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

J.O. MORY, INC.

and

Cases 25-CA-309577
25-CA-336995

INDIANA STATE PIPE TRADES ASSOCIATION, A/W UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO

Thomas Browder, Esq. and Derek A. Johnson, Esq., for the General Counsel
Kevin Dill, Esq. (O'Donoghue & O'Donoghue, LLP), for the Charging Party
Thomas M. Kimbrough, Esq. (Barrett & McNagny, LLP), for the Respondent

DECISION

Sarah Karpinen, Administrative Law Judge. This case involves "salting," a tactic some unions use to send organizers, or "salts," to work for non-union employers to organize their employees. In 2022, an organizer with the Indiana State Pipe Trades Association (Union) applied for an open position with non-union HVAC company J.O. Mory, Inc. (Respondent). To increase his chances of being hired, he falsely claimed that he worked for a non-union employer. After working for Respondent for about a month, he revealed that he was there to organize its employees and never worked for the non-union employer. He was fired the next day. The General Counsel alleges that he was fired in retaliation for his union activity, and further alleges that Respondent's employment agreement contains a non-compete clause and other provisions that chill employees from engaging in salting and other union and protected activities. Respondent says that the organizer was fired for lying, not for his union activity, and argues that its employment agreement is lawful. I find that the employee was fired in retaliation for his union activity and that Respondent's employment agreement chills employees from engaging in union and other protected activities. I also find that the "Union Free Statement" in Respondent's handbook contains unlawful threats and other coercive statements.

STATEMENT OF THE CASE

This case was tried in Fort Wayne, Indiana on March 5, 2024. The Union filed the first charge in this matter, in Case 25-CA-309577, on December 28, 2022. (GC Exh. 1(a)). The Director of Region 25 of the National Labor Relations Board (NLRB) issued a Complaint and Notice of Hearing on November 17, 2023, and Respondent timely filed its Answer on November 21. (GC Exh. 1(c), (e)). The Union filed a second charge, in Case 25-CA-336995, on March 4, 2024. The Regional Director issued an Order Consolidating Cases, Consolidated Complaint, and Notice of Hearing on the same day. (GC Exh. 1(h), (j)). Respondent timely filed its Amended Answer and filed a motion to postpone the hearing with respect to the new charge filed in Case 25-CA-336995. (GC Exh. 1(m), (n)).

Before adjourning the hearing on March 5, I ordered that the record be left open to allow Respondent to determine whether it wished to present any additional evidence in defense of the allegations in Case 25-CA-336995. The parties agreed that if Respondent did want to introduce additional evidence, the hearing would reopen via videoconference on March 18. On March 11, Respondent notified me that it did not wish to present additional evidence, and I issued an Order on that date closing the hearing and setting the briefing schedule.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

I. Jurisdiction

Respondent services and installs heating, ventilation, and air conditioning (HVAC) systems and provides metal fabrication, mechanical, and plumbing services from its office and place of business in Fort Wayne, Indiana. Respondent admits that it purchased and received goods valued at more than $5,000 directly from points outside the State of Indiana during the twelve months preceding the issuance of the Complaint in this matter, and that at all material times it was an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent also admits, and I find, that this dispute affects commerce, and that the Board has jurisdiction pursuant to Section 10(a) of the Act.

II. Background

Respondent is a family-owned business that has been in operation since 1892, beginning as a general store and evolving over time into a contracting business. (Tr. 41, 267). John R. Mory is the company's president. (Tr. 267). Respondent has about 125 employees in total at all its locations, which include a main office in South Milford, Indiana, a warehouse and fabrication shop in Wolcottville and a facility in Fort Wayne. (Tr. 67, 133). In 2022, Respondent had about twenty-eight employees in Fort Wayne, including office employees, installation workers, salespeople, and residential and commercial service technicians. (Tr. 47).

Mike Kugler[1] is Respondent's Division Manager. Kurt Dunafin was its Service Manager in 2022 (during the events at issue in this case) and is currently its Purchasing Manager. (Tr. 42). Tammy Preston is Respondent's Human Resources Director. She is involved in hiring, firing, and onboarding employees. (Tr. 105-106). Respondent admits, and I find, that Kugler, Dunafin and Preston are supervisors within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) at all material times.

Company President Mory testified that his company has never been unionized, and that it is his personal preference that it remain non-union. (Tr. 278-279). Respondent maintains an employee handbook which includes, as its first entry after the table of contents, a "J.O. Mory, Inc. Union Free Statement" that states as follows:

[1] Mr. Kugler is incorrectly identified as "Mike Kingler" in the Complaint. GC Exh. 1(j), p. 2.

> J.O. Mory, Inc. is a union free (Merit Shop) Company, and we feel our employees prefer to remain that way. No one is required to pay dues to a union in order to work here and all of the benefits, wages and privileges of employment have been vuluntarily [sic] given to employees by the company without the necessity of having to pay dues, fees or assessments to unions.
>
> Because we attempt to conduct ourselves in a way that makes unions unnecessary, we deal with our employees individually, through departmental meetings and out [sic] Human Resource Department, rather than through union outsiders. Of course, we have problems from time-to-time, as all companies do both union and non-union. Therefore, we have established employee procedures and communication policies with members of management, that attempt to resolve these problems quickly without the hostility and argumentation that unions often bring to the workplace.
>
> J.O. Mory, Inc. will exert every legal means to keep our company free from union interference because we feel that a union would not be of any advantage to either the employees or the company and could hurt the business and customers on which we all depend for out [sic] livelihood.
>
> If a union organizer or co-employee should ask you to sign what is known as a union organization card, we are asking you to refuse to sign it. You should know that you have a right to refuse to sign any such card, which generally asks you to select the union as your representative. If any outside person or employee should threaten or coerce you into signing a card, please report it to your supervisor. (R. Exh. C, p. 4).

Respondent reviews its handbook with its employees during orientation. (Tr. 111). The handbook includes an "Employee Handbook Acknowledgement" that Human Resources Director Preston testified employees are required to sign at orientation stating, "In consideration of my employment, I agree to conform to the policies and procedures of J.O. Mory, Inc. and I understand that my employment and compensation can be terminated, with or without notice, at any time, at the option of either J.O. Mory or myself." (Tr. 132, 144, R. Exh. B, R. Exh. C, p. 53). Human Resources Director Preston testified that the "Union Free Statement" is not a policy but admitted that she does not differentiate between statements and policies when reviewing the handbook with employees. (Tr. 132, 191).

III. The Union's salting campaign

David McClure works for the Union as an organizer. (Tr. 193). He was hired by the Union in the summer of 2022[2] and applied for a commercial HVAC technician position with

[2] From here forward, all dates are in 2022 unless otherwise indicated.

Respondent at its Fort Wayne facility in July. (Tr. 68, 195-196, GC Exh. 2). After turning in his resume, McClure spoke with District Manager Kugler. (Tr. 197). Kugler called Service Manager Kurt Dunafin, and they interviewed McClure that day. (Tr. 43-44, 68, 197).

McClure applied as a covert organizer, or salt. He gave Respondent a resume that falsely claimed that he worked at a non-union company called Deem from 2018 to the time of his application, where he performed "all aspects of HVAC-R repair and preventative maintenance. Including Chiller, Boiler, RTU, Heat pump, Split systems, Pumps, Walk-ins, Reach-ins and Ice machines." (GC Exh. 2). He admitted that he gained that experience from two union companies that he omitted from his resume, WMI and Habel, not from Deem. (Tr. 200-201). He worked as an HVAC technician for WMI for three and a half years and worked for Habel for about a year as a supervisory HVAC technician. (Tr. 201).

McClure testified that he believed claiming to work for a non-union employer would increase his chances of being hired, as people in the HVAC industry would generally recognize WMI and Habel as union shops and Deem as non-union. (Tr. 203). He testified that other than the names of his previous employers, his resume accurately reflected his skills and experience, and that he did not lie about any of his certifications. (Tr. 203). He worked with commercial refrigeration at WMI and had experience on projects including replacing and repairing rooftop HVAC units, installing, and repairing chillers, and quoting jobs. (Tr. 200- 202).

Service Manager Dunafin testified that when he interviewed McClure, he knew a "little bit…about Deem," and knew it was a bigger company that did similar work to Respondent. He testified that he and Kugler asked McClure "several technical questions that he answered very well." (Tr. 69). The technical questions he asked were not about Deem specifically but about the HVAC business generally. As an example, Dunafin asked McClure whether he did chillers, and McClure responded that he worked on a 500-pound chiller at the Lutheran Hospital. (Tr. 97). Dunafin testified that the questions he asked were aimed at finding out McClure's capabilities. (Tr. 98, 101). He also asked questions about Deem, including the kinds of tools Deem supplied and the type of work the company did. (Tr. 97, 198).

After the interview, Dunafin called Respondent's South Milford office and told Human Resources Director Tammy Preston and Company President John Mory that he wanted to offer McClure a job. (Tr. 140). Preston and Mory approved the hire. (Tr. 140). Mory testified that he agreed to hire McClure because "he had good experience with Deem Mechanical out of Indianapolis, had been there for around four years, and was well experienced." (Tr. 268). He testified that Deem was a mechanical contractor operating out of Indianapolis that also did work in Respondent's geographical area, and that it was a "non-union company." (Tr. 269). On July 26, Respondent offered McClure a job, which he accepted. (Tr. 50, 205, GC Exh. 3).

A. McClure starts working for Respondent.

McClure began working for Respondent on August 3. (Tr. 51). On his first day, he went to orientation at Respondent's South Milford location. (Tr. 72). After he arrived, Human Resources Director Preston asked him to fill out a job application. (Tr. 209). The application form, which McClure signed, states, "falsified statements on this application shall be grounds for

dismissal." (Tr. 231, R. Exh. A). McClure also got a copy of an employee handbook and signed Respodent's "Employee Handbook Acknowledgment." (Tr. 237, R. Exh. B). The handbook includes a "Code of Conduct" that lists actions which "will be considered misconduct sufficiently serious to justify immediate suspension for the purpose of discharge," including "[f]alsification of company and employee records or documents." (R. Exh. C, p. 42).

In addition to the handbook, Preston gave McClure an employment agreement to sign. She testified that she gave the same document to all new employees, but that to her knowledge Respondent has never tried to enforce it. (Tr. 111, 178, GC Exh. 13). McClure testified that no one told him that the agreement would not be enforced, but he was told it "wasn't very important." (Tr. 207). The employment agreement contained several provisions concerning outside employment, including a non-compete provision.

After orientation, McClure went to work in the field, where he worked primarily with Service Supervisor Josh Otis. (Tr. 208). Otis testified that he was McClure's direct supervisor. (Tr. 256). McClure testified that Dunafin was his immediate supervisor and that Dunafin told him multiple times that he was doing a very good job. (Tr. 209). Dunafin acknowledged in his testimony that McClure was qualified and did a good job. (Tr. 99). McClure never received any counseling or discipline while working for Respondent. (Tr. 210).

At some point during his tenure with Respondent, McClure recommended another employee, D.M.[3], for employment. McClure worked with D.M. at unionized company WMI but instead claimed that D.M. worked with him at Deem. (Tr. 250). Service Supervisor Otis testified that McClure recommended D.M. to him. Otis told him to tell Dunafin because "McClure does a good job, and he came from Deem, and if this gentleman worked with him at Deem, why would he not-- not be a good employee, as well." (Tr. 258). Dunafin testified that McClure recommended D.M. to him, and that the recommendation carried weight with him because Deem is a "reputable company, and [McClure] was qualified at the time…" (Tr. 78).

Mory testified that Respondent "had a little bit of trouble getting [D.M.'s] application," and that after they waited some time for it, he directed Human Resources Director Preston to try to expedite matters because they "needed another technician." (Tr. 269). Respondent received an application from D.M. dated September 5. (R. Exh. H). Dunafin testified that he believed he received a screenshot of the application from McClure. (Tr. 79). Preston testified that she received the application but could not recall whether she got it from Dunafin or Kugler. (Tr. 146). McClure could not recall whether he turned in the application for D.M. (Tr. 239).

B. Open Union advocate T.M. submits an application.

On August 23, open union advocate T.M. applied for a position with Respondent. On his application, he stated that he was a "union officer…union activist and proud member of UA Local 166" who educated people about the "benefits of being union." McClure testified that he talked with Dunafin about T.M.'s application on two occasions, and that he recorded their second conversation (Tr. 217). McClure uploaded his recording of the conversation to the

[3] In accordance with my usual practice, I will identify non-supervisory employees who did not testify at the hearing by their initials only.

Union's Google drive. (Tr. 211). The parties agreed to enter the transcript as an exhibit without the accompanying recording. (Tr. 292, 296-297, GC Exh. 10). McClure testified that the "unidentified speaker" in the transcript was Dunafin. (Tr. 212).

During his conversation with Dunafin, McClure brought up T.M.'s application and asked whether an employer would have to hire him. (GC Exh. 10, p. 3). Dunafin responded. "Their goal is to fuck with you. So, if they come in here- it's so bad that we have to do everything like we hired you, kind of. We can't use somebody else to interview this guy. 'Cause if they figure it out, then there'll be discrimination." (GC Exh. 10, p. 3). He explained, "If we don't hire him- we don't have to hire him, but we need a good reason why we don't." (GC Exh. 10, p. 4).

Dunafin explained that a lawsuit might be filed if they did not hire an applicant and "they think it has to do with the union," but said that the company was "not afraid of lawsuits," and would do "everything by the book." (GC Exh. 10, p. 4). He said that the lawyer told them, "they don't want a job. They want to fuck with ya." (GC Exh. 10, p. 4). He went on to discuss T.M.'s qualifications, noting that he had been working in an office and that his lack of recent field experience was "a thing against him," but if they didn't hire him and he had "twenty-some years of experience and looks like an awesome candidate, that looks bad." (GC Exh. 10, p. 4).

He further explained that applicants had been "prompted with questions to ask and everything. It's just a crock of shit." (GC Exh. 10, p. 4). He said that if there were four employees, and three of them told the union they did not want to go union, "they say he'll just leave. But if he comes in and gets two of them, and they sign a piece of paper, he can walk in my office and say, here I got something for you. And if I take it…they can make us go union that fast." (GC Exh. 10, p. 5). Dunafin also mentioned an employee that Respondent hired who later told them that he had to get a non-union job as part of his union initiation. (GC Exh. 10, p. 9).

Dunafin told McClure that it was something Respondent "had to go through… our management is not worried at all. Something we got to go through, not a big deal." (GC Exh. 10, p. 10). He then said that he met with Company President Mory the week before, who said, "Kurt, I know you're worried about interviewing this guy. Don't worry about it. Don't worry about it at all. And he said, the worst-case scenario, you know what the worst case scenario is? And I said what's that? And he said, we hire him, and he works for two or three days and talks to a few people and realizes he's got enough people to worry about and just---" (GC Exh. 10, p. 11).

McClure asked, "What about just not hiring him and showing him the door and just—," and Dunafin said, "That's what I think, but they're like- I think what the goal is, I'll be honest with ya, is I told you if we get [D.M.] interviewed and can hire him, and there's another guy we're trying to talk to. He sent a resume in, but we haven't hooked up with him. We have them three interviewed, the union guy and them two. And we only got one position open. We give it to [D.M.]." (GC Exh. 10, p. 11). He then said, "The worst part would be if I didn't have [D.M.] or another guy to talk to, and I only had him to talk to and I only had one position to fill….That's where we'd probably have to hire him, from what I understand." (GC Exh. 10, p. 12).

McClure responded, "I say don't hire him," and Dunafin responded that he had worked with union people in the past, and "so many of them are good fellas…And this guy either gonna come in so hotshot union and be a prick, or he's just doing his job and coming here and going

through the interview and we- not really sure. I could see him, anybody…if you had seen his resume, y'know, he's like, something about anything you guys can do, I can do as good. Been in the business twenty, twenty-five years. Been in supervisor and sales and this. So, it made it sound like he was in the office. But does anybody really want turmoil in their life?" (GC Exh. 10, p. 12). Dunafin said he was "not worried about it too much" and that he didn't know if the applicant would come in "lawyered up and then ask these questions to try to get us to say something wrong. Or if he'll come in and just go through the motions because that's what his job is and what he's supposed to do…and moves on." (GC Exh. 10, p. 13).

Dunafin testified that he remembered having a conversation with McClure about TM's application. He recalled that the Union was mentioned but could not remember much about what was said. (Tr. 64). When he was asked whether he told McClure that Respondent did not want to hire a union organizer, Dunafin responded that he did not remember that, and did not recall saying that the goal was to hire another candidate. Dunafin also denied telling McClure was that "the worst thing would be if there were no other candidates to consider, other than the Union organizer." (Tr. 65). Company President Mory was asked whether he told Dunafin that hiring T.M. would be the "worst-case scenario," but said he could not recall saying that. (Tr. 285).

C. Respondent interviews covert organizer D.M. and open union advocate T.M.

Mory, Dunafin and Human Resources Director Preston interviewed D.M. on September 9. (Tr. 149, 153, R Exh. I). Preston testified that they interviewed him because of Deem's reputation and McClure's recommendation. (Tr. 149). She testified that if McClure thought D.M. would fit in with Respondent's business, that meant that he was "somebody that we would want to talk to..." because "we liked Dave McClure. We thought he was a trustworthy person." (Tr. 149). Mory, Dunafin and Preston also interviewed open union advocate T.M. (Tr. 159). Mory testified that he was aware of T.M.'s union affiliation when he authorized the interview. (Tr. 276-277). Respondent offered D.M. a job on September 9. He asked for time to consider the offer, but never gave Respondent an answer. (Tr. 80).

D. McClure reveals that he is a union organizer.

On September 12, McClure went to Dunafin's office and told him that he wanted to reintroduce himself as an organizer for the Union. (Tr. 51, 222). The accounts McClure and Dunafin gave of the conversation that followed largely matched and are corroborated by a summary of the meeting written by Dunafin. (GC Exh. 12). McClure told Dunafin that he was there to organize Respondent's employees, and shared information with him about the benefits of being in the Union. McClure also revealed that he never worked for Deem, and that the job experience he listed was true, but was gained by working for a different company. (Tr. 52, 82, 223, GC Exh. 12). During this discussion, Service Supervisor Josh Otis came into Dunafin's office, and McClure started talking to him about the benefits of being in the Union. (Tr. 83, 222).

After McClure and Otis left for the job site, Dunafin told Mory what happened, and Mory asked him to write up a statement, which he did. (Tr. 55, GC Exh. 12). Dunafin's statement says that he was "in shock, surprised, and wondering what I should do" after McClure revealed that he was with the Union. (GC Exh. 12). He said McClure told him that everything he said was true

"except for being from Deem" and that he lied because he believed "it was the only way we would hire him." (GC Exh. 12). McClure worked the rest of the day. When his workday was over, he used a contact list in his truck to talk with his coworkers about the Union. (Tr. 223).

E. Respondent fires McClure.

Company President Mory testified that after learning that McClure lied about working for Deem, he asked Human Resources Director Preston to contact Deem and ask about McClure and D.M. (Tr. 271). He testified that Preston told him that Deem confirmed that McClure and D.M. never worked there. (Tr. 273). Mory testified that at that point, he and Preston made the decision to fire McClure for "[f]alsifying his original application, or resume, and then he also misrepresented himself after being hired to his coworkers, and to Kurt [Dunafin] about his employment at Deem…and then he also falsified the application, or submitted an application that was false for [D.M.], indicated that he had worked for Deem." (Tr. 273-274).

Mory testified that trustworthiness is a key value of Respondent and that it is important that its clients be able to trust its employees because they serve as the face of the company by giving estimates, recommending repairs, and going into their client's homes and businesses to perform work. (Tr. 275). Mory also testified that the company's longevity is due to its reputation in the community. (Tr. 276). He denied firing McClure based on his union affiliation. (Tr. 279).

Preston testified that she and Mory made the decision to terminate McClure for "[f]alsification of…his past employment. Falsification of records, and then, he lied about his past experience. He said he had worked for Deem, and he did not." (Tr. 113). Preston testified that McClure lied "at different times," including when he made a recommendation of another employee, and that all his lies were connected to his false claim of working for Deem. (Tr. 113, 116). Dunafin testified that he was also involved in the decision to fire McClure, although Mory made the ultimate decision. (Tr. 57-58). Dunafin testified that McClure was fired for "[l]ying on his resume in his interview, on his application," and trying to bring in other employees that he said worked with him at Deem. (Tr. 57). When asked if the lies about Deem were "all of it" when deciding whether to terminate, Dunafin said, "Yes." (Tr. 58).

On September 13, McClure worked at his assigned job site all day. At the end of the day, Dunafin and Kugler came to the site, and Dunafin told McClure they were there to fire him. (Tr. 224). McClure recorded this conversation. (GC Exh. 11). McClure testified that he asked for a reason, and Dunafin told him it was for "falsifying employment." (Tr. 225, GC Exh. 11, p. 6). Dunafin told McClure to pack his tools and then drove him home. (Tr. 225). During the short drive to McClure's house, he and Dunafin had a short conversation ending with Dunafin telling McClure that he was a "likeable guy." (Tr. 66, 255, GC Exh. 11, p. 5).

F. Respondent offers job to T.M.

Respondent offered T.M. a job on September 14. (R. Exh. O, Tr. 280, 160). Mory testified that he authorized hiring him because he was "qualified, experienced, and we legally have to…consider all qualified applicants." (Tr. 277- 278). Preston testified that T.M. received the same consideration as other applicants. (Tr. 162). T.M. did not accept the job. (Tr. 278).

ANALYSIS

The Consolidated Complaint alleges that Respondent maintained overly broad and unlawful rules in its employment agreement in violation of Section 8(a)(1) of the Act (Complaint, paras. 5 and 7, GC Exh. 1(j), pp. 3 and 4) and fired David McClure because of his union affiliation and activities, in violation of Sections 8(a)(1) and (3) of the Act. (Complaint, paras. 6 and 8, GC Exh. 1(j), pp. 3-4). As outlined below, I find that the General Counsel has presented sufficient evidence to support the allegations in the Complaint.

I. Witnesses and credibility

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.

The General Counsel called Purchasing Manager (and former Service Manager) Kurt Dunafin and Human Resources Director Tammy Preston as witnesses under Federal Rule of Evidence 611(c) and called McClure as an additional witness. Respondent questioned Dunafin and Preston as part of its own case and called Service Supervisor Josh Otis and Company President John Mory. For the most part, the facts in this case are not disputed. McClure admitted that he lied about working for Deem, and Respondent's witnesses admitted that he was a good worker who was qualified for the job. McClure credibly testified that he did not lie about his experience or qualifications, and only lied about working for Deem, and Respondent provide no evidence that he did not have the qualifications that he claimed on his resume.

It is undisputed that Respondent has a handbook that includes a "Union Free Statement" and a code of conduct that prohibits employees from falsifying work or employee records or documents, and that employees are required to sign an "Employee Handbook Acknowledgment" agreeing to comply with Respondent's policies and procedures. It is also undisputed that employees are required to sign an employment agreement that includes the non-compete clause and other provisions challenged by the General Counsel in the Consolidated Complaint. All parties agreed to admit the transcripts of McClure's conversations with Dunafin into the record, and no party presented any evidence or argued in their briefs that the transcripts were inaccurate.

The primary factual dispute remaining is whether Respondent fired McClure because he lied about working for Deem, or because he was a salt. Respondent's witnesses all testified that Respondent has strong core values and a reputation for integrity, and that McClure was fired because he violated these values and its policy against falsifying records. While I found Respondent's witnesses to be credible about the value Respondent places on its reputation, I did not find their claim that McClure was fired because of his lie about Deem to be credible. As outlined further below, none of the witnesses provided any details that would explain why they would value experience from Deem over the same experience at another company, or explained how McClure's lie about working for Deem could threaten Respondent's relationship with its

customers or its reputation in the community. This lack of additional explanation or detail in their testimony, when viewed along with the rest of the record, including Respondent's failure to produce evidence of any other employee who had been fired for lying on their application, the timing of the discharge, and evidence of union animus, demonstrate that Respondent's true reason for firing McClure was his status as a union salt.

II. Respondent unlawfully fired McClure because he was a union organizer.

The Board applies a two-part test to determine whether an employee has been fired for engaging in union activity. *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). The first part of the *Wright Line* test requires the General Counsel to show: "(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, slip op. at 7 (2023), enfd., *NLRB v. Intertape Polymer Corp*., 2024 WL 2764160 (6th Cir., May 9, 2024) (unpublished). Once the General Counsel meets this burden, the employer has the burden to prove it would have disciplined the employee even in the absence of their union or protected conduct. *Id*., slip op. at 8.

Determining whether an employer was motivated by union animus "is a question of fact that may be inferred from both direct and circumstantial evidence on the record as a whole." *Intertape Polymer, supra,* 372 NLRB No. 133, slip op. at 7. The "absence of any legitimate basis for an action . . . may form part of the proof of the General Counsel's case." *Id*., citing *Wright Line*, supra, at 1088 n. 12. If the employer's stated reason for an adverse action is found to be pretextual, then the trier of fact may infer that the true reason for the action was union animus, if "the surrounding facts tend to reinforce that inference." See *Electrolux Home Products, Inc*., 368 NLRB No. 34, slip op. at 3 (2019), citing *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966) (internal quotations omitted).

A. McClure engaged in protected activity and Respondent had knowledge of it.

Salting is protected under the Act. See *NLRB v. Town & Country Electric*, 516 U.S. 85 (1995). An employer can't refuse to hire a salt because they are a union organizer or assume that they will be any less hardworking or loyal than its other employees. *Id*. at 95-96. I find that McClure engaged in protected union activity by applying for a position with Respondent as a salt, concealing his affiliation with the Union, announcing his identify as an organizer, and talking to other employees about the Union, and that Respondent had knowledge of his activity when he announced that he was a union organizer.

B. Respondent's justification for firing McClure was pretext for discrimination.

When an employee lies to conceal their union affiliation and is fired for falsifying their application, the Board has found that the employer's reliance on the lie is pretext for anti-union discrimination when the employee was qualified for the job and the surrounding facts show that the true reason for the termination was the employee's union activity. See, e.g., *Leiser Constr., LLC*, 349 NLRB 413 (2007), rev. denied, 281 F. App'x 781 (10th Cir. 2008) (false claim that

applicant worked for non-union employer); *Solvay Iron Works, Inc*., 341 NLRB 208 (2004) (employee used false name); *C. T. Taylor Co., Inc.,* 342 NLRB 997 (2004) (employee concealed history of working for union employers); *Iplli, Inc*., 321 NLRB 463 (1996) (false claim that applicant worked for non-union employer); *Winn-Dixie Stores*, 236 NLRB 1547 (1978) (employee claimed to work at a grocery store to conceal real job as paid union representative).

As the Board explained in *Winn-Dixie Stores*, "the Act would not be effectuated by finding lawful a discharge for failure to disclose information which, were it the basis for a refusal to hire, would render such an initial refusal to employ a clear violation of the statute." *Id*. at 1547-1548. In a case involving another Indiana HVAC company, the Seventh Circuit applied the same reasoning, finding that because an employer can't refuse to hire an applicant because of their union status, a "salt may lie to get a job…at least if the lie concerns merely his status as a salt, union organizer, or union supporter and not his qualifications for the job." *Hartman Bros. Heating & Air Conditioning, Inc. v. NLRB*, 280 F.3d 1110, 1112 (7th Cir. 2002).

1. McClure did not lie about his qualifications or experience.

McClure did not fabricate any of his experience or qualifications, and Respondent's witnesses admitted that he was a good and qualified worker. Although these witnesses, including Company President Mory, claimed it was important to them that McClure worked for Deem, I do not credit this testimony, as they did not identify anything specific about Deem that would make experience from that company more valuable than experience gained elsewhere. In fact, some of Respondent's regard for Deem seemed to come from their observation of McClure's work. Service Supervisor Otis testified that he valued McClure's recommendation of another employee from Deem because McClure was a good worker, and if "he came from Deem, and if this gentleman worked with him at Deem, why would he not….be a good employee, as well."

In a case with similar facts to this one, the Board found an employer's claim that it fired a salt for falsely claiming on his application that he worked for non-union employer to be pretextual when the salt worked for the employer for over a month and the employer was pleased with his work until he started openly handing out union cards to his coworkers during a lunch with the company owner. See *Leiser Constr., LLC*, supra, 349 NLRB at 413; see also *Solvay Iron Works, Inc.,* supra, 341 NLRB at 213-214 (refusal to hire salt for giving false name was pretext for discrimination when he did not misrepresent his qualifications and was never given the chance to prove his skills). Based on McClure's good work record and Respondent's failure to identify any qualification that McClure was lacking, I find that Respondent's concern was not with McClure's lie, but with his status as a union salt.[4]

2. There is no evidence that McClure's lie impacted customers.

Respondent attributes its remarkable longevity to its core values, and claims that it fired McClure because it is important that customers be able to rely on the integrity of its employees. I

[4] I also find that Respondent did not establish that McClure submitted a false application for D.M., and that even if it had, Respondent was not concerned about McClure's actions with respect to D.M. because it further perpetuated the lie about Deem, but because D.M. was another union organizer.

believed Respondent's witnesses when they testified that they valued their company's reputation. However, I do not credit their claims that this was why McClure was fired. No witness presented any evidence explaining how McClure's lie about working for Deem would put its reputation in jeopardy, and there is no evidence that McClure ever lied to a customer, did substandard work, or did anything else that would cause a customer to lose trust in him. There is no evidence that customers would know or care where McClure worked in the past if he could accurately quote jobs and competently perform work, which he undisputedly could. In addition, there is no evidence that Respondent did any investigation into the work McClure did or his interactions with customers after learning that he lied on his application, which contradicts the claims that they feared that his lie would impact his work or Respondent's reputation. See *Mondelez Global*, 369 NLRB No. 46, slip op. at 3 (2020) (failure to conduct full investigation before firing an employee is evidence that employer was motivated by union animus).

Respondent is not the first employer to claim it could not trust a salt because they lied, and the Board has overlooked similar claims in other salting cases. See *Solvay Iron Works, Inc*., supra, 341 NLRB at 208, 211 (2004) (despite testimony that employer felt it could not trust salt with its employees and customers after he gave a fake name on his application, Board upheld ALJ finding that employer was motivated by union animus, not the fake name, when it failed to hire him); *Iplli, Inc*., supra, 321 NLRB at 463, 466 (1996) (despite employer claim that it could not trust employee to work independently and honestly report his hours after learning that he falsely claimed that he worked for a non-union employer, Board upheld ALJ finding that true reason for the termination was not the falsified application but the employee's union activity).

3. No other employee has been fired for falsifying their application.

Respondent has a policy against falsifying documents, and provided examples of other employees it claims were fired pursuant to this policy. However, it did not provide a single example of an employee who was fired for lying on their job application. It provided evidence of only one employee who assertedly falsified documents. This employee, A.A., was accused of falsifying timecards in support of an alleged scheme to steal and resell materials. (R. Exh. T). Respondent also provided evidence that former employee K.T. allegedly lied. However, there is no evidence he falsified any documents, and he was accused of lying to conceal the fact that he committed a serious traffic violation by passing a stopped school bus in a company vehicle. (R. Exh. S). Respondent provided termination records for former employee A.B., who was accused of lying about her absences and was convicted of stealing from her previous employer. But Respondent did not identify any document that she falsified, and Company President Mory acknowledged that the "bigger picture is, you know, she had been found guilty of theft at her previous employer… she was doing accounts receivable and handling cash…so that is the bigger picture. So, the combination of all that, is being untrustworthy." (Tr. 290, R. Exh. R).[5]

None of these employees are an appropriate comparator for McClure, who was never accused of stealing, violating traffic laws, or other criminal conduct. And, even if Respondent could show that the other employees were fired just for lying, and not for the underlying serious

[5] Respondent acknowledged in its brief that Exhibit U involving another termination was discussed but not offered. (R. Brief, p. 15). The inclusion of this exhibit would not make a difference in my decision, as the employee at issue was also accused of serious misconduct (stealing) in addition to lying.

misconduct, Respondent could not use that to justify firing McClure because they were all accused of lying about conduct that Respondent could lawfully consider in hiring or firing them. In contrast, McClure lied about his history of working for union employers. Because Respondent could not refuse to hire McClure because of his union background, his lie about working for Deem can't be used to justify firing him. See *Winn-Dixie Stores,* supra, 236 NLRB at 1548 (evidence that employer had a policy against falsifying job applications and fired 18 other employees under that policy did not support a finding that it lawfully fired an employee for concealing their union background when the other employees were fired for lying about things the employer could lawfully consider in hiring, including their criminal and educational backgrounds, and not protected activity); *Iplli, Inc*., supra, 321 NLRB at 466 (evidence another employee was fired for lying on application did not show a past practice sufficient to justify refusal to hire salt, when the other employee claimed to have electrical experience but proved to be unqualified, unlike salt, who did not lie about qualifications).

4. Respondent's "Union Free Statement" is evidence of union animus.

Although not alleged as a separate unfair labor practice, I find that the "Union Free Statement" in Respondent's handbook is evidence of its union animus. See *Stoody Co*., 312 NLRB 1175, 1182 (1993) (unalleged conduct can be used as evidence of animus). An employer is "free to communicate to his employees any of his general views about unionism," and can make predictions about the impact it thinks unionization will have if these statements are "carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control." *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969). Lawful expressions of opinion can't be used as evidence of an unfair labor practice, but this rule does not apply when employer's statements constitute unlawful threats or promises. See, e.g., *United Site Services of California*, 369 NLRB No. 137, slip op. at 18, n. 68 (2020) (precluding reliance only on those statements that "neither threaten nor promise as evidence in support of any unfair labor practice finding.").

Respondent's "Union Free Statement" says that "J.O. Mory, Inc. is a union free (Merit Shop) Company, and we feel our employees prefer to remain that way," that this prevents the "hostility and argumentation that unions often bring to the workplace" and that unionization "could hurt the business and customers on which we all depend for out [sic] livelihood." Employees are instructed that if "any outside person or employee should threaten or coerce you into signing a card, please report it to your supervisor." (R. Exh. C, p. 4). Finally, Respondent requires employees to sign an "Employee Handbook Acknowledgement" stating that, "In consideration of my employment, I agree to conform to the policies and procedures of J.O. Mory, Inc. and I understand that my employment and compensation can be terminated, with or without notice, at any time..." (R. Exh. B, R. Exh. C, p. 53).

By stating that its company IS union free, Respondent implies a fixed non-union status. And by requiring employees to sign an agreement "[i]n consideration of" their job to "conform" to its "policies and procedures," along with an acknowledgement that they can be fired "with or without notice, at any time," and by admittedly failing to differentiate between "policies" and "statements" during its orientation (Tr. 191), Respondent is unlawfully requiring employees to agree with its "Union Free Statement" as a condition of employment. See *Leather Center, Inc*., 312 NLRB 521, 525, 528-529 (1993) (employer violated Act by requiring employees to sign

agreement to comply with manual under threat of termination when it included this statement: "Our Company is union free, and we intend to lawfully remain this way."). See also *LaQuinta Motor Inns*, 293 NLRB 57, 57, 61 (1989) (unlawful to require employees to sign agreement to abide by employer's "policies and procedures" when its handbook included a "Company Position on Labor Unions" vowing to avoid "interference from any union or agent.").[6]

In addition, Respondent's statements about what might occur if employees unionize are unlawful threats. An employer can lawfully say that employees' direct relationship with their supervisors may change if they unionize if that claim is based on objective fact. See *Tri-Cast,* 274 NLRB 377, 377 (1985). However, it can't threaten that unionization may result in a hostile and argumentative work environment, especially when it offers no basis for that claim. See *Starbucks Corp*., 373 NLRB No. 53, slip op. at 3 (2024) (claim that union would hurt employees' relationship with their boss and questioning them about whether unionizing was "worth the risk" and if employees "knew what they were signing up for" was unlawful threat in absence of objective fact or discussion of give and take of bargaining); see also *Cadillac of Naperville*, 368 NLRB No. 3, slip op. at 3 (2019), enfd. in relevant part, 14 F.4th 703 (D.C. Cir. 2021) (prediction that things will change "for the worse" because of protected activity could not be interpreted as "anything but a threat" in absence objective facts supporting the claim).

Similarly, Respondent's claim that unionization could harm Respondent's business, its customers, and employees' livelihood, in the absence of any objective basis for the claim, is an unlawful threat. See *Quickway Transportation, Inc*., 372 NLRB No. 127, slip op. at 24-25 (2023) (threat that if employer went union it would lose its contract with major customer found unlawful when there was not accompanied by any objective facts), citing *Contempora Fabrics, Inc*., 344 NLRB 851, 851 (2005) (prediction that unionization would lead to a loss of customers was unlawful when employer did not offer any objective basis for the claim).

Finally, Respondent's direction to report any attempts by outsiders or other employees to "threaten or coerce" employees into signing union cards is unlawful because it instructs employees to "inform it of protected, albeit unwanted, authorization card solicitation by other employees." *Bloomington-Normal Seating Co*., 339 NLRB 191, 191 n. 2 (2003), enfd., 357 F.3d 692 (7th Cir. 2004). See also *Winkle Bus Co*., *Inc*., 347 NLRB 1203, 1204 (2006) (unlawful instruction to report any effort to "threaten or coerce" employees into signing union cards).

a. The above statements are also unfair labor practices.

Although the "Union Free Statement" is not alleged as an unfair labor practice in the Consolidated Complaint, I find that the above statements, in addition to constituting evidence of Respondent's union animus, violate the Act and should be remedied. The Board may find that an unalleged violation is an unfair labor practice when "the issue is closely connected to the subject

[6] Under longstanding Board precedent, agreements to refrain from union activity as a condition of employment, historically known as "yellow dog contracts," are unlawful. See *Tidewater Express Lines, Inc.*, 2 NLRB 560, 564-565 (1937). Even before the National Labor Relations Act was enacted into law, the Norris-LaGuardia Act of 1932 made such agreements unenforceable because they are "contrary to the public policy of the United States." See 29 U.S.C. §103, Nonenforceability of undertakings in conflict with public policy; "yellow dog" contracts.

matter of the complaint and has been fully litigated." *Pergament United Sales*, 296 NLRB 333, 334 (1989), enfd. 920 F.2d 130 (2nd Cir. 1990); see also See *NCRNC, LLC d/b/a Northeast Center for Rehabilitation*, 372 NLRB No. 35, slip op. at 6, n. 21 (2022), enfd., *NCRNC, LLC v. NLRB*, 94 F.4th 67 (D.C. Cir. 2024) (no denial of due process when underlying facts were fully litigated, and issue was closely connected to other allegations).

The "Union Free Statement" is closely related to the allegations that Respondent fired McClure in retaliation for his union activity and maintained unlawful provisions in its employment agreement that chilled employees from engaging in union or protected activity. Both the Union and the General Counsel argued that Respondent's "Union Free Statement" is evidence of its union animus. (GC Brief, pp. 24-25, U Brief, pp. 33-34, 38). Because Respondent's efforts to discourage union activity are already at issue in this case, and its "Union Free Statement" was held up as an example of its animus, the statement is closely connected to other allegations that it unlawfully deterred employees from engaging in union or other protected activities. See *The Earthgrains Company*, 351 NLRB 733, 737 (2007) (rule prohibiting employees from talking about union on company property was closely related to subject matter of complaint because it was part of a broader campaign of intimidated and coercion).

The legality of the "Union Free Statement" was also fully litigated. Respondent was on notice that the statement was at issue, and argued in its brief that it was a lawful expression of Respondent's preference to remain non-union and was not intended to threaten or coerce any employee. (R. Brief, pp. 10-11). The facts I considered and the case law I reviewed in determining whether the statement was evidence of animus were identical to the considerations I made in determining that it was unlawful under Section 8(a)(1). See *ExxonMobil Research*, 372 NLRB No. 138, slip op. at 10, n. 20 (2023) (unalleged allegation closely related and fully litigated when it turned on the same "facts and considerations" as another allegation).

Finally, Respondent was able to introduce evidence and testimony concerning the statement at the hearing. In fact, most of the evidence I reviewed with respect to this allegation was introduced by Respondent, including the handbook, the "Handbook Acknowledgment" testimony that employees are required to sign the acknowledgement, and the admission from Respondent's Human Resources Director that she does not differentiate between "statements" and "policies" when discussing the handbook with employees. (Tr. 74, 132, 144, 191, R. Exh. B, R. Exh. C). The Board is more likely to find that an issue is closely connected to the case and has been fully litigated when the "violation is established by the testimonial admissions of Respondent's own witnesses." *Pergament United Sales*, supra, at 334. See also *ExxonMobil Research*, supra (violation fully litigated when it was decided based on testimony from Respondent's witnesses and "undisputed documentary evidence.").

5. Response to application from T.M. is additional evidence of animus.

Respondent's response to the job application from open union advocate T.M. is additional evidence of its animus against the Union, especially when viewed in the context of Dunafin's comments about the application. Respondent asserts that Dunafin's comments cannot be attributed to Respondent. Dunafin is an admitted agent and supervisor who was involved in hiring and firing employees, including McClure, and his statements can reasonably be construed

to reflect Respondent's policies and views on hiring. See *Zimmerman Plumbing & Heating Co*., 325 NLRB 106, 106 (1997), enfd. in pertinent part, 188 F. 3d 508 (6th Cir. 1999).

Respondent also argues that Dunafin's comments are not evidence of animus because Dunafin said Respondent would "do everything by the book." (R. Brief, p. 8-9). I reject this claim and find that Dunafin's statements, especially when considered along with the surrounding facts, demonstrate that Respondent was aware that it was a target of salting, had animus toward union applicants, as evidenced by Dunafin's characterization of salts as troublemakers instead of legitimate applicants, and made efforts to include non-union candidates in the hiring pool so that it could justify a failure to hire a union candidate if challenged in court. This is evident from Dunafin's comment that the "worst part" would be not having the two perceived non-union candidates to talk to in addition to T.M., because that would create a situation where "we'd probably have to hire [T.M.]," and Respondent's efforts to seek applications from candidates it believed were non-union even after it received an application from the admittedly qualified T.M.

Respondent claims that the fact that it eventually hired open union applicant T.M. shows that it did not have animus against the Union. However, T.M. was not offered a job until after McClure outed himself as a salt. Hiring a union applicant is not proof that an employer will not discriminate against other employees based on their union activity. See *T. Steele Constr., Inc.*, 348 NLRB 1173, 1185 (2006), citing *H.B. Zachry*, 332 NLRB 1178, 1183 (2000); see also *Zurn/N.E.P.C.O.*, 345 NLRB 12, 20 (2005). In fact, the Board has found that when an employer hires a union applicant *after* it becomes aware that the Union is building an unfair labor practice case, the hire does not show a lack of animus, especially when (as here) the employer made offers to other applicants that it believed were non-union before offering a job to the open union applicant. See *Hi-Tech Interiors*, 348 NLRB 304, 304, n. 5 (2006).

6. Timing provides clear evidence of Respondent's unlawful motivation.

Finally, Respondent's decision to fire McClure the day after he announced his intent to organize its employees made its motivation for firing him "stunningly obvious." *Capstone Logistics*, 372 NLRB No. 124, slip op. at 6 (2023), citing *NLRB v. S.E. Nichols, Inc*., 862 F.2d 952, 959 (2d Cir. 1988), enfg. 284 NLRB 556 (1987) (termination of employee almost immediately after employer learned of their protected activity was substantial evidence that termination was motivated by animus). See also *Bannum Place of Saginaw, LLC*, 370 NLRB No. 117, slip op. at 7 (2021), enfd., *Bannum Place v. NLRB*, 41 F.4th 518 (6th Cir. 2022) (animus inferred from the proximity of adverse action to the employee's protected activity).

Respondent argues that the connection between McClure's union activity and his termination is "mere coincidence." (R. Brief, p. 8). The case Respondent cites, *Chicago Tribune Co. v. NLRB*, 962 F.2d 712, 718 (7th Cir. 1992), is not applicable, as the terminated employee in that case had a history of discipline that predated his union activity. It is undisputed that McClure had a clean disciplinary record, and that Respondent had no concerns about him until after he announced his status as a union organizer, which supports a finding of pretext. See *Leiser Constr., LLC*, supra, 349 NLRB at 413 (finding animus when employee worked for a month without incident but was fired immediately after he announced that he was a union organizer); see also *C. T. Taylor Co., Inc*., 342 NLRB 997, 1000–01 (2004) (failure to take action against

employee for lying on application until after he revealed himself to be a salt was evidence of union animus).

C. Respondent cannot meet its burden under *Wright Line*.

Because I have found that its asserted justification for firing McClure was pretextual, Respondent cannot show that it would have fired McClure even in the absence of his union affiliation or activity. "A finding of pretext necessarily means that the reasons advanced by the employer either did not exist or were not in fact relied upon, thereby leaving intact the inference of wrongful motive established by the General Counsel." *Intertape Polymer Corp.*, supra, 372 NLRB No. 133, slip op. at 16, citing *Limestone Apparel Corp*., 255 NLRB 722, 722 (1981) (quotations omitted).

Even if Respondent's justification for McClure's was not pretextual, it would still be unable to meet its *Wright Line* burden, which requires an employer to demonstrate by a preponderance of the evidence that it would have fired an employee even if he had not engaged in union activity. See *NCRNC, LLC d/b/a Northeast Center for Rehabilitation*, 372 NLRB No. 35, slip op. at 1, n. 5 (2022), enfd., *NCRNC, LLC v. NLRB*, 94 F.4th 67 (D.C. Cir. 2024). Respondent failed to show that it fired any other employees for falsifying their job applications, or that it similarly scrutinized other employees' work history. See *Intertape Polymer Corp.*, supra (employer could not meet rebuttal burden in absence of evidence any employee had been disciplined for same conduct in the past); see also *Pollock Electric, Inc*., 349 NLRB 708, 710 (2010) (after firing union salt for failing to document his work history, employer's *Wright Line* defense failed when it could not show it similarly scrutinized other employees' applications). Finally, although Respondent provided evidence that other employees were fired in part for lying or falsifying documents, these employees were also accused of other, serious misconduct in addition to dishonesty, so they were not similarly situated to McClure.

III. Respondent's employment agreement chills employees' Section 7 activities.

Respondent requires new employees to sign an employment agreement[7] containing the following provisions, which both the Union and General Counsel allege are overly broad and improperly restrict employees in the exercise of their right to engage in union and other concerted activities:

> **Provision 1, Covenants of Employee:** As part of the consideration for the execution of this Agreement, and to induce Employer to employ the Employee, and to continue such employment, subject to the terms hereof, Employee covenants and agrees that he will not engage in certain activities, as hereafter set forth…

[7] The Board analyzes provisions contained in employment agreements in the same way as other workplace rules. See, e.g., *Quicken Loans, Inc. v. NLRB*, 830 F.2d 542, 546 (2016) (unlawful rules contained in employment agreement); see also *U-Haul Co. of California*, 347 NLRB 375, 377 (2006) (mandatory arbitration agreement).

(C): During the term of this Agreement and for a period of 24 months after termination of employment for any reason, Employee will not, either directly or indirectly for himself or on behalf of others, solicit, encourage, or attempt to persuade any other employee of Employer to leave the employ of Employer. This is intended to prevent "pirating" of Employer employees.

(E): During the term of this Agreement, Employee agrees to keep Employer informed concerning any and all offers or solicitations of employment that Employee may receive from third-parties so that Employer may protect its rights under this Agreement.

Provision 2, Noncompetition. The nature of the employment contemplated by this Agreement will call for Employee to work closely with customers and valued Employees of Employer and will give the Employee access to the books and records of Employer, to the names, addresses and business arrangements with Employer's customers and principals and to the names and addresses of other persons with whom it deals, and to other information which is confidential in nature, all of which would be harmful to Employer if the same were to be divulged or become known to any competitor of Employer, or to any other person outside the employ of Employer.

As part of the consideration for the execution of this Agreement, and to induce Employer to employ the Employee, and to continue such employment, subject to the terms hereof, the Employee covenants and agrees that he will not engage in certain activities as hereafter set forth…

(A) For a period of twelve (12) months following termination or separation of employment for any reason, Employee will not directly or indirectly, on Employee's behalf or on behalf of others:

. . .

(iii) Engage in, be employed by, or become interested in, in any manner or capacity, as a principal, agent, partner, officer, director, employee, consultant, independent contractor, advisor or in any other capacity, with any insurance agency, insurance business[8] or in any other business similar or competitive with Employer's business as the same may exist at any time during the term of this Agreement, this covenant restricting Employee's employment being limited to Employer's service area which is defined as the county of the office where the Employee is located and to all contiguous counties thereto. If, during Employee's employment, Employee is employed in any other of Employer's locations, then these restrictions shall also apply to the county in which such office is located, and to all contiguous counties to that location. The parties expressly agree that the

[8] Respondent does not operate an insurance business and it appears these terms may have been mistakenly included. However, the agreement also bars employees from working for "any other business similar or competitive with Employer's business."

> restrictions above set forth are fair and reasonable with regard to scope, time periods, geographic area and in all other respects.

(GC Exh. 13, pp. 1-3).

The agreement also lists remedies available to Respondent if an employee violates the agreement, which include injunctive relief (temporary or permanent), "without the necessity of proof of actual damage," as well as "incidental and consequential damages" and attorneys' fees. The agreement further states that Respondent "shall under no circumstances be constrained by any doctrine of election of remedies." (GC Exh. 13, p. 3).

A. Legal standard

Under Section 8(a)(1) of the Act, it is unlawful to interfere with, restrain, or coerce employees in the exercise of rights guaranteed by Section 7 of the Act, including the right to engage in union and other protected concerted activities. In *Stericycle*, 372 NLRB No. 113 (2023), the Board established a two-step test for determining when a facially neutral work rule unlawfully restricts employees from engaging in protected activity. The General Counsel must first demonstrate that the rule "has a reasonable tendency to chill employees from exercising their Section 7 rights." *Id*., slip op. at 3. This is determined by looking at the rule from the viewpoint of an employee who is "subject to the rule and economically dependent on the employer, and who also contemplates engaging in protected concerted activity." *Id*. If the General Counsel meets this burden, the rule is presumed to be unlawful, "even if a contrary, noncoercive interpretation of the rule is also reasonable." *Id*. An employer may rebut the presumption by showing that "the rule advances a legitimate and substantial business interest" that it is unable to advance "with a more narrowly tailored rule." *Id.*

1. The challenged provisions chill employees from engaging in protected activity.

An employee who is dependent on Respondent for a paycheck would reasonably view the cited provisions in the employment agreement as limiting their ability to engage in union and other protected activities. The prohibition in Provision 1(C) on soliciting employees to leave Respondent's employ would dissuade a reasonable employee from engaging in protected activity like telling their coworkers about the wages and benefits offered by the Union out of a reasonable fear that Respondent might accuse them of inducing other employees to quit. See *M.J. Mechanical Services*, 325 NLRB 1098, 1106 (1998) (telling employees about union benefits, encouraging them to engage in salting activities, and referring them to union hall protected even when it resulted in one employee going to work for a union contractor). It may also deter employees from asking their coworkers to make a concerted threat to quit unless their working conditions improve. See *Morgan Corp.*, 371 NLRB No. 142, slip op. at 5 (2022) (employee who told supervisor that he and his co-workers would quit over demand for higher wages was "indisputably" engaged in protected concerted activity).

The non-compete provision in Provision 2(A) is overly broad in scope and would deter a reasonable employee from engaging in protected activity by barring employees from directly or

indirectly, and in any capacity, engaging in, being employed by, or becoming interested in any enterprise that is "similar or competitive" to the employer's business. Not only is this provision ridiculously broad in scope (could an employee indirectly engage with a competitor by sending a family member to buy something from its store?), but it would also cause a reasonable employee to refrain from engaging in protected activities that come with a risk of retaliation. If an employee knows they are barred from being involved in any capacity with any company that operates a similar business to Respondent, they will logically be more fearful of being fired and less willing to rock the boat because they face the prospect of being unable to find any work in their geographic area if they are fired or forced to leave their job.

All three of the challenged provisions would deter a reasonable employee from working for other employers in the area as a union salt or recruiting others to do so for fear of being accused of inducing other employees to leave, being forced to tell their supervisors about job offers they receive, or having Respondent find out they are working for one of its competitors. The Board rejected a similar argument for finding outside employment policies to be unlawful in *Nicholson Terminal & Dock Co*., 369 NLRB No. 147, slip op. at 4 (2020) and *Newmark Grubb Knight Frank*, 369 NLRB No. 121, slip op. at 3 (2020). However, the Board analyzed those cases under the framework outlined in *The Boeing Co*., 365 NLRB No. 154 (2017), which was overruled by the Board in *Stericycle*, supra, slip op. at 11, n. 12. In addition, the rules at issue in those cases were different than the provisions challenged here, with the rule in *Nicholson* prohibiting outside jobs that were "inconsistent with the Company's interest" or that would have a "detrimental impact" on the employer or adversely impact the employees' job performance, and the rule in *Newmark* prohibiting employees from taking jobs that represented a "conflict of interest." The rules at issue in those cases did not broadly prohibit employees from being involved in any capacity with a business that is "similar or competitive" to the employer's business, prohibit them from soliciting other employees to leave their employer, or require them to report any job offers they might receive.

Finally, by requiring in Provision 1(E) that employees report "any and all offers or solicitations of employment that Employee may receive from third-parties," with no limitation for union or other protected activities, Respondent is promulgating an overly broad rule that may require employees to report on their own protected activities (and potentially those of other employees). For example, it may require an employee to reveal to his supervisor that he is engaged in a union salting campaign by requiring him to report any job offers he receives as part of that campaign. It is unlawful to require employees to report protected activity to their employers. See *Bloomington-Normal Seating Co*., supra, 339 NLRB at 191, n. 2.

2. The provisions unlawfully restrict the activity of current and former employees.

The prohibition in Provision 1(C) applies to employees while they are working for Respondent and for twenty-four months after they leave. The non-competition clause in Provision 2(A) applies for 12 months after employees leave, but in practice it also applies to employees while they are working for Respondent, as most employees find a new job before leaving their old job, and the knowledge that they will be unable to work for a competitor in their geographic area if they are fired or leave would necessarily impact their behavior before and after they leave Respondent's employ.

Under *Stericycle*, work rules should be examined from the viewpoint of an employee who is "subject to the rule and economically dependent on the employer." *Stericycle,* supra, 372 NLRB No. 113, slip op. at 3. Because employees are required to sign Respondent's employment agreement at a time when they are economically dependent on Respondent, I find that the above provisions unlawfully chill employees from participating in protected activities both during and after their employment with Respondent. Although an employee who quits is no longer economically dependent on Respondent, they are still subject to the agreement they signed when they were employed, which gives the employer the right to seek damages including injunctive relief. A reasonable former employee would continue to be chilled from engaging in union and other protected activity by the threat of damages and legal fees for violating the agreement. It is unlawful for an employer to restrain former employees from engaging in protected activity. See *McLaren Macomb*, 372 NLRB No. 58, slip op. at 7 (2023) and cases cited therein; see also Section 2(3) of the Act: "The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer." 29 U.S.C. §152(3).

3. Respondent has not demonstrated that the challenged provisions advance a legitimate and substantial business interest.

Respondent denies that provisions cited above are unlawful, but provided no evidence that they advance any legitimate business interest, making it unnecessary for me to conduct the second part of the *Stericycle* analysis, as it is Respondent's burden to rebut the presumption that a rule is unlawful. *Stericycle,* supra, 372 NLRB No. 113, slip op. at 3. The agreement itself states that the rule against soliciting other employees prevents "pirating," the requirement that employees report job offers is in place to "protect [Respondent's] rights under this Agreement" and that the noncompetition provisions are in place because employees may have information about its customers, employees, and business arrangements. There are other, unchallenged, portions of the agreement that address these concerns, including provisions requiring employees to turn over confidential and proprietary information and prohibiting them from trying to divert Respondent's customers. Therefore, the stated justifications are insufficient to rebut the presumption that the provisions are unlawful, particularly in the absence of any evidence that Respondent's objectives could not be addressed with a more narrowly tailored rule.

Respondent correctly points out that there is no evidence that any employee has been chilled in the exercise of their Section 7 rights by the employment agreement, or that it has ever enforced the agreement. These arguments are unavailing. When a rule chills employees in the exercise of their Section 7 rights, the Board has the authority to prevent it from "cowing…employees into inaction" by blocking it even before the "chill is manifest." *Stericycle*, supra, 372 NLRB No. 113, slip op. at 3 (citations and internal quotations omitted). Nor does the Board have to wait for a work rule to be enforced before it acts, as it "has long and consistently recognized that an employer's mere maintenance of a work rule may unlawfully interfere with, restrain, or coerce employees in the exercise of their Section 7 rights." *Id*., citing *Republic Aviation Corp*., 51 NLRB 1186, 1187 (1943).

CONCLUSIONS OF LAW

1. J.O. Mory, Inc. Corporation (Respondent) is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Indiana State Pipe Trades Association, A/W United Association Of Journeymen And Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. By firing David McClure because he engaged in union and/or other protected concerted activities, and to discourage other employees from engaging in these activities, Respondent violated Sections 8(a)(1) and (3) of the Act.

4. By requiring employees to sign an employment agreement with provisions prohibiting them from (1) being engaged in, interested in, or employed by any business similar or competitive with Respondent's business, (2) inducing other employees to leave Respondent's employ, and (3) requiring employees to inform Respondent of any offers or solicitations of employment they receive from third parties, Respondent interfered with employees' in the exercise of their right to engage in union and other protected activities in violation of Section 8(a)(1) of the Act.

5. By promulgating a "Union Free Statement" stating that unionization often results in "hostility and argumentation" and that unionizing "could hurt the business and customers on which we all depend for out [sic] livelihood," Respondent threatened employees that their jobs and income will be in jeopardy and their workplace will become more hostile if they unionize, in violation of Section 8(a)(1) of the Act.

6. By directing employees to report any effort by another employee to "threaten or coerce" them into signing a union card, Respondent required employees to inform it of employees' protected union activity, in violation of Section 8(a)(1) of the Act.

7. By requiring employees to sign an "Employee Handbook Acknowledgment" agreeing to conform to the policies and procedures in its handbook in consideration of their jobs and under threat of termination, Respondent unlawfully required employees to agree to conform to the "Union Free Statement" in its handbook as a condition of employment, in violation of Section 8(a)(1) of the Act.

8. The unfair labor practices described above affect commerce within the meaning of Sections 2(6) and (7) of the Act.

REMEDY

Having found that Respondent engaged in certain unfair labor practices, Respondent is ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent is ordered to offer David McClure reinstatement to his former position, or if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of

earnings and other benefits he may have suffered because of the discrimination against him. The backpay remedy shall be computed on a quarterly basis, less any interim earnings, as prescribed in *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).

In accordance with *Thryv, Inc.*, 372 NLRB No. 22 (2022), Respondent shall also be ordered to make McClure whole, with interest, for any other direct or foreseeable pecuniary harms suffered because of his termination, including reasonable search-for-work and interim employment expenses, if any, regardless of whether these expenses exceed interim earnings. See *King Soopers, Inc.*, 364 NLRB 1153 (2016), enfd. in relevant part 859 F.3d 23 (D.C. Cir. 2017). Compensation for these harms shall be calculated separately from taxable backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

Further, Respondent is ordered to compensate McClure for the adverse tax consequences, if any, of receiving lump-sum backpay awards and to file with the Regional Director for Region 25, 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). *AdvoServ of New Jersey, Inc*., 363 NLRB No. 143 (2016). In accordance with *Cascades Container Board*, 370 NLRB No. 76 (2021), as modified in 371 NLRB No. 25 (2021), Respondent is further ordered to file with the Regional Director for Region 25 copies of the W-2 form(s) reflecting his backpay award. Respondent is also ordered to expunge from its files any references to the unlawful termination of David McClure and notify him in writing that this has been done and that evidence of the unlawful actions will not be used against him in any way.

Respondent is further ordered to rescind Provisions 1(A), (E) and 2(A) of its Employment Agreement and any other rules, policies or provisions prohibiting employees from (1) being engaged in, interested in, or employed by any business similar or competitive with Respondent's business, (2) inducing other employees to leave Respondent's employ, and (3) requiring employees to inform Respondent of any offers or solicitations of employment they receive from third parties, and send each of its current and former employees who have been subject to the same or similar agreement that those provisions have been rescinded and they are released from any obligations pursuant to them.

I am also ordering Respondent to remedy its requirement that employees promise to comply with Respondent's "Union Free Statement." At Respondent's option, this can be done either by removing the statement from the handbook and notifying employees that its "Union Free Statement" is not one of its policies or procedures and that they do not have to comply with it, or by rescinding the "Employee Handbook Acknowledgment" and notifying employees that it has done so. Respondent is also ordered to rescind the claims in its "Union Free Statement" that unionization often brings "hostility and argumentation" to the workplace and "could hurt the business and customers on which we all depend for out [sic] livelihood," and to rescind the directive that employees report any employee who "should threaten or coerce you into signing a card" to their supervisors, and notify employees that it has done so.

I am ordering Respondent to post a Notice to Employees, as outlined in more detail below. Although the General Counsel requested that the notice be posted in Indianapolis, I believe this was an error, as there is no evidence that Respondent has an Indianapolis location. I have included Respondent's Fort Wayne and South Milford locations because the record shows that unfair labor practices occurred at both locations. I am also ordering that, in the event the notice is mailed, that it be mailed to all employees and former employees employed by the Respondent at any time since August 3, 2022. The General Counsel asked for this date to run from September 13, which is the date of McClure's discharge; however, I have determined that the more appropriate date is August 3 because that is the date McClure was required to sign Respondent's employment agreement containing unlawful provisions.

The General Counsel asks that I order Respondent to write a letter of apology to McClure, send it to the Region for approval, and then mail it to McClure. I decline to include this remedy in my recommended Order. Posting a notice informing McClure and any other employee working for Respondent that it violated the law by firing McClure and will not repeat its actions again in the future is an effective remedy because it lets any employee who might have been scared away from union activity by McClure's termination know that Respondent broke the law by firing him, that it is being held accountable for its actions, that McClure will be made whole, that they have the right to participate in or refrain from union activity, and that their employer will not retaliate against them for that activity in the future. The General Counsel has not shown that an apology letter would further effectuate the policies of the Act, or that case differs significantly from other cases where the Board has declined to order apology letters. See, e.g., *Starbucks Corporation*, 373 NLRB No. 33, slip op. at 1, n. 3 (2024); *Starbucks Corporation*, 372 NLRB No. 122, slip op. at 1, n. 3, 22–23 (2023).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[9]

ORDER

Respondent J.O. Mory, Inc. and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

   (a) Discharging or otherwise discriminating against employees because they engage in union or other protected activities or because of their union affiliation.

   (b) Requiring employees to sign an employment agreement containing the following unlawful provisions, or maintaining any other work rules or policies that:

   - Prohibit them from being engaged in, interested in, or employed by any business that is similar or competitive with Respondent's business.
   - Prohibit employees and former employees from soliciting or inducing

[9] 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.

other employees to leave Respondent's employ.

- Require employees to inform Respondent of any offers or solicitations of employment they receive from third parties.

(c) Requiring employees to agree to conform to its "Union Free Statement."

(d) Threatening employees that their jobs and income will be in jeopardy and their workplace will be more hostile if they unionize.

(e) Requiring employees to report union solicitation by other employees.

(f) 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, offer David McClure immediate and full reinstatement to his former job, or if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed.

(b) Make David McClure whole for any loss of earnings, other benefits, and for any other direct or foreseeable pecuniary harms resulting from his termination, as provided in the remedy portion of this decision.

(c) Compensate David McClure for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 25, 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 year(s).

(d) File with the Regional Director for Region 25, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, or such additional time as the Regional Director may allow for good cause shown, a copy of David McClure's W-2 form(s) reflecting the backpay award.

(e) Within 14 days of the date of this Order, remove from its files any reference to the unlawful discharge of David McClure, and within 3 days thereafter, notify them in writing that this has been done and that the unlawful employment actions will not be used against them in any way.

(f) 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 amount of back pay due under the terms of this Order.

(g) Within 14 days from the date of this Order, rescind Provisions 1(A), (E) and 2(A) of its Employment Agreement and any other policies or work rules prohibiting employees from (1) being engaged in, interested in, or employed by any business similar or competitive with Respondent's business, (2) inducing other employees to leave Respondent's employ, and (3) requiring employees to inform Respondent

of any offers or solicitations of employment they receive from third parties, and send each of its current and former employees who have been subject to the same or similar agreement that those provisions have been rescinded and they are released from any obligations pursuant to them.

(h) Within 14 days from the date of this Order, either rescind the "Employee Handbook Acknowledgment," and notify employees it has done so, or remove the "Union Free Statement" from its handbook and notify employees that the statement is not a part of its handbook and that they are not required to comply with it.

(i) Within 14 days from the date of this Order, rescind the claims in its "Union Free Statement" that unionization often brings "hostility and argumentation" to the workplace and "could hurt the business and customers on which we all depend for out [sic] livelihood" and rescind the direction to employees to report any employee who "should threaten or coerce you into signing a card." If Respondent opts to remove the "Union Free Statement" from its handbook but plans to continue to maintain it as a separate document, it should provide employees with a new copy of the statement after it is revised. If Respondent chooses to keep the statement in the handbook, it should provide employees with a new copy of the handbook or provide them with an insert page with the revised statement.

(j) Within 14 days after service by the Region, post at its Fort Wayne and South Milford facilities copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the 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, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice shall be mailed to all current employees and former employees employed by the Respondent at any time since August 3, 2022.

(k) Within 21 days after service by the Region, file with the Regional Director for Region 25 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., June 13, 2024

Sarah Karpinen

Sarah Karpinen
Administrative Law Judge

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.

THE NATIONAL LABOR RELATIONS ACT GIVES YOU THE RIGHT TO

- Form, join, or assist a union.
- Choose representatives 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 interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL NOT fire you because you engage in union or other protected activities, or because of your union membership or support for a union.

WE WILL NOT require you to sign an employment agreement or subject you to any policies or work rules prohibiting you from working for any business that is similar or competitive with our business, prohibiting you from soliciting or inducing other employees to leave our employ, or requiring you to tell us about any offers or solicitations of employment you receive.

WE WILL NOT require you to promise to comply with our "Union Free Statement."

WE WILL NOT threaten employees that their jobs and income will be in jeopardy and their workplace will be more hostile if they unionize.

WE WILL NOT direct you to report solicitation of union cards by other employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed to you by Section 7 of the Act.

WE WILL offer David McClure immediate and full reinstatement to his former job, or if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed.

WE WILL make David McClure whole for any loss of earnings and other benefits resulting from his termination less any net interim earnings, plus interest. **WE WILL** also make McClure whole for any direct or foreseeable pecuniary harms he suffered because he was fired, including reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate McClure for the adverse tax consequences, if any, of receiving a lump-sum backpay award and **WE WILL** file with the Regional Director for Region 25, 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), as well as a copy of the corresponding W-2 form(s) reflecting the backpay award(s).

WE WILL remove from our files any reference to the unlawful termination of David McClure, and within 3 days thereafter, notify him in writing that this has been done and that the unlawful employment actions will not be used against them in any way.

WE WILL rescind Provisions 1(A), (E) and 2(A) of our Employment Agreement and any other provisions or rules prohibiting you from working for any business that is similar or competitive with our business, prohibiting you from soliciting or inducing other employees to leave our employ, or requiring you to tell us about any offers or solicitations of employment you receive, and **WE WILL** notify you and any former employees who have been subject to the same agreement that those provisions have been rescinded and they are released from any obligations pursuant to them.

WE WILL rescind our requirement that you promise to comply with our "Union Free Statement," and **WE WILL** notify you that you do not have to comply with that statement.

WE WILL rescind the portions of our "Union Free Statement," stating that unionization often brings "hostility and argumentation" to the workplace and "could hurt the business and customers on which we all depend for out [sic] livelihood" and that direct you to report any employee who "should threaten or coerce you into signing a card" to your supervisor, and **WE WILL** either furnish you with a revised copy of the statement or give you a new handbook or insert page for your handbook with a revised copy of the statement.

J.O. MORY, INC.
(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.

NLRB REGION 25
575 N Pennsylvania St Ste 238
Indianapolis, IN 46204-1520
Tel: (317) 226-7381
Hours of operation: 8:30am – 5:00pm ET

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/25-CA-309577 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer, (317) 991-7644.