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

GE APPLIANCES, A HAIER COMPANY

and

Case 09-CA-351781

JEFF WARREN, AN INDIVIDUAL

Erik P. Brinker, Esq., for the General Counsel
Lira A. Johnson, Esq., *Dinsmore & Shohl LLP*, and *G. Randall Ayers, Esq. and Kenneth C. Rice, Esq., GE Appliances*, for the Respondent

DECISION

Sarah Karpinen, Administrative Law Judge. The General Counsel alleges in this case that Respondent GE Appliances violated the National Labor Relations Act (Act) by threatening Charging Party Warren with transfer to a less desirable position because of his actions as union steward and then transferring him to another job in retaliation for his union activity. As explained in more detail below, I find that the General Counsel did not provide sufficient evidence that Respondent threatened the Charging Party or transferred him in retaliation for his union activity.

STATEMENT OF THE CASE

Charging Party Warren filed the unfair labor practice charge in this matter with National Labor Relations Board (NLRB) Region 9 on September 30, 2024. The charge was served on Respondent on October 2. It was amended on March 12, 2024, and a copy of the amended charge was served on March 18. A Complaint issued on March 25, 2026, and Respondent filed a timely Answer denying that it violated the Act.

The trial in this case was held in Louisville, Kentucky, on June 23, 2026. All parties were afforded the opportunity to call, examine, and cross-examine witnesses, present documentary evidence, and file post-hearing briefs.

On the entire record, including the briefs filed by the General Counsel and Respondent, I make the following findings, conclusions of law, and recommendations.

JURISDICTION

Respondent is a corporation with an office and place of business in Louisville, Kentucky, where it manufactures and distributes household appliances. Respondent admits that in conducting its operations during the calendar year ending March 1, 2026, it sold and shipped goods valued over $50,000 from its Louisville campus directly to points outside the Commonwealth of Kentucky. Respondent further admits, and I find, based on the admitted facts and the record as a whole, that at all material times it has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act and that the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers – Communications Workers of America, Local 83761 (Union) is a labor organization within the meaning of Section 2(5) of the Act. Accordingly, I find that the Board has jurisdiction over this matter pursuant to Section 10(a) of the Act.

FINDINGS OF FACT[1]

I. Background

Respondent operates a 750-acre facility in Louisville, known as Appliance Park, where it employs over 8,000 people in five different appliance manufacturing plants. The events of this case happened at the dishwasher manufacturing plant, known as Appliance Park Building 3 (AP3). The Union and Respondent are signatory to a national collective bargaining agreement and a local supplemental agreement covering production and maintenance employees at AP3. The current agreements are effective from 2025-2029. (GC Exhs. 2(b) and (c)). The alleged unfair labor practice in this case occurred in 2024, and the collective bargaining agreements in place at that time were effective from 2020-2024 (GC Exh. 2(a), R. Exh. 1).

Charging Party Warren is a maintenance technician in AP3 and is part of the bargaining unit. For several months in 2024, from about May through at least August, he served as the union steward for the second shift maintenance technicians. (Tr. 31). Warren's supervisor is Richard Hall. In 2024, Hall reported to AP3 business leader Jason Hasselhoff, and Hasselhoff reported to Elias Alcantar, who was at that time serving as the maintenance director for AP3.

A. P2/P3 lines

Until August 1, 2024, Charging Party Warren was assigned to the P2 and P3 lines (P2/P3) in AP3 on the second shift, from 1:30 PM until 9:30 PM. During all times relevant to this case, Respondent did not have a second shift production crew on P2/P3, but first shift production workers continued to run production for the first hour of second shift, or until about

[1] I cited specific transcript pages and exhibits to aid the reader, but my findings are based on the entire record and not just the portions cited. I credited witness testimony that went unchallenged by the other parties and have incorporated that testimony in my findings of fact. Where credibility determinations were necessary, I explained my basis for those determinations in the analysis section of this decision.

2:30 PM. For the first hour or so of his shift, Warren was responsible for monitoring the lines and doing emergency repairs to keep production going. After first shift production ended, Warren worked on repairs and upgrades to keep the lines in working order. Until June 2024,[2] Respondent had a third shift production crew on P2, and Warren spent the last part of his shift preparing P2 to restart production. (Tr. 20-26). P3 did not have a third production shift. (Tr. 195).

B. The QS line

The QS, or "tub fab" line, is an automated line in AP3 that is used to assemble stainless steel dishwasher tubs. It runs production throughout the entirety of the second shift. As of July 2024, there were two second shift maintenance technician positions on the QS line. One of the positions was filled by an employee named Mike F.[3] The other position had been vacant for a long period of time and was typically covered by a maintenance technician from another shift working overtime. (Tr. 34-35). Warren testified that he viewed the QS technician position as the "most undesirable job in the building" because of its difficulty.

The QS line is fully computerized, and when it breaks down, technicians must access a screen to review what is wrong and attempt to repair it. (Tr. 37). Other maintenance technicians agreed with Warren that it was difficult to work on the QS line. Jason Thompson, a day shift maintenance technician assigned to the P3 line, testified that the QS line is complicated, and described it as a job requiring a minimum of two technicians, and "probably more than that," given the complexity of the equipment and the size of the area covered. (Tr. 187). David Creighton Samuels, second shift maintenance technician on the P5 line, testified that the QS line is not a desirable assignment, and described it as a "Frankenstein line" because it has been reengineered several times and is difficult to repair because the machines do not function independently, meaning that all must be working in order for the line to function. (Tr. 200-201).

C. Job bidding and transfer

When a maintenance position opens in AP3, the Union initiates a procedure, informally known as the "curly shuffle," to fill the position. The union steward begins with the most senior employee and goes down the seniority list asking if anyone wants the open job. If someone takes the open job, their job is filled in the same manner until every position is filled. New employees are placed in whatever positions are left vacant in the "shuffle" process. (Tr. 34). Maintenance technicians Thompson and Samuels testified that they bid on their own jobs in a shuffle and were not aware of open positions being filled in any other way. (Tr. 186-187, 199, 201).

In Section 14 of the 2020-2024 local supplemental agreement, it states that open maintenance jobs will be posted on a "bid board." When a position remains open "after postings, bump, and maintenance recall procedures are completed," it will be filled either by an employee who has submitted a valid transfer request, or by a new hire. The contract also includes a clause

[2] From here forward, all dates are in 2024 unless noted otherwise.

[3] I will refer to non-supervisory employees who did not testify by their first name and last initial.

(Section 14(c)) stating that nothing in the agreement "will be construed to restrict management's right of job assignment or rearrangement of the workforce." (R Exh. 1, p. 22).

D. Work orders

In addition to keeping their assigned lines running during production, maintenance technicians also complete work orders for repairs and updates on their assigned line. Justin Padgett, a **s**enior process improvement engineer who works on the first shift in AP3, is responsible for writing work orders. (Tr. 212). When Charging Party Warren was assigned to P2/P3, Padgett wrote work orders for repairs and updates to the lines and would typically talk with Warren and explain what he wanted done before leaving for the day. Warren would then complete the work during his shift. (Tr. 214-215, GC Exh. 7). Padgett testified that Warren did good work and rarely required any follow-up. (Tr. 218-219).

II. Warren is transferred from P2/P3 to QS line

On May 5, 2024, AP3 Plant Manager Tim Vibbert sent a memo to employees informing them that the appliance industry was in a "down" cycle due to external economic factors and that as a result, the company had to do what it could to control costs, which included ending third shift production on the P2 line. He assured employees that the decision was not a reflection of the quality of their work, and that they would be able to move into other jobs under the terms of Respondent's collective bargaining agreement with the Union. (R Exh. 2).

Warren testified that he was not told that his work would be impacted by the change. (Tr. 28). When third shift production on the P2 line ended on June 2, his work continued as before, except that he was no longer required to prepare the line for third shift production and instead completed work orders until the end of his shift. (Tr. 29-30). Engineer Padgett testified that he was not aware of any changes to Warren's job duties after the P2 line stopped running a third production shift, other than that he had more time to complete work orders. (Tr. 216-217). He testified that there would "hypothetically" be fewer repairs and breakdowns on the line after the third shift production shift stopped, because usage would be down, but that the failures that occurred on the line "are just the stuff that happens over time," and would happen whether or not Respondent was running another production shift, so he did not see a "marked drop-off" in work orders relating to the P2 line after the third shift production shift ended. (Tr. 221-223).

A. Events of July 31 and August 1

On July 31, Supervisor Hall called Warren over to the QS line. Warren testified that when he arrived, Hall told him that the system of "guys working over and the guys coming in early to cover the QS with Mike is not working out." He explained that the regular QS maintenance technician, Mike F., did not have any help and was waiting for another technician to assist him. Warren said he would call the shift coordinator, Bob D. (Tr. 39). The coordinator is a non-supervisory bargaining unit employee who is responsible for giving employees their work assignments each shift. (Tr. 40).

Warren testified that Coordinator Bob D. told him that an employee from first shift, Don H., was assigned to the QS line, and Warren asked him to find him. A few minutes later, Bob D.

came back and told Warren and Hall that Don H. was working on another section of the line by himself. Warren testified that he then turned to Supervisor Hall and told him he did not see a reason to discipline anyone. Hall responded, "well, you need to go tell him that he needs to be with Mike [F.]" Warren told him that he was the union steward and that Supervisor Hall was the one who had to tell employees what to do, and that Warren's job was to represent them.

Warren testified that Supervisor Hall then asked him, "so you're not going to tell him what to do?" and that he responded that he would not. Hall repeated his question, then said, "well, starting tomorrow you're going to be on the QS line, and the guys that are covering overtime will be on your line, covering your line." (Tr. 41-42). Warren testified that Hall did not give a reason for moving him to the QS line, other than saying, after Warren told him that he could not move him to another line, that he had the right of assignment. (Tr. 42). The following morning, Warren reported to the QS line, where he has been working since. (Tr. 43-44).

Hall did not have a clear memory of his discussion with Warren but remembered telling him about his reassignment to the QS line and that Warren was "very animated and…very excited." (Tr. 327, 334, 368-369). He testified that if he needed additional staffing during a shift, he would contact the coordinator and not a steward, and that he could not recall ever asking a union steward to find another employee to work on a particular job. (Tr. 337-338).

B. Grievances

On August 1, Warren filed two grievances protesting his transfer to the QS line. The first grievance stated that he was being retaliated against for his "recent acceptance of the position of 2nd shift maintenance steward" by, among other things, being "forcibly assigned to another production line." He also alleged that his confidential meetings with management as steward were being "leaked" to other maintenance employees in an "untrue or altered" form, causing him to have a hostile work environment. (GC Exh. 4, p. 1). The second grievance alleged that Respondent violated contractual transfer procedures by forcing him to work on the QS line and demanded that a new hire be brought in for the position instead. (GC Exh. 4, pp. 1 and 3).

On the grievance fact sheet, Warren wrote that in June, he went to HR about his belief that his conversations with Hall were being leaked, and that someone named Amanda then "sent out an email about confidentiality." He also wrote that he met with Maintenance Director Elias Alcantar about Hall not using the coordinator to assign work. The date of this meeting was hard to read but may have been marked as June 28. Finally, he wrote that on July 31, he "was called to QS line by Richard Hall. Richard stated that the maint[enance] overtime people working over and coming in early were not performing well. Pointed out Mike [F.] was working alone. The[n] told me I would be moved to cover QS line. After investigating found [Don H.] was working on another call (source Bobby [D.] coordinator)." (GC Exh. 4, p. 5).

The grievances were both denied by Supervisor Hall on August 6, who stated that Warren was "moved from a line that doesn't run on his shift normally any more to a line that only has one mechanic and is struggling to operate on our shift." (GC Exh. 4, pp. 2 and 4). Former Maintenance Director Alcantar testified that the grievances were terminated by the Union when they reached his level of the grievance process. (Tr. 244).

C. Maintenance Director involvement in transfer decision

Elias Alcantar, who is currently serving as Respondent's support operations director, was the AP3 maintenance director at the time Warren was transferred. He testified that he made the decision to move Warren to the QS line as part of an effort to implement Plant Manager Vibbert's directive to reduce costs in AP3, and that after receiving Vibbert's memo, he reviewed plant operations and concluded that the QS line was the least efficient part of the plant, and that problems there affected the entire building because if the line shut down, the other lines did not have dishwasher tubs to use in their assembly processes.

Alcantar testified that he reviewed staffing in AP3 and noted that one of the second shift maintenance positions on the QS line was unfilled and was being covered for the first four hours by a first shift employee staying past their shift on overtime, and for the second four hours by a third shift employee coming in early. He also saw that the P2 line had a full-time technician assigned on the second shift even though it did not have a second-shift production crew.

He testified that he considered the inefficiencies that resulted from two overtime employees handing off work to each other mid-shift on the QS line, the cost of paying eight hours of overtime to have continuous coverage for the QS line, which runs production during the entire second shift, as opposed to paying someone overtime to cover the P2 line for the one to two hours that it ran production during the second shift, and the "finicky and technical" nature of the equipment on the QS line, which he believed could be better maintained by a regularly assigned employee, before determining that Warren should move to the QS line. (Tr. 235-240).

Alcantar testified that he did not know Warren was the union steward for the second shift at the time he made the decision. He acknowledged that he met with union officials as part of his job but stated that he only met with the chief steward and not Warren. (Tr. 241-242). He testified that he did not speak to Supervisor Hall about the transfer and only communicated with Hall's supervisor, AP3 Business Leader Hasselhoff, who in turn communicated with Hall. (Tr. 243). He denied that Hall asked him to transfer Warren or that he said anything negative about Warren to him. (Tr. 244-245). Alcantar could not recall when he made the decision, other than that it was after May, when he took over as maintenance director, and before October. He believed that it was "[m]ore than likely" in "July, sometime," but he was not sure. (Tr. 269, 276). He did not have any written notes, emails, or other documentary evidence concerning the decision.

Supervisor Hall testified that he told Warren about the transfer but was not the "sole person" responsible for the assignment. He testified that he had discussions with his immediate supervisor, Business Leader Hasselhoff, about the need for another technician to be permanently assigned to the QS line to stabilize the operations there. (Tr. 327-328). Hall testified that he and Hasselhoff discussed the QS line and noted that "the only availability we had was the fact that P2 did not run during our shift, and Mr. Warren was available to add the stability to tub fab…" (Tr. 334-345). Business Leader Hasselhoff did not testify.

In a written response to Warren's grievance, Hall stated that Warren was moved to QS because overtime employees could not be relied upon to cover the line and as a result, repairs and downtimes had increased. He wrote that he spoke with Hasselhoff about the issue and noted that while Warren completed work orders on P2 and P3, the P2 line had "stopped running on 2nd

shift" and the QS line was struggling. Hall wrote that he "proposed the move to QS and it had also been discussed before either several weeks or possibly a month or so ago but shelved," and that when he approached Warren about the move on July 31 he told him "he can go back to P2 if it comes back on line on our shift," and if other positions open, "we can do a shuffle and he can use his seniority to move to another area if he wants." (GC Exh. 4, p. 10).

D. Status of P2/P3 and QS lines after the transfer

Warren acknowledged that Hall told him on August 1 that his assignment to the QS line was temporary. (Tr. 43-44, 367). He also acknowledged that he was offered other positions after being transferred to the QS line but declined to accept those offers because he wanted to return to P2/P3 and believed he had been wrongfully transferred. (Tr. 266-267, 354-355, 391-392, R. Exh. 7). Former Maintenance Director Alcantar testified that there is no longer a regular maintenance position on P2/P3 during second shift, and that Respondent staffs the last hour of production and completes repairs and maintenance on the line with overtime employees. (Tr. 266-267, R. Exh. 4). He testified that efficiency on the QS line has improved since Warren took over the vacant technician position, and that overtime usage in AP3 was reduced from 28 percent in May 2024 to 23 percent in December 2024. (Tr. 242, 267-268).

Project Coordinator Kenneth Allgeier, an hourly employee who is responsible for matching employees who sign up for overtime with available assignments, testified that prior to August 1, he did not typically assign overtime employees to P2/P3 on second shift, but that after Warren moved to the QS line, he assigned overtime employees to cover those lines and testified that he believed the employees would typically continue to work on the P2/P3 lines to complete work orders after the first shift production shift ended. However, he acknowledged that he did not work on second shift and that those employees may also work in other areas of the AP3 building as needed. (Tr. 159-160, 166-167). Hall testified that overtime employees could return to other projects when production ended on P2/P3 but acknowledged that Allgeier is the one responsible for assigning employees to projects. (Tr. 333). A typical overtime shift is four hours.

Engineer Padgett testified that it was "nice to have a consistent face" to work with on P2/P3, so he did not have to bring new people up to speed on the lines, and that it was a "better situation" when Warren was still there because he got a lot of work done. (Tr. 228-229). Padgett continued to produce work orders for P2/P3 after August 1 and testified that the amount of work did not change significantly. (Tr. 220). Day shift maintenance technician Jason Thompson testified that since Warren was transferred to the QS line, he has frequently been assigned to cover P2/P3 during second shift on overtime, including in the past year. He testified that the lines still run production for about an hour into the second shift, so he is responsible for keeping them running, then completing work orders to update and maintain the lines. (Tr. 191-192).

ANALYSIS

The Complaint alleges that Respondent unlawfully threatened to reassign Charging Party Warren because of his actions as union steward, then reassigned him to QS in retaliation for his union activity, and to discourage other employees from engaging in union or other protected concerted activities. (Complaint, paras. 5-6). As outlined below, I find that the General Counsel has failed to establish that Respondent violated the Act.

I. Alleged threat

Employers are prohibited from making statements that would have a "reasonable tendency" to deter employees from engaging in union activity. The Board considers the circumstances surrounding a statement, as well as the statement itself, in assessing whether it would have a "reasonable tendency" to discourage employees from engaging in union activity. The standard is an objective one, viewed through the eyes of a reasonable employee, and the employer's intent in making the statement is immaterial. See *Lush Cosmetics*, 372 NLRB No. 54, slip op. at 4 (2023), citing *KSM Industries*, 336 NLRB 133, 133 (2001).

Counsel for the General Counsel alleges that after Charging Party Warren told Supervisor Hall that he would not tell technician Don H. what to do, "Hall told Warren that he was going to reassign him to the QS line if he was going to refuse his instruction," then followed through with the threat when Warren "again refused" to follow Hall's instruction. (GC Brief, p. 26). After carefully reviewing the record, I find that the evidence does not support this characterization of events, even when fully crediting Warren's testimony about what Hall said.[4]

Charging Party Warren testified that after Supervisor Hall told him to tell employee Don H. to work near regular technician Mike F., he responded as follows:

> Warren: And I told him I said well, Richard, I'm the union steward; you're the boss. I said you're the one that needs to go tell him what to do. I said, I represent him, I'm like his lawyer. And he goes, so you're not going to tell him what to do? And I said no. And he goes, well –– he said it like twice –– and then –– I –– **the next thing he said**, well, starting tomorrow you're going to be on the QS line, and the guys that are covering overtime will be on your line, covering your line.
>
> Q: And –– and –– and what was the reason he gave you for doing that?
>
> Warren: **He didn't**. I mean –– I questioned –– I said, you can't do that. And he goes –– he goes, I've got right of assignment.
>
> …
>
> Q: Yeah. So he says to you…you said he said it multiple times, you're not going to do what I tell you to do meaning—
>
> Warren: Yeah. He said it twice.
>
> Q: --meaning telling this overtime person that he needs to stay with Mike?

[4] In making my credibility determinations in this case, I considered the testimony of all the witnesses in the context of their demeanor, the weight of the evidence, the facts, the probability that the testimony was true, and the reasonable inferences that could be drawn from their statements. See *Double D Construction Group*, 339 NLRB 303, 305 (2003), citing *Daikichi Sushi*, 335 NLRB 622, 623 (2001). I also followed the general rule that credibility determinations are not "all or nothing," and that it is possible to disbelieve portions of a witness' testimony without discrediting everything that they say. See *Daikichi Sushi*, supra, at 622.

> Warren: Right.
>
> Q: And when you said that you weren't going to do that, he **then −− that's when he said you were going to move** −− you were going to get moved to that position?
>
> Warren: **Yes.** He said, starting tomorrow you will be on QS line tub fab area, and the overtime guys will be on your line covering your area. (Tr. 41-42, emphasis added).

At no point did Warren say that Hall told him to tell Don H. what to do or face reassignment. He testified only that after he refused to follow Hall's instruction, Hall repeated twice, "you're not going to tell him what to do," and then told Warren that he was being reassigned to the QS line beginning the following day. Therefore, I find that the General Counsel has failed to produce sufficient evidence to support the allegation that Hall threatened Warren that he would be reassigned if he did not follow his instruction.

I separately considered whether Hall's statements are evidence that Warren was transferred in retaliation for refusing his instruction in my analysis of his reassignment, below.

II. Reassignment

To establish that an employee has been disciplined in retaliation for union activity, the General Counsel must establish the following: "(1) union or other protected activity by the employee, (2) employer knowledge of that activity, and (3) animus against union or other protected activity on the part of the employer." *Intertape Polymer Corp. and Local 1149, UAW*, 372 NLRB No. 133 (2023), slip op. at 7, citing *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied, 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.,* 462 U.S. 393 (1983). If the General Counsel can meet this burden, the burden then shifts to the employer to prove it would have terminated the employee even in the absence of their protected conduct. *Id*., slip op. at 8.

A. Activity and knowledge

It is undisputed that Warren was a union steward, and that Supervisor Hall knew of his union activity. Respondent concedes that Warren engaged in union activity but argues that knowledge is not established because former Maintenance Director Alcantar did not know that Warren was a union steward at the time he made the decision to transfer him to the QS line. (R. Brief, p. 15). This argument fails for two reasons. First, Hall is an admitted supervisor, so his knowledge of Warren's union activity is imputed to Alcantar as the decision maker. See *Nitro Construction Services*, 374 NLRB No. 120, slip op. at 1 (2026).

Further, there is evidence, based on Supervisor Hall's own testimony, that he had input into the decision to transfer Warren. Hall was a credible witness, and he had no reason to fabricate testimony that cut against Respondent's claim that the decision was made only by Alcantar. Alcantar was also a credible witness, and (as outlined further below) I am not

discrediting his testimony that he made the decision based on data and the need for a permanent technician on the QS line. However, he admitted that he could not remember when he made the decision, so it is likely he also could not remember all the details that went into making it.

I credit both Hall and Alcantar that they did not speak directly to each other about transferring Warren, but both testified that they discussed the matter with Business Manager Jason Hasselhoff, who was not called to testify by any party. It is reasonable to infer that information from Hall filtered up to Alcantar through Hasselhoff, even if Alcantar did not know, or forgot, that the information came from Hall. Therefore, I find that there is sufficient evidence to find that Hall had some influence on Alcantar's decision. See *Springfield Air Center*, 311 NLRB 1151, 1151 (1993) (knowledge of company president that employee engaged in protected activity imputed to directors who fired the employee when evidence showed that company president had at least some input into the termination decision).

B. The change from P2/P3 to QS was an adverse action

Respondent argues that transferring Charging Party Warren to the QS line was not an adverse action because he stayed on the same shift, in the same building, working the same hours. However, Warren testified persuasively that the QS line was more difficult than the P2/P3 lines, and that he likes working there less because it is a complex, computerized system. His fellow maintenance technicians, Thompson and Creighton Samuels, also testified that they viewed working on the QS line as less desirable due to the complexity of the equipment, and their credibility on this point was bolstered by the fact that no employee bid on the job while it was open, and by the testimony of former Maintenance Director Alcantar about the "finicky" nature of the equipment on the QS line. Therefore, I find that the General Counsel presented sufficient evidence to establish that the transfer was an adverse action. See *River City Asphalt*, 372 NLRB No. 87, slip op. at 1, n. 3 (2023) (rejecting claim that driver did not suffer adverse action when reassigned to different truck because he did not lose compensation when he and another employee testified that drivers lost time and efficiency when assigned to unfamiliar vehicles, and preferred assignment to familiar vehicles with better equipment).

C. Retaliatory motive

In determining the motivation behind an adverse action, "animus and a causal connection may be inferred from circumstantial evidence based on the record as a whole." *Intertape Polymer Corp*., supra, 372 NLRB No. 133, slip op. at 14, quoting *Tschiggfrie Properties*, 368 NLRB No. 120, slip op. at 8 (2019) (internal quotation marks omitted). It is not necessary to provide direct evidence of an unlawful motive, "i.e., the proverbial smoking gun," as such evidence "is seldom obtainable." *Id.* Factors that may be considered in lieu of such direct evidence include "the timing of the action in relation to the union or other protected conduct; shifting, false, or exaggerated reasons offered for the action… departures from past practices; disparate treatment of the employee; and reliance on pretextual reasons for the action." *Id*.

The General Counsel argues that Supervisor Hall had animus toward Warren regarding his conduct as union steward, culminating in Warren's refusal on July 31 to tell employee Don H. what to do, and that Respondent retaliated against him by transferring him to the QS line.

However, as outlined below, I find that the General Counsel has not established that the transfer was motivated by animus against the Union or Warren's union activities.

1. Warren's interactions with Hall as steward prior to July 31

The General Counsel claims that Supervisor Hall and Charging Party Warren were "bumping heads" almost immediately after Warren became a steward (GC Brief, p. 26) but provided little evidence to support this claim. Warren testified that he would talk to Hall in his office about various issues, but that they never agreed to settle anything, and "before I would get out in the plant, I would hear what we were talking about from somebody in the plant," but it would be "twisted around just a little bit" to the point it would upset his fellow employees. (Tr. 51). However, he did not give any examples of how his words were changed to reflect poorly on him. He testified that he went to the HR office about the issue and wrote in his grievance worksheet that he talked to "Amanda in HR," but the record is devoid of any evidence about who Amanda is, whether she is a supervisor, or whether Hall or Alcantar knew about the meeting.

Warren also testified that he had issues with Hall "coming straight to me instead of going through the coordinator and…bypassing seniority." (Tr. 51). He wrote on his grievance worksheet that he met with Maintenance Director Alcantar about it, possibly on June 28, although the date was not clear. (GC Exh. 4, p. 5). But he did not testify about this meeting, so there is no evidence on the record about what was said, whether Hall was involved, or if any resolution was reached. There is also no evidence that Warren ever filed a grievance about the coordinator issue (or any other issue) before he was transferred to QS on August 1.

Supervisor Hall testified that his conversations with Warren were like the ones he had with other stewards, which he described as general discussions about production and staffing. (Tr. 337). He denied leaking the contents of their conversations and testified that the only dispute he could recall Warren being involved in concerned removing a lock on a break room door; however, he and Warren were on the same side of that dispute: Warren wanted the lock removed, and he agreed. (Tr. 380-381). The General Counsel did not rebut Hall's testimony that he and Warren were on the same side in the lock dispute and did not provide enough information about their other interactions to establish that the two had a contentious relationship.

2. Events of July 31

The General Counsel argues that Warren was "reassigned as a direct result of his refusal to tell another employee what to do in his capacity as shop steward." (GC Brief, p. 27). Timing can be strong evidence of a nexus between protected activity and an adverse action. See *Capstone Logistics,* supra, 372 NLRB No. 124, slip op. at 6 (firing employee soon after learning of her protected activity was evidence of animus). But the evidence presented here does not support finding that Hall transferred Warren because he refused his instruction on July 31.

I credit former Maintenance Director Alcantar's testimony that he made the transfer decision, and that he reviewed staffing and efficiency data before doing so. Although he was admittedly unable to recall the date he made the decision, and he did not have any documentation showing when or how the decision was made, his testimony about the information he reviewed and the reasons he made the decision was detailed and the way in which he described why and

how he decided to transfer Warren was sincere and reflected a genuine effort to explain his reasoning. I also credit Hall's testimony that he was not the sole decision maker, and that he discussed the transfer with Business Leader Hasselhoff before communicating the decision to Warren. He testified in a direct, matter-of-fact manner, and provided a similar justification for the transfer in his grievance response.[5] Therefore, even though Respondent could not provide a fixed date for when the decision was made, it provided sufficient evidence to establish that the decision was made over time, by multiple layers of management, and then communicated to Warren by Hall on July 31.

The predetermined nature of the decision is also reflected in the way Supervisor Hall initially brought up the subject with Warren on July 31. Warren testified that the first thing Hall told him when he called him over to the QS line was that "guys working over and the guys coming in early to cover the QS with Mike is not working out." This was consistent with Warren's grievance worksheet, in which he stated that Hall called him to the QS line and told him that "the maint[enance] overtime people working over and coming in early were not performing well. Pointed out Mike [F.] was working alone. The[n] told me I would be moved to cover QS line. After investigating found [Don H.] was working on another call (source Bobby [D.] coordinator)." (GC Exh. 4, p. 5).

Warren did not mention his conversation with Hall about telling Don H. what to do in his grievance or on his grievance worksheet. However, I credit Warren's testimony that the conversation took place. Hall did not have sufficient memory of their conversation to specifically refute it, and Warren testified in a matter-of-fact manner without any signs of deflection or fabrication. But even if his testimony is fully credited, there is no evidence that Hall expressed any anger toward Warren for refusing his instruction or threatened him with retaliation. Warren testified that Hall simply repeated twice, "you're not going to tell him what to do," and then told him he was going to be working on the QS line beginning the following day.

It is understandable that Warren subjectively believed there was a connection between his refusal of Hall's instruction, and Hall telling him that he was being transferred to QS, because of the timing of the two events. But there is insufficient objective evidence to support an inference that Hall transferred Warren to the QS line because he did not follow his instruction, when considering the credible evidence from Respondent that the transfer decision was made by Alcantar, with input from Hasselhoff and Hall, and then conveyed by Hall, and not made spontaneously by Hall in response to Warren's actions on July 31.

3. Evidence of pretext, disparate treatment, and past practice

The General Counsel argues that Respondent's stated reasons for transferring Warren were false, and that the unprecedented nature of the action shows that Warren was targeted because of his union activity. However, I find that there is insufficient evidence that

[5] The General Counsel argues that Hall's testimony should be discredited because he acknowledged that he mistakenly wrote in his grievance response that Warren was moved to QS because the P2 line did not normally run production on second shift anymore, when P2 never ran production on that shift. However, I find that this is not a reason to discredit him, as it is undisputed that the P2 line did not run production on second shift, and is also undisputed that it stopped running a third production shift in June.

Respondent's explanation of why it transferred Warren was pretextual, or that Warren was targeted because of his union activity and not because he worked on a line that was not running production for the majority of second shift.

Respondent's witnesses credibly testified that the lack of two regular technicians on the QS line caused downtime issues that affected overall production in the plant, and that they determined that it was important to have a second, regularly assigned technician on QS to stabilize the operations there. They also credibly testified that Warren was selected because he was working on a line that did not run production for most of his shift, and that they believed it would improve efficiency and reduce overtime to transfer him to QS.

The General Counsel argues that there was "scant evidence" to support a finding of operational need, noting that Respondent has two third shift maintenance employees working on its P5 line, even though it does not run production on that line on third shift. (GC Brief, p. 28-29). But Respondent's third shift operations were not at issue in this case, and there is no evidence that there were any issues on the QS line on third shift, so Respondent's staffing choices on that shift are not relevant to the issue of whether it had a legitimate basis to transfer Warren to cover the vacant second shift position on QS.

The General Counsel did not identify any second shift maintenance technicians who were assigned to a line that did not run production for the entire shift, so there is no basis to find that Warren was singled out over other, similarly situated employees. There is evidence that open positions were filled using the shuffle process, but the record showed that shuffles are initiated by the Union when a position is initially vacated, not used to fill long-vacant openings. It is unclear whether Respondent can initiate a shuffle on its own, but since the QS position had been vacant for some time without any bids, there is no evidence that using the shuffle process would have achieved Respondent's goal of filling the position with a regular, full-time technician.

The General Counsel argues that Respondent's reason for selecting Warren was baseless because the work on the P2/P3 lines did not disappear and is now being done by overtime employees. There was considerable back and forth at the trial about how much time Warren and others spent completing work orders on P2/P3, and whether the electronic record system accurately reflected the hours spent on those work orders or the identities of the technicians doing the work. (See, e.g., GC Exhs. 5(a) and (b), R. Exhs. 5 and 6). I credit Engineer Padgett that he relied on Warren to complete work orders on P2/P3 before August 1, and also credit Coordinator Allgeier and Technician Thompson that day shift technicians were assigned on overtime to complete projects on P2/P3 after Warren was transferred.

However, the continuation of work on P2/P3 does not show that Respondent's justification for transferring Warren was pretextual. Alcantar acknowledged that he knew that overtime employees would be needed to cover the time period when the first shift was still running production on P2/P3, as well as to complete work orders, but that he believed overtime would be reduced because Respondent would no longer have to bring in overtime employees from both the first and third shift to cover the entire eight hours of production on the QS line on second shift. His explanation is supported by the fact that as of June 2024, P2 was no longer running a third production shift, so there was no need to bring in a third shift employee early on overtime to prepare the line or cover the first part of the third production shift.

Further, reduction of overtime was not the only reason Respondent gave for selecting Warren for transfer. Both Hall and Alcantar stressed the need for stability on the QS line, because problems on that line resulting from having an open technician position and using different overtime employees for coverage (along with the inefficiencies of handing off tasks between overtime employees mid-shift) were impacting efficiency in the entire plant. They also provided a rational basis for why they did not have the same concerns about P2/P3, because it was not running production for the full eight-hour shift.

The General Counsel argues that even if Respondent had a legitimate need to cover the QS line, the manner in which the transfer was done is evidence of animus, as "reassignments like this are supposed to be on a temporary basis, and open positions are to be filled through hiring when they remain unfilled after all the bids, transfers, etc. in the curly shuffle." (GC Brief, pp. 29-30). However, Warren acknowledged that the move was presented to him as temporary, and that Respondent offered him other positions, but he declined because he wanted to go back to his former assignment on P2/P3. Therefore, there was no open position on QS for Respondent to fill when it hired new employees after August 1.

Absent evidence that Respondent eliminated the P2/P3 position and transferred Warren to QS to retaliate against him for his union activity, I am unable to recommend that Respondent be required to restore the status quo and return Warren to the position he was in prior to August 1.

CONCLUSIONS OF LAW

Respondent has not violated Section 8(a)(1) or (3) of the Act as alleged in the Complaint.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended[6]

ORDER

The Complaint is dismissed in its entirety.

Dated Washington, D.C., November 16, 2026

Sarah Karpinen

Sarah Karpinen
Administrative Law Judge

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