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

AMAZON.COM SERVICES, LLC

and

Case Nos.: 10-CA-290944
10-CA-290974
10-CA-291045
10-CA-292230
10-CA-292238
10-CA-292966
10-CA-294283
10-CA-295768
10-CA-298933
10-RC-269250

RETAIL, WHOLESALE AND DEPARTMENT STORE UNION

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for the Respondent

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for the Charging Party

DECISION

STATEMENT OF THE CASE

MICHAEL P. SILVERSTEIN, Administrative Law Judge. The instant cases concern a laundry list of objections and unfair labor practices filed over the 2022 rerun election conducted at Amazon.com Services, LLC's (Respondent or Employer or Amazon) Bessemer, Alabama facility.

As will be explained *infra,* I find that the General Counsel has proven six separate unfair labor practices, the most significant and pervasive being Amazon's unlawful confiscation of Union materials from BHM1's breakrooms and restrooms. I also sustain two of the Retail, Wholesale, and Department Store Union's (the Charging Party or Union) post-election objections, which together with the unfair labor practice findings, necessitates setting aside the 2022 rerun election. Consequently, I am ordering a third election at Amazon's BHM1 facility in Bessemer. I am also recommending that certain unfair labor practice allegations be dismissed, and certain of the Charging Party and Amazon's objections be overruled as summarized in the below chart.

Summary of Administrative Law Judge Findings

Complaint ¶	Allegation[1]	ALJ Finding	Page # in Decision
5	Captive audience meetings – 1/15/22 and other dates in January 2022	No Violation	45
6(a)	Interrogation by Josh Perkins in January 2022	Violation	46
6(b)	Polling of employees by Perkins in January 2022	No Violation	48
7(a)	At captive audience meetings in January and February 2022, threatened employees with loss of pay if they supported the Union	No Violation	48
7(b)	At captive audience meetings in Jan/Feb 2022, threatened employees with loss of benefits if they supported the Union	No Violation	49
7(c)	At captive audience meetings in Jan/Feb 2022, threatened employees with loss of access to management if they supported the Union	No Violation	52
8	Disparately enforced rules in Jan/Feb 2022 by allowing anti-union materials to be posted in work and non-work areas but not allowing pro-union materials to be posted in similar areas[2]	Violation re confiscation of union materials distributed in break rooms; No violation	56

[1] All complaint allegations allege violations of Section 8(a)(1) of the Act.

[2] During the hearing, Counsel for the General Counsel moved to amend paragraph 8 to add a separate allegation regarding similar conduct in November 2021. On April 29, 2024, I denied Counsel for the General Counsel's motion to amend this specific complaint paragraph. Counsel for the General Counsel did not address paragraph 8 in its subsequent renewed motion to amend the complaint.

		re posting of materials in work areas	
9(a)(i)	Camillo Jaramillo and David Croft orally promulgated a rule on February 11, 2022, and since maintained this overly broad rule prohibiting employees access to the facility 30 minutes prior to the start of a shift and required employees to leave the facility within 30 minutes after the end of their shift.	No Violation	57
9(a)(ii)	Same as 9(a)(i) except the rule limited access to the facility to a reasonable period of time prior to start of shift and after end of the shift.	No Violation	57
9(b)	Employer promulgated and maintained the rules in 9(a) to discourage its employees from forming, joining, or assisting the Union or other concerted activities.	No Violation	57
10(a)	In the 3rd floor breakroom, Camillo Jaramillo removed pro-union literature from breakroom tables (2/11/22).	Violation	58
10(b)	In a 1st floor restroom, Crystal Carney removed pro-union literature (2/11/22).	Violation	59
10(c)	In the parking lot, Crystal Carney orally promulgated, and has since maintained, a rule prohibiting employees from posting pro-union flyers in the restrooms.	No Violation	60
11(a)	At or near the 3rd floor breakroom, Ryan Underwood engaged in surveillance of employees' union activities (2/24/22).	Violation	60
11(b)	At or near the 3rd floor breakroom, Ryan Underwood threatened employees with plant closure if they voted in the Union.	Violation	61
11(c)	At or near the 3rd floor breakroom, Ryan Underwood threatened employees that electing a union would be futile.	No Violation	62
11(d)	At or near the 3rd floor breakroom, Ryan Underwood promised employees benefits by suggesting the formation of an internal employee committee to discuss workplace issues with management.	No Violation	64

12(a)	Felicia Terrell, by the site entrance, engaged in surveillance of Union activities (2/11/22).	No Violation	66
12(b)	Jeff Johns and James Rivers, near the 3rd floor breakroom, engaged in surveillance of employees (2/11/22).	No Violation	66
12(c)	Greg Swars, at or near the breakrooms, engaged in surveillance of employees engaged in union activities (2/15/22).	No Violation	67
12(d)	Mamadou Diop, near the front entrance, engaged in surveillance of employees (2/25/22)	No Violation	68
	Union Objections		
1	Amazon removed union literature from breakrooms, restrooms, and other non-working areas during the critical period.	Objectionable	70
2	Amazon applied a rule prohibiting the posting of union campaign literature in work areas and permitted employees to post anti-union messages in work areas during the critical period.	Not Objectionable	57
4	Amazon engaged in surveillance or created the impression of surveillance of employees engaged in hand-billing and/or other protected activities in the employee parking lot during the critical period.	Not Objectionable	69
5	Amazon engaged in surveillance or created the impression of surveillance; coerced employees who were discussing the union in an employee breakroom during the critical period.	Not Objectionable	61
7	Amazon engaged in surveillance or created the impression of surveillance when its agents followed/surveilled the Union's organizers as they visited employees' homes during the critical period.	Withdrawn (see page 67 of Charging Party post-hearing brief)	
9	During the critical period, Amazon engaged in surveillance and/or created impression of surveillance by stopping the only employee wearing a pro-union button and asking for his name immediately after the employee had been engaged in protected activities in the breakroom.	Not Objectionable	61
10	During the critical period, Amazon unlawfully imposed and/or discriminatorily enforced a new work rule prohibiting employees from arriving more than 30 minutes before the start of the shift and remaining on the premises more than 30 minutes after the end of the shift.	Not objectionable	58
11	During the critical period, Amazon engaged in surveillance and/or created the impression of surveillance when Amazon agents actively	No Finding	59

	observed employees engaging in protected activities in breakrooms and stationed themselves in employee breakrooms during breaks to observe and/or prevent such activities.		
17	Amazon sent text messages to employees containing false accusations that pro-Union employees were harassing co-workers and encouraged employees to report such harassment to HR.	Objectionable	71
18	Amazon provided the Union with a voter list which contained substantial errors.	Not Objectionable	77
19	Amazon threatened employees with plant closure during the critical period.	Not Objectionable	62, 80
20	Amazon required employees to attend anti-union captive audience meetings during the critical period.	Not Objectionable	46
21	Amazon granted employees extra rest time to attend anti-union captive audience meetings during the critical period.	Withdrawn (see page 67 of Charging Party's post-hearing brief)	
	Amazon's Objections		
1	The Union unlawfully communicated with employees regarding which mailboxes employees should use to return their mail ballots and the Union made false and/or misleading statements regarding the on-site mailbox during the critical period.	Not Objectionable	81
2	Union agents visited employees' homes after mail ballots had been sent and Union agents offered to take employees' ballots and mail them, and otherwise unlawfully handled or offered to handle employees' mail ballots during the critical period.	Withdrawn (See page 164 of Amazon's post-hearing brief)	
3	Union agents unlawfully represented themselves as agents of Amazon when visiting employees' homes during the critical period.	Withdrawn (See page 164 of Amazon's post-hearing brief)	
4	Union polled, interrogated, surveilled, and/or created the impression of surveillance among employees during the critical period.	Withdrawn (See page 164 of Amazon's post-hearing brief)	
5	Union agents unlawfully visited employees at their homes and offered to supply employees	Withdrawn (See page 164 of Amazon's	

	with mail ballots of unknown origin during the critical period.	post-hearing brief)	
6	Union agents unlawfully spread false and/or misleading information to employees designed to depress election turnout during the critical period.	Withdrawn (See page 164 of Amazon's post-hearing brief)	
7	At the vote count, the Union unlawfully challenged returned mail ballots for "bad address" and "employment status" without good cause to depress election turnout.	Not objectionable	82

There are nine unfair labor practice charges involved here. The first charge, 10-CA-290244, was filed on February 22, 2022, and the last charge, 10-CA-298933, was filed on July 7, 2022. The first complaint issued on May 22, 2023, and the Region's Sixth Amended Complaint issued on April 18, 2024. On April 22, 2024, Amazon filed its Answer to the Sixth Amended Complaint, denying the Complaint's material allegations[3] and asserting 75 affirmative and other defenses.

I am also tasked to decide a series of post-election objections filed by the Union and the Employer on April 7, 2022. (GC Exs. 1(jjj) and 1(kkk)). On June 6, 2023, Regional Director Lisa Henderson issued a Report on Objections and Challenged Ballots, Order Consolidating Cases, and Notice of Hearing, which consolidated 13 Union and 7 Employer objections for hearing with the unfair labor practices alleged in the complaint. (GC Ex. 1(zzzz)).[4]

The cases were tried in Birmingham, Alabama on April 29 to May 2, 2024, May 13 to May 17, and July 8 to 10[5]. At trial, all parties were afforded the right to call, examine, and cross-examine witnesses[6], to present any relevant documentary evidence, and to argue their respective legal positions orally.

[3] In paragraphs 1(e) and (i) of its Answer to the Sixth Amended Complaint, Amazon denies receipt of the second amended charge in Case 10-CA-290974 and the third amended charge in Case 10-CA-291045. As part of its formal papers, Counsel for the General Counsel has provided copies of these charges and affidavits of service confirming mailing of these charges. (GC Ex. 1(ssss) and 1(tttt) and GC Ex. 1(uuuu) and 1(vvvv)). Therefore, I find that the filing and service requirements relating to these two amended charges has been met.

[4] In a subsequent Order, the Regional Director held the challenged ballots in abeyance and therefore, the challenged ballots were not litigated before me. (GC Ex. 1(uuuuu)).

[5] On October 9, 2024, the parties filed a Joint Motion to Correct the Hearing Transcript. I hereby grant the parties' Joint Motion. I further order the following corrections to the transcript: Page 283, line 8 from "the fourth shift" to "before the shift"; Page 330, line 10 from "Crystal Corn" to "Crystal Carney"; Page 603, line 16 from "interest" to "entrance"; Page 1295, line 8 from "Gerald" to "Daryl"; Page 1297, line 9 from "Mr. Dumbacher" to "Judge Silverstein"; Page 1353, line 9 from "side" to "site"; Page 1451, line 9 from "smee" to "SME"; Page 1453, line 8 from "prom" to "Prime"; Page 1805, line 23 from "side" to "site"; Page 1947, lines 11-12 from "Bree and Ellis" to "Brienne Ellis"; Page 2010, lines 22 and 24 from "Mead" to "Meade"; Page 2208, line 3 from "protect the stadium" to "Protective Stadium."

[6] The General Counsel called eight witnesses – Clint Shiflett, Jennifer Bates, Serena Wallace, Braxton

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by Counsel for the General Counsel, Charging Party, and Amazon, I make the following:

FINDINGS OF FACT

JURISDICTION

Respondent admits, and I find, that it is a limited liability company engaged in the retail sale of consumer products throughout the United States. Respondent further admits that its Bessemer, Alabama fulfillment center has annually derived gross revenues in excess of $500,000 relating to Respondent's retail sale and distribution of consumer goods. Respondent also admits that it has purchased and received products, goods, and materials at its Bessemer facility valued in excess of $5,000 directly from points outside the State of Alabama. Respondent also admits, and I find, that it has been an employer engaged in commerce within the meaning of Sections 2(2), 2(6) and (7) of the Act.[7]

Based on the foregoing, I find that this dispute affects commerce and that the National Labor Relations Board (the Board) has jurisdiction over this case pursuant to Section 10(a) of the Act.

AMAZON'S BHM1 FACILITY IN BESSEMER, ALABAMA

Amazon's BHM1 facility is a robotics-sortable fulfillment center located in Bessemer, Alabama, about 15-20 miles southwest of Birmingham. BHM1 is essentially a supersized warehouse storing inventory that is available for purchase through's Amazon's online channels. The facility is 855,000 square feet with over 22 miles of conveyance throughout the building. There are 14 staircases in the facility and over 40 catwalks – elevated walkways with stairs to traverse for conveyance. On average, there are 20,000,000 units stored at BHM1 at any given time. (Tr. 1342, 1345-1346, 1366). While Amazon has two other fulfillment centers in the Huntsville area, BHM1 is the only robotics sortable site in the State of Alabama. (Tr. 1344). These sites only handle items that weigh less than 20 pounds and are smaller than 18x14x8.

BHM1 opened in March 2020 almost in concert with the declaration of COVID-19 as a public health emergency. (Tr. 1263).

Wright, Isaiah Thomas, Asia Sanders, Roger (Dale) Wyatt, and Christopher Sessions – while the Charging Party called three witnesses – Adam Obernauer, David Jimenez, and Brienne Ellis. Amazon called eleven witnesses – Todd Logan, Cody Haycraft, Adam Kozinn, Hope Webb, James Venable, Milly Gutierrez, Christopher O'Malley, Mamadou Diop, William (Lorin) Moyd, Jeremy Meade, and Brodrick (Ryan) Underwood.

[7] Respondent also admits that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

I will provide more details about the inner workings of BHM1 later in this decision, but how we got to the instant proceedings is essential to understanding the objections and unfair labor practice allegations I am tasked to decide here.

REPRESENTATION CASE BACKGROUND

On November 20, 2020, the Union filed a representation petition with Region 10 of the Board seeking to represent certain employees of Respondent. The Regional Director's January 15, 2021 Decision and Direction of Election identified the voting unit as follows:

> Included: All hourly full-time and regular part-time fulfillment associates, seasonal fulfillment associates, lead fulfillment associates, process assistants, learning coordinators, learning trainers, amnesty trainers, PIT trainers, AR quarterbacks, interior handlers, hazardous waste coordinators, sortation associates, WHS specialists, onsite medical representatives, data analysts, dock clerks, transportation associates, interim transportation associates, transportation operations management support specialists, field transportation leads, seasonal learning trainers, seasonal safety coordinators, seasonal process assistants, and warehouse associates (temporary) employed by the Respondent at its Bessemer, AL facility.
>
> Excluded: All truck drivers, office clerical employees, professional employees, managerial employees, engineering employees, maintenance employees, robotics employees, information technology employees, loss prevention specialists, guards, and supervisors as defined by the Act. (GC Ex. 1(a) and (g)).

The election took place via mail ballot, with balloting commencing on February 8, 2021 and the ballot count taking place on April 9.

The Tally of Ballots showed the following results:

Approximate number of eligible voters	5,867
Number of void ballots	76
Number of ballots cast for the Petitioner	738
Number of votes cast against labor organization	1,798
Number of valid votes counted	2,536
Number of challenged ballots	505
Number of valid votes counted plus challenged ballots	3,041

The challenged ballots were not sufficient in number to affect the results of the election. Therefore, a majority of the valid votes counted were not cast for the Union. (ER Ex. 22).

On April 16, 2021, the Union filed objections to the results of the election. (GC Ex. 1(s)). The Regional Director for Region 10 ordered a hearing on the post-election objections, the hearing took place in May 2021, and on August 2, the Hearing Officer issued her report recommending that certain post-hearing objections be sustained and recommending that a second election be ordered. (GC Ex. 1(z)).

The Employer filed Exceptions to the Hearing Officer's Report on Objections and on November 29, 2021, the Regional Director for Region 10 issued a Decision and Direction of Second Election affirming the Hearing Officer's findings and recommendations. (GC Ex. 1(gg)). Specifically, the Regional Director concluded that Amazon caused a postal mailbox to be installed at its facility during the critical period, in full view of security cameras, with its slogan on a tent surrounding the mailbox, in contravention of the Region's instructions to abide by the Board's mail ballot procedures and therefore, this conduct altered election procedures to give the appearance of irregular and improper Employer involvement inconsistent with the Board's laboratory conditions standard. (GC Ex. 1(gg), page 8).

On January 11, 2022, the Regional Director issued an Order Scheduling Mail Ballot Election which directed that mail ballots for the rerun election be mailed out on February 4, 2022, with a deadline for returning ballots by March 25, and scheduling the ballot count for March 28. (GC Ex. 1(mm)).

The Tally of Ballots for the rerun election showed the following results:

Approximate number of eligible voters	6,153
Number of void ballots	59
Number of ballots cast for the Petitioner	875
Number of votes cast against labor organization	993
Number of valid votes counted	1,868
Number of challenged ballots	416
Number of valid votes counted plus challenged ballots	2,284

BHM1 Departments and Hours of Operations

BHM1 receives inventory items from vendors or other Amazon fulfillment centers.[8] These items are unloaded on the inbound dock. Items are removed from their transit packaging (decanted) and placed in a yellow tote bound for a stow station. Robots bring yellow inventory shelves (pods) to the stow station, where associates place these items into BHM1's inventory. When a customer orders an item and it is fillable with BHM1's inventory, robots bring that inventory to a pick station, where associates place the ordered item in a yellow tote. The item moves along to the pack department, where associates place the items in appropriate packaging. The package is then routed to the facility's slam machines, which generate the customer address label for when the package leaves BHM1 on its way either to a sort center or a final mile destination.[9] (Tr. 1342-1344).

To manage the steady inflow and outflow of products, BHM1 operates virtually around the clock. For three days each week, the facility remains open for 24 hours. On the other four days of the week, the facility is open for 22 hours each day. (Tr. 1369). Day shifts begin at either

[8] On average, BHM1 receives 3.5 million inbound units per week. (Tr. 1345).

[9] The final mile is the delivery network that brings Amazon packages to customers' doorsteps. (Tr. 1320).

7:00am or 7:30am and run for 10 hours. Night shifts start at either 6:00pm or 6:30pm and also run for 10 hours. Associates working 10-hour shifts receive a 30-minute unpaid lunch period and a 30-minute paid rest period. Associates working a 12-hour shift receive an extra 15-minute paid rest break. (Tr. 1370, 1387).

There is one site entrance, which all associates and managers use to enter the facility. By this entrance are seven glass doors, a small foyer and several sets of turnstiles where employees must scan their ID badges to enter the facility. Security officers, who are not directly employed by Amazon, staff the front desk and assist with printing badges for visitors and vendors as well as assisting Amazon associates who misplaced their access badges. (Tr. 1348, 1498).

Once through the turnstiles, associates see the 1st floor breakroom on their left. This 10,000 square foot breakroom has a capacity of 400 persons.[10] (Tr. 1348, 1363). There are also three much smaller breakrooms scattered throughout the 1st floor as well as six restrooms. (ER Ex. 17; Tr. 1365). The inbound and outbound ship dock departments are also located on the 1st floor, along with stations for pack, pick, stow, and count, as well as the robotics service platform (RSP). (Tr. 170, 254, 1349, 1366). Finally, management offices (for the general manager, assistant general manager, senior operations managers, and senior human resources manager) are located on the 1st floor, along with offices for safety, loss prevention and human resources. (Tr. 1423-1425, 1498).

The 2nd and 3rd floors of BHM1 contain the pack department. (Tr. 1349). There is no breakroom on the 2nd floor while the 3rd floor houses a massive breakroom similar in size to the 1st floor breakroom.[11] Adjacent to the 3rd floor breakroom are two meeting/training spaces, denoted the Alabama and Auburn rooms. (Tr. 1364-1365).

Over 30 large screen televisions, called ACID feeds, are located throughout BHM1, with a heavy concentration by the building's main entrance. On these ACID feeds, Amazon digitally displays official communications for associates, such as the temperature inside BHM1, Amazon policies, shift schedules and voluntary extra time information.[12] (ER Ex. 19; Tr. 1391, 1501, 1505, 1709). Other digital display screens called Voice of Associates (VOA) Boards project and scroll associate comments and questions as well as management responses.[13] BHM1's general manager and HR leader are responsible for maintaining the VOA boards and their designees monitor and answer questions posed through the A-to-Z app. (Tr. 1657-1658, 1712). There are 3 VOA boards at BHM1 – 2 by the main entrance and 1 near the 3rd floor breakroom. (Tr. 1503-1504).

Bargaining Unit Size/BHM1 Management

[10] Managers and associates use the same breakrooms. (Tr. 1387).

[11] There is no breakroom on the 4th floor of BHM1. (Tr. 1464).

[12] There are four ACID feeds located at the outbound ship dock start-up work area. (Tr. 1506).

[13] Associates post their comments or questions through Amazon's A-to-Z app, which allows associates to view their personnel records and benefits enrollment, submit time off requests, lodge complaints with human resources, and access Amazon policies. (Tr. 1397).

As of January 1, 2022, there were approximately 6,000 hourly associates on BHM1's payroll. Headcount increases during the "peak" season, which runs from Black Friday through Christmas as well as the late June/early July period leading up to Amazon Prime Day. (Tr. 1452-1454). Conversely, headcount drops after the Christmas rush and in late Summer. These seasonal swings yield a 100% attrition rate amongst BHM1's hourly associates. As a result, about 70% of the current BHM1 workforce was hired after January 2022. (Tr. 1339).

This supersized workforce requires a significant managerial presence. To this end, there are at least 70 day-shift managers and 50 night-shift managers. (CP Ex. 56, 62). The outbound ship dock department illustrates this phenomenon. Once a package has been labeled with the customer's address, it is sorted by destination, placed on a pallet and stacked onto a truck bound for the next leg of its journey. (Tr. 1340-1341). There are 400-500 employees in outbound ship dock and on any given shift, there are 70-120 employees working in this department. This department is divided into three areas with three area managers. There is one operations manager per shift, with a total of four operations managers having three direct reports (area managers). (Tr. 1340-1341, 1451). Operations managers report to senior operations managers, who in turn report to the assistant general manager (AGM) of the facility. The AGM reports to the site general manager. (Tr. 1338). Mamadou Diop served as BHM1's general manager from May 2021 through October 2023. (Tr. 2096).

The Cleaning Contractor

A building as massive as BHM1 requires a sizeable cleaning staff. When BHM1 opened in 2020, Amazon contracted with KBS to clean inside the building (e.g. restrooms, breakrooms, and offices) as well as the entire parking lot, outside smoking areas, and in front of the building. (Tr. 2165, 2168). There were about 80 KBS cleaners working on the BHM1 account at any one time and roughly 20-30 KBS cleaners onsite each shift. (Tr. 2198). Bill Owens was the site manager for KBS as of November 2021. Jairo Sarmiento was the regional zone manager for KBS and Michael Napieraj was the regional vice-president. (GC Exs. 24 and 25; Tr. 2184-2185).

Amazon's Vote No Campaign

In January 2022, Amazon unleashed a full-throttled Vote No campaign. Spearheading this campaign onsite was a squadron of 20 Amazon employee relations professionals, who were temporarily reassigned to BHM1, as well as 8 paid outside consultants.[14] This employee relations team reported to employee relations principals Todd Logan[15] and Andrew Stanley. (Tr. 1262, 1267, 1672, 1674, 1763). In addition to the eyes and ears on the ground, Stanley provided an email "BHM1 Site Update" to invested parties, such as Josh Frank, Amazon's director of employee relations, and Janet Saura, Amazon's vice-president of employee relations. (Tr. 1664, 1908). These email site updates were sent out on a daily basis from January 21, 2022 through February 3, 2022, and then switched to 3x/week updates for the remainder of February. (CP Exs. 54 through 65).

[14] Employee relations managers and principals remotely provide field-based support for multiple Amazon sites on a regional basis. (Tr. 1264, 1312).

[15] Logan also coordinated the Employer's "Vote No" campaign for the 2021 mail ballot election. (Tr. 1260).

Small Group Meetings

Like in the 2021 campaign, a central feature of the Employer's "Vote No" rerun election campaign was a series of small group meetings conducted in the Alabama/Auburn training room adjacent to the 3rd floor breakroom.[16] (Tr. 1364, 1385). Logan testified that the purpose of the small group meetings was to educate employees on the topics of the week (e.g. collective bargaining, strikes), provide them with factual information supporting Amazon's position regarding unionization, and encourage employees to vote. (Tr. 1594-1596). Starting on January 16, 2022, these small group meetings took place every 30 minutes over 8-hour windows on the day shift and 8-hour windows on the night shift. Either employee relations managers/principals or third-party consultants presented materials during these meetings, with no more than 2 presenters in the room.[17] There were 50 chairs set up in the meeting room and Logan testified that the Employer aimed to fill every chair at every meeting. (Tr. 1595-1596, 1600-1601, 1706).

Logan testified that employee attendance at these small group meetings was not mandatory. (Tr. 1596). He instructed area managers to tell employees that Amazon was providing important information about the campaign at these meetings and would really like for the employees to attend the small group meetings. But Logan told managers not to threaten employees with discipline if they didn't want to attend the small group meetings. (Tr. 1596-1597).[18]

Associates were paid to attend the small group meetings. (Tr. 1649). To track their time, Amazon scanned associates' badges three separate times. The first scan switched employees' time to a nonoperational labor tracking code. The second scan tracked the time of the small group session employees attended and the final scan, which took place at the end of the session, switched employees' time out of the nonoperational labor tracking code.[19] (Tr. 1386-1387).

Several employees testified that their managers informed them that the small group meetings were mandatory.[20] In this regard, Serena Wallace testified that her manager, Collin Johansen directed her to attend the meetings in the 3rd floor meeting rooms and specifically told her that the meetings were mandatory.[21] (Tr. 387-388). Similarly, employee Isaiah Thomas testified that an operations manager named Ula Dahama told him that there was a mandatory meeting and he needed to be there. Dahama then scanned his badge, told him to wait in the

[16] The Alabama/Auburn room can be split by a divider to function as two separate training rooms. For the 2022 small group meetings, no divider was used, and the meetings all took place in the same large space. (Tr. 1421).

[17] One of the two presenters presented the material to employees. The other individual served as backup. (Tr. 1767).

[18] Logan did not know if any associates actually opted out of these meetings. (Tr. 1650).

[19] Amazon's finance department decided how to code these messages. These nonoperational labor tracking codes are similar to codes used for safety trainings and town hall meetings. (Tr. 1499-1500).

[20] Amazon did not present any witnesses that spoke to employees about the small group meetings or were present when employees were invited to these meetings.

[21] Wallace also testified that she was paid to attend these small group meetings and that she also attended other meetings, like trainings, safety meetings, and orientations – on paid time. (Tr. 423).

stand-up area, and Thomas and a group of employees were then escorted to the 3rd floor meeting room. (Tr. 579, 581).

Todd Logan testified that he prepared, edited, and ultimately approved the PowerPoint presentations and handouts covered at the small group meetings. (Tr. 1603). Presenters used the PowerPoint materials as a guide but did not work from a formal script. (Tr. 1550). Hope Webb, an employee relations principal, testified that during her 30-minute presentations, she elaborated on the slides, simplified matters, and offered her own experiences with the materials presented. (Tr. 1739-1740, 1766).

The first full week of meetings featured PowerPoint slides concerning unions and collective bargaining. (Joint Ex. 5, Tr. 1603). These materials were used in all meetings conducted the week of January 16th (Sunday to Saturday). The second full week of small group meetings focused on collective bargaining, strikes, and the importance of voting in the mail ballot election. Imbedded in that week's PowerPoint presentation was a video of general manager Mamadou Diop and HR site leader CJ Mitchell imploring employees to vote no and explaining why a union at BHM1 would not be in the employees' best interests. (Joint Exs. 6 and 9(a) and (b); Tr. 1608-16010). The final week of small group meetings began on January 30 and ended by February 2 because Region 10 began mailing out ballots to voters on February 4. (Tr. 1611). The last week's presentation focused on key election dates and suggested how employees could respond to union representatives contacting employees at home. (Joint Ex. 7).

Over these three weeks, Amazon, via its BHM1 site update emails, provided almost real-time updates for senior HR and employee relations officials, as well as outside legal counsel. Each site update contained a running count of employee attendance at small group sessions that week as well as to-date in the campaign. For example, the January 21, 2022 site update noted that 3,507 employees had attended these sessions so far that week. By the January 24 site update, this number had grown to 4,511 employees for the week-to-date, and a campaign total of 14,811. (CP Exs. 54 and 57).

Beyond the raw attendance numbers, the site update emails also provided senior Amazon leaders with feedback regarding employee behaviors at these meetings. For example, the January 21, 2022 site update reported that:

> "a small group of agitators have been more vocal in meetings, though their aggression and communication style seem to exhaust other AAs (Amazon Associates) in the room. There has also been the appearance of RWDSU branded shirts in the site. While there is still just a small contingent of largely known supporters wearing the shirts, this is a tactic that was not seen in the prior election." (CP Ex. 54).

One-on-One Engagements at Workstations

Another central feature of Amazon's "Vote No" campaign was direct one-on-one engagements at employees' workstations. These conversations with employees occurred throughout the rerun election campaign and were conducted by paid third-party consultants as well as some of the employee relations staff on temporary assignment at BHM1. (Tr. 1672-

1673). By the time of the ballot count, Amazon representatives had logged 18,631 engagements on the shop floor. (CP Ex. 52).

According to Todd Logan, there was no script used for these conversations. (Tr. 1674). Since none of Respondent's witnesses actually participated in these one-on-one engagements, Counsel for the General Counsel's witnesses filled in the blanks. To this end, Asia Sanders, who worked on the inbound dock, testified that an employee relations official named Josh Perkins approached her in about late January 2022 while she was working on her line. Perkins asked Sanders how she felt about the "union stuff" going on at the facility and Sanders said that she didn't have an opinion. Perkins asked if she had any questions for him and Sanders said no. Perkins then moved over to talk to the next employee on the line.[22] (GC Ex. 23, Tr. 612-616). Similarly, inbound dock employee Jennifer Bates testified that in about January or February 2022, a tall, African American male approached her on the decant line, said that he was with Amazon employee relations, and wanted to share information with employees. The man asked Bates if she had any questions for him and Bates said that he could not answer her questions. The man then criticized employees who support the union, asserting without any basis that those who support the union have trouble with their own finances. After this conversation ended, the man talked to Bates' neighbor on the decant line. The man from Employee Relations identified himself to Bates' co-worker, said he was there to put out the facts, asked Bates' co-worker how she felt about the Union, and asked her if she knew what the Union did with the money they collected for dues. (Tr. 318-321, 325-327).

Table Toppers and Installments

In addition to the weekly meetings and workstation engagements, Amazon used its breakrooms and bathrooms to further bombard associates with its anti-union campaign rhetoric. When BHM1 opened, Amazon used table toppers on each breakroom table to disseminate HR messages concerning time off, pay, and other Amazon policies. At the time of the launch, the table toppers did not contain information relating to unions. (Tr. 2200). But in the throes of the rerun election, every table in every breakroom contained a rotating series of table toppers reinforcing Amazon's "Vote No" campaign. (Tr. 1624). For example, one table topper contained the headline "Amazon Guarantees vs. Union Promises" with the first paragraph stating:

> "Competitive pay and benefits. You already have competitive pay and benefits without ever paying a cent in union dues. With good faith union negotiations, you could end up with the same, more, or less than what you have today." (GC Ex. 25; Tr. 1626).

Associates who needed to use the restroom could not avoid Amazon's anti-union messaging either. In BHM1's bathrooms, Amazon placed "installments" on the bathroom walls, in front of urinals, and inside the doors of the stalls. Site HR worked with BHM1 leadership to rotate installment messages on a weekly basis consistent with monthly themes and information related to these themes. During the week of February 13 to 19, 2022, installments highlighted ways to celebrate Black History Month, updated Amazon's mask-wearing policy, and outlined

[22] In its Answer to the Sixth Amended Complaint and in Joint Ex. 2, Amazon confirmed that Perkins was its agent within the meaning of Section 2(13) of the Act during the January to March 2022 timeframe. Perkins did not testify.

upcoming celebrations such as swag giveaways and trivia nights. But attached to these announcements was an anti-union message stating: "If You Don't Want a Union at BHM1: VOTE NOW and VOTE "NO!" (CP Ex. 36; Tr. 235, 1315, 1713).[23] Other installments included Amazon's answers to questions from associates regarding union dues and whether the union could offer more benefits than associates currently enjoyed. After providing its slanted perspective on the issues, the installment implored employees to "Vote Early. Vote NO!" (GC Ex. 14; Tr. 548-549).[24]

If employees somehow missed Amazon's "Vote No" messaging in the breakrooms and bathrooms, the same content from the table toppers and installments was displayed on the 30 ACID feed monitors scattered throughout BHM1. (Tr. 1501). Plus, in February 2022, Amazon added more TVs throughout BHM1 to display this messaging and erected a mammoth "We Win As One, Vote No!" banner inside the site entrance. (CP Ex. 42).

Text-Em-Alls

Another facet of Amazon's anti-union campaign was the weaponization of its electronic communications system to repeatedly disseminate messages critical of the Union and its supporters. Amazon uses "Text-Em-Alls" or "TEAs" to send out text blasts to the mobile phones of all BHM1 associates concerning weather updates and changes in COVID protocols. (Tr. 520, 1615-1616). But during the rerun election campaign, Amazon used this means of communication to control its campaign narrative. At the beginning of the campaign, these "Text-Em-Alls" were fairly innocuous. For example, Amazon sent out the following "Text-Em-Alls" in the first week of January:

> "Amazon and the RWDSU have let the National Labor Relations Board know their preferences for the new election. We want an in-person election in January, while the union wants to draw it out until April and make it less convenient for you to vote. We will update you when we know more.
>
> Free college tuition after just 90 days on the job through Career Choice. We also offer other training opportunities and are proud to have promoted well over 300 associates at BHM1 in 2021 and over 5,000 associates at fulfillment centers nationwide in 2021. Please go to www.amazoncareerchoice.com to explore the opportunities available to you." (CP Ex. 53).

Text-Em-Alls disseminated later in January 2022 were authored in response to reports Amazon received regarding Union agents visiting employees at home and to supposedly counter Union misinformation:

[23] Todd Logan testified that Amazon does not permit 3rd parties to include information on the installments. (Tr. 1717). Logan also testified that he supplied HR with the installment content concerning the union election. (Tr. 1640).

[24] Isaiah Thomas testified that this message was also in a table topper in the breakrooms in addition to on the walls of the bathrooms. (Tr. 547-548).

"Amazon Values Your Privacy: AAs have voluntarily shared with us that they've received phone calls and visits at their homes by RWDSU representatives. When these individuals contact you either by phone or at your home, it is your choice whether to speak to them. The law allows unions to make inaccurate and untruthful statements and promises when trying to get your vote. If it sounds too good to be true, it may be. We encourage you to do your own research.

No one can predict or guarantee the outcome of good faith collective bargaining negotiations: not Amazon and not the union. If the union were voted in, your wages, benefits, and other terms and conditions of employment would be subject to good faith negotiations between the union and Amazon." (CP Ex. 61).

"Some associates have shared that they are exhausted by the tension this election has caused. Many have expressed concerns with inconvenient home visits and phone calls by union organizers. We believe the best way for you to let the RWDSU know that you do not want union representation and you want their organizing efforts to end is by voting NO. We encourage everyone to vote so that your collective voices can be heard." (CP Ex. 62).

Amazon Text-Em-Alls in early February 2022 continued the Employer's counterpunching strategy:

"As ballots start arriving at your homes, union organizers or their supporters may try to create anxiety at the site by spreading false rumors. Should that happen, we encourage you to ask questions and do your own research so you can decide what is true and not true. Even though small group meetings have ended, leaders are still available to address questions you may have. We thank all of our associates who attended small group meetings, asked questions, and shared their experiences." (CP Ex. 64).

"As the NLRB mails ballots to AAs on February 4, there may be increased attempts by union organizers or their paid contractors to contact you by phone or at your home. Please note that no one representing Amazon will visit your home, so if anyone who appears at your home says they represent Amazon, that is not true. It is your right and choice whether to talk to anyone who visits your home. It is also your right to say 'No thanks' and that you do not wish to be contacted again. Please know that per the NLRB's instructions, you should not permit anyone – Amazon, the Union, or their representatives – to handle, collect, or mail your ballot. This is a secret-ballot election, and you have the right to not share with anyone how you vote!" (CP Ex. 64).

"We understand that some AAs may be frustrated with the manner in which RWDSU supporters are distributing RWDSU T-shirts and approaching them in front of the building. While we respect the rights of all AAs to engage in legally protected activities – such as supporting or opposing the union – we want to make clear that people handing out these T-shirts are NOT acting on behalf of Amazon or BHM1. If you do not want a union, which many of you have expressed to us throughout the course of the campaign,

we believe the best way to send that message is to once again overwhelmingly "VOTE NO!" (CP Ex. 65).

The Union's Organizing Activities and Amazon's Response

The Union ran a multi-pronged organizing campaign of its own. Inside BHM1, employees placed flyers in breakrooms and bathrooms throughout the facility. In BHM1's parking lot, employees displayed banners, brought a box truck featuring in LED screen with images of Union supporters, distributed t-shirts, used megaphones to amplify their messaging during shift change, and on one occasion, projected the word "YES" onto the side of BHM1 next to Amazon's enormous "Vote" banner.

Away from BHM1, the Union tweeted using the @BAmazonUnion hashtag, sent out text blasts of their own, held weekly meetings with workers at the local Fairfield Inn, conducted phone banking, and recruited over 100 organizers to conduct home visits with employees. (Tr. 845, 886, 937).

As the Union's organizing activities accelerated, Amazon pushed back. Isaiah Thomas engaged in his union activities with alacrity. Thomas testified that in January and February 2022, he passed out flyers in the breakrooms about 40 or 50 times. He passed out these flyers before and after his shift as well as during breaks. Thomas testified that he would arrive at work about two hours before his scheduled shift time so that he could pass out flyers. In the breakrooms, Thomas put flyers on the bottom left-hand corner of every breakroom table. On occasion, he handed the flyers directly to employees enjoying their breaks in the breakrooms. (Tr. 583-585, 587-588). And on about 20-30 occasions, Thomas placed flyers in every men's bathroom – on the walls next to the installments.[25] At 11:30am, during Thomas' first break of the day, he returned to the breakrooms where he had earlier distributed the union flyers. On every occasion that Thomas went back to check on the flyers, they had been removed from the tables. And when Thomas checked on the flyers affixed to the bathroom walls during the same 11:30am break, the flyers had been removed as well. (Tr. 588, 593-594).

Thomas' actions caught Amazon's eye. On January 21, 2022, Employee Relations Principal Andrew Stanley and Outbound Ship Dock Senior Operations Manager Cody Haycraft pulled Thomas away from his workstation to hand him a document entitled "Solicitation Policy Reminder." The letter said:

> "On January 19th, we received multiple voluntary reports from associates that you are soliciting in work areas, during associate working times. While we understand your activity may have occurred during your break time, you were interfering with fellow associates during their working time, in their work areas. As you may be aware, it is a violation of Amazon's lawful solicitation policy for an associate to:
>
> -Engage in solicitation of any kind on company property during working time; and
> -Distribute literature or materials of any type or description (other than as necessary in the course of your job) in working areas at any time.

[25] Thomas used tape to affix the flyers to the bathroom walls. (Tr. 592).

> Nothing in Amazon's solicitation policy restricts you, as an associate, from engaging in solicitation in non-work areas or while you and the associates you are soliciting are both on non-work time. Non-work areas include, but may not be limited to, the parking lot and site break rooms. Amazon respects your right to engage in lawful solicitation in accordance with our lawful policy. Thank you for adhering to our policy." (ER Ex. 4).

In their conversation, Stanley told Thomas that he couldn't pass out materials while he was working, and he couldn't pass out flyers while other associates were working. Stanley never identified to whom Thomas had allegedly solicited while on the clock or where this solicitation took place. (Tr. 556-557, 589, 607). Haycraft testified that he did not recall receiving complaints about Thomas prior to escorting Stanley to speak with Thomas. Haycraft said that he did not know why the solicitation policy reminder was drafted and this was the only time he was involved in delivering this type of letter to an associate during the rerun election campaign. (Tr. 1470).

This incident was significant enough to warrant mention in the January 22, 2022 BHM1 Site Update email that reached the highest levels of Amazon employee relations and human resources. The site update noted that "on January 21, ER (Employee Relations) and an Operations Manager met with a known organizer who AAs had reported for soliciting them on work time and in work locations. The AA was reminded of Amazon's policy on solicitation and was provided a letter, vetted by legal, reminding him of the policy." (CP Ex. 55).

In the same January 22 site update, Amazon tracked two other incidents involving union-supporting employees. For the first episode, the email author noted that "on January 21, at least two AAs wearing RWDSU shirts stood at the front entrance and handed out flyers to AAs entering the building. This activity was done on non-work time and in a non-work location. The AAs completed their solicitation and clocked-in for their assigned shift." For the second tidbit, the author noted that:

> "On January 21, ER received information that pro-union AAs had placed flyers on all of the tables in the third-floor breakroom prior to the start of the first AA meeting at 0800. The manager labor tracking AAs reported this to ER and was advised to leave the flyers on the table. Shortly after the 0800 class entered the Training Room for the small group meetings, ER observed the manager removing the flyers. The manager misunderstood the direction from ER and thought he could remove the flyers once the class was sent in. Moving forward, ER will level set with the managers labor tracking AAs, making sure they understand what they can and cannot do when it comes to union flyers and any solicitation going on during AA breaks." (CP Ex. 55).

Besides monitoring who was engaged in union activities as well as the nature of those activities, Amazon kept tabs on what specific types of union literature were being distributed. To this end, in the February 1 BHM1 Site Update, Amazon higher-ups learned the following:

> "On January 31, RWDSU representatives stood at the exits to the site waving signs and handing out flyers to vehicles. For the first time since the campaign began, the flyer

being distributed has changed. This flyer contains one side with photos of union supporting associates holding signs stating why they are supporting the union. Each of the individuals on the flyer has appeared in previous communications. The other side lays out what the union plans to do once if associates vote to unionize. The fourth bullet point specifically states that they intend to negotiate better wages and more PTO. ER has continued to show examples of what types of wages and PTO the RWDSU has actually delivered for their members in collective bargaining." (CP Ex. 63).[26]

The February 8th Box Truck Incident in the BHM1 Parking Lot

During the afternoon shift change on February 8, a box truck carrying Isaiah Thomas parked in front of BHM1 in the area designated for pick-ups and drop-offs. But this was no ordinary box truck. Blasting Bob Marley's "Get Up Stand Up" from its speakers, the truck featured two large LCD screens on either side of the vehicle. As the music played, the LCD screens scrolled through images of Amazon associates holding signs explaining why they support the Union, framed by the words "Vote Yes."[27] (CP Ex. 9; Tr. 722).

After parking in the pick-up/drop-off area for about a minute, site general manager Mamadou Diop came out to talk to Thomas, Clint Shiflett (whose shift was ending and was supposed to leave in the box truck), as well as Chris Sessions, who filmed this interaction. Diop explained that if Thomas had already been dropped off for work, the box truck needed to leave the pick-up/drop-off area. He suggested that the box truck move to a regular parking spot but reiterated that the truck could not remain where it was parked. Diop then walked back inside BHM1, with Sessions inexplicably filming Diop's walk back inside the building. (CP Ex. 9; Tr. 722, 751-752, 756).

This incident was reported in the next day's site update email. The update summarized the incident as follows:

> "On February 8, the RWDSU parked a box truck with large video screens at the exit to the facility during shift change. After shift change, three AAs drove the box truck into the parking lot and parked in the loading/unloading zone. ER and the site GM engaged with the AAs and advised them that they were not allowed to park in that area. One of the AAs recorded the interaction. The incident was escalated to PR for awareness."

In this same site update, the author noted that on February 9, Employee Relations met with site senior leadership to review escalation protocol guidance in anticipation of RWDSU representatives becoming "increasingly provocative in their behavior." (CP Ex. 41).

Multiple Incidents on February 11th

With ballots mailed out to voters, the back-and-forth rancor ratcheted up, with the events of February 11th serving as the crescendo.

[26] The emailed site update contained pictures of each side of the above-referenced flyers. (CP Ex. 63).

[27] These are the same images referenced in the February 1 site update and in General Counsel Exhibit 4.

Burning of an RWDSU T-Shirt in the BHM1 Parking Lot During Shift Change

During the morning shift change[28] on February 11th, a number of union supporters stationed themselves in the BHM1 parking lot to distribute t-shirts and flyers. A man wearing an Amazon lanyard approached Chris Sessions and curiously asked Sessions for a t-shirt in the size that was least in demand. Sessions handed the man a shirt and a few minutes later, Sessions noticed a shirt on fire in the parking lot. Sessions saw the man who had just taken the shirt leaning against a post with his arms folded and a smirk on his face watching the shirt burning. The shirt was burning near the site entrance, in an area where cars are allowed to pull up. (Tr. 644, 728-729, 733-734).

A security guard extinguished the fire and then an Amazon loss prevention agent and a Bessemer police officer spoke with the alleged culprit. (Tr. 644, 738). Employer relations principal James Venable walked through the parking lot and observed the smoldering t-shirt. He spoke with loss prevention, learned that the t-shirt said RWDSU and was told that loss prevention and human resources were reviewing the matter and taking care of it. (Tr. 1877-1878).

The evidentiary record contains Amazon's investigation report identifying associate Cory Smith, aka Red Slavae, as the man who burned the RWDSU t-shirt on the morning of February 11th. (CP Ex. 40).

The background section of the report states that:

> "On February 11, 2022 at approximately 0700hrs, I was contacted by Natasha Reese in regards AA Cory Smith (Red Slavae) burning a RWDSU t-shirt in the parking lot. Witness 1 Natasha Reese stated they observed the POI Cory Smith (Red Slavae) light a RWDSU shirt on fire at the front of the building near the main parking lot. In their statement, Reese identified the POI by name and provided a detail time frame of the event. A written and signed statement was obtained by Reese. A video review was conducted and it was consistent with the statement provided by Reese. In the video the POI, Cory Smith (Red Slavae) is seen taking a RWDSU t-shirt and then began walking down towards the east side of the center parking lot in front of the smoker's canopy. The POI is then seen lighting the shirt on fire and turning around to face the RWDSU supporters before dropping the burning shirt on the ground and walking away.
>
> At 1500hrs, Adam Williams and I, Oumou Sylla interviewed the POI Cory Smith (Red Slavae) via phone. When we asked the POI why they burned the shirt, the POI replied 'it is my freedom of speech.' The POI then further said it was burned as a 'protest' to the union campaign. The POI stated they felt the union was being 'hypocritical.' Following the interview, an emailed statement was requested from the POI. The POI's badge has been placed in a Paid Leave status pending the completion of the investigation." (CP Ex. 40).

[28] During shift change, there are hundreds of employees crisscrossing the parking lot either leaving work or arriving for the start of their shift.

The investigation report then noted that there was substantiating evidence to conclude that Cory Smith violated Amazon's safety conduct standards, category 2 – behaviors that create risk of significant injury to self or others, are serious, and may result in a final written warning. (CP Ex. 40).

In the next day's BHM1 Site Update email, the author summarized the shirt burning incident as follows:

> "On February 11, groups of RWDSU supporters continued their cadence of handing out shirts on Tuesdays and Fridays. During the morning handout, an AA took at least one shirt from the RWDSU supporters, lit it on fire, and then dropped it on the pavement in the parking lot away from other AAs, buildings, and vehicles. The incident is still under investigation." (CP Ex. 42).

No Text-Em-All was sent out to alert Amazon employees about that morning's shirt burning incident. (Tr. 1879).

Clint Shiflett Leafleting in the 3rd Floor Breakroom on February 11th

Clint Shiflett worked on the 1st floor ship dock during the 2022 union campaign. (Tr. 170). On the morning of February 11th, Shiflett met with fellow union supporters Chris Sessions and Isaiah Thomas to coordinate distribution of flyers in the Employer's breakrooms. (Tr. 195). Shiflett then entered BHM1 at about 5:30am, two hours before his shift was scheduled to begin. He scanned his badge to pass through the entry gates and headed for the 3rd floor breakroom. Shiflett placed flyers in the center of each of the 60-80 individual tables in the large breakroom.[29] The flyers were all the same – a collage of photos of union supporters holding placards explaining why they supported unionization at BHM1. (Tr. 116-117, 119, 172, 192).

Shiflett testified that he placed about 30 flyers on the 3rd floor breakroom tables before going to the restroom. Shiflett estimates that he left the breakroom for about 10 minutes and when he returned, Amazon manager Camilo Jaramillo was removing his flyers from the breakroom tables. At this point, Shiflett recorded their interaction. Jaramillo acknowledged removing one of the flyers from the tables, explaining that they (KBS) have to clean and disinfect the tables. Amazon manager David Croft then asked Shiflett if he was on the clock. Shiflett told the managers that he was early because his shift started at 7:30am. Croft told Shiflett that he wasn't supposed to be in the building so early, indicating that he can only be in the building a "reasonable amount of time" before or after his shift. Jaramillo interjected by saying that it is a maximum of 30 minutes before the start of a shift. Jaramillo then stated that KBS is going to come in and throw away the flyers because they have to be disinfected. Jaramillo clarified that KBS asked the managers to pick up any papers on the tables, but Shiflett accused him of removing union literature from nonwork areas. Jaramillo asserted that he was going to place the flyers in a stack on one of the desks, but Shiflett was skeptical, given that

[29] Each table contained a plexiglass shield, sanitary wipes, hand sanitizer, and a table topper. (GC Ex. 3(a); Tr. 118).

every other time he had distributed flyers in the breakrooms, the flyers just disappeared.[30] At the end of this recording, Shiflett noted that the time was 6:09am. (GC Ex. 3(b); Tr. 122).

After his encounter with Jaramillo and Croft, Shiflett continued leafleting in the 3rd floor breakroom, leafleted in a smaller 1st floor breakroom by the rear of the building, and then exited the facility through the main entrance to join his colleagues distributing union t-shirts and literature in the BHM1 parking lot. (Tr. 125, 136).

But word of the leafleting quickly spread through management's ranks. In an internal Chime chat group, manager Jeff Johns, at 6:25am[31], informed six HR and employee relations officials (CJ Mitchell, James Venable, Cody Haycraft, Taylor Angert, Andrew Stanley, and Felicia Terrell) that "the third floor break room is plastered with union stuff." Twenty minutes later, Johns confirmed that "it's a white guy in red RWDSU t-shirt putting them everywhere." (GC Ex. 3(d)).

In a separate concurrent Chime chat featuring Andrew Stanley, Todd Logan, James Venable, Cody Haycraft, and John Henderson, Henderson asked at 6:34am whether they are removing anybody not on the clock if they are passing out flyers in the breakroom. Haycraft said no but reiterated that the 3rd floor breakroom was plastered with union stuff. Henderson interjected that "they are putting flyers on every table," but Todd Logan told them to let it be. (ER Ex. 13).

The following day's site update summarized the leafleting activity. It reads:

> "On February 11, pro-union flyers were placed in the breakrooms and on work stations. Managers on the floor were unable to determine who flyered the working areas. All flyers were removed from work stations. Those left in breakrooms remained until KBS did their regularly scheduled cleanup according to their SOP." (CP Ex. 42).

Amazon Instructions to KBS to Remove Union Leaflets from Breakroom Tables

Amazon contracted with KBS to clean BHM1's parking lot, the front of the facility, outside smoke areas, breakrooms, restrooms, offices, and anything else that required cleaning inside the building. (Tr. ER Ex. 46; Tr. 2168). Pursuant to a schedule in place since 2020, KBS was supposed to clean BHM1's breakrooms before and after each scheduled break. For

[30] Shiflett testified that he passed out union flyers in BHM1's breakrooms about five times in January and February 2022. On each of those occasions, Shiflett returned to the breakrooms during his first break, about two hours into the shift. The union literature was never on the breakroom tables when Shiflett followed up. (Tr. 133-134).

[31] The actual Chime message reads 04:25, but James Venable testified that these Chime messages are stored on an Amazon server based in Seattle. Since Seattle is in the Pacific time zone and Bessemer is in the Central time zone, the actual time these messages were sent is 2 hours ahead of the times listed on the exhibit. Therefore, a message listed at 04:25 was actually sent at 06:25. (Tr. 1802).

example, on the day shift (employees who start work between 6:45am and 7:45am), employees take their lunch break at staggered times between 10:00am and 11:45am. Therefore, KBS is expected to clean the facility's breakrooms between 8:00am and 10:00am (before lunch) and from 12:00pm to 2:00pm (after lunch). The cycle repeats itself for every break and meal period on the day and night shifts. (ER Ex. 47; Tr. 2176).

William Lorin Moyd was BHM1's procurement operations analyst from March 2020 through March 22, 2022. (Tr. 2164). Among his many hats, Moyd served as a liaison for all vendor services at BHM1 – janitorial, recycling, etc. Specifically, Moyd was the point of contact for KBS at the building to help manage the contract and ensure KBS was meeting the scope of work. (Tr. 2165).

Moyd testified that in about early November 2021, Todd Logan informed him that he (Logan) received a number of escalations from KBS concerning the cleaners' fears about what they could and could not throw away when they were doing their normal cleaning duties in the breakrooms. (Tr. 2178, 2190). The specific concern brought to Logan's attention was the appearance of RWDSU flyers in the breakroom during clean zone windows. (Tr. 2178). Logan asked Moyd to communicate with KBS to reiterate the appropriate breakroom cleaning standard. (Tr. 2191). Consequently, on November 8, 2021, Moyd sent KBS officials Bill Owens, Jairo Sarmiento, and Michael Napieraj the following email:

> "This is for clarification purposes only. Please pull your team together and show them that this is the standard for a clean break room table. If there is anything at all on the table other than what is shown here then it is considered trash and should be thrown away. You do not need to notify Ops, ER, or HR if you find anything from an outside party, i.e. the RWDSU, on the table as part of your normal cleaning cadence. Just clean the tables to this standard and be done with it." (GC Ex. 25).

Attached to this email was a picture of a breakroom table showing the table topper, hand sanitizer, a canister of wipes, and a napkin dispenser. (GC Ex. 25). Moyd testified that there had not been any concerns raised about flyers or papers being left in the breakroom from any outside party other than the RWDSU. (Tr. 2201). Moyd also testified that he communicated to the janitorial team that the table toppers were not to be considered trash. (Tr. 2188).

Todd Logan testified that he spoke with Moyd about the importance of maintaining a clean, safe work environment and Logan asked what the standard was regarding loose materials, trash, etc. in the breakrooms. Logan and Moyd confirmed that if there were loose flyers that were not Amazon-approved table toppers, the napkin holder, wipes, or sanitizer, then it was trash – whether it was an RWDSU flyer or food materials. (Tr. 1621-1623). And on recross-examination, Logan confirmed that RWDSU flyers did not meet the standard for what was permitted on the breakroom tables. (Tr. 1731).

Jennifer Bates Leafleting on February 11th and Subsequent Confrontation with Supervisor Crystal Carney Regarding the Removal of These Leaflets

Jennifer Bates testified that she arrived at BHM1 at 6:00am on February 11th to help distribute union t-shirts, buttons, and literature in the parking lot. (Tr. 292-293). After witnessing the t-shirt burning incident, Bates went inside to place flyers in the 1st floor breakroom and bathroom located across from her workstation prior to the start of her 7:00am shift. (Tr. 369). Bates either placed the flyers on the breakroom tables or in the table topper such that the flyer's pro-union message was back-to-back with Amazon's anti-union message. In the 1st floor bathroom, Bates placed her flyer behind the stall doors, between the bathroom mirrors and next to the installment featuring the "If You Don't Want a Union at BHM1: VOTE NOW AND VOTE "NO!" message. (Tr. 274-275, 278, 281-283).

During her first break of the day, Bates went to the breakroom and saw that all of the flyers she had distributed before the start of her shift had been removed. She also saw a KBS supervisor named Aldridge removing union flyers from the breakroom. Bates asked him what he was doing, and Aldridge said that he was cleaning up and doing what he was told. Aldridge then said that Bates should take the matter up with KBS. (Tr. 377-379).

Bates also went to the 1st floor bathroom, where she found that the flyers she had affixed to the walls and doors had been removed. (Tr. 283). Undaunted, Bates placed new flyers on the stall doors and next to the bathroom mirrors. She returned to her workstation but had a clear line of sight to see who was entering and leaving the restroom. Bates then spotted her manager, Crystal Carney, going into the bathroom. About a minute or two later, Carney emerged from the restroom and Bates went back into the restroom. All of the Union flyers she had just posted were now in the trashcan located between the two sinks.[32] (Tr. 283-284, 381).

After her shift ended around 5:30pm that evening, Bates joined Clint Shiflett, Chris Sessions, Roger Wyatt, and Isaiah Thomas in the BHM1 parking lot, where they erected a large banner with "Vote Union Yes" written in large letters flanked by smaller images of co-workers expressing their support for the Union. (GC Ex. 3(d); Tr. 298). Union supporters handed out flyers, t-shirts, and buttons, and engaged co-workers during the shift change by speaking through small hand-held megaphones. (Tr. 298, 300, 341).

During the shift change, Bates spotted Crystal Carney leaving BHM1 and walking to her car. Bates followed Carney and using a megaphone, accused Carney of removing the Union flyers from the bathroom. In her direct testimony, Bates said that she asked Carney why she took the flyers down from the bathroom and Carney said that the flyers were not supposed to be in the bathroom. (Tr. 284-285). Part of this interaction was recorded by Chris Sessions. (GC Ex. 21; Tr. 357-358, 705-707). This 49 second recording captured Bates in the middle of asking questions to Carney. Bates accused Carney of taking the flyers down on her own and Sessions asked Carney whether she took the flyers down. Trying to keep her composure after Bates repeatedly peppered Carney with questions, Carney asked Bates not to start and requested that Sessions get the camera out of her face. Sessions asserted that he had a Section 7 right to record her because she was a manager. The recording ended when Carney got into her vehicle.[33] (GC Ex. 21).

[32] On cross-examination, Bates confirmed that she did not actually see Carney remove the postings from the bathroom walls. (Tr. 352).

[33] Carney did not testify at the hearing. Cody Haycraft testified that Carney still works for Amazon,

Confrontation Between Sammie Stewart and Roger Wyatt in the Parking Lot of BHM1 on the Evening of February 11

The flareups continued through the evening of February 11. At one point, Jennifer Bates and Clint Shiflett were taking turns using the megaphones in the BHM1 parking lot. For about 30 seconds, Shiflett countered Amazon talking points concerning union dues, electing a negotiating committee, and voting on a contract. As Shiflett continued to speak, Roger Wyatt, adorned in a red RWDSU t-shirt, yelled in the direction of the main entry sign "you're not allowed to record us – put that away." (CP Ex. 10). Wyatt pointed at a female named Sammie Stewart, who was wearing a yellow vest and holding a cell phone to her face as if she was recording the parking lot revelry. Wyatt stormed towards Stewart. Chris Sessions, who had been recording Bates and Shiflett's speeches, accompanied Wyatt as he raced towards Stewart. Wyatt approached Stewart and said that it was against federal law to record the Union's supporters. Stewart denied that her actions violated the law. Sessions reiterated that Section 7 of the Act protected workers and Stewart said to Sessions – "are you talking to me bitch?" Stewart said that she had rights as well because she "fucking worked there." Wyatt threatened to file charges with the Labor Board and said that they had rights under the Act. Stewart said that she had rights as well and called Wyatt a "bitch." Stewart started to say that "we don't fucking want you…" but got cutoff and then stated to Wyatt "get out of my fucking face." When Stewart said this, Wyatt appeared to be about 10 feet away from her and walking back towards the Union action in the parking lot. Session's recording ended after 78 seconds. (CP Ex. 10).

Sammie Stewart's recording was also entered into the evidentiary record. For about 20 seconds, Stewart recorded Shiflett speaking into the megaphone. From her vantage point, the video shows where the Union adherents had stationed themselves in relation to the building's front entrance, how employees during the shift change crisscrossed the frame, and how Shiflett was standing on a stepladder next to the large banner displaying "Vote Union Yes" along with the collage of union supporters. Stewart's video also showed how Roger Wyatt was standing near Shiflett and other red t-shirt wearing co-workers until about 25 seconds into the video when he noticed Stewart recording them. Wyatt and Sessions then approached Stewart, and Sessions, armed with his camera, actually got closer to Stewart than Wyatt did. Wyatt stayed behind a garbage can during his colloquy with Stewart and never came close to invading Stewart's personal space. He then quickly retreated. Sessions testified that he got no closer than 4-5 feet away from Stewart and that the zooming of his lens during the filming made it appear that he was closer to Stewart than he really was. (ER Ex. 35; Tr. 744). Stewart did not testify at the hearing.[34]

At 7:33pm that evening, Stewart submitted a complaint against Wyatt and Sessions through Amazon's online service. In her complaint, Stewart wrote the following:

> "I was standing there talking to Jay and had my phone out and was listening to the union speakers on the bullhorns. The 2 men mentioned came and got in my face, pointing

but at one of its Las Vegas, Nevada locations. (Tr.1394).

[34] On February 11, 2022, Stewart served as a learning ambassador, which is a bargaining unit position. Sometime thereafter, Stewart was promoted to be a manager.

fingers angrily and threatening me. Christopher had a camera and a voice recorder in my face and was telling me that I couldn't record. Roger got in my face and had his fingers in my face while standing 1 foot away from me, if that. I felt threatened and targeted because of my stance on the union. It is known that I am anti-union and I felt like they were targeting me. It was Friday 2/11/22 at 6:06pm. I clocked in and came back outside because I had a phone call from my insurance agent and had to answer it. I did not engage these people. I was just standing there with my phone out. This is discrimination due to my personal views on the union and I was targeted for it." (ER Ex. 35).

Amazon assigned Jenni Munoz to investigate Stewart's complaint, along with case team members Alicia Perez, James Sermons, and Jennifer Samuelson. (CP Ex. 33). The investigation report entered into the evidentiary record indicated that Munoz first interviewed Stewart on February 18 and Amazon ultimately found Stewart's allegations to be "unsubstantiated." (CP Ex. 33).

Amazon Receives Reports of Untoward Comments Made by Union Supporters to Amazon Associates During Shift Change on the Evening of February 11th

As Employee Relations principal James Venable walked from the BHM1 main entrance to a trailer in the parking lot[35] on February 11th, he witnessed Clint Shiftlett and his fellow Union supporters setting up the large banners shown in GC Ex. 3(d). (Tr. 1806).

At 6:41pm, Felicia Terrell[36], who worked in BHM1's human resources department, sent a Chime message to CJ Mitchell, James Venable, Cody Haycraft, Taylor Angert, Andrew Stanley, and Jeff Johns that there was "Union activity in front of site. 5 associates reported after they denied union shirts was told to go work for your master." Less than a minute later, Terrell messaged the group that "associates reporting to security that they don't feel safe." (GC Ex. 3(d)).

Venable testified that after receiving Terrrell's Chime messages, he walked from the trailer to the main entrance to see what was happening. Venable heard employees using the megaphones and vaguely testified that there were "exchanges" out in front of the facility. Venable then returned to the trailer. (Tr. 1807-1808). In his testimony, Venable did not identify any employees using the megaphones nor did he identify any employees participating in the "exchanges."

Then at some point after receiving Terrell's Chime messages, Venable spoke with her in-person either in the trailer or inside BHM1. Terrell told Venable that associates came to her and let her know what was going on in front of the building and how they were told to "go work for your masters or something to that effect" when they refused the Union's t-shirts. Terrell did not share the names of any of the employees on the receiving end of the comments or the names of

[35] This temporary trailer housed the influx of Employee Relations officials who descended on BHM1 during the rerun campaign. (Tr. 1790). It was located several hundred feet away from the front entrance of BHM1. (Tr. 1808).

[36] Amazon stipulated that on February 11, 2022, Felicia Terrell was an agent of Respondent within the meaning of Section 2(13) of the Act. (GC Ex. 24).

employees who allegedly made the incendiary remarks but told Venable that she had spoken with the associates that were upset. (Tr. 1809-1810). Terrell also told Venable that there had been some interaction between Sammie Stewart and one of the employees supporting the Union. In his testimony, Venable could not recall specifically what Terrell told him, but described the situation as "very, very heated and confrontational and it appeared that there was going to be some type of physical confrontation." (Tr. 1812-1813). Venable also testified that he spoke with Sammie Stewart, but he couldn't recall when he spoke with her. (Tr. 1812).

Venable did not witness either the Sammie Stewart parking lot confrontation or the exchange where Union supporters allegedly told employees who refused t-shirts to go work for your masters. Felicia Terrell did not testify at the hearing and there is no evidence that she witnessed either the Sammie Stewart incident or the inflammatory remarks allegedly made when employees refused the Union t-shirts. At the outset of the hearing on April 29, 2024, Amazon counsel represented that Felicia Terrell still works at BHM1, but that she was on an extended leave of absence. (Tr. 46). The hearing closed on July 10, 2024. Respondent did not seek a postponement of the hearing to allow for Terrell's testimony at a later date nor did Respondent indicate that it subpoenaed Terrell to appear at the hearing.

Despite having no first-hand information, and limited, non-specific second-hand information, Venable prepared and authorized the following text blast (Text-Em-All) that issued at 8:12pm on February 11:

> "We wanted to let you know we received reports regarding the activity that occurred in front of the building tonight. Some of you have told us that the organizers yelled at you and made offensive comments if you refused to accept their t-shirts and made you feel unsafe. We are sorry the RWDSU[37] has subjected you to this behavior on your way to work. Ask yourself whether these are the type of people you want representing you. Show the union you don't want this at BHM1, Vote No!" (CP Ex. 1).

Venable testified that it was appropriate to send the text blast to employees because he felt it was Amazon's obligation to make sure that the associates knew that we did not condone this behavior, we supported the associates, and wanted to let them know that this was not right. Venable said that this is a predominantly African American employee population and as an African American, Venable was offended by the language used. He testified that "for folks to imply that anybody going into the facility to do their work was being a slave is an offensive thing to say," and Venable noted that he was upset, and he could see why the employees were upset too. (Tr. 1804, 1816).

Venable testified that he saw a video of the Sammie Stewart confrontation posted on social media, but he couldn't recall which video he saw, or if he saw the video before or after he sent out the text blast. (Tr. 1814-1815, 1847). Venable also testified that Sammie Stewart did not tell him that she had been recording the Union supporters prior to the confrontation captured on video. (Tr. 1850-1851).

[37] There is no evidence that any Union officials participated in the February 11th activities in the BHM1 parking lot. All participants on both sides of the exchanges that evening were employed as Amazon associates.

Clint Shiflett and Dale Wyatt denied using threatening behavior on February 11 and denied witnessing any threatening or intimidating behavior. When specifically asked on cross-examination whether they heard any of the union supporters use the phrase "go work for your masters," on February 11th, Jennifer Bates and Isaiah Thomas said either they did not hear this or they were not aware that anybody said this. (Tr. 149, 366, Tr. 571-572, 652). Nobody from Amazon interviewed or questioned these Union supporters either before or after the February 11th text blast was sent out.

Over the General Counsel and Union's objections, I admitted into evidence Amazon's investigative file regarding this incident. (ER Ex. 36; Tr. 2284-2289). This file indicated that at 6:00pm on February 11, an employee named Angel Prado lodged a complaint with Human Resources regarding the incident referenced in that evening's Text-Em-All. The report indicates that the claimant was interviewed, but there are no interview notes attached to the investigative file.

At 10:38pm that evening, Prado submitted the following written statement:

> "I was walking inside and I saw a union rep yelling at another associate with a megaphone and recording her. She ran back to the other union reps and were being disruptive. As I was walking past them I looked back and told them that they are being disruptive. Then on my right side, someone said 'go inside to your masters,' more or less in those words. I ignore them and went inside clock in and reported it to HR." (ER Ex. 36).

At 11:00pm that evening, another employee, Ashis Sample, submitted her written statement regarding the parking lot incident. Sample's statement reads:

> "When walking in, a comment was made, not towards me, that we should 'Go work for our masters.' I feel that this was non work and uncomfortable statement. I also witnessed a woman be followed to her car and yelled at through microphones that she was going to be fired.[38]"

An investigative team consisting of Delorious Wilson, Roosevelt Morgan, Felicia Terrell, Ryan Furtick, James Sermons, and Alicia Perez closed the investigation on March 7, 2022 finding that there was not enough information to investigate. There is no indication in the investigative file that Amazon's investigative team interviewed any of the Union supporters alluded to, but not named, in the witness statements. (ER Ex. 36).

At 8:56pm on February 11, James Venable submitted a GSOC report to an internal Amazon unit that investigates safety and security incidents. (CP Ex. 39; Tr. 1667, 1819). Venable testified that he filed the GSOC report because of the nature of the incidents in front of the building. He said that some of the activity made associates feel unsafe in the workplace and in some instances employees felt intimidated. Venable also noted that the situation with Sammie

[38] The last sentence seems to refer to the parking lot confrontation between Jennifer Bates and Crystal Carney.

Stewart almost involved physical violence and therefore, Venable felt it was necessary to notify GSOC.[39] (1819, 1891).

Under the Summary of Incident tab on the GSOC report, Venable wrote as follows:

> "The GSOC was notified of Labor Activity involving Amazon Associates at BHM1. The AA's approx. 5-10 Associates, arrived on site at shift change approx. 1700-1730 CST. The AA's were handing out T-shirts, displaying a placard stating, 'Vote Union Yes,' and had erected a structure. The activity was not approved by the site. The AA's departed the site on their own accord at approx. 1900-1930 hours CST. The AA's plan to return to the site to hold a rally on 02/28/2022. This event has been captured on social media." (CP Ex. 39).

The GSOC report contained links to two separate Twitter accounts and one Instagram account with images of the activities referenced in the GSOC report. There is no specific reference in the narrative portion to comments akin to "go work for your masters" or the confrontations noted above concerning Sammie Stewart and Crystal Carney.

Nobody from GSOC followed up with Venable regarding his report. This was the only GSOC report that Venable filed during the rerun election campaign. (Tr. 1820-1821, 1874).

At 6:23am on February 12, an anonymous employee posted the following on the VOA board:

> "The fact that these union workers are screaming at people coming in, following them with the bull horns in their faces, threatening when shirts aren't being taken, recording us as we are going to work but flipping out and hostile when you record them is getting out of hand. They are unhinged. Funny thing is that they are union plants and aren't even eligible to vote since they just started working here. Don't let them bully you, too!"

Amazon's response, which was also posted on the VOA Board is as follows:

> "Thank you for sharing this comment. Any associate who believes they have been subjected to physically threatening behavior may report it. While AAs have the right to support or oppose the RWDSU and solicit others in support of their viewpoint, no one should feel unsafe or intimidated coming to work. We hope that associates will show their disapproval of the RWDSU's tactics by voting No!"[40] (CP Ex. 37).

Amazon Sends Out a Second Text-Em-All on February 14 Despite the Absence of Union Activities

James Venable testified that there were no Union activities in front of BHM1 on February 12, 13, or 14, but that after Amazon issued the February 11th text blast, human resources personnel relayed concerns to him that associates were still upset about the Union's alleged

[39] No GSOC report was filed concerning the t-shirt burning incident from earlier that morning.
[40] This post was shared internally via the February 14 BHM1 Site Update email. (CP Ex. 37).

misdeeds on February 11th and they were concerned that Union supporters would repeat their alleged misconduct. Venable's testimony failed to identify who conveyed these concerns to him. (Tr. 1851-1853). But despite the lack of Union activity, Venable drafted and authorized the issuance of the following text blast on the afternoon of February 14th[41]:

> "A Word from BHM1 Leadership:
>
> We want to follow-up with you regarding the activities that occurred in front of the building on Friday evening, as they could happen again. Some of you have expressed concern with the behavior of RWDSU organizers. Though associates have the right to express their views for or against the RWDSU and solicit others to support their viewpoint, no one has the right to physically intimidate you while you are coming into work or threaten your personal safety. If you feel either of these have occurred, you may report it. We also encourage you to show your disapproval of the RWDSU's tactics by Voting No!" (CP Ex. 2; Tr. 1818).

In its February 14th BHM1 site update email, Amazon summarized the previous weekend's activities as follows:

> "On Friday evening between 5:00-5:30pm, RWDSU organizers erected two large placards on each side of the walkway leading into the site. The organizers were distributing RWDSU t-shirts and chanting slogans through two bullhorns as associates entered and exited the building. Several associates took issue with some of the statements which they said were demeaning and threatening. A confrontation occurred between an associate and organizers which was videotaped and posted on social media. The organizers left the site between 8:00-8:30pm.
> On Saturday and Sunday, ER and on site consultants continued GOTV (Get Out the Vote) engagement activities. There were no disturbances over the weekend, however, we received information that the RWDSU's activities were generally not well received by associates. Onsite consultants continued to use the weekend to close any engagement gaps, and communicating with any PT AAs on premises who had not yet been engaged. ER will continue to maintain floor presence for 1:1 engagement to ensure associates' ballot questions are answered." (CP Ex. 36).

In the February 16th BHM1 site update emailed to Amazon's inner circle, the author shared the reasoning behind the February 14th text blast:

> "In response to reports from some associates that they felt intimidated or unsafe as a result of conduct by union organizers in the parking lot at shift change on Friday evening, ER deployed the following TEA Friday night…
>
> ER received information that the RWDSU planned on doing the same activity on Tuesday as per their normal cadence. In preparation for that activity, ER deployed the following TEA on Monday evening…

[41] Venable could not recall if he first spoke with Sammie Stewart before or after he sent out the February 14th text blast. (Tr. 1862).

For the first time in several weeks, the RWDSU did not show back up in the parking lot on Tuesday…" (CP Ex. 44).

Pro-Union Flyers are Removed from Work Areas in Late February 2022 While Anti-Union Flyers Remained Posted in the Same Work Areas

Roger Wyatt worked in the Inbound Support Services (ISS) department at BHM1. This is essentially a problem-solving department dedicated to investigating customer complaints, e.g. checking for damaged items, and fixing the issues. Wyatt's work area was located on the 3rd floor, where only 3 or 4 other employees worked. (Tr. 637, 642). The problems ISS is asked to solve show up on a ticket in Amazon's computer system. Sometimes the problems are solved through the computer and at other times, Wyatt and his co-workers must walk through the facility to solve the problem. According to Wyatt, other BHM1 employees don't venture over to ISS that often. (Tr. 688-689).

On February 23, 2022, Wyatt photographed a white flyer with writing in all caps (with black font) taped to a yellow support beam in the ISS department. The flyer read:

> "THEY WILL DO ANYTHING, I MEAN ANYTHING TO GET YOUR VOTE. MOSTLY BULLYING YOU – FIGHT BACK WITH YOUR NO VOTE, LET THEM KNOW YOU DON'T NEED FAILURES THINKING FOR YOU. AND YOU WILL NOT BE BULLIED BY ANY ONE. ESPECIALLY A DO NOTHING UNION. WE WILL FIGHT BACK. NO MEANS NO. WE DON'T WANT THE RWDSU THEY WILL HURT YOU IN THE LONG RUN." (GC Ex. 7; Tr. 626-627).[42]

Wyatt testified that the anti-union flyer had been hanging on this support beam in Wyatt's work area for several weeks. (Tr. 627). Wyatt, however, did not see who posted the flyer on the support beam. (Tr. 628). In the spirit of equality, Wyatt then affixed a pro-Union flyer on the same yellow support beam, directly underneath the anti-union flyer. Wyatt's flyer was titled "We're Voting Union Yes This Time!" and featured the photographs and testimonials of two employees who supported the Union. (GC Ex. 8(a); Tr. 629). But on March 14, Wyatt noticed that his pro-Union flyer had been removed from the yellow support beam, but the anti-Union flyer remained taped to this beam.[43] Wyatt photographed this change, and the photo was entered into evidence as GC Exhibit 9. (Tr. 629-630).

On cross-examination, Wyatt acknowledged that posting the flyer from GC Ex. 8(a) in his work area violated Amazon company policy. (Tr. 675). Wyatt also confirmed that he did not lodge a complaint with Amazon regarding the anti-Union flyer posted on the yellow support beam. (Tr. 667-668).

[42] At the same time, a similar, purple-colored flyer degrading the Union was hanging on a stanchion in one of the main ISS department walkways located between the robotics floor and the breakroom. Wyatt testified that he saw the purple flyer hanging on the stanchion for weeks. (GC Ex. 8(b); Tr. 635, 637).

[43] Wyatt testified that he did not know who removed the Union flyer he had taped to the yellow support beam. (Tr. 675-676).

Wyatt also testified that while walking through the RSP robotics area on February 22, 2022, he photographed a different anti-Union flyer posted on a yellow column. The flyer reads:

> "VOTE NO!!!!VOTE NO!!! VOTE NO!!!
>
> Amazon does not mail letters about your employment status. In other words, Amazon does not fire people through the mail. That's another union tactic. Don't fall for this. Amazon has an open-door policy. Ask Anything.
>
> Don't fall for the lies this union is spitting out. Amazon would find ways to keep you before firing anyone.
>
> If you know someone that has said the post office has called them and they got a letter from Amazon is pure deceitfulness. Tell them to call the ERC or go talk to HR.
>
> VOTE NO!!! VOTE NO!!! VOTE NO!!!" (GC Ex. 8(c)).

Wyatt testified that this flyer had been posted on the same beam for weeks both before and after the February 22nd picture. (Tr. 639-641). Wyatt further testified that as part of his job duties, he regularly works in RSP, about 50-100 employees work in this department, and RSP employees walk by this support beam on their way to the 3rd floor breakroom. (Tr. 680, 690).

Cody Haycraft testified that employees are not allowed to post flyers or other literature in working areas, as it runs contrary to Amazon's solicitation policy. Haycraft said that during the rerun election campaign, he did not observe any union-related flyers posted in working areas, but he received reports or questions from other managers regarding how to respond to this situation. Haycraft said that when he received these notifications, the standing instruction was to remove all literature from working areas. (Tr. 1371-1373). But Haycraft testified that he did not recall seeing the flyers from GC Exhibits 7, 8(b), and (c) posted in the facility nor did he receive any escalations from colleagues regarding these postings. (Tr. 1376, 1379-1380).

Amazon Supervisor Ryan Underwood Questions Chris Sessions on February 24, 2022

Chris Sessions started his shift at 7:30am on February 24, 2022 and took his first break in the 3rd floor breakroom at about 10:30am. During this break, he sat down with singles pack co-worker Serena Wallace to discuss the Union campaign. (Tr. 406-407, 709-711). Both Sessions and Wallace testified that a manager wearing a red vest approached Sessions and asked him his name and Sessions complied with the request.[44] (Tr. 408-409, 712). At this point, Wallace left to clock back in to work and the manager left as well. (Tr. 409, 712).

A confused Sessions then approached the manager by the stairwell nearest the timeclock. Sessions asked the manager for his name and says that the manager identified himself as B. Ryan Underwood. Underwood said that he noticed the Union pin that Sessions was wearing and wanted to ask him some questions. Sessions said that he needed to return to work. Underwood

[44] Sessions testified that he was wearing his name badge, but it was flipped around, and his name was not visible. (Tr. 711).

asked Sessions where he worked and then started asking personal questions such as where he was from, why he was working at Amazon, how long he intended to work there, and if he had gone to school. (Tr. 712-714).

Sessions next testified that Underwood said that he had previously worked at US Steel, he didn't personally like unions because if unions secured a $1/hour raise for employees, employees would have to give up other things to get that raise. Underwood also said that if employees voted in a union at BHM1, he didn't see why Amazon would keep the facility open because there were so many other Amazon facilities. Underwood then suggested that employees create an advocacy group to bring their grievances directly to management. Sessions replied that employees were attempting to do this by bringing in the Union. Sessions asked Underwood which department he managed, Underwood said 1st floor inbound stow, and the conversation ended. (Tr. 714-716, 785).[45]

Serena Wallace testified that Sessions spoke to her later that day regarding his conversation with Underwood. Sessions told her that Underwood said that if the Union got into BHM1, Amazon would more than likely shut the plant down. (Tr. 411).

Underwood testified that in February 2022, he worked as a subject matter expert (SME) for the inbound department.[46] He said that his role focused on ways to make BHM1 jobs safer, ways to reduce quality defects, and ways to increase productivity. Underwood's desk was on the 3rd floor, about 100 feet away from the breakroom. (Tr. 2226-2229).

Underwood testified about his interaction with Chris Sessions in February 2022. Underwood testified that Sessions stopped him near the stairwell by the 3rd floor time clocks. Underwood could not recall how the conversation began, but he remembered sharing his thoughts about the Union. Underwood told Sessions that he had experience with a union at US Steel and he didn't think that a union was best for BHM1. Underwood said that in his opinion, having a union would stifle progress and effective dialogue. Sessions told Underwood that a union would give associates a voice in the workplace. Underwood asked if he had heard of the associate safety committee and Sessions said he was not familiar with it. Underwood told Sessions that with his passion and how articulate he was, it would be a good thing for him to get involved with the safety committee. Underwood described this conversation as cordial and pleasant and recalled telling Sessions that they could agree to disagree. (Tr. 2236-2244).

Underwood did not recall asking Sessions his name nor did he ask Sessions to turn over his badge. (Tr. 2242). Underwood testified that they did not talk about hourly pay rates and Underwood never told Sessions that it would be futile to have a union at BHM1 or that it would be useless to vote for the Union. Underwood did not suggest that employees create an advocacy group to present grievances directly to management. Underwood denied saying that if the Union came in, he didn't see a reason why Amazon would keep BHM1 open, and he denied saying that Amazon would more than likely shut down the plant if employees selected a union at BHM1.

[45] This was the first and only time that Sessions interacted with Underwood during his employment at BHM1. (Tr. 783-784).

[46] In its Answer to the Sixth Amended Complaint, Amazon admitted that Underwood was an agent of Amazon within the meaning of Section 2(13) of the Act.

(Tr. 2244-2246). Underwood also denied identifying himself as "B. Ryan Underwood," clarifying that although Ryan was his middle name, his preferred name is "Ryan Underwood," and his employee badge said "Ryan Underwood." (Tr. 2247).

Union Supporters Project the Word "Yes" on the Oversized "Vote" Banner Hanging from the Side of BHM1

On February 25, Isaiah Thomas rode to work in a red truck driven by a member of the IATSE union. In the BHM1 parking lot, Thomas met with Chris Sessions, and they set up a spotlight that projected the word "Yes!" onto the enormous "Vote" banner affixed to the side of BHM1.[47] (Joint Ex. 10(b); Tr. 490, 562, 719).

Thomas estimated that the projection remained up from about 6:00pm to 8:30pm.[48] Nobody from Amazon asked Thomas or Sessions to take down the projection. (Tr. 576, 686). But while the projection was up, Sessions and Thomas noticed site general manager Mamadou Diop standing about five feet away from them along with a man wearing a loss prevention vest. (Tr. 494-495, 720). Diop was holding a cell phone pointed in the direction of the red truck. When Sessions told Diop that he could not record them, Diop quickly put his phone away and started walking back towards the building. Thomas stayed by the truck, but Sessions followed Diop and recorded the interaction. Sessions accused Diop of taking pictures of them and suggested that this behavior was not allowed under the NLRA. Diop largely ignored Sessions, and the minute-long video clip ended when Diop entered BHM1. (GC Ex. 22; 563-564, 720-722).

Diop testified that on the evening of February 25th, an employee came into Diop's office to ask if he was aware of the projection of the word "Yes" on the front of the building. Diop

[47] In addition to the projection, Union supporters also handed out literature and t-shirts in front of BHM1 on the evening of February 25, 2022. (Tr. 718).

[48] Sessions believed that the projection was up for about 30 minutes. (Tr. 771). Roger Wyatt, however, testified that the projection stayed up for about 2 hours. (Tr. 685-686).

wondered what impact the projection might have on employees entering or leaving the building during shift change and so he went outside to investigate. Diop asked Loss Prevention manager Sean Timmins to accompany him. (Tr. 2101-2102, 2130). Diop took pictures of the projection on the building as well as the vehicle from where the projection was emanating. Diop testified that he took these pictures due to the unusual nature of the situation and to share with Employee Relations for guidance. (Joint Ex. 10(a) through (c); Tr. 2103-2106).

Diop estimated that he was about 50-70 feet away from the red truck when he took the photo marked as Joint Ex. 10(c). (Tr. 2107). He says that he did not approach the truck at any time that evening. Diop testified that he could see that there were people in the truck, but he did not know who they were. Diop further testified that he did not try to take any photos of the people in the truck. After taking the picture in Joint Ex. 10(c), Diop started walking back into the building, but somebody from the truck started following him and Timmins. Diop noticed that the person following them was recording them, but Diop did not engage the individual. Diop estimates that he was only outside for about 5-10 minutes that evening. (Tr. 2113-2115).

Diop testified that on other occasions he has taken photos outside BHM1 to document items in need of repair or attention. Diop then testified about three such instances – 1) in December 2021, Diop took a photo of a poorly erected barricade so that the maintenance contractor could follow up and correct the issue; 2) in February 2022, Diop took a photo of landscaping gravel that needed to be fixed; and 3) in February 2022, Diop took a photo of the façade of the building for maintenance to document and repair. (ER Ex. 43-45, Tr. 2116-2123).

In its February 25th BHM1 Site Update email, the light projection incident was summarized as follows:

> "On February 25, an RWDSU supporter used a projector to shine the word "Yes" on to the BHM1 building next to one of the site's "VOTE" banner.[49] It also was reported to the Company by AAs that RWDSU supporters handed out McDonald's hamburgers in the break room during break time. Additionally, RWDSU President Stuart Applebaum led a small contingent of union representatives waving signs at AAs as they left the parking lot during shift change.
>
> Multiple AAs have volunteered to ER that they have been contacted by reporters from outside of Alabama who say they are in-town and seeking interviews. The contingent of press has likely been arranged by the RWDSU in preparation for their Saturday activities.
>
> Based upon its announcements, the RWDSU has planned a rally to occur at an empty lot near the site on Saturday, February 26. Multiple AAs volunteered information to their AMs that pro-company AAs are planning a rally in the BHM1 parking lot in response to the RWDSU's activity down the street.
>
> ER has worked with LP and Safety to ensure a plan is in place for the safety of all AAs, both pro-Union and pro-Company, while respecting the rights of all AAs to engage in protected concerted activity. Following a RWDSU rally during Campaign 1.0, RWDSU

[49] A picture of the projection was embedded in the site update email. (CP Ex. 48).

led a car caravan through the BHM1 parking lot. Because of this, any large gathering on site will be asked to stand in a safe location away from the flow of traffic. While we expect and hope that everyone will engage in peaceful and safe activity, in an abundance of caution, LP has the front lane of parking spaces blocked off, and vehicle traffic is not able to ingress or egress that area."[50] (CP Ex. 48).

Union Supporters Report Harassment to Human Resources Officials on March 16

On the evening of March 5th, a number of anti-union employees handed out "Vote No" t-shirts and goodie bags to passersby during shift change. At one point, Ezra Hudson, a Union supporter, handed a goodie bag back to Coco Eatman, who was distributing these items. In response, Eatman screamed that the Union supporters[51] were "stupid idiots" and "poor."[52] (Tr. 163-164, 522-525).

Eleven days later, Shiflett, Sessions, Wyatt, and Thomas reported this alleged harassment to BHM1 human resources officials. Wyatt testified that there was another incident of harassment after March 5th that compelled the Union supporters to lodge their complaint on March 16th, but Wyatt offered no specifics about this alleged incident. (Tr. 657). But after 6:00pm on March 16th, the four men spoke with human resources officials James Sermons and Madison (last name unknown). The employees explained what happened, Sermons asked them to fill out witness statements and told them that Amazon would investigate and hoped to follow up with them within 48 hours. (Tr. 165-166, 526, 529, 534, 658-659). As a remedy, the Union supporters requested that Amazon send out a Text-Em-All denouncing the behavior of the anti-union associates. (Tr. 165, 530, 659, 760-763).[53]

Isaiah Thomas' witness form submitted to Amazon on March 16th reads as follows:

"Cocoa Eatman called Chris Sessions, Clint Shiflett, Ezra Hudson, and myself 'idiots' and that we were 'poor." We were just standing nearby and these words were shouted at us. The time this happened was around 6:30pm. Another person, Dawn Hoag was with Cocoa as this went down." (CP Ex. 6).

Chris Sessions's witness statement said that "Cocoa Eatman called Isaiah Thomas, Clint Shiflett and Ezra Hudson 'idiots' on March 5 at a 'Vote No' rally event. She also shouted to us 'they're poor' around 6:30pm." (CP Ex. 11).

[50] Amazon's March 4 site update email followed up regarding the rally by stating that "based upon the media surround such event, it appears to have been sparsely attended." (CP Ex. 49).

[51] Hudson was standing with Chris Sessions, Clint Shiflett, and Isaiah Thomas. (Tr. 163, 525). Hudson did not testify at the hearing.

[52] Isaiah Thomas testified that Eatman referred to them as "retarded," but neither Sessions nor Shiflett testified that Eatman used this word. (Tr. 524). Also, the witness statement that Thomas supplied to Amazon on March 16 did not reference the word "retarded." (CP Ex. 6).

[53] Sessions testified that either he or Wyatt told the HR officials that they had a recording of Eatman calling them names. But Sessions also testified that this recording was not provided to HR. (Tr.764). No such recording was offered or entered into the evidentiary record concerning these cases.

Roger Wyatt's written statement on March 16th seemed to focus only on the February 11th incident with Sammie Stewart. Wyatt wrote:

> "During a legally-protected pro-union event a leadership member of the ambassadors was recording our activities. I told her she was not allowed to record me per NLRB policy. She responded 'I bet I do it anyway.' After which I informed her she was in violation and subject to arbitration should charges arise to which her reply was 'I can do whatever I want bitch.' I asked her to repeat herself and she complied." (ER Ex. 7; Tr. 677).

Nobody from human resources followed up with Sessions, Wyatt, Shiflett, or Thomas. (Tr. 166-167, 534, 659, 764). But their complaints were disseminated via the BHM1 Site Update email on March 19. The email said:

> "On Wednesday evening, internal RWDSU organizers set-up a loudspeaker at the front entrance of the building. The organizers later entered the building and proceeded to the human resources office. The organizers claimed they had been harassed on March 5th and demanded that HR issue a TEA in response to their concerns. HR advised them that the matter would be reviewed in accordance with our normal process." (CP Ex. 51).

Excelsior List Objections

On January 11, 2022, Regional Director Lisa Henderson issued an Order Scheduling Mail Ballot Election. Included in this Order was a requirement that Amazon furnish the *Excelsior* list by January 13, 2022. (GC Ex. 1(mm)). Amazon deputized senior HR manager Christopher O'Malley to compile the *Excelsior* list containing roughly 6,000 names in this tight 48-hour window. (Tr. 1936, 1986).

To accomplish this task, O'Malley did not refer to the 2021 *Excelsior* list as a guide.[54] (Tr. 1987, 2088). Instead, O'Malley used two primary HR sources to generate this list: 1) Panorama and 2) People Portal. (Tr. 1937-1938). In Panorama, O'Malley was able to pull an actual roster of employees (as of the payroll eligibility date of January 8, 2022) along with a myriad of biographical data. (Tr. 1938, 1976). In People Portal, O'Malley could look at historical data for each employee. (Tr. 1938). For example, People Portal shows the current address for employees as well as any other previous addresses listed for that employee. (Tr. 1949). O'Malley then compared the data on the preliminary list he compiled with another list pulled by the Amazon executive data team to make sure the lists were the same.[55] (Tr. 1939). Amazon's HR system has separate windows for home address and mailing address, but for purposes of generating the January 2022 *Excelsior* list, O'Malley used only the home addresses listed in People Portal and Panorama. (Tr. 2038).

The addresses contained in Panorama initially come from associates who enter their addresses into the A-to-Z app when they are onboarding. Employees also update their addresses using Amazon's A-to-Z app. If employees are at BHM1, they can use a kiosk to update their

[54] O'Malley did not prepare the 2021 *Excelsior* List. (Tr. 2086).

[55] If the lists did not match, O'Malley would go into the HR systems to see why the information did not match and identify what was the most accurate data Amazon had on file. (Tr. 2090).

addresses. But Amazon has no way of knowing if an employee has moved if employees do not update their contact information either in the A-to-Z app or the kiosks. (Tr. 1940, 1960). And O'Malley testified that Amazon does not audit addresses to see if employees actually live at the address listed as their home address in People Portal, and Amazon has no way to detect when an employee has inputted a bad or incorrect address into its system. (Tr. 1967, 2042).

In Amazon's HR system, there are listings for both legal and preferred names. The badge used at BHM1 will show the employee's preferred name and O'Malley used preferred names on the January 2022 *Excelsior* list. (Tr. 1982-1983).

Union Complaints About the January 2022 Excelsior List

For the rerun election campaign, Union researcher Brienne Ellis managed the *Excelsior* list received from Amazon. Ellis received the list formatted in Microsoft Word. They imported the data into a Microsoft Excel spreadsheet and visually inspected each entry to make sure it looked correct. Ellis then created lists of employees for organizers to contact, trained new organizers as they joined the campaign, and specifically trained organizers on how to input data into the Union's system. (Tr. 1068, 1194-1195).[56]

After analyzing the January 2022 *Excelsior* list and comparing it to the information contained in the *Excelsior* list used for the first election, the Union lodged Objection 18 for three reasons: 1) mismatched names and failure to provide full legal names; 2) wrong addresses; and 3) names on the *Excelsior* list of individuals who were no longer employed at BHM1 as of the payroll eligibility date. (Tr. 1113-1114).

Names

Brienne Ellis testified that the 2021 *Excelsior* list contained legal first and middle names, but the January 2022 list did not contain full and legal names. Specifically, Ellis examined both lists and determined that of the 2,750 employees on the *Excelsior* Lists for both the first election and the rerun election, there were 239 entries whose phone number, email, and address all matched on both lists, but the names did not match. (Tr. 1102-1105). Ellis compiled this data in a spreadsheet, which is CP Exhibit 30.[57] This spreadsheet contains three columns of information. Column A contains the names from the January 2022 *Excelsior* list; Column B comes from the January 2021 *Excelsior* list; and Column C identifies the discrepancy between the two lists. (CP Ex. 30; Tr. 1100-1103, 1110-1111).

[56] Adam Obernauer is the Union's organizing director. Based out of New York City, Obernauer spent most of the last quarter of 2021 and the first quarter of 2022 in Alabama running the Union's ground operation for the rerun election. (Tr. 841, 843, 846). Obernauer supervised a team of about 100 organizers from the RWDSU's Mid-South Council union hall in the Five Points South neighborhood of Birmingham, Alabama.

[57] Ellis originally created this list in January 2022 and audited/edited the list prior to their testimony at the 2024 hearing. (Tr. 1106).

Some of the discrepancies listed on CP Exhibit 30 are fairly benign, such as a nickname used in the January 2022 list simply shortening a name from the January 2021 list. Here is a sampling of this type of discrepancy:

Key #	Name on January 2022 list	Name on January 2021 list
169	Kendra Stewart	Makendra Stewart
170	Sammie Stewart	Samantha Stewart
172	Jeff Strattan	Jeffrey Strattan
175	Chris Taylor	Christopher Taylor
176	Kenny Taylor	Kenneth Taylor
182	Cam Threats	Cameron Threats
184	Joanie Warren	Joan Warren
185	Matt Washington	Matthew Washington

Other discrepancies involved the use of nicknames or legal names from the 2021 list that did not match the first or last names for the entries for the same individuals on the January 2022 list. Here is a sampling of this type of discrepancy:

Key #	Name on January 2022 list	Name on January 2021 list
4	AuMerrius Young	Perry Smith
5	Cory Smith	Red Slavae
6	Jarquinna Thompson	Red Martin
7	DeHenry Cospy	Sham Pain
8	Korey Rhodes	Deandre Bufford
238	Fierra Mbugua	Whitney Flowers

The Union asserts that the impact of these discrepancies was to extend the amount of time that it took to reconcile the lists, introducing uncertainty as to whether the Union had the correct contact information for these workers.[58] Ellis testified that since the 239 name discrepancies represented about 10% of the workers found on both lists, the Union believed that there were more pervasive issues with the January 2022 *Excelsior* list. (Tr. 1120-1123).

Addresses

The Union asserts that over 1,000 names on the January 2022 *Excelsior* list contained wrong addresses. The reasons for the wrong addresses include: 1) the address did not exist; 2) the worker moved; 3) the house was vacant or abandoned; 4) there was no apartment or unit number; and 5) the Postal Service mailing system rejected the Union's mailers to those addresses. (CP Ex. 31).

The sources of information varied. Organizers conducted home visits and on these occasions a family member or current tenant would share that the worker no longer lived at that address. Organizers were then supposed to enter their notes in the Union's database so that Ellis

[58] Ellis noted that there were many households in which multiple Amazon associates lived. (Tr. 1123).

could flag these addresses in the system. Ellis instructed organizers to attempt an address and if they thought the address was wrong, to call the worker and try to get a confirmed address. For all of the workers tagged with a wrong address, the Union had a team of phone bankers solely dedicated to calling workers to try to get a correct address for them. (Tr. 1127, 1130-1131).[59]

Ellis testified that for about 80 entries on the *Excelsior* list, the homes that the organizers visited were either vacant or abandoned.[60] Ellis also testified that for about 60-80 entries on the *Excelsior* list, there was no apartment or unit number associated with the address and so the organizer could not contact the worker. (Tr. 1133). Still on other occasions, organizers made multiple attempts to contact the worker and the address on the *Excelsior* list could not be located. For shorthand, Ellis used DNE (Does Not Exist) to capture these data points on their spreadsheet. (Tr. 1132).

Beyond information gleaned from house visits, the Union tried to send out mailers to eligible voters, but a number of these addresses were rejected by the Postal Service. For example, in some cases, mail was sent out to the voter, but the Postal Service returned it as "not deliverable as addressed[61]" or "insufficient address[62]." (Tr. 1135-1136). Ellis explained that if the Union received a mailer back that could not be delivered, the Union did not immediately take the worker off of the house visit list. The Union made several more house visit attempts before taking the worker off the list. (Tr. 1137-1138).[63]

Workers on the Excelsior list Who Were No Longer Employed by Amazon by the Payroll Eligibility Date

The Union alleges that an additional 128 individuals were erroneously included on the January 2022 *Excelsior* list even though they were no longer employed by Amazon at BHM1 as of the payroll eligibility date. The Union compiled this information from organizers' conversations with the workers themselves (either in person, via text or phone call) or with their family members telling the organizers that the individuals were no longer employed at BHM1. Ellis put together the list in CP Exhibit 32 based on organizers flagging these individuals as no longer employed[64] and Ellis' review of notes that organizers made memorializing the conversations referenced above as well as auditing records to ensure that the dates aligned with the voter eligibility period. (CP Ex. 32; Tr. 1165, 1169-1174).

[59] To generate the list of 1,000 names cited for wrong addresses in CP Ex. 31, Ellis audited the Union's worker database and reviewed the notes that organizers inputted documenting their attempts to contact these workers. Ellis then compared the information recorded in the database against the information on the *Excelsior* list. (Tr. 1129-1130).

[60] Additional notes organizers entered into the Union's database specified if there was either a fire or a flood. (Tr. 1133, 1237).

[61] See entry 737 on CP Ex. 31 – Katrina Henley.

[62] See entry 714 on CP Ex. 31 – Latasha Wilson.

[63] Ellis confirmed on cross-examination that mail being undeliverable does not on its own establish that an address is incorrect. (Tr. 1206).

[64] Ellis testified that the the job status field in the Union database allowed organizers to enter this information. (Tr. 1174).

Although Ellis did not conduct any home visits themselves, Adam Obernauer testified about the 120 doors that he personally knocked on during the campaign. Obernauer said that he spoke to about 30-40 workers, but that 15-20 of the addresses were no good. In Obernauer's limited sample size, he found two homes with eviction notices, three workers who said that they were not sure if they still worked for Amazon, and family members who said that the workers did not live there anymore. (Tr. 945-947). Obernauer opined that the volume of bad addresses from the *Excelsior* list put an "exorbitant amount of stress" on the organizing team because it often takes 4 or 5 times before you catch a worker at home at the right time and the wrong addresses added to this challenge. (Tr. 947-948).

Amazon Responds to the Union's Assertions About Problems with the Excelsior List

Shortly after the Union challenged a series of ballots at the count assertedly for bad addresses, O'Malley received a list of associates whose addresses were identified by the Union as incorrect. The list O'Malley received did not state why the addresses were not correct. (ER Ex. 23; Tr. 1941). After receiving the list, O'Malley looked each name up in Amazon's People Portal and Panorama systems to make sure that the information on the list matched what was in Amazon's systems. O'Malley testified that after his review was complete, he confirmed that all of the addresses on the list matched the information in Amazon's records as of January 2022. (Tr. 1942).

O'Malley further testified that some of the challenges for bad addresses involved addresses in Amazon's files as of March 2022 that did not match the address that Amazon provided on the January 2022 *Excelsior* List. In such scenarios, the associate updated their address in the A-to-Z app after generation of the *Excelsior* list. But O'Malley confirmed that the addresses provided on the January 13, 2022 list matched the information in Amazon's records as of that date. (Tr. 1958). Torris Daniel's records illustrate this point. O'Malley testified that when Amazon provided the voter list on January 13, 2022, it did not yet have Daniel's Houston Road address on file. And the pay statement for Torris Daniel from January 14, 2022 confirms that the address listed on that paystub was the same address submitted to the Union in the January 2022 *Excelsior* list. (ER Ex. 29; 1959, 1961).

O'Malley also testified that he investigated the Union's claims that some people on the voter list were no longer employed at BHM1 as of the payroll eligibility date of January 8, 2022. (Tr. 1969, 1976). O'Malley acknowledged that Amazon rehires employees who previously quit and that even if an employee resigns voluntarily, Amazon's HR systems still refer to this as a "termination." (Tr. 1970, 1972). But O'Malley testified that his review confirmed that the challenged employees were on Amazon's payroll at the time the *Excelsior* list was generated. For example, Cayonnia George was terminated for job abandonment as of February 14, 2022. Amazon's records show that George's last day of work was on December 12, 2021, but they were not terminated in the HR system until February 2022. Thus, George was properly included on the January 13, 2022 *Excelsior* list. (ER Ex. 34; Tr. 1981).

Prentajah Tanniehill is an example that supports the idea that the Union was acting in good faith when it believed that Tanniehill was no longer employed by Amazon as of the payroll eligibility date and that Amazon was also acting in good faith by including Tanniehill on the

Excelsior list. HR records in Employer Exhibit 31 show that BHM1 hired Tanniehill on May 18, 2020. The records also show that Amazon involuntarily terminated Tanniehill on April 1, 2021, with March 27, 2021 serving as Tanniehill's last day worked. The Union included Tanniehill in its ballot challenges because Tanniehill told a Union organizer on August 24, 2021 that they were no longer employed by Amazon at BHM1. (CP Ex. 32). But Amazon rehired Tanniehill on January 6, 2022, two days before the payroll eligibility cut-off date. (ER Ex. 31; Tr. 1971, 2031).

My Comparison of Addresses Listed on ER Exhibit 30 and ALJ Ex. 3

As part of the record in this case, Amazon supplied ER Exhibit 30, which contains the names and address histories for the 1,177 employees identified as wrong addresses in CP Exhibit 31. I separately admitted into the record as ALJ Exhibit 3 the January 13, 2022 *Excelsior* list. In comparing the addresses listed on the two documents, I found that all of the addresses Amazon included on the *Excelsior* list matched the information in its HR systems. There were, however, individuals who moved shortly after the *Excelsior* list was generated, which explains why the Union included the worker on its list of bad addresses. For example, Makaila Mcleod is listed on CP Exhibit 31 (entry 14) because a February 28, 2022 house visit revealed that their address on the *Excelsior* list did not exist. But ER Exhibit 30 shows that Mcleod changed their address in Amazon's system on January 21, 2022, just 8 days after the *Excelsior* list was generated. Similarly, Denquanayrius Lacey is listed on CP Exhibit 31 (entry 23) because a November 1, 2021 house visit revealed they had moved. But ER Exhibit 30 shows that Lacey updated their mailing address in Amazon's system on January 18, 2022, just 5 days after the *Excelsior* List was generated. Likewise, on January 12, 2022, employees Alondra Escobar Rivas and Stephanie Barnett updated their home addresses in Amazon's HR systems. If Christopher O'Malley pulled Rivas and Barnett's records either on January 11 or earlier in the day on January 12, their former addresses would have populated in the *Excelsior* list. Thus, when the Union learned on November 16, 2021 that Rivas had moved, and when the Union's February 11, 2022 house visit disclosed that Barnett's previous address was a vacant/abandoned property, this information appears to be accurate.[65]

I found similar innocent discrepancies for Janya Lewis (entry 27), Zorious Jones (entry 29), Camona Collins (entry 37), Zakiyah Lenoir (entry 38), Rosalyn Conner (entry 44), Tywuntae Lucas (entry 45), Bryant Howard (entry 58), Rashid Denson (entry 62), Savannah Daring (entry 100), Clinton Lewis (entry 101), La'kayla Lawson (entry 105), Leesha Collier (entry 117), Malencia Davis (entry 127), Andares Robinson (entry 135), Barbara Brooks (entry 137), William Pierce (entry 165), Justin Wheeler (entry 180), Brionna Hollis (entry 197), Racquel Oliver (entry 204), Justin Stone (entry 215), Felearia Green (entry 216), Kendra Ellsberry (entry 222), Tashiana Bentley (entry 238), Shatavia Griffin (entry 261), Skylar Romano (entry 288), Kamelliah Jackson (entry 335), Shamar Carstarphen (entry 338), Aisha Celestine (entry 456), Marilynn Sharpe (entry 474), Jason Smith (entry 515), Brandy Norton (entry 518), David McKinney (entry 553), Torris Daniel (entry 590), Jasmine Williams (entry 621), Joshua McDowell (entry 642), Joshua Washington (entry 645), James Carlton (entry 646), Shearmar Jackson (entry 652), Nikeshia Davis (entry 656), Carrie Morrison (entry 660), Connor Bryde (entry 661), Horace Wilson (entry 687), Camesha Mack (entry 688), Anyl Pascal (entry

[65] Candace Craig (entry 123), Brandy Norton (entry 518), Austin Hilbert (entry 807), and Zion Richbow (entry 937) also updated their addresses in Amazon's HR systems on January 12, 2022.

690), Kdayshein Allen (entry 694), Krysta Woodard (entry 715), Katrina Henley (entry 737), Michah Smith-Craig (entry 746), Reginald Molton (entry 756), Kateyn Hoggle (entry 774), Dixie Benton (entry 775), Junira Armstead (entry 778), James Whittaker (entry 784), Marvin McRoy (entry 795), Quindarrin Chaney (entry 813), Laura Duncan (entry 817), Anthony Stodghill (entry 845), Rebecca Willis (entry 852), Sienne Zellander (entry 854), John Justice (entry 866),[66] Isaiah Burks (entry 896), Princess Daniels (entry 897), Meagen Heath (entry 906), Brandon Singleton (entry 915), Gabriel Murray (entry 921), Jaron Baylor (entry 930), Ashley Bell (entry 932), Michael Hawkins (entry 933), Shannon Brown (entry 945), Antwion Holloway (entry 953), Quinita Jackson (entry 955), Leland Townsend (entry 980), Mia Peterson (entry 986), Jeffrey Collins (entry 987), Logan Murfree (entry 989), Enza Patti (entry 997), Kayla Hardy (entry 1001), Marsha Mahan (entry 1003), Jamarra Allen (entry 1005), Tina Moore (entry 1021), and Daeje Pittman (entry 1027).

Further understandable confusion is exemplified by Anita Woodson (entry 51) and Amelia Sommerville (entry 76). The Union complains that there was no unit number for Woodson and Sommerville's addresses on the voter list. And that would be true. But what was also true is that the address listed in Amazon's HR systems for Woodson as of 2021 did not include an apartment number. Woodson first added their apartment number in Amazon's HR portal in November 2023. And Sommerville first added their apartment number in Amazon's HR portal on February 23, 2022.

The only three entries for which the addresses on the *Excelsior* list did not match the addresses contained in Amazon's HR systems are Kelsey Cullins (entry 34), Jahdiel Oldfield (entry 176), and Shelbie Clem (entry 815). The Union's list indicated that Cullans moved as of a house visit on January 23, 2022. But Amazon's HR systems only show one address for Cullans, effective December 2022. The *Excelsior* list, however, shows a different address for Cullans with no explanation in the record for the discrepancy.[67] For Oldfield, the Union asserts that a February 2022 house visit revealed that Oldfield did not live at the address listed on the *Excelsior* List. Amazon's HR systems show a street name, but no house number for Oldfield's address. The *Excelsior* list does have a house number to go along with the street name, but it is unclear from the records where this house number came from.

[66] The sole error in Justin Hardy's (entry 888) address was "Pinehill Roaf" instead of "Pinehill Road."

[67] Amazon did not provide HR records for Lynn Strown (entry 36), Zaire Knapp (entry 39), Derlia Banks (entry 41), KP Pippens (entry 83), Chinonso Onyeama (entry 91), Comilla Butler (entry 96), Amauri Minter (entry 119), Tierra Johnson (entry 160), Thelma Craig (entry 177), Nisi Green (entry 217), Randall Lewis (entry 246), Kova Munez (entry 249), Jay Marcus (entry 269), Florenshia Hall (entry 276), Ember Alcaida (entry 311), Angel Sharpe (entry 329), Mikhail Smith (entry 346), Chris Lee (entry 357), Kaii Stacy (entry 373), Ced Scales (entry 374), Quila Byrd (entry 379), Missy Talley (entry 390), JC Cade (entry 392), Benjamin Hill, Jr. (entry 397), Chris Gibson (entry 407), Aaron Young (entry 410), Tara Gray (entry 424), Ikinda Hill (entry 431), Ieshia Moore (entry 463), Shirley Allen (entry 497), Jaida Pickett (entry 501), Tondra Howard (entry 512), Anthony Jones II (entry 576), Uta Cotton (entry 583), Todd Todd (entry 620), Shonte Purvis (entry 631), John Cooks (entry 648), Tobias Tanniehill (entry 666), Cordero Jackson (entry 720), Lakesha Washington (entry 787), Iziah Giles (entry 789), Denise Collins (entry 800), Jaquan Anderson (entry 912).

Additionally, for entry 796, LaNequa Russell's address in Amazon's HR systems showed their address as Greensboro, Alabama, but somehow, this was transposed as Greensboro, Tennessee (with the correct Alabama zip code) on the *Excelsior* list.

The Mailbox and Amazon's Objections

In her November 30, 2021 correspondence to the parties, Regional Director Henderson asked for proposals for the neutralization of the cluster box unit (mailbox) that was installed outside BHM1 in February 2021. (GC Ex. 1(hh)). This solicitation came in response to Amazon's desire for clarity regarding the placement of the mailbox because Amazon did not want the existence of this mailbox to be the basis for overturning the results of the rerun election. (Tr. 1275). Thus, in Regional Director Henderson's January 11, 2022 Order Scheduling Mail Ballot Election, she wrote the following:

> "Finally, the Employer requested the Region provide clear guidance regarding its expectations for the mailbox that was placed outside the facility in January 2021 and was the subject of several objections. The United States Postal Service has moved or will move the mailbox to a neutral location on the Employer's property away from the entrance to the facility. No party shall erect a canopy, tent, banner, sign, or other object on, at, around, or in view of the mailbox. Nor shall any party issue a directive, suggestion, or other statement to voters concerning the use of the mailbox for the purposes of this election." (GC Ex. 1(mm)).

On January 12, 2022, the Postal Service moved the mailbox to a grassy median on the far-left side of the building, separated from the building by a large parking lot. In its new location, the mailbox was not visible from the main entrance to BHM1 and it was about a 7-10 minute walk to reach the mailbox from the main entrance to the building. (ER Ex. 11; Tr. 1279-1280, 1285-1286).

Amazon complains that the Union made inaccurate statements in its Request for Review of the January 11, 2022 Order Regarding Disposition of the Mailbox. Specifically, Amazon asserts that on page 4 of this filing, the Union wrote:

> "The mailbox, which the Regional Director found was a basis to set aside the results of the first election, has been moved by Amazon to the left side of the facility entrance but still within the employee parking lot and within view of Amazon's multiple surveillance cameras…Employees parking in that location must pass by it as they make their way to the building. Even though the mailbox is not covered by a tent and draped with the Employer's anti-union campaign message, the mailbox serves as a stark reminder of the Employer's 'flagrant disregard for the Board's typical mail-ballot procedure' which 'created the impression that the Employer conducted the election process rather than the Board.' Moving the mailbox a few hundred feet but still in plain view of surveillance cameras and employees passing by it every day does not erase the stain of the Employer's conduct or diminish 'the impression that the Employer is involved in conducting the election.' Indeed, the continued presence of the mailbox on the Employer's premises sends a clear and unequivocal message to the employees. That message is despite the

> Regional Director finding 'that the Employer-directed installation of the mailbox is inconsistent with the Board's laboratory conditions and contravenes the DDE's instructions cautioning against perceived Employer involvement in the neutral election proceedings' Amazon still has 'a role in the collection and control of mail ballots.'" (GC Ex. 1(oo)).

Todd Logan testified that Amazon did not move the mailbox – USPS did. But the Union's Request for Review received local media attention and at a Zoom press conference held on January 26, 2022, Union supporters referenced the mailbox and how Amazon was not abiding by the Regional Director's instruction not to comment to voters regarding the placement of the mailbox. (Tr. 1291-1294). Amazon then offered into evidence a Law360 article reporting on the press conference in which Jennifer Bates is quoted as saying she thought Amazon installed the mailbox to "further manipulate employees" and its placement is not convenient for workers because "we leave a mailbox every day when we leave home." (ER Ex. 12).

Adam Obernauer testified that he attended the Zoom press conference. He testified that he told employees that there were a number of reasons why there was a rerun election and some of that related to the mailbox. Obernauer said that in his conversations with workers he did not go into too much detail about the mailbox because "that goes down a rabbit hole I didn't really like to get to with workers." (Tr. 968, 973). Obernauer also said that organizers were instructed to tell employees to mail their ballots at the mailbox that they were most comfortable with and that organizers were not instructed to tell workers that they should not use the mailbox at BHM1. (Tr. 973-974). Finally, Obernauer testified that the only reason the Union spoke with workers about the mailbox was to counter misinformation it believed Amazon was spreading indicating that the mailbox had nothing to do with the rerun election. (Tr. 986).

Analysis – Unfair Labor Practice Allegations

A. Amazon Did Not Violate the Act by Holding Mandatory Small Group Meetings with Its Employees in the Run-Up to the Rerun Mail Ballot Election (Complaint Paragraph 5)

Current Board law permits an employer to compel its employees during working hours to attend speeches that express the employer's opposition towards unionization. *Babcock & Wilcox,* 77 NLRB 577, 578 (1948). The Board confirmed this holding in *Electrolux Home Products, Inc.,* 368 NLRB No. 34, slip op. at 5 (2019), and recently declined to revisit this precedent in *Starbucks Corporation,* 373 NLRB No. 75, slip op. at fn. 4 (2024). In their post-hearing brief, Counsel for the General Counsel advocate for the Board to overrule *Babcock & Wilcox* and find that convening captive audience meetings is per se unlawful. As an administrative law judge, it is not my place to make or alter existing law or policy – that is the exclusive domain of the Board. Thus, I find that Respondent did not violate Section 8(a)(1) of the Act by requiring[68] BHM1 associates to attend small group meetings with employee relations personnel in the run-up to the February/March 2022 rerun mail ballot election.[69]

[68] I credit Serena Wallace and Isaiah Thomas's testimony that they, and other employees, were required to attend small group meetings during the rerun election campaign.

[69] This allegation is coextensive with Union Objection 20. For the reasons listed above, I similarly find

B. Amazon Violated the Act When Josh Perkins Interrogated Asia Sanders and Her Co-Workers Regarding Their Union Sympathies (Complaint Paragraph 6a)

The credible record evidence reveals that in about late January 2022, employee relations representative Josh Perkins[70] approached employee Asia Sanders at her workstation and asked how she felt about the "union stuff" at BHM1. Under the totality of the circumstances test, this query violated the Act.

Interrogation Caselaw

To determine the lawfulness of an employer's interrogation, the Board evaluates whether, under all the circumstances, the interrogation reasonably tended to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. *Garten Trucking LC,* 373 NLRB No. 94, slip op. at 1 (2024); *Quickway Tranportation, Inc.,* 372 NLRB No. 127, slip op. at 25 (2023); *Rossmore House,* 269 NLRB 1176, 1177 (1984), affd. Sub nom. *Hotel & Restaurant Employees Local 11 v. NLRB,* 760 F.2d 1006 (9th Cir. 1985). "Factors relevant to the analysis include the background against which the questioning occurred, the nature of the information sought, the identity of the questioner, the place and method of interrogation, the truthfulness of the employee's reply, and whether the employee involved was an open and active union supporter." *Kumho Tires Georgia,* 370 NLRB No. 32, slip op. at 5 fn. 14 (2020). The Board also asks whether the employer has a history of hostility toward or discrimination against union activity. *Garten Trucking LC,* 373 NLRB No. 94, slip op. at 1.

In our case, Asia Sanders testified without contradiction about Josh Perkins' entreaty to her while she was actively working. Perkins introduced himself as a representative from Amazon employee relations and asked her how she felt about the "union stuff." Sanders said that she had no opinion and Perkins asked if she was sure about this. Perkins then asked if she had any questions for him, Sanders told him no, and Perkins moved on to the next employee. During this brief conversation, Sanders was wearing a red button bearing the Union's logo.[71]

This is a close call – several factors weigh in favor of a violation, while others do not. First, the "nature of the information sought" factor weighs in favor of a violation. To this end, Perkins directly inquired about Sanders's union sentiments. Amazon's site updates from late January 2022 stated that employee relations representatives engaged in one-on-one conversations with associates at their workstations to "answer any questions they have about the information in the meetings." (CP Ex. 55). These site updates also show that Amazon tracked the exact number of 1:1 employee engagements by day, week, and campaign-to-date, as well as specific complaints raised by employees during these conversations (e.g. management leadership style). (CP Ex. 56). Based on the above, I find that the "nature of the information sought" factor weighs in favor of a violation.

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that holding captive audience meetings does not constitute objectionable conduct.

[70] Amazon admitted in its Answer to the Sixth Amended Complaint (paragraph 4(a)(xii)) that Josh Perkins was an agent of Amazon as defined by Section 2(13) of the Act.

[71] Perkins did not testify at the hearing.

Next, the "identity of the questioner" factor weighs against a finding of a violation here. In this regard, Josh Perkins was a lower-level employee relations official with no previous ties to BHM1. Sanders had not met him before their January 2022 conversation and there is no record evidence that they interacted again. Given that Perkins was not a high-ranking official with Amazon or at BHM1, this factor weighs against a finding of a violation here.

Additionally, I find that the "place and method of interrogation" factor is neutral. This was not the case where a boss called an employee to their office, closed the door, and began asking probing questions. But Perkins' interactions with Sanders and her co-workers were far from organic. Given the extensive tracking of one-on-one engagements, these seemingly impromptu interactions were far less casual and far more purposeful than Amazon claims. Since there are strong arguments in either direction, I find that this factor is neutral.

Furthermore, the "truthfulness of the reply" factor weighs in favor of a violation because Sanders clearly tried to dodge discussing her union sentiments when questioned by Perkins by stating she had "no opinion" on the union matter. On the other hand, Sanders wearing the red Union button indicated that she was an open supporter of the Union, meaning that the "open and active union supporter" factor weighs against a finding of a violation.

The last factor – background/hostility or discrimination against union activity – is a little trickier. Amazon ran a relentlessly anti-union campaign during the 2022 rerun election, as well as during the initial mail ballot election in 2021. But I am aware of no 8(a)(1) or (3) violations stemming from the first election. In contrast, this decision finds six separate unfair labor practices during the rerun election campaign. Thus, I find that this last factor is inconclusive.

I next turn to relevant caselaw for guidance. There are a number of Board cases where violations have been found under similar circumstances. See *Apple, Inc.,* 373 NLRB No. 52 (2024) (senior store manager questioned employee on the sales floor what he thought about the unionization efforts at Apple); *Kumho Tires Georgia,* 370 NLRB No. 32, slip op. at 5 (2020) (supervisor unlawfully interrogated employee by asking them how they felt about the union); *Bozzuto's, Inc.,* 365 NLRB No. 146, slip op. at 1 (2017) (employer vice-president stopped union supporter as he was exiting the restroom and asked what was going on with "this union stuff"); *Gelita USA, Inc.,* 356 NLRB 467 (2011) (adopting earlier 2-member Board decision finding unlawful interrogation where human resources consultant speaks to employee at their workstation and asks how she was doing with all of this "union" stuff).

Gelita confirms that the Board will find a violation for unlawful interrogation when a mid-level supervisor questions an employee at their workstation in a manner that causes the employee to be reluctant to discuss the union and reticent to give a truthful response about their true union sympathies. Although it is a close call, under the totality of the circumstances here, I find that Josh Perkins' inquiry to Asia Sanders about how she felt about the "union stuff" constitutes unlawful interrogation under Section 8(a)(1) of the Act.

C. Amazon Did Not Engage in Unlawful Polling of Employees (Complaint Paragraph 6b)

On page 74 of their post-hearing brief, Counsel for the General Counsel assert that Josh Perkins engaged in unlawful polling of employees because he was observed taking notes as he questioned employees regarding their union activities. I do not agree. Asia Sanders testified that Josh Perkins was walking around and talking to employees on the decant line, then Perkins did something with his phone, and ultimately came to talk to her. When asked if she saw what Perkins was doing on his phone, Sanders said that it looked like he was taking notes, but she couldn't see what he was doing with his phone. (Tr. 612-613). This slender reed of evidence is insufficient to support a finding of a violation here. To this end, in the only case the Counsel for the General Counsel cited in support of its proposition, *Hyundai Motor Mfg. Alabama, LLC,* 366 NLRB No. 166 (2018), there was neither an allegation of unlawful polling of employees nor a finding of such. And given that Sanders testified that she could not see what Perkins was doing with his phone, there is simply no evidence supporting a finding of unlawful polling here. Therefore, I recommend dismissal of Complaint paragraph 6(b).

D. Amazon Did Not Unlawfully Threaten Employees with a Loss of Pay During Small Group Meetings (Complaint paragraph 7(a))

On page 46 of their post-hearing brief, Counsel for the General Counsel allege that Amazon threatened employees with a loss of pay by not voluntarily disclosing to employees during small group meetings that they would have to specifically authorize the collection of dues from their paychecks because Alabama is a right-to-work state. The facts and caselaw do not support finding a violation here.

In support of their theory, Counsel for the General Counsel identified two pieces of testimony. First, Jennifer Bates testified that employee relations partner Hope Webb told employees at a small group meeting that dues would be taken out of employees' paychecks, but Webb did not tell employees that they did not have to pay union dues if they did not want to. (Tr. 262-263). No recording of Webb's meeting was introduced through Bates. Bates's recording of a part of a meeting conducted by Sarah Ortiz was admitted into the record as GC Ex. 2(f). In this recording, Ortiz cursorily mentioned that unions operate through the collection of dues and speculated that the Union was interested in Amazon's employees because $500 dues/year for 6,000 employees is a big incentive for the Union.

Hope Webb did mention union dues a number of times in the recording of her small group meeting entered into evidence. (GC Ex. 2(e)). Webb noted that dues are the Union's source of income and the Union spends members' dues to pay bills to operate its business. Webb stated that the dues for 6,000 new members at BHM1 would be very helpful to the Union. Webb also stated that nobody can predict the result of bargaining – bargaining could yield for employees exactly the same pay and benefits they enjoy now in addition to paying union dues, or employees could wind up with more or less than their current wage and benefit package. When pressed by Clint Shiflett about not paying union dues until a contract is ratified, Webb confirmed this was the case and also confirmed that employees are not required to pay dues in the State of Alabama. (GC Ex. 2(e)). Lastly, Webb opined that employees would have to pay $500 in union dues per year and Shiflett corrected her that the proper amount was $9.25/week.

In Joint Exhibit 4, which was distributed by Amazon to its employees during the rerun election campaign, the first question addressed union dues as follows:

> Q. Will the Union Take Money Out of My Paycheck for Dues?
>
> A. The RWDSU has negotiated what is called "dues check off" in many of its contracts. That means when a contract is signed, if a member has given authorization, the union dues owed by the member can be taken directly out of the member's paycheck to cover the almost $500/year in dues. If a member doesn't give authorization, the member would need to pay the dues directly to the union.

As further support for its theory of a violation, Counsel for the General Counsel pointed to Braxton Wright's testimony. Wright testified about a small group meeting leader named Leo's representation regarding union dues. Leo said that if the Union negotiated a $1/hour raise and employees lost benefits like a shift premium or health insurance, the $9.25/week in union dues would mean that employees would make less money with the Union than they currently make. (Tr. 442).

In *Tesla, Inc.,* 370 NLRB No. 101, slip op. at 9 (2021), the Board reiterated that "an employer may criticize, disparage, or denigrate a union without running afoul of Section 8(a)(1), provided that its expression of opinion does not threaten employees or otherwise interfere with the Section 7 rights of employees." *Children's Center for Behavioral Development,* 347 NLRB 35, 35 (2006). The Board further found "nothing unlawful in [an employer's] statement that the employees would have to pay [union] dues if they selected the union" because '[i]t is an economic reality that unions may collect dues from the employees they represent. *Office Depot,* 330 NLRB 640, 642 (2000). In *Office Depot,* the Board confirmed that even if an employer's statement about having to pay dues is untruthful, it is nothing more than a misrepresentation about unions' ability to enforce payment of dues and not a threat of adverse action by the employer. *Id.* Counsel for the General Counsel have provided no caselaw supporting their contention that failing to explicitly announce Alabama is a right-to-work state turns Amazon's statements about dues into unlawful threats. *Office Depot* makes clear that such an omission is merely a misrepresentation and not a violation of Section 8(a)(1) of the Act. Based on the above, I recommend dismissal of complaint paragraph 7(a).

E. Amazon Did Not Unlawfully Threaten Employees with Loss of Benefits During Small Group Meetings (Complaint paragraph 7(b))

Amazon's mandatory small group meetings featured a revolving cast of employee relations professionals delivering variations on the same recurring themes – if the Union was voted in, Amazon would engage in good-faith collective bargaining which could result in the same pay and benefits for employees or increases or decreases in pay and benefits. These statements do not violate the Act.

As part of its education campaign, Amazon distributed "What Really Happens in Collective Bargaining Negotiations?" leaflets to employees at the small group meetings and

displayed this information throughout BHM1. (Joint Ex. 3). In relevant part, this leaflet asks and answers the following questions:

> Q. Can a Union Guarantee That It Will Get Us Better Hours, Wages and Benefits?
>
> A. No. The union might be making promises about getting you better wages or benefits, but in collective bargaining there are no guarantees. You could end up with the same, more or less than you have today. And collective bargaining is a give and take process.
>
> Q. Can a Union Force Amazon to Agree to Its Demands if it Wins the Election?
>
> A. No. If the union is voted in, the union would have a committee that would sit at the table to negotiate with Amazon in collective bargaining. The union and Amazon would bargain together in good faith to try to reach an agreement, but neither side is forced to agree to anything they don't want. And each party can make proposals and counterproposals that are in its best interests. That's part of the give and take of the collective bargaining process.
>
> Q. What Items are Discussed at a Negotiation?
>
> A. If the union were voted in, your wages, benefits, and other terms and conditions of employment would be subject to good-faith negotiations between the union and Amazon. No one can predict the outcome of good-faith collective bargaining. You could end up with more, the same, or less than you have now. And if a contract is reached, it would apply to you, even if it does not have the things you wanted.

Consistent with this approach, Amazon's employee relations professionals delivered captive audience messaging using different slide decks each week. For the discussion of collective bargaining, Joint Ex. 5 contained a slide entitled "Key Facts About Collective Bargaining," which consisted of the following bullet points:

- Collective bargaining is a process where the union and a company negotiate your wages, benefits, and terms and conditions of employment
- No one can predict the results of good-faith collective bargaining. You could end up with the same, more, or less than you have today
- Unions cannot guarantee better wages, benefits or working conditions. If a contract is reached, it would apply to you – even if it does not have the things you wanted.

A follow-up slide stated that "in collective bargaining, there are no guarantees. You could end up with the same, more or less than you have today," and contained the following quotes culled from the NLRB history books:

> "Collective bargaining is potentially hazardous for employees, and as a result of such negotiations, employees might possibly wind up with less benefits after unionization than before – 228 NLRB 440.

"There is, of course, no obligation on the part of the employer to contract to continue all existing benefits, nor is it an unfair labor practice to offer reduced benefits – 133 NLRB 1132."

A subsequent slide then compared Amazon's wage package more favorably to other Alabama outfits whose employees are represented by the Union.

As part of the video embedded in the first week's slide deck, general manager Diop commented that "no one can predict or guarantee what would happen in collective bargaining. In collective bargaining, associates could end up with the same, more, or less than what they have now." (Joint Ex. 8(b), page 4). A subsequent video featured Diop and regional senior HR manager Ray Roach stating that "if a union is voted in, your terms and conditions of employment, including pay and benefits, are subject to good-faith collective bargaining. You could end up with the same, more, or less than you have right now. No union can guarantee the outcome of good-faith collective bargaining." (Joint Ex. 9(b), page 3).

In the recording of Hope Webb's small group meeting, she opened the session with a disclaimer that "the purpose of this presentation is to discuss facts and potential scenarios and the Union's record on certain key issues. We are not claiming to be able to predict the future. We don't have a crystal ball. We're not a fortune teller. But what we want to do is just give facts and talk about our presentation in a way not implying what's going to happen, but the things that could happen…A lot of it is unknown because that's what happens in negotiations." (GC Ex. 2(e), pages 3-4).

After playing the Diop/Roach video, Webb talked about collective bargaining. She offered that this process:

"discusses every term and condition of employment, so pay, processes, benefits, anything and everything to do with how we operate here at BHM1. That's what collective bargaining means…So no one can predict the result of what's going to happen at the bargaining table. You could come away from that process with exactly what you have right now, but you would also be paying union dues, you could end up with more, or you could end up with less than what you have as a total package right now, plus paying union dues." (GC Ex. 2(e), page 14).

Towards the conclusion of the meeting, Webb offered the following:

"Can the union guarantee better wages and benefits? No, they cannot guarantee. They have to go to collective bargaining with the company, and there are no guarantees. You could end up with the same that you have today, less, or more." (GC Ex. 2(e), page 24).

Then Sarah Ortiz reiterated that benefits are negotiated with the union. She said the following:

"Those current benefit packages have to be negotiated with the company and the union, including what your premium is, how much the company is going to cover, how many hours they're going to be eligible. You have to keep that in mind as well, that that is not

> a benefit that you would necessarily wholly retain. It would be subject to negotiation. So I know we've had a little chatter about pay and benefits, etc. It's important to remember that we're not claiming we're perfect, but all of that stuff could change in a contract negotiation." (GC Ex. 2(e), pages 30-31).

Counsel for the General Counsel assert on page 49 of their post-hearing brief that Braxton Wright's testimony regarding Amazon representations emphasizing employees losing the benefits that they have communicated to employees that Amazon was taking a predetermined, regressive bargaining posture rather than planning to engage in good-faith bargaining. But two years removed from these meetings yielded testimony with little meat on the bone. To this end, Wright testified that he attended about six small-group meetings and at one of the meetings, an employee relations professional named Leo stated that if the Union came in and the existing shift premium was not negotiated in the contract, employees would lose the shift premium. (Tr. 442). Wright also testified that Leo said that if the Union negotiated a $1 raise for employees coupled with a loss of benefits such as the shift premium or health insurance, along with dues payments, employees would be making less money with the Union than before. (Tr. 442). On cross examination, however, Wright acknowledged that Amazon representatives made clear that good-faith contract negotiations could yield employees pay and benefits that were higher, the same, or less than what they currently enjoyed. (Tr. 457). This representation is more consistent with the documentary evidence and the recordings of Webb, Kozinn, and Ortiz's meetings, and provide a truer context of the noncoercive nature of the Employer's statements regarding changes in benefits.

Serena Wallace's testimony about what she heard at the captive audience meetings she attended was similarly bereft of details. Wallace testified that she attended four of these meetings. She provided conclusory testimony that the literature handed out at these meetings informed employees that they could lose their benefits and detailed how much unions dues would be. (Tr. 390). When asked what the speakers said at the meetings, Wallace testified that an unidentified presenter said that there were no guarantees, the union couldn't guarantee anything, and employees' benefits would be impacted. (Tr. 390-391). Such vague testimony cannot form the basis for a violation of the Act. Wallace also recalled an unidentified speaker said that while the Union was coming in, everything – including raises and benefits – would stop. (Tr. 392). One can infer that Wallace was alluding to changes in benefits stopping once the Union is voted in, but Wallace's testimony on this subject was much too vague to be attributable to coercive or regressive messaging on Amazon's part.

Jennifer Bates testified that during one of the small group meetings, Hope Webb said that if Amazon made a decision to give a $10 raise to all of its other facilities, BHM1 would not receive that raise because Amazon would have to go through the union and BHM1 employees would not participate in that raise. While I generally found Bates to be a very credible witness, I note the lack of context in this portion of her testimony. It is unclear whether Webb said that this issue was subject to good-faith collective-bargaining or how this subject came up at all. And in the recording of one of Hope Webb's small group meetings, Webb did not address the subject of raises. Counsel for the General Counsel posit that Bates' testimony is evidence of Amazon

regressive, coercive messaging. I do not believe that the General Counsel has carried its burden given the paucity of credible record evidence on this subject. Instead, the record evidence shows that Amazon repeatedly referenced good-faith collective-bargaining negotiations and took great pains to avoid the regressive or unlawfully coercive messaging about benefits that is the backbone of the General Counsel's allegation. Therefore, I recommend dismissal of complaint paragraph 7(b).[72]

F. Amazon Did Not Unlawfully Threaten Employees with Loss of Access to Management During Small Group Meetings (Complaint Paragraph 7(c))

Counsel for the General Counsel urge the Board to limit the application of *Tri-Cast, Inc.,* 274 NLRB 377 (1985) and hold that preelection statements that explicitly misrepresent employee rights under the proviso to Section 9(a) of the Act are unlawful threats of existing benefits. I am bound, however, to enforce Board law, and under extant precedent, Counsel for the General Counsel have not established a violation of the Act here.

To support its theory of a violation, Counsel for the General Counsel point to Hope Webb's comments to employees at a small group meeting that if they elected a union, Amazon would have to speak to the Union and could not speak to employees directly. And in a video played for all attendees of the small group meetings, site manager Diop said that "unions make it more difficult for us to speak directly with each other…here at BHM1, we value our ability to speak directly with each other and respond to your concerns. With a union, that relationship may change."

Hope Webb addressed this subject in response to an employee's question about why Amazon's communications with employees would change if the Union came in. Webb said that "there are tons and tons of laws around how you can operate when a union represents your workforce. So by law, we aren't allowed to have this relationship with you because you have elected a union to be your representative. So by bringing in a union, there are laws around us having to communicate with your union instead of you directly." (GC Ex. 2(e), page 17).

Mamadou Diop, in the pre-recorded video, said as follows:

> "I've worked for 20 years for a company, General Motors, where some employees were represented by a union. In my experience, the unions bring an additional layer to everything we do. Unions make it more difficult for us to speak directly with each other. In my previous roles, my ability to speak directly with employees and respond to their concerns was limited by the terms of the contract. Here at BHM1, we value our ability to speak directly with each other and respond to your concerns. With a union that relationship may change." (GC Ex. 2(e), pages 12-13).

In *Tri-Cast,* the employer distributed a letter to employees shortly before an election stating that "We have been able to work on an informal and person-to-person basis. If the union

[72] Clint Shiflett testified that Hope Webb repeatedly emphasized that employees could wind up with fewer or worse benefits. (Tr. 104). In the recording placed in evidence, Webb repeatedly remarked that employees could wind up with better benefits, the same benefits, or lesser benefits. (GC Exs. 2(d) and (e)).

comes in this will change. We will have to run things by the book, with a stranger, and will not be able to handle personal projects as we have been doing." *Tri-Cast, Inc.,* 274 NLRB at 377. The Board found that this letter did not contain a threat – either explicit or implicit – and that it instead was simply a statement explaining to employees that when they select a union to represent them, their relationship with their employer "will not be as before." *Id.*

Numerous cases following *Tri-Cast* have concluded that similar employer predictions about the employees' loss of a direct relationship with their employer are lawful. See *Cemex Construction Materials Pacific, LLC,* 372 NLRB No. 130, slip op. at 6 (2023) (no violation of the Act when employer's vice-president/general manager told employees that unionization would change their relationship with management; once they were under a collective-bargaining agreement, they would have to go through the Union instead of going directly to management; employees would lose their ability to deal directly with their supervisors and these supervisors would not be able to do anything for them); *Ben Venue Laboratories,* 317 NLRB 900, 900 (1995) (no violation of the Act where an employer president told employees that its open-door policy would no longer exist if the employees voted in a union); *Office Depot,* 330 NLRB at 642 (no violation of the Act where the employer told employees that they would not be able to communicate with management in the same way because there would be a representative from the union serving as the middle person); *Gunderson Rail Services,* 364 NLRB 279, 279 (2016) (no violation of the Act when the employer told employees that if they selected the union, they would no longer be able to bring complaints directly to management).

Applying *Tri-Cast* and this line of cases, I find that Webb and Diop's statements are permissible speech, and I recommend dismissal of complaint paragraph 7(c).

G. Amazon Specifically Targeted for Removal Pro-Union Flyers Distributed in its Break Rooms While Permitting Anti-Union Table Toppers to Remain on Each Break Room Table (Complaint Paragraph 8)

The compelling record evidence establishes that Amazon specifically targeted Union flyers, and only Union flyers, for removal from its break rooms during the rerun election campaign. This repeated conduct violated the Act.[73]

Employees have the right to distribute literature in nonworking areas, such as break rooms. *Venture Industries;* 330 NLRB 1133, 1134 (2000); *Mid-Mountain Foods, Inc.,* 332

[73] Amazon correctly notes in its post-hearing brief that complaint paragraph 8 references posting of materials in non-work areas and does not mention either distribution or confiscation of literature. The parties, however, litigated this issue as if the allegation focused on distribution and/or confiscation of union literature in non-work areas, it is undisputed that none of the Union flyers distributed in the breakrooms were posted on the walls or bulletin boards, all parties had an opportunity to present evidence on this matter, and all parties addressed this theory of a violation in their respective post-hearing briefs. Additionally, Union Objection #1 addresses removal of Union literature from breakrooms and the Region indicated, when setting the objections for a hearing, that Union Objection #1 was coextensive with an allegation in the Region's complaint. Based on the above, I am analyzing this portion of complaint paragraph 8 as the disparate removal and/or confiscation of Union literature from non-work areas, such as the employee breakrooms.

NLRB 229, 229 (2000); *United Aircraft Corp.,* 139 NLRB 39 (1962). Interference with employee circulation of protected material in nonworking areas during off-duty periods is presumptively a violation of the Act unless the employer can affirmatively demonstrate the restriction is necessary to protect its proper interest. *Waste Management of Arizona, Inc.,* 345 NLRB 1339, 1346, fn. 2 (2005) quoting *Champion International Corp.,* 303 NLRB 102, 105 (1991). To overcome the presumption that a rule restricting such employee activities is unlawful, an employer "must show a compelling and legitimate business reason necessitating" the restrictions it has imposed. *Waste Management of Arizona,* 345 NLRB at 1346. The Board has further held that that it is unlawful for an employer to confiscate union literature even if the employer could under the circumstances legally prohibit its distribution. *Shamrock Foods Co.,* 366 NLRB No. 117, slip op. at 23 (2018); *Manorcare Health Services-Easton,* 356 NLRB 202, 204-205 (2010).

Employees Clint Shiflett, Jennifer Bates, Roger Wyatt, and Isaiah Thomas presented compelling, detailed testimony chronicling their repeated leafleting activities in Amazon's breakrooms during the campaign. Although Serena Wallace engaged in this flyering activity less frequently than her colleagues, her testimony is just as credible.

Their "Groundhog Day"[74]-like efforts went like this – employees entered BHM1 before their shifts started and neatly placed Union leaflets on each table in the large breakrooms (on the 1st and 3rd floors) as well as the smaller, satellite breakrooms sprinkled throughout the facility. During their first scheduled break, they would return to the breakrooms and find all of their leaflets removed. On occasion, the employees would find their flyers in the trash. Often, they never located their flyers. Shiflett testified this happened to him on 5 occasions in January and February 2022. (Tr. 133). Bates testified that the same thing happened to her on the 3 or 4 occasions she distributed flyers in the breakrooms. (Tr. 273). Wallace passed out flyers on 3 occasions in the 3rd floor breakroom, roughly 100-150 flyers each time. (Tr. 401, 418). Roger Wyatt testified that he passed out flyers in the breakrooms about once a week during the campaign. (Tr. 620). And Isaiah Thomas estimated that he distributed flyers in Amazon's breakrooms a minimum of 40 times in January and February 2022. Each time with the same result – the flyers were gone by the next shift break.

The removal of the Union flyers from the breakrooms was neither isolated nor accidental. It was the result of a directive Todd Logan asked Lorin Moyd to convey to the site's cleaning contractor KBS in November 2021. This directive, in the form of an email, specifically ordered KBS to throw away any RWDSU flyers found on the breakroom tables during their normal cleaning schedule. (GC Ex. 25). And KBS dutifully followed these orders.

Amazon defends its conduct in its post-hearing brief by asserting that the BHM1 housekeeping policy was unchanged from the time the facility opened in March 2020 through the rerun election in 2022. This means the scope of work (e.g. cleaning of breakrooms) and cleaning cadence (cleaning the breakrooms before and after each break) was consistently enforced and

[74] "Groundhog Day" is a 1993 comedy starring Bill Murray and Andie MacDowall in which Murray plays a Pennsylvania weatherman living the same day (February 2nd – Groundhog Day) over and over.

applied, and KBS threw away all materials left on the breakroom tables, not just the Union flyers.

On its face, these arguments are factual. But Amazon ignores the discriminatory intent behind the November 2021 email Moyd sent to KBS. To this end, Moyd testified that when the facility opened in March 2020, the table toppers on each breakroom table contained HR messages to associates, e.g. time off and pay policies. And none of the table toppers referenced the Union. (Tr. 2000). This changed during the first election campaign and the undisputed record evidence shows that the table toppers used during the rerun election campaign only contained Amazon's anti-union messaging. Moyd further testified that at the same time he sent the November 2021 email to KBS, Amazon had no concerns about flyers or papers being left in the breakroom from any outside parties other than the Union. (Tr. 2201). Thus, Amazon sent the directive to KBS to stifle the Union's organizing efforts and to cleanse the breakroom tables of pro-union messaging while leaving BHM1's breakroom table cluttered only with Amazon's anti-union propaganda. Consequently, the confiscation of Union flyers violates Section 8(a)(1) of the Act.[75]

H. There is Insufficient Record Evidence to Establish that Amazon Disparately Removed Union Flyers from Work Areas (Complaint Paragraph 8)

Counsel for the General Counsel identified one alleged incident involving the removal of pro-Union material from a work area. Based on this flimsy record, there is insufficient evidence to establish a violation of the Act.

Roger Wyatt testified about an anti-union flyer posted on a support beam in the ISS department, where Wyatt worked. Wyatt did not see who posted this flyer and never asked a manager or supervisor to remove it. Wyatt asserted that this flyer was posted for several weeks until he decided to affix a pro-union flyer to the same support beam. Wyatt then noticed that his flyer had been removed, but the original, anti-union flyer remained on the support beam. Wyatt did not see who removed this flyer and did not bring this matter to his supervisor's attention.

Wyatt testified that only 3 or 4 employees work in this area, but that employees or managers would frequently pass through. Wyatt also took a photo of an anti-union flyer posted on the robotics floor, which is ostensibly more heavily trafficked, but no specific testimony was adduced on this subject.

Unlike the flyer distribution in the breakrooms, there is no evidence that Amazon was aware of the anti-union posting on the support beam or that it had a hand in removing Wyatt's flyer. Without such evidence, no violation of the Act has been established and I recommend dismissal of the portion of complaint paragraph 8 concerning disparate enforcement of materials posted in work areas.[76]

[75] There is no record evidence that the flyers were left in the breakroom in a way to create a mess, clutter, or otherwise interfere with employee enjoyment of the breakroom. In fact, the employee witnesses testified to the great pains they took to make sure that the flyers were neatly placed on each table.

[76] This allegation is coextensive with Union Objection #2. I similarly find a lack of probative evidence

I. Amazon Did Not Orally Promulgate an Unlawful Rule Regarding Access to BHM1 Before and After a Shift Because Jaramillo and Croft's Statements Were Only Made to Shiflett and There is No Evidence That This Rule Was Disseminated Throughout the Facility or Enforced Against Any Employee (Complaint Paragraphs 9(a)(i) and (ii) and 9(b))

Clint Shiflett's unrebutted testimony as well as the recording admitted into the record make clear that after spotting Shiflett passing out flyers in the 3rd floor breakroom well before the start of his shift on the morning of February 11, 2022, manager David Croft told Shiflett that he was not permitted to be in the building so early, he was only permitted to enter BHM1 a "reasonable amount of time" before his shift began, and was permitted to remain in BHM1 for a "reasonable amount of time" after the conclusion of his shift. Camilo Jaramillo then told Shiflett that he could only enter the facility a maximum of 30 minutes prior to the start of his shift. Counsel for the General Counsel assert that these directives constitute orally promulgated rules, which were maintained by Amazon after Jaramillo and Croft made these statements. I disagree. Although it is clear that Croft and Jaramillo tried to limit Shiflett's protected, concerted activities with their directive, there is a long line of Board cases holding that before assessing whether the oral promulgation of an alleged rule is unlawful, it is appropriate to determine whether the statement at issue is in fact the promulgation of a rule. See *Shamrock Foods Co.,* 366 NLRB No. 177, slip op. at fn. 10 (2018). In *Shamrock Foods* and related cases, the Board states that a supervisor's single statement to an employee that is not repeated to other employees does not amount to the promulgation of a rule of general applicability. See *Food Services of America, Inc.,* 360 NLRB 1012, 1016, fn. 11 (2014); *Flamingo Las Vegas Operating Co., LLC,* 360 NLRB 243, 243, fn. 5 (2014); *St. Mary's Hospital of Blue Springs,* 346 NLRB 776, 777 (2006).

In our case, Croft and Jaramillo informed only Shiflett that Amazon's policy limited access to the building within 30 minutes of a shift ending or beginning. There is no record evidence that Croft or Jaramillo shared this directive with any other employee[77] before or after their conversation with Shiflett, and there is no evidence that upper management at BHM1 endorsed such a policy. Additionally, there is no evidence that the 30-minute rule or "reasonable time" rule were enforced at any other time during the campaign. Since Counsel for the General Counsel has failed to establish that Croft and Jaramillo's edicts were disseminated and applied to all employees at BHM1, I find that Croft and Jaramillo's statements did not constitute orally promulgated rules, and I recommend dismissal of complaint paragraphs 9(a)(i) and (ii). And because I find that there was no rule promulgated, I also recommend dismissal of complaint paragraph 9(b).

The Charging Party offered into evidence a June 30, 2022, A-to-Z app notification informing employees of a nationwide change to Amazon's Off-Duty Access Policy. (CP Ex. 4).

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to establish objectionable conduct regarding alleged posting of anti-union messages and removal of pro-union leaflets from work areas.

[77] Although the recording indicates that another employee was present for the start of the conversation, I do not believe that the Board's analysis changes whether the message was shared with 1 out of 6,000 employees or 2 out of 6,000 employees.

Under this new policy, employees are not allowed to access Amazon buildings on scheduled days off and before or after scheduled shifts. The policy does not define how long before or after a shift an employee is permitted to stay or remain onsite. Clint Shiflett testified that he received notification of this policy change sometime in July 2022. (Tr. 231-232). These facts, however, do not change my conclusion. To this end, this policy change took effect 4½ months after the incident with Shiflett, Jaramillo, and Croft, and approximately three months after the ballot count in the instant representation proceeding. And Todd Logan confirmed that Amazon did not have a policy requiring employees leave BHM1 within 30 minutes after the completion of their shifts (or prohibit arrivals more than 30 minutes prior to the start of a shift) during the rerun election campaign. (Tr. 1308).[78] As stated earlier, there is no evidence that a change to BHM1's access policy was disseminated to any BHM1 employees other than Shiflett during the January to March 2022 campaign period, or at any other time within the critical period.[79]

J. Amazon Violated Section 8(a)(1) of the Act When Camilo Jaramillo Confiscated Union Leaflets on February 11, 2022 (Complaint Paragraph 10(a))

Clint Shiflett's unrebutted testimony as well as the recording of Shiflett's interaction with Camilo Jaramillo establishes that Jaramillo removed pro-Union literature from 3rd floor breakroom tables on the morning of February 11, 2022. This conduct violated Section 8(a)(1) of the Act.

The Board has consistently found that confiscation of union literature from breakroom tables violates Section 8(a)(1) of the Act. See *Apple, Inc.,* 373 NLRB No. 52 (2024); *Valley Health System, LLC,* 369 NLRB No. 116, slip op. at 2 (2020); *Shamrock Foods,* 366 NLRB No. 177 (2018); *Manor Care of Easton, PA,* 356 NLRB 202, 205 (2010); *Republic Aviation Corp. v. NLRB,* 324 U.S. 793, 803, fn. 10 (1945) (employees are permitted to engage in solicitation and to distribute union literature during non-working time and in nonworking areas, absent a showing of "special circumstances" necessary for the employer to "maintain production or discipline").

In our case, Clint Shiflett placed a number of leaflets on the 3rd floor breakroom tables, left the room to use the bathroom, and upon his return, interrupted Camilo Jaramillo as Jaramillo was removing the leaflets from the breakroom tables. It is undisputed that the 3rd floor breakroom is a non-work area and that Shiflett engaged in this activity prior to the start of his shift that morning.

Why Jaramillo was in the 3rd floor breakroom was made clear in the Chime chat he participated in on the morning of February 11, 2022. To this end, about 10-15 minutes before Jaramillo went to the breakroom, James Rivers, a stipulated 2(11) Amazon supervisor, sent out the following missive: "you may want to contact the ERC POC (employee relations point of contact) and have them "clean" the 3rd floor breakroom, there are a couple AA's handing out

[78] Counsel for the General Counsel asserted that the legality of Amazon's June 30, 2022, access policy change is being litigated in another administrative proceeding. (Tr. 233). Of course, June 30, 2022, was well after the critical period in our case.

[79] This allegation is coextensive with Union Objection 10. I overrule this objection for the same reasons I determined that the above 8(a)(1) allegation did not have merit.

flyers, etc…" (GC Exs. 24, 27). Thus, it was the desired "cleaning" of the 3rd floor breakroom that Shiflett witnessed firsthand that morning. As a result, Jaramillo's removal of union literature violated Section 8(a)(1) of the Act.[80]

K. Amazon Violated Section 8(a)(1) of the Act When Crystal Carney Removed Union Leaflets from the 1st Floor Bathroom on February 11, 2022 (Complaint Paragraph 10(b))

On February 11, 2022, Jennifer Bates placed union flyers in the 1st floor female bathroom – specifically, on the stall doors and next to the bathroom mirrors and the installment advocating for employees to "Vote No." Bates then monitored who entered the bathroom because the first set of flyers she posted in the bathroom that morning was deposited in the trash. Bates spotted manager Crystal Carney entering the bathroom and when Carney exited the bathroom, Bates checked on her flyers. All were now in the trash bin. Since the restroom was a non-work area, Carney's actions violated Section 8(a)(1) of the Act.

The Board has consistently held that employees have the right to distribute literature in nonworking areas. *Mid-Mountain Foods, Inc.,* 332 NLRB 229, 229 (2000); *United Aircraft Corp.,* 139 NLRB 39 (1962). This is true so long as the literature is not strewn about in an unsightly or hazardous manner. *Mid-Mountain Foods, Inc.,* 332 NLRB at 230. Absent special circumstances, time outside working hours, whether before or after work, or during lunch or rest periods, is an employee's time to use as they wish without unreasonable restraint, even though the employee is on company property. *Cooper Tire and Rubber Co. v. NLRB,* 957 F.2d 1245, 1249 (1992); *Republic Aviation Corp. v. NLRB,* 324 U.S. at 804.

Amazon has defended its right to remove union literature from its restrooms by asserting that its restrooms are work areas. Todd Logan specifically asserted that restrooms are considered working areas because employees are permitted to use the bathrooms while they are on paid time. (Tr. 1316). Logan also asserted that non-Amazon-approved materials could not be posted in the restrooms ostensibly because Amazon did not want to clutter its working areas with solicitations and cleanliness of these areas was a safety concern. (Tr. 1590-1591). But Logan's tortured explanation strains credulity. To this end, Logan asserted that the bathrooms were still work areas even if an employee uses the bathroom before a shift starts or while on their meal break. (Tr. 1643-1645). Such an expansive definition of a work area seemingly transforms breakrooms and outside smoke areas into work areas simply because an employee may enter that area while they are on working time. The more logical explanation, however, is that restrooms are non-working areas and that conversations about unions and distribution of union materials are equally permitted in this space. And there is no evidence that Bates' postings created a mess or posed a safety hazard – instead, it appears that Bates neatly affixed union flyers next to

[80] Union Objection 11 alleges Amazon engaged in surveillance by observing employees participating in protected, concerted activities in the breakroom and stationed employer officials in the breakrooms during break times. It is unclear to me if this objection is coextensive with the Camilo Jaramillo/David Croft complaint allegations or if it relates to different misconduct. Given the number of meritorious complaint allegations and post-hearing objections, it is not necessary for me to make a finding on this allegation.

Amazon's anti-union messaging on the bathroom installments. Based on the above, Crystal Carney's removal of the union flyers on February 11, 2022 violated Section 8(a)(1) of the Act.

L. Amazon Did Not Orally Promulgate a Rule Regarding Posting of Flyers in the Restrooms (Complaint Paragraph 10(c))

The General Counsel's complaint specifically alleges that Crystal Carney orally promulgated a rule in Amazon's parking lot which prohibited the posting of union flyers in Amazon's bathrooms. The record evidence, however, does not support this pleading. To this end, the recording showing Jennifer Bates confronting Crystal Carney in the parking lot contains many instances of Bates and Chris Sessions accusing Carney of taking the flyers down, but other than telling Bates not to start, Carney does not acknowledge taking down the flyers in the bathroom. If Carney did not confirm this fact, she certainly did not promulgate and maintain a rule regarding the removal of flyers from Amazon's restrooms. Therefore, I recommend dismissal of complaint paragraph 10(c).

M. Ryan Underwood Engaged in Unlawful Surveillance When He Asked Chris Sessions His Name and to Show Him His ID Badge (Complaint Paragraph 11(a))

Chris Sessions and Serena Wallace credibly testified that Ryan Underwood approached Sessions as they were finishing their break, and that Underwood asked Sessions for his name. Sessions further testified credibly that he was the only employee in the breakroom wearing a Union button and he was the only employee that Underwood approached and asked to identify themselves. Sessions also testified that Underwood asked to see his ID badge even though Sessions' lanyard was visible. Underwood's actions constitute unlawful surveillance.

Underwood testified that he did not ask Sessions for his name, nor did he ask Sessions to show him his ID badge. But Underwood had trouble identifying just how his conversation with Sessions began. In contrast, Sessions provided detailed testimony about how his interaction with Underwood began, how Sessions was wearing his lanyard, what he and Wallace had been discussing during their break, and how this part of their interaction ended. This portion of Sessions' testimony was detailed, sharp, and eminently credible. Underwood's blanket denials and his failure to recall any of these details leave me unable to credit this portion of his testimony.

Additionally, Underwood's (and Cody Haycraft's) testimony about Amazon badge policies seemed forced and unpersuasive. In this regard, Underwood and Haycraft testified about Amazon's requirement for all associates to visibly wear their badges. But Sessions never said he wasn't wearing his badge – he testified that his lanyard containing his badge was turned around. And Underwood denied asking to see Sessions' ID badge. Therefore, testimony from Underwood and Haycraft about managers' contests to find employees who were not wearing their badges makes no sense if Underwood never asked to see Sessions' badge.

Furthermore, the cases cited by Amazon in its post-hearing brief are distinguishable from the facts in our case. To this end, in *McDonnell Douglas Helicopter Co.,* 283 NLRB 707 (1987), security guards checked ID badges of employees distributing union literature in a company

parking lot during shift change to verify that these individuals worked for the employer. In *St. Clair Memorial Hospital,* 309 NLRB 738 (1992), hospital security guards asked out-of-uniform employees distributing handbills in a parking lot for their identification badges. And in *International Business Machines, Corp.,* 333 NLRB 215 (2001), security guards checked employee ID badges as they drove onto the property to ensure that only employees entered the premises. But in our case, Underwood questioned Sessions, and only Sessions, for his name and badge even though Sessions was wearing a lanyard around his neck. And Amazon has failed to explain why Underwood did not ask the same questions of Wallace if he was indeed neutrally enforcing company badge policy.

In sum, Underwood initiated an interaction with the only employee wearing a Union button. Underwood asked for Sessions' name and to see his ID badge. Underwood did not ask Wallace for this information, even though she was next to Sessions. Set against the backdrop of an aggressive anti-union campaign, and the 3rd floor breakroom being a locus of Union distribution, I find that Underwood's actions constituted unlawful surveillance in violation of Section 8(a)(1) of the Act.[81]

N. Ryan Underwood's Threat of Plant Closure Violated Section 8(a)(1) of the Act (Complaint Paragraph 11(b))

During his February 24th conversation with Chris Sessions, Ryan Underwood said that if the Union was voted in at BHM1, he didn't see why Amazon would keep BHM1 open because it had so many other facilities. Given the lack of objective fact in this statement, Underwood's comments were not protected by Section 8(c) of the Act and instead constitute an unlawful threat of plant closure.

An allegedly unlawful statement violates Section 8(a)(1) if it has a reasonable tendency to coerce employees in the exercise of their Section 7 rights. *Tesla, Inc.,* 370 NLRB No. 101, slip op. at 9 (2021); *KSM Industries,* 336 NLRB 133, 133 (2001). The Board considers the totality of the circumstances to make this determination, and intent is immaterial to the analysis. *Id.* Under Section 8(c), "the expressing of any views, argument, or opinion…shall not constitute or be evidence of an unfair labor practice…if such expression contains no threat of reprisal or force or promise of benefit." *Id.*

Predictions of adverse economic consequences such as plant closure "must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond the employer's control. *NLRB v. Gissel Packing,* 395 U.S. 575, 618 (1969). If there is "any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him," the statement is a threat of retaliation in violation of Section 8(a)(1). *Id.* at 616-620. Unsupported

[81] This allegation is coextensive with Union Objections 5 and 9. Even though I find Underwood's actions to be unlawful surveillance, I do not find that this conduct alone constitutes objectionable conduct. To this end, Sessions was not an eligible voter and there is no evidence that the only other employee present for this conversation, Serena Wallace, shared what happened with any other potential voters. Out of a bargaining unit of 6,000, I conclude that it virtually impossible for this isolated act to have interfered with the results of the election. Therefore, I overrule Union objections 5 and 9.

predictions of plant closure may be coercive even if they indicate closure is only a possibility rather than a certainty. See *Daikichi Sushi,* 335 NLRB 622, 623-624 (2001); *Mohawk Bedding Co.,* 204 NLRB 277, 278 (1973) (finding that in the context of statements of plant closure, the statement 'if the union wins the election tomorrow…then we could all be in for serious trouble," violated Section 8(a)(1) of the Act). Furthermore, a supervisor's otherwise unlawful prediction of plant closure is not excused merely because an employee asked the supervisor's views about unionization. See *Frazier Industrial Co.,* 328 NLRB 717, 727-728 (1999).

In this case, I credit Sessions' account over Underwood's blanket denial. Specifically, I note that Serena Wallace corroborated this aspect of Sessions' testimony when she recalled that Sessions reported Underwood's comments about plant closure shortly after the comments were made. This threat clearly connected organizing with the end of BHM1 – and it was delivered devoid of objective facts to support such a contention.

In my analysis for complaint paragraph 11(c), I note Underwood's off-the-cuff, unplanned remarks, and the fact that no threats of plant closure were disseminated in Amazon's prepared materials and small group meetings, as extenuating circumstances. But unlike the alleged statement of futility, Underwood did not state that he was offering his personal opinion. And a threat of plant closure is as serious as it gets. Given the corroboration of this remark by Serena Wallace, I find that Ryan Underwood unlawfully threatened plant closure in violation of Section 8(a)(1) of the Act.[82]

O. Ryan Underwood's Remark to Chris Sessions About Employees Having to Give Up Certain Things in Exchange for a Raise Does Not Constitute an Implied Statement of Futility (Complaint Paragraph 11(c))

Chris Sessions testified that during a one-on-one conversation with Ryan Underwood on February 24, 2022, Underwood said that he personally did not like unions because if employees were to receive a dollar an hour raise, employees would have to give up other things to get that raise. Counsel for the General Counsel assert that Underwood's statement about the raise constitutes an implied threat of futility. In evaluating the totality of the circumstances here, I find that this statement does not violate the Act.

To find an implied statement of futility, a reasonable employee would have to conclude that the employer was threatening employees with a negotiating posture such that employees would not gain anything in collective bargaining. *DHL Express, Inc.,* 355 NLRB 1399, 1400 (2010). Even crediting Sessions' version of the conversation, I do not find that a reasonable employee would conclude that Underwood was speaking on behalf of the company. To this end, Underwood was clearly speaking off-the-cuff and premised his remarks by stating this was his personal opinion. While offering one's personal opinion does not always insulate an employer

[82] This allegation is coextensive with Union Objection 19. I agree with Amazon's contention that even assuming Underwood unlawfully threatened plant closure, this was made in a one-on-one conversation with an employee who was not eligible to vote in the rerun election, the record evidence shows that this statement was only shared with 1 (Serena Wallace) out of approximately 6,000 eligible voters. It is thus virtually impossible to conclude that Underwood's unlawful statement could have affected the election results. See *Metz Metallurgical Corp.,* 270 NLRB 889, 889 (1984).

from liability, I believe that the unique facts here do. In this regard, Underwood was one of over a hundred low-level supervisors working at BHM1. This was an impromptu conversation initiated by Sessions. But in the hundreds of captive audience meetings and the relentless stream of campaign propaganda, Amazon's position regarding bargaining was consistent – Amazon would engage in good faith bargaining and this could yield wages and benefits that were better than what was currently offered, worse, or the same. And with the avalanche of visits from employee relations personnel and the series of videos featuring the plant manager, it's hard to see how Sessions could conclude that an obscure manager he had never met was speaking on behalf of Amazon regarding bargaining strategy.

The only case the General Counsel cited in support of finding a violation here is *Certainteed Corp.,* 282 NLRB 1101 (1987). In *Certainteed,* the ALJ found two separate violations for statements of futility. In the first instance, a warehouse supervisor told an employee, shortly before contract negotiations began, that the union would not do him any good and that the employees were fighting a losing battle because the employer was not going to give them anything. *Id.* at 1111. In a separate conversation after first contract negotiations had begun, a different warehouse supervisor told employees that there would be no way the employees could get any kind of insurance benefits in negotiations. *Id.* at 1113. But the employer in *Certainteed* did not file exceptions regarding these findings and thus, the Board never opined on these matters. Even if the Board had confirmed these findings, the facts are distinguishable from our case. In *Certainteed,* the supervisors said that the employer would not give employees anything and there was no way that employees could get insurance benefits in negotiations. In contrast, Underwood said that the Union could obtain gains in contract negotiations, but that in his opinion, these gains would be offset by unspecified claw backs.

In *DHL Express, Inc.,* 355 NLRB 1399 (2010), the employer's labor relations director spoke to employees using pie charts illustrating the employer's negotiating budget. The labor relations director suggested that during contract negotiations, the employer would shift money from one slice of the pie to another so that if the union obtained a wage increase for employees, the employer would take this money out of employees' benefits. The Board found that a reasonable employee would have likely concluded that the employer was threatening employees with a negotiating posture such that employees would not gain any increase in any benefit during collective bargaining negotiations without an offsetting reduction in other benefits. *Id.* at 1400.

Our facts are distinguishable from *DHL* in two important respects. First, the speaker in *DHL* was the employer's labor relations director. Thus, any listener would likely presume that her word was close to the gospel. Second, the labor relations director repeated this formal presentation on a number of occasions. As such, the coercive intent of the speaker in *DHL* is much more clear than the impromptu remarks of a low-level supervisor engaged in a conversation with a lone employee who was not even eligible to vote in the rerun election.

I have some reservations about Sessions' testimony regarding his conversation with Underwood. In this regard, Sessions explained that he pursued Underwood and initiated their second conversation. While Sessions testified that Underwood asked him a series of questions about his work and personal life, his testimony lacked details as to how Underwood pivoted to his comments about the Union. Specifically, Sessions testified that Underwood said he

personally didn't like unions because a dollar raise would be offset by other things. But this testimony did not explain how the subject of unions first came up in the conversation. Sessions' answer to this question on redirect examination ("Well, he said, I saw your pin, and I wanted to ask you some questions, referring to my Union pin.") was still bereft of any helpful details. (Tr. 796). And Sessions' direct testimony omitted Underwood's reference to his employment at US Steel as the basis for Underwood's opinions about unions and omitted Sessions' counterpoints about the benefits of unionization. These details were brought out through cross-examination. But while some gaps in memory are attributable to Sessions testifying in May 2024 about a conversation that took place in February 2022, these factors mitigate the strength of Sessions' testimony regarding this aspect of the Underwood conversation and impact my finding that based on the totality of the circumstances, no coercive statement was made.[83] Another reservation I have about fully crediting Sessions is that Serena Wallace did not corroborate Sessions' testimony about the alleged statement of futility.

To be clear, I also have reservations with Underwood's testimony. Underwood could not recall how his conversation with Sessions began and he denied asking Sessions for his name – even though Serena Wallace corroborated this point. Underwood also couldn't recall if Sessions was wearing a union badge. Finally, Underwood's insistence that he did not discuss collective bargaining with Sessions was undermined by Amazon's position statement more proximate in time to the events which said that "Mr. Underwood stated further that nothing was guaranteed in the collective bargaining and negotiation process, and that no one could know what the Union would or would not be able to accomplish." (GC Ex. 31). Much like with Sessions, the gaps in memory are understandable given Underwood's testimony was two-years removed from the incident in question. But I have to assess each witness's demeanor and candor – and it not unusual to credit some, but not all of a witnesses' testimony. See *Daikichi Sushi,* 335 NLRB 622, 622 (2001) quoting *NLRB v. Universal Camera Corp.,* 179 F.2d 749, 754 (2nd Cir. 1950) ("nothing is more common in all kinds of judicial decisions than to believe some and not all" of a witness' testimony).

Even in crediting Sessions, I do not believe that his testimony established an implied statement of futility. Therefore, I recommend dismissal of complaint paragraph 11(c).

P. Ryan Underwood Did Not Unlawfully Suggest Chris Sessions Form or Participate in an Internal Employee Committee to Discuss Workplace Changes with Amazon (Complaint Paragraph 11(d))

In its post-hearing brief (on page 83), Counsel for the General Counsel allege that Ryan Underwood unlawfully suggested to Chris Sessions during their February 24, 2022 conversation that Sessions should form or join an employee committee to discuss work issues with management. There is insufficient record evidence to support a finding of a violation here and thus, I recommend dismissal of complaint paragraph 12(d).

On direct examination, Counsel for the General Counsel asked the following leading question:

[83] I generally found Sessions to be a credible witness. He did not embellish his testimony, and he candidly answered Amazon counsel's cross-examination questions.

Q. Did Manager Underwood propose that employees do anything instead of creating a union?

Sessions answered as follows:

A. He did. He made the suggestion that we create employee – I forget the exact term he used, but some sort of advocacy group, to go directly to management with our grievances.

Sessions then told Underwood that was what employees were attempting to do by forming a union. (Tr. 715). The direct examination then pivoted in another direction. On cross-examination, Amazon counsel asked Sessions if Underwood discussed employee safety with him and Sessions said that he could not remember. Amazon counsel then asked if Underwood mentioned the associate safety committee and Sessions again said that he could not remember. (Tr. 786).

On his direct examination, Underwood confirmed that Sessions said that the Union would help give associates a voice in the workplace. Underwood then testified that he asked Sessions if he was familiar with the associate safety committee. Sessions said that he was not familiar with this entity and Underwood told him that his passion would serve him well on this committee. Underwood then told Sessions that the associate safety committee generated ideas from a safety perspective, but these discussions often touched on improving quality and productivity at the facility. Underwood testified that the associate safety committee met weekly in February 2022 and Underwood attended these meetings to facilitate implementation of these ideas and had participated in this committee since the Fall of 2020. (Tr. 2241, 2246-2247). Underwood also testified that he did not suggest the creation of a new committee during his conversation with Sessions. (Tr. 2245).

As evidenced in my earlier analysis, there are portions of Sessions' testimony that were far more detailed and creditable than Underwood. This allegation, however, is not one of those portions. Where Sessions fumbled with his recall regarding discussions of employee safety, Underwood was clear and thorough. Even on cross examination, Underwood admitted that he told Sessions that his voice in the existing associate safety forum would be better served than employees having a union. (Tr. 2266-2267). But this statement is more of a validation of existing processes than an alleged solicitation of benefits. And importantly, Serena Wallace did not corroborate that Underwood made this alleged unlawful statement when Sessions filled her in on his conversation with Underwood later that day. Given the stronger testimony from Underwood regarding this specific allegation, I find that Counsel for the General Counsel has failed to prove that Underwood unlawfully solicited benefits by suggesting the formation of an employee committee to address grievances. Therefore, I recommend dismissal of complaint paragraph 11(d).

Q. <u>Felicia Terrell Did Not Engage in Unlawful Surveillance of Employees on February 11, 2022 (Complaint Paragraph 12(a))</u>

During the hearing, I granted Counsel for the General Counsel's motion to add the following pleading language as Complaint Paragraph 12(a):

> About February 11, 2022, Respondent, through Felicia Terrell, at or near the entrance to Respondent's facility, engaged in surveillance of employees engaged in union activity.

The only evidence proffered in support of this pleading was a series of Chime messages from February 11th. At 5:27pm, Amazon agent Taylor Angert circulated a photo of union supporters unfurling a large "Vote Union Yes" banner in the parking lot in front of the site entrance. (GC Ex. 3d). This photo was sent to CJ Mitchell, James Venable, Cody Haycraft, Andrew Stanley, Jeff Johns, and Felicia Terrell.[84] It is unclear from the Chime chat who took this photograph. Over an hour later, Terrell sent the following messages to the group: "Union activity in front of site. 5 associates reported after they denied union shirts was told to go work for your master" and "Associates reporting to security that they don't feel safe."

I agree with Amazon's position that this complaint allegation should be dismissed because there is no record evidence that Felicia Terrell either took or circulated the photograph that is the source of the surveillance allegation. The Chime messages confirm that Taylor Angert circulated the photograph and there was no record testimony or additional documentary evidence verifying just who took the photograph. But the pleading specifically named Terrell as the actor here - and the evidence simply does not support this proposition.

Additionally, the General Counsel argues that Terrell's statements in the Chime chat do not establish sufficient justification to photograph the Union's protected activity. But Terrell's entries were made an hour after the photograph was taken and if Terrell in fact observed the alleged verbal abuse (which is far from certain), the Board permits employer representatives to observe open and obvious Section 7 activities – and it is hard to get much more open and obvious than the display of the giant "Vote Union Yes" banner. For these reasons, I find insufficient evidence that Felicia Terrell engaged in unlawful surveillance. Therefore, I recommend dismissal of complaint paragraph 12(a).

R. Jeff Johns and James Rivers Did Not Engage in Unlawful Surveillance of Employees on February 11, 2022 (Complaint Paragraph 12(b))

Counsel for the General Counsel assert that Jeff Johns and James Rivers engaged in unlawful surveillance on February 11, 2022 as evidenced by their exchange in a series of Chime messages. For the following reasons, I find there is insufficient evidence of a violation, and I recommend dismissal of this complaint paragraph.

At about 5:49am, admitted 2(11) supervisor James Rivers sent a Chime message to fellow manager Camilo Jaramillo indicating that "you may want to contact the ERC POC and have them "clean" the 3rd floor breakroom, there are a couple of AA's handing out flyers etc." (GC Ex. 27). Then about 35 minutes later (about the same time as the t-shirt burning incident), admitted 2(11) supervisor Jeff Johns informed six of his colleagues in human resources and

[84] Amazon admits that all of the recipients were either 2(11) supervisors and/or 2(13) agents of Amazon.

employee relations that "the third floor break room is plastered with union stuff." About 20 minutes later, Johns emphasized that it was a "white guy in red RWDSU t-shirt putting them everywhere." (GC Ex. 3d). Counsel for the General Counsel assert that these Chime exchanges constitute unlawful surveillance.

The general rule is that a supervisor's routine observation of employees engaged in open Section 7 activities on company property does not constitute unlawful surveillance. *Aladdin Gaming, LLC,* 345 NLRB 585, 585-586 (2005); *Eddyleon Chocolate Co.,* 301 NLRB 887, 888 (1991). An employer, however, violates Section 8(a)(1) of the Act when it surveils employees engaged in Section 7 activity by observing in a way that is "out of the ordinary" and thereby coercive. *Sands Hotel & Casino, San Juan,* 306 NLRB 172 (1992).

Counsel for the General Counsel argue that Johns' observation and reporting on the third-floor breakroom constituted "out of the ordinary" behavior. I cannot agree. To this end, there is no evidence as to how long Johns was in the breakroom, whether he interacted with the associates handing out flyers, or for how long the associates were engaged in Section 7 activity in the breakroom. Without this evidence – either in the form of employee witnesses testifying to their interactions with Johns or via testimony from Johns – the record simply shows that associates were engaged in open and obvious Section 7 activities and Johns observed and reported on this behavior. But without more, no violation of the Act can be found. Similarly, Rivers' Chime message to Jaramillo reporting on the associates handing out flyers is bereft of details like how long Rivers spent in the breakroom, whether he interacted with the associate(s) handing out flyers, or any other details that could help me decide whether Rivers' behavior was "out of the ordinary." Without more, I find that the General Counsel has failed to establish a Section 8(a)(1) violation, and I recommend dismissal of complaint paragraph 12(b).

S. Greg Swars Did Not Engage in Unlawful Surveillance of Employees (Complaint Paragraph 12(c))

Counsel for the General Counsel allege that HR representative Greg Swars engaged in unlawful surveillance of employees' union activities by reporting via a Chime chat on February 15, 2022 that union supporters brought McDonalds to associates in the breakroom and passed out pamphlets on breakroom tables. I find that Swars's actions did not violate the Act. To this end, there was no testimony regarding this episode – the General Counsel simply offered the Chime chat into evidence (as GC Ex. 28) and has extrapolated a violation from this document.

The General Counsel's theory of a violation is that Swars' behavior was out of the ordinary under *Loudon Steel, Inc.,* 340 NLRB 307 (2003). In *Loudon Steel,* the finding adopted by the Board was that a supervisor informed an employee, in response to the employee's union activities, that he was to be supervised at all times. *Id.* at 313. And the reference in *Loudon Steel* to "out of the ordinary" supervisory activities concerned a supervisor walking to within 10 feet of employees' vehicles when they received handbills from pro-union employees. In our case, there is no credible evidence that Swars went to the breakroom to observe the employees handing out food and pamphlets. And even if Swars did observe these activities firsthand, the pro-union employees were engaged in open and obvious activities and there is no evidence that

Swars photographed, videotaped, took notes, or engaged in any "out of the ordinary" behaviors to chronicle these activities. Thus, *Loudon Steel* is inapposite.

Furthermore, the other case relied on by Counsel for the General Counsel to support a violation here, *Sprain Brook Manor Nursing Home,* 351 NLRB 1190 (2007) is similarly distinguishable. In *Sprain Brook,* the Board found that the employer engaged in unlawful surveillance because the nursing home administrator, who came to work on her day off and stood in the doorway watching a union organizer speaking with employees, testified that the only reason she was at the facility that day was to observe union activity. *Id.* at 1191. Thus, the administrator's activities were "out of the ordinary." But as noted above, there is no record evidence here that shows that Swars had observed the pro-union employees handing out food and flyers, or that if he did, he engaged in behavior that was "out of the ordinary." Based on the above, I recommend dismissal of complaint paragraph 12(c).

T. Mamadou Diop Did Not Engage in Unlawful Surveillance When He Photographed Employees Responsible for the "Vote Yes" Light Projection on February 25, 2022 (Complaint Paragraph 12(d))

Upon receiving a report of a light projection on the side of BHM1, site general manager Mamadou Diop stepped outside, photographed the "Vote Yes" projection, and photographed the vehicle responsible for the projection. Given the unique nature of the protected activity and the great difficulty of accurately capturing the essence of this activity without using photographs or videos, I find that Diop did not engage in unlawful surveillance.

Management officials may observe public union activity, particularly when such activity occurs on its premises, without violating Section 8(a)(1) of the Act, unless these officials engage in behavior that is out of the ordinary. *NCRNC, LLC d/b/a Northeast Center for Rehabilitation and Brain Injury,* 372 NLRB No. 35, slip op. at 6 (2022); *Arrow Automotive,* 258 NLRB 860, 861 (1981). When officials depart from their ordinary conduct, such atypical monitoring "clearly has an inhibiting effect upon employees' union activity and is violative of Section 8(a)(1) of the Act." *Intermedics, Inc.,* 262 NLRB 1407, 1415 (1982). Indicia of coerciveness include the duration of the observation, the employer's distance from its employees while observing them, and whether the employer engaged in coercive behavior during its observation. *Aladdin Gaming, LLC,* 345 NLRB 585, 585-586 (2005). This test is an objective one and involves a determination as to whether the employer's conduct, under the totality of the circumstances, would reasonably tend to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. *Sage Dining Services, Inc.,* 312 NLRB 845, 856 (1993).

As an initial matter, I do not credit Diop's testimony that his photographs taken on the evening of February 25th were consistent with his regular habit of photographing exterior portions of BHM1 to document needed repairs. This testimony seems far-fetched and manufactured. As such, Diop's decision to photograph the "Vote Yes" projection and its projectors was not ordinary. But so was the nature of the light projection. And I credit other portions of Diop's testimony demonstrating that his observations and photographs on the evening of February 25th were limited in scope, unintrusive, and only began after he received reports of the light projection from Amazon associates. I am comfortable crediting this portion of Diop's

testimony because it is confirmed by the record evidence. To this end, Diop only took a few photographs outside – two of the projection on the side of the building and one of the red truck from where the projection was emanating. Diop took the latter photograph about 50 feet away from the truck and none of the individuals inside or outside the truck is visible in the photograph. Diop did not ask the employees to stop the projection, nor did he ask the red truck to move to a location further away from vehicular traffic. Furthermore, Diop did not engage in any other coercive conduct on that evening. He simply came outside to document the projection and returned inside shortly thereafter. That Diop shared these photographs with Amazon Employee Relations officials is confirmed by the summary and photograph contained in the February 25th Site Update email. Given the extraordinary, unprecedented nature of the light projection, the maxim "a picture is worth a thousand words" drives my finding that under the totality of the circumstances, Diop's photographing of this activity would not reasonably tend to interfere with, restrain, or coerce the employees engaged in their Section 7 activities that evening. Thus, I recommend dismissal of complaint paragraph 12(d).[85]

Analysis – Election Objections Levied Against Amazon

Objectionable Conduct Caselaw

In *Intertape Polymer Corp.,* 363 NLRB No. 187, slip op. at 2 (2016), the Board confirmed its longstanding rule that a violation of Section 8(a)(1) during the critical election period is, a fortiori, conduct that interferes with the results of the election unless it is so de minimis that it is "virtually impossible to conclude that [the violation] could have affected the results of the election." *Super Thrift Markets, Inc.*, 233 NLRB 409, 409 (1977). See also *Baton Rouge General Hospital*, 283 NLRB 192, 192 fn. 5 (1987); *Dal-Tex Optical Co*., 137 NLRB 1782, 1786 (1962). In determining whether the unlawful conduct is de minimis, the Board considers the number of incidents, their severity, the extent of dissemination, the size of the unit, and other relevant factors. See *Super Thrift Markets*, 233 NLRB at 409.

When the alleged objectionable conduct is not separately alleged as an unfair labor practice, the Board's analysis changes slightly. Thus, the Board will set aside an election when "the objectionable conduct so interfered with the necessary 'laboratory conditions' as to prevent the employees' expression of a free choice in the election." *Dairyland USA Corp.,* 347 NLRB 310, 313 (2006), enfd. sub nom. *NLRB v. Food & Commercial Workers Local 348-S,* 273 Fed. Appx. 40 (2nd Cir. 2008). The Board overturns election results if the objectionable conduct, taken as a whole, had "the tendency to interfere with the employees' freedom of choice" and "could well have affected the outcome of the election." *NYES Corp.,* 343 NLRB 791, 791 fn. 2 (2004) (citing *Cambridge Tool & Mfg. Co.,* 316 NLRB 716, 716 (1995)). When evaluating the extent to which objectionable threats are disseminated, the Board places the burden of proof on the objecting party, and thus does not presume dissemination. *Dairyland USA Corp.,* 347 NLRB at 313, citing *Crown Bolt, Inc.,* 343 NLRB 776, 777 (2004).

[85] Union Objection #4 is coextensive with the Diop surveillance allegation. The additional allegation of parking lot surveillance attributable to Felicia Terrell was not in the complaint when the Regional Director's Report on Objections issued. Even so, because I do not find an 8(a)(1) violation for either the Diop or Terrell surveillance allegations, I overrule Union Objection #4.

The critical period for a second election commences as of the date of the first election. *Star Kist Caribe,* 325 NLRB 304 (1998); *Times Wire & Cable Co.,* 280 NLRB 19, 20, fn. 10 (1986).

Union Objection #1: Amazon Engaged in Objectionable Conduct by Removing Union Literature from Breakrooms and Restrooms During the Critical Period

The compelling record evidence demonstrates that Amazon mandated the removal of Union flyers from all breakrooms at BHM1 throughout January and February 2022. This constitutes objectionable conduct sufficient to set aside the results of the rerun election.

The Board has consistently held that an employer's confiscation of pro-union literature from employee breakrooms constitutes objectionable conduct. *Mercy Healthcare Sacramento d/b/a Mercy General Hospital,* 334 NLRB 100, 107-108 (2001) (employer agents removing and throwing away pro-union literature from breakrooms is objectionable because it interfered with employees' right to distribute union literature in nonwork areas on nonworking time and inhibited the free flow of information and employees' willingness to participate in union campaign activities); *Cast-Matic Corp. d/b/a Intermet,* 350 NLRB 1349, 1391, fn. 4 (2007) (supervisor confiscated and disposed of union literature left on a table in the breakroom). In fact, the Board has set aside the results of elections solely based on objectionable confiscation of union literature. See *Union Tank Car Co.,* 369 NLRB No. 120 (2020).

In *Union Tank Car,* the Board specifically noted that the confiscation of union materials in the employee breakroom during the first shift prevented second and third-shift employees from seeing the material. *Id.* at slip op. 3-4. That is precisely what happened in our case multiple times each day over a course of several weeks. By labeling Union leaflets as trash, Amazon orchestrated the discarding of thousands of these Union flyers. And for each flyer that was discarded, Amazon prevented workers on their next break or on their next shift from seeing the Union's messaging. Even though the Union had means to reach out to workers away from BHM1, Union leaflets, neatly distributed in BHM1's multiple breakrooms for non-working employees to consume in nonwork areas, represented the primary means of protected Section 7 communications inside BHM1's walls. Yet, Amazon snuffed out this form of communication, leaving the anti-union table toppers as the sole election-related content employees would see during their shift breaks. Given the number of breakrooms cleansed by Amazon and KBS, and the number of employees impacted by this unlawful behavior, Amazon's misconduct clearly interfered with the laboratory conditions for the rerun election. Therefore, I recommend sustaining Union Objection 1. The appropriate remedy, as will be discussed *infra,* is to order a third election.

The same conclusion applies to Amazon's removal of Union flyers from BHM1 bathrooms. Roger Wyatt and Isaiah Thomas testified in great detail about how they posted pro-Union materials in the men's restrooms next to Amazon's Installments, which during the campaign were partly used for anti-union propaganda. Wyatt testified that he hung the flyers on the stalls or on the restroom walls prior to the start of his shift. (Tr. 620-622). Thomas testified that on at least 20 occasions, he used tape to affix the flyers next to the Installments in five of BHM1's men's rooms. (Tr. 591-592). Every time they posted the flyers in the men's bathrooms,

the flyers were removed by their first break. (Tr. 593-594, 622-623). And Jennifer Bates testified that the same thing happened to the flyers she put up in the women's bathroom closest to her workstation. At the same time, the bathroom Installments, which featured anti-union messaging, were left undisturbed. As I noted earlier in my Decision, I reject Amazon's argument that its restrooms are "work areas." Therefore, Amazon's removal of pro-union flyers from its restrooms constitutes objectionable conduct.[86]

Union Objection #17: Amazon Engaged in Objectionable Conduct When It Sent Two Text Blasts Containing Unproven Allegations Vilifying the Union with the Intent of Coercing Employees from Engaging in Future Section 7 Activities

On February 4, 2022, ballots were mailed out to eligible voters. The rerun election had begun. But during morning shift change on February 11, an employee named Cory Smith set a Union t-shirt on fire in the BHM1 parking lot in full view of hundreds of employees. This incendiary act prompted a muted response from Amazon – placing Smith on paid leave and refusing to condemn this incident to its workforce.

That evening, Union supporters unfurled a large "Vote Union Yes" banner in the BHM1 parking lot, and distributed t-shirts and literature as tensions continued to simmer. Jennifer Bates bellowed at Crystal Carney to find out why Carney removed her flyers from the 1st floor women's restroom. Roger Wyatt then spotted learning ambassador Sammie Stewart recording Section 7 activities in the parking lot and confronted her with an impromptu dissertation on the ins and outs of the NLRA. Stewart's expletive-tinged responses further inflamed the situation. Finally, reports filtered in from human resources officials that employees who refused to take Union t-shirts were allegedly greeted with a series of intemperate, offensive remarks.

Armed with incomplete information regarding the parking lot fracases, James Venable hastily authorized a text blast condemning "organizers" who yelled, made offensive comments, and made employees feel unsafe. The TEA said: "We are sorry the RWDSU has subjected you to this behavior on your way to work. Ask yourself whether these are the type of people you want representing you. Show the union you don't want this at BHM1, Vote No!"

The explanation for why Venable acted so rashly was revealed in the following week's internal site update. (CP Ex. 44). Amazon employee relations had received information that the Union planned to repeat the same parking lot activities on February 15 and Amazon wished to muzzle this Section 7 activity. Thus, without additional investigation of the Friday night incidents, and even though there had been no further flareups, Venable authorized the following Text-Em-All for February 14 (Monday night):

> "We want to follow-up with you regarding the activities that occurred in front of the building on Friday evening, as they could happen again. Some of you have expressed

[86] In its post-hearing brief (pages 35-62), the Charging Party argues that I should find additional unpled violations of the Act based on Amazon's November 8, 2021 implementation of the housekeeping policy and unlawful surveillance on February 8th. It is unnecessary for me to pass on these additional, unpled allegations because any findings of violations would not meaningfully impact the remedy here.

concern with the behavior of RWDSU organizers[87]. Though associates have the right to express their views for or against the RWDSU and solicit others to support their viewpoint, no one has the right to physically intimidate you while you are coming into work or threaten your personal safety. If you feel either of these have occurred, you may report it. We also encourage you to show your disapproval of the RWDSU's tactics by Voting No!"

Amazon's digital warning shots had the desired coercive effect – in that same site update, Amazon officials learned that for the first time in several weeks, Union supporters did not gather in the parking lot on Tuesday evening, February 15th. By promoting unsubstantiated claims of Union supporter misconduct while remaining silent as a presumably anti-union associate literally ignited a Union emblem in the middle of a shift change, Amazon stifled employees' free choice and interfered with the necessary laboratory conditions during the conduct of the rerun election.

My indictment of Venable and Amazon's conduct is not meant to diminish the scurrilous import of the words allegedly uttered regarding employees going to work for their masters. I agree with Venable that it was offensive to imply that anybody entering BHM1 to work was being a slave. (Tr. 1804). But Amazon's subsequent investigation revealed that these allegations were unsubstantiated. And the record evidence revealed that Venable stubbornly continued to attribute these remarks to Union supporters, without proper investigation or confirmation, simply as a means to drive home Amazon's anti-union message and to silence employees' Section 7 activities.

Here is what Venable knew and did not know, when he learned this information, and how he failed to properly investigate. At 6:41pm on February 11, Felicia Terrell informed Venable and others in a Chime chat that there was union activity in front of BHM1 and that five associates reported being told to go work for their master after refusing Union t-shirts. Terrell then added that associates reported to security that they didn't feel safe. Venable did not personally hear any of these intemperate remarks and was not present when employees reported their concerns to security. Venable followed up with Terrell, who told him that employees were told "go work for your masters or something to that effect." Terrell did not personally hear the alleged remarks uttered in the parking lot. She told Venable that she had spoken with some of these employees after the fact, but did not provide Venable with names of employees on the receiving end of these remarks. Terrell, however, did not testify at the hearing. Amazon counsel represented that Terrell was still employed by Amazon, but she was on an extended leave of absence. (Tr. 46). This representation was made at the end of April 2024 and the hearing concluded on July 10. Amazon did not request to keep the record open to allow Terrell to testify upon her return from leave or in any other way seek an accommodation to permit Terrell's testimony. Thus, the record is devoid of Terrell's insights, leaving Venable's account too far removed from the source to be reliable.

The record evidence shows that the first eyewitness written account from a complaining employee was received at 10:38pm that evening. In his statement, employee Angel Prado alleged that "someone said go inside to your masters, more or less in those words." Prado did

[87] There is no record evidence pointing to Union employees or organizers participating in the parking lot activities. These activities were engaged in solely by Amazon associates who supported the Union.

not testify at the hearing, nor does the record evidence clarify why both Terrell and Prado qualified their account of the incident with the "more or less" descriptor. At 11:00pm, employee Ashis Sample submitted a written statement indicating that "a comment was made, not towards me, that we should go work for our masters…" Sample did not testify at the hearing and there was no indication in the investigative file that Amazon's HR investigators spoke to either Prado or Sample to obtain additional information beyond their short, written statements. Even so, Prado and Sample's statements were submitted hours after Venable released the first Text-Em-All.

Todd Logan testified that "any good professional in doing their job would want to obtain the accurate and relevant information to what was occurring. To ensure that we are giving proper advice. To make sure we're following the law, protecting employees' rights, and doing that in a lawful and legal way. So, I think any professional, whether lawyer or nonlawyer would want to get all the factual information." (Tr. 1637-1638). James Venable failed to follow this creed. Nobody from Amazon spoke to Shiflett, Wyatt, Bates, Sessions, or Thomas, who were all outside that evening, to get their side of the story – before or after the first Text-Em-All was released. Bates and Thomas testified that they did not hear the "go work for your masters" statement and were not aware that such a statement was made. Shiflett and Wyatt similarly testified that they did not engage in any threatening behavior that evening and did not witness any threatening or intimidating behavior. Venable just took the third-hand account of what happened outside and treated it as fact despite the glaring lack of details or supporting evidence. The sooner Amazon could impugn the Union the better.

And this was just the "go work for your masters" comment. Venable testified that the text blast also conveyed Amazon's displeasure with Union supporters' interactions with Sammie Stewart. But Venable's actions and his testimony once more reflect his zeal to smear the Union rather than first obtaining accurate information concerning Stewart and Wyatt's parking lot encounter. Venable testified that Terrell told him that there was an interaction with Stewart and one of the Union supporters, he didn't know what was said, but it got very heated and confrontational, with the possibility of a physical confrontation. Again, Terrell did not testify so there is no reliable evidence as to what Terrell learned from Stewart or what Terrell actually reported to Venable. Venable did not see the parking lot interaction between Stewart and Wyatt and apparently neither did Terrell. Venable testified that he spoke to Sammie Stewart, but he couldn't recall if he spoke to Stewart before or after sending out the first text blast. And Venable testified that he saw a video on social media capturing part of this incident, but he couldn't recall if he saw the video before or after he authorized the text blast. But Venable was certain that the video he saw corroborated Stewart's account. Despite this certainty, Venable confirmed that Stewart failed to mention to him that she had recorded the Union supporters engaged in their Section 7 activities and this act sparked the confrontation. Of course, there were two videos of this incident – one taken by Stewart and the other by Chris Sessions. Stewart's video showed her recording Clint Shiflett for about 25 seconds prior to Wyatt spotting her. That casts serious doubt on Stewart's assertion that she was only outside to take a phone call from her insurance agent. And Stewart's snide "are you talking to me bitch" remark and her "we don't fucking want you (here)" retort undermine her contention that she did not engage with the Union supporters. The video also shows Wyatt and Stewart separated by a garbage can and several feet, which also contradicts Stewart's written summary of the incident. Stewart did not testify at the hearing. In

sum, the record reflects that Venable authorized that evening's Text-Em-All without first speaking with Stewart[88] or watching the video circulating on social media.

HR's investigation concluded that Stewart's allegations were unsubstantiated. (CP Ex. 33). HR also concluded that the alleged "go work for your masters" remarks in the parking lot were a "noninvestigation," meaning that it was not an Amazon policy violation that required investigation. (Tr. 2047). But the damage from the Text-Em-Alls was already done.

When asked about the t-shirt burning incident, Venable testified that he actually saw the t-shirt smoldering when he came to BHM1 that morning. Venable spoke to Loss Prevention, who told him that an employee named "Red" had burned a Union t-shirt, they were reviewing the matter and would take care of it. Venable then inexplicably testified that he did not consider sending a Text-Em-All to employees regarding this incident because HR and loss prevention were handling the matter, and if HR and loss prevention felt they needed to do something about it and said this was a serious issue, then Venable would have considered it. (Tr. 1879). The double standard is shocking. In the morning, Venable witnesses a Union symbol set ablaze, gets confirmation as to who was responsible, but refuses to consider sending out a Text-Em-All because HR was investigating.[89] Yet in the evening, Venable received incomplete information about a series of intemperate remarks he did not witness, yet he rushes to publish a Text-Em-All condemning Union "organizers," even though HR was just beginning its investigation. Venable's answer to my question about why he included the "Vote No" message at the tail end of each Text-Em-All sums up why he and Amazon responded so incongruently to the morning and evening episodes – "There's a campaign going on." (Tr. 1818).

Part of the Charging Party's theory for a finding of objectionable conduct here is that Amazon refused the Union supporters' entreaty to send out a Text-Em-All in March condemning the harassment they experienced. I do not second guess Amazon's actions in this respect – and do not find Amazon's refusal to issue a Text-Em-All to constitute objectionable conduct. In this regard, the employees waited 11 days to first complain to human resources about allegedly intemperate remarks uttered to them in the parking lot. But the statements supplied to HR were awfully skimpy on details – alleging that Coco Eatman called them "idiots" and "poor." (CP Exs. 6 and 7). Isaiah Thomas confirmed that he had not previously complained to his supervisors (and any other Amazon officials) about this alleged misconduct, and Roger Wyatt confirmed that his statement to HR was lacking the date of the infraction as well as the name of the alleged bad actor. (Tr. 527, 678-679). Consequently, Amazon's decision not to send out a text blast concerning these allegations is understandable.

Amazon's post-hearing brief sets forth a myriad of explanations as to why Objection 17 should be overruled. First, Amazon argues that *Texas Meat Packers,* 130 NLRB 279, 280 (1961) applies and such, the fact that the Region dismissed a related 8(a)(3) charge dictates that Objection 17 is not properly before me. I do not agree. The 8(a)(3) conduct dismissed by the Region was the allegation of disparate treatment in Amazon not issuing a text blast denouncing anti-union employees' alleged intemperate remarks from March. But as I stated above, that is

[88] HR did not interview Sammie Stewart until February 18, four days after the second Text-Em-All was issued. (ER Ex. 35; CP Ex. 33).

[89] The HR investigation ultimately concluded that Cory Smith's actions violated Amazon policies.

not the basis for my finding of objectionable conduct. And in *ADIA Personnel Services, Inc.,* 322 NLRB 994, 994, fn. 2 (1997), the Board stated that where it is not necessary to conclude that an employer committed an unfair labor practice in order to find conduct objectionable, the fact that an unfair labor practice charge concerning the same conduct has been dismissed does not require the pro forma overruling of the objection because "the effect of preelection conduct on an election is not tested by the same criteria as conduct alleged by a complaint to violate the Act." *Texas Meat Packers,* 130 NLRB at 280. The Board went on to say that while the General Counsel has unlimited discretion under Section 3(d) regarding what complaints will issue, the Board retains total discretion under Section 9(c) regarding representation proceedings, and in determining whether certain conduct is objectionable, will defer to the General Counsel's dismissal of the unfair labor practice allegations where "the conduct which is alleged to have interfered with the election could only be held to be such interference upon an initial finding that an unfair labor practice was committed." *Id.* The Board concluded by saying that it was properly within the Board's authority to consider, in the context of an objection, conduct which has been dismissed as an 8(a)(1) allegation where the conduct may be found objectionable without determining that it is an unfair labor practice. That is precisely the situation here. To find the hurried issuance of the February 11 and 14 text blasts was objectionable does not require me to find as a predicate either an 8(a)(1) or (3) violation.[90]

The Regional Director's Report on Objections identified Union Objection 17 as follows: "the Employer unlawfully sent text messages to the employees containing false accusations that pro-union employees were harassing coworkers, and the Employer encouraged employees to report such harassment to the Employer's Human Resources department. I find that this objection raises substantial and material issues of fact that may be best resolved by a hearing." (GC Ex. 1(zzzz)). As stated above, Board precedent does not preclude me from finding objectionable conduct to the above-outlined objection simply because a related 8(a)(3) allegation was dismissed.

Amazon next asserts that its communications to employees on February 11 and 14 did not constitute objectionable conduct because they were classic campaign communications protected under Section 8(c) of the Act. Noncoercive speech is protected by Section 8(c). So is speech that does not contain a threat of reprisal or force or promise of benefits. *NLRB v. Gissel,* 395 U.S. 575, 618 (1969). But the following factors lead me to conclude that the text blasts were coercive and interfered with employees' freedom of choice: 1) Amazon's text blasts reached the entire bargaining unit; 2) these text blasts were released after mail ballots had been received by employees; 3) the likelihood that these texts would cause fear among bargaining unit employees; and 4) the internal Amazon communication referencing the purpose of the second text blast was to preempt and restrain employees' future Section 7 activities. The first two factors are self-explanatory. The third factor is based on Jennifer Bates and Clint Shiflett's testimony that I specifically credit. In this regard, Bates testified that after reading the text blasts, she was genuinely concerned she and her co-workers would be fired for something they did not do. (Tr. 314). She also testified that employees who were not in the parking lot that evening spoke to her about the things that the Union supporters were accused of doing, and one employee told Bates

[90] Similarly, the Board has held that withdrawal of an unfair labor practice charge does not operate as a waiver of a party's right to file objections based on the same conduct. *Virginia Concrete Corp.,* 338 NLRB 1182, 1184 (2003).

that they would refrain from voting after reviewing the text messages. (Tr. 314). And Clint Shiflett also testified with conviction that the text blasts caused him to be more anxious and apprehensive about engaging in future leafleting and union organizing activities. (Tr. 145). This fear and apprehensiveness were understandable since the February 14th text blast specifically invited employees to report any physically intimidating or threatening behavior – and nobody from Amazon reached out to Shiflett, Bates, Sessions, etc. to get their side of the story concerning the events of Friday evening, February 11th. See e.g. *Cayuga Medical Center at Ithaca, Inc.,* 365 NLRB 1873, 1873, fn. 1 (2017) (employer requesting that employees report whether they felt harassed by employees seeking to discuss unionization chilled lawful solicitation because the overtly subjective basis for reporting was overbroad and implies that the employer intended to take unspecified action against subjectively offensive activity regardless of whether this activity was protected by Section 7 of the Act). Finally, Amazon's site update specifically noted that the text blasts were designed to stunt similar Section 7 activities planned for the following week. And this coercive purpose certainly chilled Union activities as reported in the same site update that for the first time in weeks, on the following Tuesday, Union supporters did not engage in their collective activities in the parking lot.[91] Thus, the coercive nature of the text blasts rendered them unprotected by Section 8(c) of the Act.

On page 137 of its post-hearing brief, Amazon counsel noted that neither of the text blasts required any associates to stop engaging in protected, concerted activity and Amazon did not require any associate to stop engaging in protected activity. This is true, but the desired effect of the text blasts was to chill future planned Section 7 activity, and Venable's rush to issue the text blasts before he confirmed the veracity or accuracy of the allegations supports my conclusion that these text blasts were coercive and interfered with employees' free choice.

Furthermore, on page 142 of its post-hearing brief, counsel for Amazon asserts that the text blasts did not actually interfere with the Union's campaign efforts. It is true that Union supporters continued to leaflet and engage in attention-grabbing activities (e.g. the February 25th Vote Yes projection). But to say that the text blasts did not interfere at all with the campaign is to willingly ignore the gloating in Amazon's February 16th site update where it was reported that the Union departed from its usual cadence and did not engage in parking lot activities as expected on February 15th.

Amazon next argues that an employer's decision to notify employees that they can report threats by union supporters during a union organizing drive is a managerial prerogative in which neither I nor the Board can interfere. The facts here do not support such a blanket reprieve for Amazon. In this regard, my finding of objectionable conduct is based on a totality of the circumstances, which taken together, supports a finding of coercive and thus, objectionable conduct. These factors include the failure to properly investigate the incidents before sending out the first text blast, Venable's failure to fact check any of the allegations between the authoring of the first and second text, the willingness to rush to judgment and publicize

[91] I specifically discredit Venable's testimony whereby he denied that the second text blast was done in anticipation of union activities on Tuesday, February 15th. (Tr. 861). I similarly found unbelievable Venable's testimony where he refused to acknowledge that the "activity" referred to in the GSOC report Venable submitted on February 11th was union activity. (Tr. 835-836).

perceived misconduct on the part of Union supporters[92] while downplaying intimidating and potentially hazardous misconduct from earlier that same day, the invitation for employees to report intimidating or threatening conduct by Union supporters, and the site update that attributed the second text blast to a desire to undercut future Union activities and stifle employee free choice. Under these circumstances, Amazon's management prerogative must take a backseat to objectionable conduct which interfered with the laboratory conditions of the election.

Finally, Amazon significantly downplays the severity of the shirt burning incident to justify its lack of notification to employees. To this end, Amazon says that the shirt burned in a vacant section of the parking lot, and no one was endangered, hurt, or threatened. (ER post-hearing brief, page 145). In doing so, Amazon seeks to normalize intimidating behavior on its property. An Amazon employee took a Union symbol and lit it on fire for hundreds of employees to see during shift change. That nobody was hurt does not mean that nobody was endangered. Setting a fire in a populated area is inherently risky and dangerous. It is also a purposeful act of intimidation. For Amazon to downplay these risks undercuts its narrative that it sent out the text blasts to ensure that its associates came to work in an environment free from harassment and intimidation.

Union Objection #18: Amazon's Voter List Substantially Complied with Board Requirements and Does Not Constitute Objectionable Conduct

The Union alleges that the *Excelsior* list Amazon supplied in conjunction with the rerun election contained substantial inaccuracies and constitutes objectionable conduct. I disagree.

Section 102.62(d) of the Board's Rules and Regulations requires an employer to provide to the Regional Director and Parties, within two business days of the issuance of a direction of election, the following information: "a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular 'cell' telephone numbers) of all eligible voters." The Board does not apply these rules mechanically. See e.g. *Program Aids Co.,* 163 NLRB 145, 146 (1967). In determining whether an employer has substantially complied with the rule, the Board has consistently viewed the omission of names from the voter list as more serious than inaccuracies in addresses. *Pacific Beach Corp.,* 344 NLRB 1160 (2005); *Washington Fruit & Produce Co.,* 343 NLRB 1215, 1222 (2004). Whereas the vote margin may be relevant in cases of omissions, the Board has allowed greater latitude in cases of inaccuracies. See *Women in Crisis Counseling,* 312 NLRB 589, 589 (1993) (holding that 30% inaccuracy rate and employer's good-faith compliance were sufficient to meet *Excelsior* rule requirements). The Board explained that the *Excelsior* rule was devised for two basic purposes: 1) to ensure an

[92] I am mindful that certain Union supporters on February 11th were rude and aggressive. The same could be said for Sammie Stewart. My findings are not meant to measure who was the rudest or most aggressive. And neither are my findings designed to second guess the offense that Venable and others rightfully took to the "go work for your masters" remark. Instead, my finding of objectionable conduct is premised on Amazon's failure to learn basic facts about what happened in the parking lot before hurriedly releasing text blasts to its 6,000 strong workforce – and its desire to extinguish future Section 7 activities - which drove the departure from obtaining accurate and relevant information prior to releasing its text messages.

informed electorate by affording all parties an equal opportunity to communicate with eligible employees and 2) to expedite resolution of questions of representation by minimizing challenges based solely on lack of knowledge as to the voter's identity.

The Board says that the omission of names from an *Excelsior* list is far more likely to frustrate the Board's purposes than inaccuracies in addresses. *Id.* A party that is unaware of an employee's name suffers an obvious and pronounced disadvantage in communicating with that person by any means and in assessing prior to the election whether that person is eligible to vote. *Id.* A party with an employee's name but an inaccurate address at least has a key piece of information which can be used to identify and communicate with the person by means other than mail. *Id*. Moreover, the Board's greater tolerance of address inaccuracies in *Excelsior* lists reflects a pragmatic recognition that an employer reasonably should know the names of employees in its current work force but may be less able, without prompt disclosure from the employees themselves, to maintain a completely accurate list of their current addresses. *Id.*

The Board went on to explain that it was not suggesting that inaccurate addresses, standing alone, could never be the basis for finding that an employer had not substantially complied with the *Excelsior* rule. *Id.* Specifically, the Board noted that it may set aside an election because of an insubstantial failure to comply with the *Excelsior* rule if the employer has been grossly negligent or acted in bad faith in providing inaccurate addresses. *Id.*

In our case, Christopher O'Malley provided detailed and credible testimony about how he compiled the January 2022 *Excelsior* List in the 48-hour window he was given. O'Malley pulled the addresses from two of Amazon's HR portals and cross-checked the list against information compiled by another team gathering data for the same purpose. O'Malley also credibly testified that the addresses contained in Amazon's HR portals and transposed onto the *Excelsior* list came directly from associates inputting the information themselves.[93] Given the sheer volume of workers at BHM1, the burden fell on the associates to update their contact information in case they moved. Many examples of this are found Employer Exhibit 30. But it is impossible to tell just how long after the employees moved that they entered their new contact information in Amazon's HR systems. The result was over a thousand entries on the *Excelsior* list where the Union could not locate the employee at the address provided on the voter list. Even though I find that the Union collected its "bad address" data in good faith, the record evidence also discloses no evidence of gross negligence or bad faith on Amazon's part in furnishing this information to the Union.

As part of my review of the evidentiary record, I compared Amazon HR records to the addresses contained on the January 2022 *Excelsior* list for the 1,177 employees the Union included in CP Exhibit 31 as evidence of improper addresses. I found only 3 entries for whom the *Excelsior* list addresses did not match the information in Amazon's HR systems – Kelsey Cullins, Jadhiel Oldfield, and Shelbie Clem. And for about 43 additional workers, Amazon did not provide HR records for my comparison. I do not treat the latter group as confirmed evidence

[93] O'Malley credibly testified that if the home address and mailing address in Amazon's systems did not match, O'Malley only used the home addresses for the January 2022 *Excelsior* list. This was a reasonable choice.

of wrong addresses – I simply note that I did not have the records to verify the accuracy of the information contained in the *Excelsior* list.

My records comparison also revealed that about 90 of the employees listed on CP Exhibit 31 updated their addresses in Amazon's HR portals sometime after the issuance of the *Excelsior* List, but before the ballot count in late March 2022. This would account for the Union's correct assertion that the employee no longer lived at the address found on the *Excelsior* list, but it would also confirm that the address included on the *Excelsior* List was as accurate as possible on the day the list was generated.

In its post-hearing brief, the Charging Party relies on *Merchants Transfer Co.,* 330 NLRB 1165 (2000) to support its assertion that Amazon has committed objectionable conduct in the compilation of its voter list. I find this case distinguishable from the instant matter. In *Merchants Transfer,* the Board found that the employer was grossly negligent because it knew that a significant number of employee addresses on the *Excelsior* list were incorrect, but it still forwarded the list to the Union without attempting to correct these inaccuracies. *Id.* at 1165. This finding of gross negligence precluded the Board from finding that the employer was in substantial compliance with the *Excelsior* rule. In our case, there is no evidence that Amazon was aware that the addresses it provided on the voter list were inaccurate and I specifically find that Amazon did not act in bad faith in its methodology for compiling the voter list.

I similarly find the Union's reliance on *RHCG Safety Corp.,* 365 NLRB No. 88 (2017) to be misplaced. In *RHCG,* the Board set aside an election because, in a bargaining unit of about 100 employees, 90% of the addresses on the *Excelsior* list were inaccurate and the list omitted the names of at least 15 eligible voters. *Id.* at slip op. 6. But in our case, there was no evidence that Amazon omitted any names of eligible voters from the approximately 6,000 names on the voter list and I have found that only a small fraction of the approximately 1,100 names identified in CP Exhibit 31 contained inaccurate addresses, a far cry from the Union's 20% figure and nowhere near the 90% figure cited by the Board in *RHCG*. Thus, Amazon has substantially complied with the Board's requirements.

I also find unpersuasive the Union's argument that Amazon's failure to use legal names constitutes objectionable conduct. To this end, many of the names cited in CP Exhibit 30 were simply abbreviations based on preferred names listed in Amazon's HR portals (e.g. Kendra Stewart vs. Makendra Stewart and Sammie Stewart vs. Samantha Stewart). The Union has failed to supply any Board caselaw to support its contention that preferred names do not equate to "full names" under the Board's Rules and Regulations. And the Union's comparison between the 2021 and 2022 lists as a source for discrepancies is unhelpful in light of Christopher O'Malley's credible testimony that he did not use the 2021 *Excelsior* list as a reference point in constructing the 2022 voter list.[94] For the remaining names listed in CP Exhibit 30, the Union has failed to establish that these names do not match the preferred names contained in Amazon's HR portals. Thus, any perceived discrepancies with earlier lists fails to establish bad faith or gross negligence on the part of Amazon in compiling the 2022 *Excelsior* list.

[94] Given the heavy turnover in the proposed bargaining unit, it is certainly understandable why O'Malley did not use the 2021 voter as a reference point.

The Union further argues that 128 names on the voter list should not have been included because these employees were no longer employed with Amazon by the payroll eligibility date. This argument is also unpersuasive. The documents supplied by Amazon and testified to by O'Malley show that each of the identified individuals was still listed as active in Amazon's payroll system as of the eligibility date. This accounts for employees who quit and were rehired prior to the rerun election, such as Prentajah Tanniehill, who told Union organizers on August 24, 2021 that they were no longer employed at BHM1, but was rehired on January 6, 2022, two days before the payroll eligibility cut-off. Thus, the Union has failed to establish that the inclusion of these 128 names on the *Excelsior* list constitutes objectionable conduct.

Based on the above, I overrule Union Objection 18.

Union Objection #19: Ryan Underwood's Statement About Plant Closure was Only Disseminated to One Employee and It is Therefore Impossible to Conclude That This Comment Impacted the Election in a 6,000 Voter Unit

Although I have credited Chris Sessions's testimony (and Serena Wallace's corroborating testimony) that Ryan Underwood implied BHM1 might close if the Union was voted in, I find, under the specific circumstances here, that this statement does not constitute objectionable conduct. To this end, Sessions was not an eligible voter in the 2022 rerun election. He testified that he may have mentioned Underwood's plant closure comment to Serena Wallace, but he had no specific recollection of telling any other co-workers about this matter. (Tr. 793). Furthermore, there is no testimony from Wallace confirming that she shared this comment with any of her co-workers. But Wallace did testify that there was no reference to the possibility of BHM1 closing in any of the four captive audience meetings she attended. (Tr. 411-412). Thus, the record evidence reveals that an unlawful statement was made to an employee ineligible to vote, and this statement was passed along to 1 out of 6,000 bargaining unit employees.

In *Crown Bolt, Inc.,* 343 NLRB 776, 779 (2004), the Board said that the probability of the dissemination of a threat of plant-closure and the extent of its dissemination may be reduced by the circumstances, including the manner in which the threat is conveyed, to whom, by whom and under what circumstances, and the size and makeup of the unit. Words spoken by a plant owner in a formal meeting have a different seriousness than different words used during casual conversation by a low-level plant supervisor. The Board went on to say that "where proof of dissemination of coercive statements, including threats of plant closure, is required, the objecting party will have the burden of proving it and its impact on the election by direct and circumstantial evidence." *Id.* Given the paucity of evidence establishing dissemination of Underwood's plant closure remarks, I find that the Union has failed to carry its burden to show that Underwood's comments were shared with other bargaining unit employees.

Given the lack of dissemination, under the circumstances here, I find that Underwood's plant closure remark had a de minimis impact on the laboratory conditions of this election. To determine whether certain conduct is de minimis, the Board takes into consideration the number of violations, their severity, the extent of dissemination, the size of the unit, and other relevant factors. *Waste Automation,* 314 NLRB 376, 376 (1994); *Metz Metallurgical Corp.,* 270 NLRB 889 (1984). As noted above, the size of the unit, coupled with the lack of dissemination, the fact

that Underwood was a low-level supervisor, and there is no evidence that Amazon employee relations officials referenced plant closing during the captive audience meetings, all support my conclusion that Underwood's plant-closing comment, by itself, does not constitute objectionable conduct. Consequently, I recommend overruling Union Objection #19.

Analysis – Election Objections Levied Against the Union

Amazon Objection #1: The Union Did Not Engage in Objectionable Conduct Based on Statements Made at a Press Conference Concerning the Mailbox or in its Request for Review of the Regional Director's Order Concerning the Mailbox

Amazon alleges that the Union engaged in objectionable conduct when employees Jennifer Bates and Daryl Richardson commented about the import of the mailbox used during the first election. Specifically, Amazon asserts that Bates said: "the mailbox's continued existence on Amazon's property stands as a stark physical memorial of a tainted election." Amazon also alleges that Richardson said that "the mailbox is there for cheating and that's not OK." Amazon attempted to introduce this evidence through media articles summarizing the press conference, but did not offer into evidence a recording of the actual press conference, which was conducted virtually.[95]

Even assuming Bates and Richardson were agents of the Union, their alleged statements do not constitute objectionable conduct. In this regard, Amazon's post-hearing brief did not contain a single case cite supporting its contention that these remarks were objectionable such that the election results should be set aside. And Amazon presented no record evidence showing that any eligible voters watched the press conference, saw the Union's Twitter (now known as "X") feed, or were even aware of its existence. Thus, I am unwilling to infer that these alleged comments reached or influenced enough eligible voters to affect the results of the election. See *Amveco Magnetics, Inc.,* 338 NLRB 905 (2003). But most importantly, in cases of alleged campaign misrepresentations, the Board applies the *Midland National Life* standard whereby the Board will not probe into the truth or falsity of the parties' campaign statements and will not set aside an election due to misleading statements unless "a party has used forged documents which render the voters unable to recognize propaganda for what it is." *Durham School Services, LP,* 360 NLRB 851, 851 (2014); *Midland National Life Insurance Co.,* 263 NLRB 127, 133 (1982). The *Midland* standard is premised on a "view of employees as mature individuals who are capable of recognizing campaign propaganda for what it is and discounting it." *Midland National Life Insurance Co.,* 263 NLRB at 132, quoting *Shopping Kart Food Market, Inc.,* 228 NLRB 1311, 1313 (1977).

Amazon next points to alleged misrepresentations the Union made regarding the mailbox in its Request for Review of the Regional Director's Order. Amazon asserts that the Union made blatantly false claims that Amazon moved the mailbox, and that the new location still required associates to pass by the mailbox on their way into BHM1. Amazon argues the misrepresentations and/or falsehoods in this filing had the tendency to discourage associates from returning their ballots using the disputed mailbox at BHM1, and these comments also undermined the Board's authority in the conduct of this election. Amazon, however, has

[95] Daryl Richardson did not testify at the hearing.

provided no record evidence to support these contentions. To this end, not a single employee testified at the hearing that they saw the Union's Request for Review or that this filing impacted their desire to use the BHM1 mailbox, or otherwise impacted their participation in the rerun election. And Amazon has supplied no caselaw suggesting that its theory of liability has been endorsed by the Board or Courts. Based on the above, I recommend that Amazon Objection #1 is overruled.

Amazon Objection #7: The Union Did Not Engage in Objectionable Conduct by Challenging Voters Due to Basis of Bad Addresses

Amazon alleges that the Union engaged in objectionable conduct by challenging over a hundred ballots on the basis of "bad addresses." I do not find this conduct to be objectionable. I first note that I agree with Amazon's representation that the challenge process is designed to question a voter's eligibility to participate in the election. And it is seemingly counterintuitive for the Union to challenge as "bad addresses" a series of ballots that employees received in the mail and ultimately returned to the Board in a timely manner. But I earlier found that the Union's compilation of assertedly incorrect voter contact information was proffered in good faith. And Amazon has pointed to zero Board, circuit court, or even ALJ/Hearing Officer decisions which found that challenging voters' eligibility on the basis of "bad address" constitutes objectionable conduct. Furthermore, Amazon put on no testimony from employees whose ballots were challenged on this basis to clarify whether in fact their *Excelsior* list addresses were accurate. For these reasons, I find that Amazon has failed to carry its burden of proof to establish objectionable conduct here.

Conclusions of Law

1. The Respondent, Amazon.com Services, LLC., is an employer within the meaning of Sections 2(2), (6) and (7) of the Act.

2. The Charging Party, the Retail, Wholesale, and Department Store Union, is a labor organization within the meaning of Section 2(5) of the Act.

3. By engaging in the following acts and conduct, Respondent has violated Section 8(a)(1) of the Act:

    a. Interrogating employees about their feelings or sympathies for the Charging Party.

    b. Confiscating union materials from its breakrooms and restrooms.

    c. Surveilling employees in the breakroom by asking employees wearing union buttons to show their ID badges.

    d. Telling employees that Amazon will close BHM1 if employees vote in the union.

4. The unfair labor practices set forth above affect commerce within the meaning of Section 2(6) and (7) of the Act.

5. By the foregoing violations of the Act, which occurred during the critical period before the second election, and by the conduct cited by the Union in Objections 1 and 17, Amazon has prevented the holding of a fair election, and such conduct warrants setting aside the 2022 mail ballot election in Case 10-RC-269250.

6. All other allegations of the complaint are dismissed.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.[96]

I will order that Amazon post a notice at its Bessemer, Alabama facility in the usual manner, and in accordance with *Starbucks Corp.,* 372 NLRB No. 122, slip op. at 5 (2023), 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. More specifically, I will order that Amazon place a copy of the notice in a table topper to be placed on each table in BHM1's breakrooms. I specifically order this remedy because Amazon unlawfully confiscated Union literature from its breakroom tables that was placed next to the table toppers containing anti-union messaging. I further order that a copy of the notice be placed in the Installments located in BHM1's restrooms. This remedy is based on my finding that Amazon unlawfully confiscated Union literature placed next to the Installments in BHM1's restrooms. Furthermore, I agree with the General Counsel and Charging Party that Amazon must send a copy of the notice to each BHM1 employee via text message, which was one of the methods by which Amazon engaged in objectionable conduct during the rerun election campaign. I further order that the notice be posted in Amazon's A-to-Z app because there was copious record testimony that Amazon communicates electronically with its employees via this method, which is essentially a more modern version of the intranet. I, however, will not order distribution of the notice via either the ACID feeds or Voice of Associates (VOA) Boards located throughout BHM1 because none of the unfair labor practices or objectionable conduct came through communications via either of these methods.

The General Counsel and Charging Party have requested a panoply of special remedies, assertedly due to the extensive unfair labor practice pleadings and the large volume of

[96] In their post-hearing brief (pages 193-196), Amazon counsel assert that all objections and unfair labor practices in these cases must be dismissed because: 1) the NLRB's structure only permits the President to remove Board members for neglect of duty or malfeasance; 2) ALJs have multiple layers of removal protection in violation of Article II of the Constitution. I deny each of Amazon's constitutional challenges with the understanding that a federal court will likely address these issues at some point in the future. See *Starbucks Corp.,* 373 NLRB No. 123, slip op. at fn. 3 (2024). *SJT Holdings, Inc.,* 372 NLRB No. 82, slip op. at 1-2 (2023).

objectionable conduct allegations. I decline the request for special remedies. Specifically, I deny the request for Union access to BHM1 for 30-minute meetings with employees during the critical period for the second rerun election. Because I have not found any unfair labor practices or objectionable conduct stemming from Amazon's captive audience meetings, the requested remedy is not commensurate with the violations or unlawful conduct I have found in the instant matters. Furthermore, each party requests a remedy requiring training for managers, supervisors, and Amazon's agents covering Section 7 rights. I do not find this remedy appropriate given my findings. To this end, the record reveals that there are over a hundred managers at BHM1, but my findings of unfair labor practices are limited to four managers, who each committed one isolated unfair labor practice. None of these managers currently works at BHM1 and the unlawful conduct I have found is not the pervasive kind that requires the requested training remedy. I acknowledge that my plant closing finding is considered a hallmark violation, one of the most serious violations of the Act. The extenuating circumstances here – one comment by a low-level manager to one employee who was not even eligible to vote, that Christopher Sessions only shared this comment with one other co-worker, and the lack of evidence that Amazon included similar plant closing language in its captive audience presentations – further supports my conclusion that special remedies are not warranted here.

Additionally, having found that Amazon did not engage in objectionable conduct in the provision of the *Excelsior* list, the General Counsel and Charging Party have not established a basis for their request for Union access to a voter list on a rolling basis. Finally, Counsel for the General Counsel and the Charging Party request a notice reading remedy here. If I had found violations on more of the pled violations and objections, a notice reading would certainly be appropriate. But the principal ULP/objection I found involved the confiscation of Union literature from non-work areas throughout BHM1. In a recent Board case featuring the same central allegation, *Apple, Inc.,* 373 NLRB No. 52 (2024), the Board did not order a notice reading as part of the remedy. Thus, I will not grant a notice reading remedy here either.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended[97]

Order

Amazon.com Services, LLC, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees about their feelings about the Charging Party, or any other labor organization.

(b) Confiscating union materials from its breakrooms and restrooms.

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

(c) Surveilling employees in the breakroom by asking employees wearing union buttons to show their ID badges.

(d) Telling employees that Amazon will close BHM1 if they vote in the Union.

(e) 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.

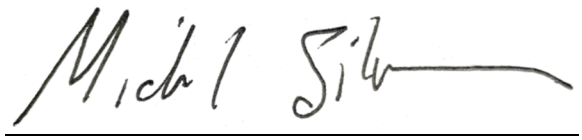
2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its Bessemer, Alabama facility copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 1, 2022.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 10 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the Regional Director for Region 10 shall set aside the 2022 representation election results in Case 10-RC-269250, and that a new election be held at a date and time to be determined by the Regional Director.

Dated, Washington, D.C. November 5, 2024



Michael P. Silverstein
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.

FEDERAL LAW 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 interrogate you regarding your feelings about the RWDSU or any other labor organization.

WE WILL NOT confiscate pro-union materials from nonwork areas such as our breakrooms and bathrooms.

WE WILL NOT ask employees wearing items demonstrating support for the RWDSU or any other labor organization to show us their ID badges.

WE WILL NOT tell employees that we will close BHM1 if employees vote in the RWDSU or any other labor organization.

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

Amazon.com Services, LLC
(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.

National Labor Relations Board Region 10
1130 22nd Street South, Ridge Park Place, Suite 3400
Birmingham, Alabama 35205
Hours of Operation: 8:00 a.m. to 4:30 p.m.
205-933-3017

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/10-CA-290944 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, 205-933-3017.