issuing performance improvement plans only after employees had received multiple disciplinary actions for similar conduct; and the timing of Wagner's termination is suspicious insofar as Respondent took action against Wagner soon after learning of his union activities. (See FOF, sec. II(A)(2), (I)(1)–(3); see also *Intercon I (Zercom)*, 333 NLRB 223, 224 (2001) (description of an employee as having a negative attitude supported a finding of animus since that terminology is a common euphemism for pro-union activity); *James Julian Inc. of Delaware*, 325 NLRB 1109, 1109 (1998) (same).) This evidence of animus, which is generally attributable to Robison, is imputed to Respondent's human resources managers because, through her recommendation, Robison had direct input into the human resources managers' decision to terminate Wagner. See *Bruce Packing Co.*, 357 NLRB at 1086.[50]

As an affirmative defense, Respondent contends that it would have terminated Wagner for attendance even in the absence of his union activities. (See R. Posttrial Br. at 42, 45–46.) That defense is not supported by the evidentiary record. Respondent was, at best, inconsistent with enforcing its attendance policy. Sometimes Respondent was aware of an employee's attendance issues and, for whatever reason, did not take disciplinary action. Other times, Respondent did discipline employees for attendance, generally by issuing a series of escalating warnings. While the attendance policy does allow Respondent to "skip" disciplinary steps in its discretion (even though the policy generally recommends progressive discipline for attendance infractions), there are no examples in the evidentiary record of Respondent immediately placing an employee other than Wagner on a performance improvement plan for attendance without issuing one or more warnings beforehand. (See FOF, sec. II(E)(1) (Ruthven received three warnings for attendance in 2023, before being placed on a performance improvement plan in February 2024); id., sec. II(I)(1) (Respondent did not issue disciplinary action to Wagner in 2023 or early 2024 despite multiple attendance issues); id., sec. II(I)(4) (attendance comparators, describing one documented discussion and three final warnings that Respondent issued to employees for attendance; Respondent did not issue the final warning to comparator D.M. until after D.M. missed 5 mandatory staff meetings over a 4–month period without notifying management);[51] id., sec. II(J)(1) (Hughes performance review noted attendance issues but there is no evidence that Hughes received any disciplinary action for attendance); id., sec. II(A)(4)

[49] I note that this point would be true even if I agreed that Respondent issued the performance improvement plan to Wagner on February 20 (the date that Robison and Freeman placed by their signatures) instead of March 20. In that scenario, Respondent would have: issued the plan to Wagner; tolerated Wagner's absences, tardies, and early departures on March 1, 7, 8, and 18 even though the performance improvement plan was in place; and then terminated Wagner based on absences on March 25–26, soon after learning of his union activities. (See FOF, sec. II(I)(1)–(3).)

[50] I note that I am not persuaded by Respondent's argument that it could not have had animus towards Wagner's union activities because the organizing campaign was effectively over by April 1, before Wagner was terminated. (See R. Posttrial Br. at 43.) It suffices to say that even if the union organizing campaign was over, Respondent could easily harbor animus against employees who participated in the campaign and were still working at the pharmacy.

[51] The evidentiary record does include one comparator who was terminated for attendance. (FOF, sec. II(I)(4) (comparator C.H.).) I give little weight to that comparator because the evidentiary record does not include any evidence about the attendance infraction(s) underlying the termination.

(attendance policy and practices).) In short, Respondent's track record for disciplining and/or terminating employees for attendance infractions does not support Respondent's abrupt decisions to place Wagner on a performance improvement plan and subsequently terminate him shortly after learning of his union activities. Accordingly, the affirmative defense fails and I find that Respondent violated Section 8(a)(3) and (1) of the Act by terminating Wagner on April 2, 2024,[52] because of his union activities.

5. Analysis – Hughes' termination and ban

The evidentiary record shows that on April 25, 2024, Respondent terminated pharmacy agent Hughes and banned her from Respondent's pharmacies in Utah. Respondent terminated Hughes for, without prior authorization from management, charging a patient a lower price for products than what was shown on the delivery receipt (the delivery receipt was based on products that were erroneously placed in the delivery box; Hughes charged the patient the $120 lower price of the products listed on the patient's online order). Respondent decided to ban Hughes (in addition to terminating her) on the ground that Hughes had been making coworkers uncomfortable and creating a hostile work environment. (FOF, sec. II(J)(2)–(4).)

The General Counsel made an initial showing that Respondent violated the Act when it terminated and banned Hughes. Hughes engaged in union activity by, among other things, signing a union authorization card, attending the second union meeting, and meeting in person with union representative Byrd in the pharmacy parking lot. At a minimum, Respondent was aware of Hughes' union activities because Hughes told Respondent's labor consultant on about April 1 that she (Hughes) was very interested in the Union. (FOF, sec. II(J)(1).) Since the labor consultant was acting as Respondent's agent under Section 2(13) of the Act,[53] the labor consultant's knowledge of Hughes' union support is imputed to Respondent. Cf. *Mid-South Drywall Co.*, 339 NLRB 480, 480 (2003) ("It is well established that where an employer places a rank-and-file employee in a position in which employees would reasonably believe that the employee speaks on behalf of management, the employer has vested that employee with apparent authority to act as the employer's agent, and the employee's actions are attributable to the employer."). I also infer that Respondent learned about Hughes' and other employees' union activities through the various communications that pharmacy manager Robison and pharmacist in charge Freeman had with employees about the union organizing campaign. (See, e.g., FOF, sec. II(D), (K)(4).)

[52] Although the complaint alleges that Respondent unlawfully terminated Wagner on or about April 22, 2024, the correct date is April 2, 2024. That difference in dates is not material, as the April 2 date is sufficiently consistent with the "on or about" language in the complaint.

[53] There is no dispute that Respondent brought in the labor consultant to speak with employees about the union organizing campaign. Indeed, Respondent sent an email to advise that a labor consultant would be visiting the pharmacy to speak with employees, and pharmacy manager Robison notified each employee when it was their turn to speak with the consultant. (FOF, sec. II(H).) Under those circumstances, Respondent's employees would reasonably believe that the consultant was speaking and acting on Respondent's behalf. See *Pan-Oston, Co.*, 336 NLRB 305, 305–306 (2001) (explaining that an employee is an agent under Sec. 2(13) of the Act if, "under all of the circumstances, employees would reasonably believe that the employee in question was reflecting company policy and speaking and acting for management").

There is also sufficient evidence that Respondent acted with animus when it terminated and banned Hughes. For starters, animus is demonstrated by the fact that, a few weeks before terminating and banning Hughes, Respondent unlawfully terminated pharmacy agent Wagner for engaging in union activities. (See Discussion and Analysis, sec. B(4), supra.) Beyond that, animus is established by the fact that: Respondent departed from its anti-harassment policy by not giving Hughes an opportunity to respond to the allegations that she was making coworkers uncomfortable and creating a hostile work environment; Respondent departed from its past practices with discipline for similar conduct (as discussed in more detail below in connection with Respondent's affirmative defense); the timing of Hughes' termination and ban is suspicious in that Respondent took action against Hughes within a few weeks of becoming aware of her union concerted activities; and Respondent's reasons for banning Hughes were exaggerated insofar as the allegation that Hughes was "aggressive" conflicts with observations that Respondent made in Hughes' February 2024 performance review, and insofar as there is no credible evidence of Hughes making coworkers uncomfortable and/or creating a hostile working environment. (FOF, sec. II(A)(3), (J)(1)–(2), (4).)

For its affirmative defense, Respondent asserts that it would have terminated and banned Hughes even in the absence of her union activities.[54] (R. Posttrial Br. at 52, 59–62.) That argument is not supported by the evidentiary record. Regarding Hughes' decision to charge the patient the lower price shown on the patient's online order (the proffered basis for terminating Hughes), in a February 29, 2024 staff meeting Robison gave employees mixed signals about when to use their discretion to resolve issues with patients without involving management. Specifically, Robison advised that management should make decisions "if anything out of the ordinary needs to happen" such as decisions about policy, closing time, turning away or refusing service to patients, and shutting down the drive through. Robison added, however, that she wanted employees "to feel empowered to make hard calls regarding patients, such as discounts, returns, etc." Hughes' decision to charge the patient the price shown on the online order was arguably a "hard call" (akin to a discount) that Robison said employees could make.

Perhaps more important, the record shows that employee mistakes were an ongoing concern that Respondent repeatedly raised in staff meetings but wanted to avoid having to resort to disciplinary action. (See FOF, sec. II(A)(5), supra.) Consistent with that approach, Robison testified that she would probably give a documented coaching to an employee who gave a customer a discount without authorization from a manager. Similarly, Respondent gave documented coachings or warnings to employees who made mistakes with selling, securing, or handling products. (FOF, sec. II(J)(5).) When Hughes charged the lower price for the delivery order (an action that was akin to giving an unauthorized discount), however, Respondent

[54] Respondent also argued that the bans that it issued to Hughes and Rueda) were not discriminatory because Respondent did not ban pharmacy agents Ruthven and Wagner, who also supported the union. (R. Posttrial Br. at 59.) That argument lacks merit because it does not rebut the evidence that Hughes' and Rueda's bans were discriminatory. Perhaps Respondent did not ban Ruthven and Wagner because the company was being more cautious during the peak of the union organizing campaign. Or perhaps Respondent decided to ban Hughes and Rueda along with terminating them because Respondent was emboldened by the earlier terminations of Ruthven and Wagner and the apparent failure of the organizing campaign. Regardless of Respondent's reasons for not banning Ruthven and Wagner, the evidence shows that Respondent's reasons for banning Hughes and Rueda were unlawful.

terminated Hughes, who had no prior discipline in her record with the pharmacy. In light of its track record with similar infractions, it does not ring true for Respondent to contend that it would have taken such harsh action (termination) towards Hughes even in the absence of her union activities.

Respondent's decision to ban Hughes from its Utah facilities has similar shortcomings. As previously noted, Respondent did not interview Hughes or give her a chance to respond to the hostile work environment allegations even though the pharmacy's anti-harassment policy indicates that accused employees should be given the opportunity to defend themselves. The harassment allegations against Hughes are also hopelessly vague, as the only "clear" allegation in the record is Hundley's unreliable April 19, 2024 email that faulted Hughes for speaking in an abrasive manner about two pickup orders that needed correction. Further, Respondent did not have a track record of imposing bans for similar or worse misconduct than what it attributed to Hughes. To the contrary: employees commonly used profanity without being disciplined; Respondent did not ban pharmacy agent Ruthven after she raised her voice at Robison during an argument;[55] and Respondent issued warnings to (and did not ban) comparators for engaging in misconduct such as yelling at patients or coworkers on the pharmacy floor, using the epithet "f-----," or making condescending remarks to human resources personnel despite having previously been warned about such behavior. (FOF, sec. II(E)(4), (J)(5), (K)(5); see also id., sec. II(J)(5) (Respondent provided testimony that it banned two or three other employees but did not provide specific information or documentation about those bans).) Since the conduct underlying Respondent's decision to ban Hughes was not substantiated and Respondent did not adhere to its anti-harassment policy or its practices with addressing aggressive, abrasive, or offensive conduct by employees, I find that Respondent fell short with proving that it would have banned Hughes even in the absence of her union activities. See *General Motors LLC*, 369 NLRB No. 127, slip op. at 7–9 (2020) (holding that an employer may act in good faith to maintain civil, inclusive, and healthy workplaces but may not discriminate against activity protected by the Act).

Since the General Counsel made an initial showing of discrimination and Respondent failed to prove its affirmative defenses, I find that Respondent violated Section 8(a)(3) and (1) of the Act when it terminated and banned Hughes on April 25, 2024.

6. Analysis – Rueda's termination and ban

The evidence establishes that on May 10, 2024, Respondent terminated and banned pharmacy agent Rueda for missing a mandatory staff meeting and for creating a hostile work environment by posting messages that were religious in nature in a group chat for employees and managers. Pharmacy manager Robison recommended that Respondent take these adverse employment actions, and human resources manager Yonk and director of human resources Williams approved Robison's recommendation. (FOF, sec. II(K)(4).)

The General Counsel made an initial showing that Respondent terminated and banned Rueda because she engaged in union activities. Rueda engaged in union activities by, among

[55] Respondent did terminate Ruthven for that incident but Ruthven was already on a performance improvement plan that predated the union organizing campaign and warned against similar misconduct. (See Discussion and Analysis, sec. B(3), supra.)

other activities, reach out to the Union on about March 11, attending union meetings on about March 14 and 25, and signing a union authorization card. Additionally, in about late April, Rueda made group chat posts to object to Respondent decision to terminate pharmacy agent Hughes (another union supporter) and call out pharmacist in charge Freeman for encouraging her to explore unionizing but then supporting management's decision regarding Hughes.[56] The evidentiary record shows that Respondent was aware of Rueda's union activities because: assistant manager Hundley attended the March 14 union meeting; in mid-March, pharmacist in charge Freeman viewed Rueda as one of the most active union supporters; and Freeman saw Rueda's late April posts in the group chat and posted responses to argue with her about whether Hughes was appropriately terminated. (FOF, sec. II(K)(1)–(2).)

The General Counsel also presented evidence that Respondent acted with animus when it terminated and banned Rueda. The evidence of animus includes: the unlawful adverse employment actions that Respondent took against pharmacy agents Wagner and Hughes; Robison's view that Rueda's harassment of coworkers included Rueda texting coworkers to get them to support the Union; Respondent's departure from its anti-harassment policy by not giving Rueda an opportunity to respond to the allegations that she was making coworkers uncomfortable; disparate treatment for missing mandatory staff meetings and for making remarks that made coworkers, managers, and/or patients uncomfortable (as discussed in more detail below regarding Respondent's affirmative defense); the suspicious timing of Rueda's termination and ban, which occurred not long after Respondent learned that Rueda was engaging in union activities; and Freeman's late-April group chat post that directed Rueda to express her workplace concerns to him privately instead of using the group chat to stir employees up. (Discussion and Analysis, sec. B(4)–(5), supra; FOF, sec. II(A)(3), (K)(2), (4)–(5); see also *Mercy Hospital*, 366 NLRB No. 165, slip op. at 1, 22 (2018) (employer violated Section 8(a)(1) of the Act when a manager told an employee that she should not ask questions about working conditions during team meetings and instead only do so in a private meeting with the manager on her own behalf).)

As an affirmative defense, Respondent contends that it would have terminated and banned Rueda even in the absence of her union activities. (R. Posttrial Br. at 55–62.) Respondent's arguments do not withstand scrutiny based on the evidentiary record. Regarding the explanation that Respondent terminated Rueda for missing the May 2 mandatory staff

[56] Respondent contends that Rueda's late April posts to the group chat are not covered by the complaint allegations and thus cannot be considered here. Specifically, Respondent argues that the complaint only alleges that Rueda engaged in union activities and thus did not provide notice that protected concerted (but allegedly nonunion) activities would be at issue. (R. Posttrial Br. at 53–55, 58.)

I do not find merit to that argument. Although the union organizing campaign was effectively over by early April, it does not follow that employees were no longer engaging in union activities after that date. To the contrary, Rueda explicitly mentioned the union organizing campaign in her late April posts about Hughes' termination by faulting Freeman for backing management's decision about Hughes after previously encouraging Rueda to explore unionizing. (See FOF, sec. II(G), (K)(2).) That put Respondent on notice that Rueda was still an active union supporter even though the organizing campaign had faltered. Respondent accordingly missed the mark with its argument that Rueda's late April posts are not covered by the complaint – simply put, the complaint alleges that Rueda engaged in union activities and Rueda's April group chat posts were part of her union activities.

meeting, the evidentiary record shows that employee D.M. also missed the May 2 meeting without notifying management. Respondent, however, only took immediate disciplinary action against Rueda for missing the May 2 meeting. By contrast, Respondent did not discipline D.M. until August 2024, when Respondent issued a final warning to D.M. for missing a total of 5 mandatory staff meetings without notifying management (two meetings in March 2024, the May 2 meeting, and two additional meetings in late May and mid–June 2024). (FOF, sec. II(I)(4).) Given the lenience that Respondent afforded to D.M. for missing mandatory staff meetings (including the May 2 meeting that Respondent relied on when terminating Rueda) I cannot find that Respondent would have terminated Rueda for attendance even in the absence of her union and protected activities.

Respondent also fell short with its contention that it would have terminated and banned Rueda for violating its anti-harassment policy even in the absence of her union activities. I find that Respondent discriminated against Rueda when it decided to terminate and ban her for making group chat posts that were religious in nature. Respondent does not have a track record of terminating and/or banning employees for confrontations with coworkers, patients, and/or managers based on religion, or otherwise. Instead, as previously noted, Respondent generally issued warnings to employees for such conduct. (See Discussion and Analysis, sec. B(5), supra.) Moreover, Respondent departed from its anti-harassment policy by not giving Rueda an opportunity to defend herself during Respondent's investigation of the harassment allegations against her. In short, Respondent's actions indicate that it was more interested in getting rid of Rueda than it was in adhering to and enforcing its anti-harassment policy in a consistent fashion. See *General Motors LLC*, 369 NLRB No. 127, slip op. at 7–9 (an employer may act in good faith to maintain civil, inclusive, and healthy workplaces but may not discriminate against activity protected by the Act).

In sum, the General Counsel made an initial showing that Respondent discriminated against Rueda by terminating and banning her because she engaged in union activities, and Respondent failed to prove its affirmative defenses.[57] I therefore find that Respondent violated Section 8(a)(3) and (1) of the Act when it terminated and banned Rueda on May 10, 2024.

C. Did Respondent Unlawfully Fail and Refuse to Recognize and Bargain with the Union?

1. Complaint allegations

The General Counsel alleges that Respondent violated Section 8(a)(5) and (1) of the Act by, since about March 21, 2024, failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the bargaining unit.

[57] The General Counsel also argued that Respondent ran afoul of the Act by relying on Rueda's May 2023 verbal counseling as part of the rationale for terminating and banning Rueda. (GC Posttrial Br. at 57–58; see also FOF, sec. II(K)(1), (4).) I do not rely on that argument here because it would require me to find that the May 2023 verbal counseling was unlawful, and such a finding would run afoul of the 6–month limitation period set forth in Sec. 10(b) of the Act.

2. Applicable legal standard

An employer violates Section 8(a)(5) and (1) by refusing to recognize, upon request, a union that has been designated as Section 9(a) representative by the majority of employees in an appropriate bargaining unit unless the employer promptly files a petition under Section 9(c)(1)(B) of the Act (an RM petition) to test the union's majority status or the appropriateness of the unit, assuming that the union has not already filed a petition pursuant to Section 9(c)(1)(A). *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130, slip op. at 25 (2023), enfd. 2026 WL 1079297 (9th Cir. 2026), cert. denied 2026 WL 3116596 (2026).

3. Analysis

The General Counsel failed to demonstrate that the Union or employees asked Respondent to recognize the Union as the exclusive collective-bargaining representative of all non-supervisory employees (except guards) at the South Ogden pharmacy. Indeed, none of the General Counsel's witnesses testified that they gave or sent the March 25 recognition letter to Respondent or otherwise requested recognition, and none of Respondent's witnesses testified that they received the letter or a recognition request. (FOF, sec. II(F).)

Consistent with this lack of evidence, neither the General Counsel nor the Union argued in their posttrial briefs that I should find a violation based on this complaint allegation. For whatever reason, however, the General Counsel did not withdraw the complaint allegation. I therefore resolve it here by recommending that this complaint allegation be dismissed.

CONCLUSIONS OF LAW

1. Respondent True North of Utah, LLC d/b/a The Flower Shop is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. Charging Party United Food and Commercial Workers, Local 99 (Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. By, on or about April 2, 2024, terminating pharmacy agent Todd Wagner because he engaged in union activities, Respondent violated Section 8(a)(3) and (1) of the Act.

4. By, on or about April 25, 2024, terminating pharmacy agent Bridget Hughes and banning her from Respondent's pharmacies in Utah because she engaged in union activities, Respondent violated Section 8(a)(3) and (1) of the Act.

5. By, on or about May 10, 2024, terminating pharmacy agent Sara Rueda and banning her from Respondent's pharmacies in Utah because she engaged in union activities, Respondent violated Section 8(a)(3) and (1) of the Act.

6. The unfair labor practices stated in Conclusions of Law 3–5 above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

A. Standard Remedies

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

Respondent, having unlawfully terminated Bridget Hughes, Sara Rueda, and Todd Wagner, 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. Respondent shall also make Hughes, Rueda, and Wagner whole for any loss of earnings and other benefits that result from the unlawful terminations and, as to Hughes and Rueda, the unlawful bans from Respondent's pharmacies in Utah. The make-whole remedy shall be computed in accordance with *F.W. Woolworth Co.,* 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB 6 (2010). Consistent with *Thryv, Inc.*, 372 NLRB No. 22, slip op. at 14 (2022), enf. denied in part on other grounds, 102 F.4th 727 (5th Cir. 2024), Respondent shall also compensate Hughes, Rueda, and Wagner for any other direct or foreseeable pecuniary harms incurred as a result of the unlawful terminations and bans, 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.

Respondent shall also be required to remove from its files any references to the unlawful terminations of Hughes, Rueda, and Wagner and unlawful bans of Hughes and Rueda, and to notify them in writing that this has been done and that the terminations and bans will not be used against them in any way.

In addition, Respondent shall compensate Hughes, Rueda, and Wagner for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 27, 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), Respondent shall also be required to file with the Regional Director for Region 27 a copy of each backpay recipient's corresponding W–2 form reflecting the backpay award.

B. Request for a Bargaining Order

The General Counsel and Union maintain that a bargaining order is warranted under *NLRB v. Gissel Packing Co., Inc.*, 395 U.S. 575 (1969). (GC Posttrial Br. at 61–63; Union Posttrial Br. at 6–7.) Under *Gissel*, where a union has achieved majority support and an

employer engages in unfair labor practices that have the tendency to undermine majority strength and impede the election processes, the Board should issue an order for the employer to bargain with the union without an election if "the Board finds that the possibility of erasing the effects of past practices and of ensuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order." When determining whether a bargaining order is warranted, it is appropriate to consider an employer's entire course of conduct, both before and after the election, as well as the following factors: the seriousness of the violations and their pervasive nature; the number of employees directly affected; the identity and position of the individuals committing the unfair labor practices; and the size of the unit and extent of dissemination of knowledge of the respondent's coercive conduct among unit employees. *Gissel Packing Co.*, 395 U.S. at 614–615; see also *Garten Trucking LC*, 373 NLRB No. 94, slip op. at 3–4 (2024), enfd. 2026 WL 458394 (4th Cir. 2026), cert. denied 2026 WL 2976577 (2026).

I do not find that a bargaining order is warranted in this case. As a preliminary matter, the General Counsel and Union did not prove part of the alleged foundation for requesting a bargaining order, insofar as they did not prove that the Union or employees requested that Respondent recognize the Union as the exclusive collective-bargaining representative of the bargaining unit. (See Discussion and Analysis, sec. (C)(3), supra; see also GC Exh. 1 (par. 7(c)).) Beyond that, however, the sequence of events in this case does not support a finding that Respondent engaged in unfair labor practices that had a tendency to undermine majority strength and impede the election processes. To the contrary, a majority of nonsupervisory employees in the contemplated bargaining unit[58] supported the Union as of about March 25, 2024, but by April 1, 2024, the union organizing campaign was effectively over because the Union lost majority support due to some employees ending their support the Union on or shortly after March 25. The Union' loss of support therefore occurred before Respondent unlawfully terminated Wagner, Hughes, and Rueda on about April 2 and 25, and May 10, respectively. To be sure, Respondent terminated pharmacy agent Ruthven before April 1, but I did not find that termination to be unlawful. (See Discussion and Analysis, sec. (B)(3)–(6); FOF, sec. II(F)–(G) (noting that as of about March 25, 2024, about 16 out of 31 employees in the contemplated bargaining unit signed union authorization cards and were still working for Respondent, but within a couple days at least 3 employees withdrew their support).) The General Counsel and Union therefore did not establish an adequate foundation for a bargaining order (e.g., by showing that Respondent's unfair labor practices had a reasonable tendency to undermine the Union's majority support), and thus I decline to issue such an order here.[59]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[60]

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[58] Respondent disputes whether a bargaining unit composed of Respondent's nonsupervisory employees would be an appropriate unit. That argument is moot since I have not found that Respondent violated Sec. 8(a)(5) of the Act or found that a bargaining order is warranted.

[59] In the complaint, the General Counsel requested a notice reading as a special remedy. Since the General Counsel did not present an argument in support of that remedy in its posttrial brief, I find it has waived the request for that remedy.

[60] 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

ORDER

Respondent, True North of Utah, LLC d/b/a The Flower Shop, South Ogden, Utah, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Terminating, banning or otherwise discriminating against employees for supporting the Union or any other labor organization.

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

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

(a) Within 14 days from the date of this Order, offer Bridget Hughes, Sara Rueda, and Todd Wagner full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Bridget Hughes, Sara Rueda, and Todd Wagner 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.

(c) Compensate Bridget Hughes, Sara Rueda, and Todd Wagner for the adverse tax consequences, if any, of receiving lump-sum backpay award(s), and file with the Regional Director for Region 27 within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award(s) to the appropriate calendar year(s).

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful terminations and bans of Bridget Hughes, Sara Rueda, and Todd Wagner and, within 3 days thereafter, notify them in writing that this has been done and that the unlawful terminations and bans will not be used against them in any way.

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

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by the Board and all objections to them shall be deemed waived for all purposes due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its South Ogden, Utah facility copies of the attached notice marked "Appendix."[61] Copies of the notice, on forms provided by the Regional Director for Region 27, after being signed by Respondent's authorized representative, shall be posted by 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 Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 2, 2024.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 27 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C., November 2, 2026.

Geoffrey Carter
Administrative Law Judge

[61] 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 terminate, ban, or otherwise discriminate against any of you for supporting United Food and Commercial Workers, Local 99 or any other labor organization.

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, within 14 days from the date of the Board's Order, offer Bridget Hughes, Sara Rueda, and Todd Wagner full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Bridget Hughes, Sara Rueda, and Todd Wagner whole for any loss of earnings and other benefits resulting from their terminations and bans, 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 terminations and bans, including reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Bridget Hughes, Sara Rueda, and Todd Wagner for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 27 within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award(s) to the appropriate calendar year(s).

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful terminations and bans issued to Bridget Hughes, Sara Rueda, and Todd Wagner, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the terminations and bans will not be used against them in any way.

True North of Utah, LLC d/b/a The Flower Shop
(Employer)

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

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

Bryon Rogers Federal Office Building, 1961 Stout Street, Suite 13-103, Denver, CO 80294
(303) 844-3551, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/27-CA-340860 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 SE, Washington, DC 20570-0001, 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.