

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

**SHEFFIELD BARBERS, LLC**

**and**

**Case 05-CA-162795**

**JESSICA KIWANA CUFF, an individual**

**and**

**Case 05-CA-167229**

**INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
LOCAL UNION NO. 822**

*Stephanie Eitzen, Esq.,*  
for the General Counsel.  
*Kevin Dolley, Esq.,*  
for the Respondent.

**DECISION**

GEOFFREY CARTER, Administrative Law Judge. In this case, the General Counsel asserts that Sheffield Barbers, LLC (Respondent) ran afoul of the National Labor Relations Act (the Act) when Respondent, on October 13, 2015, rescinded a job offer that it extended to barber Jessica Kiwana Cuff, and when Respondent, on January 5, 2016, discharged barber Reginald Harris. Respondent maintains that its employment decisions regarding Cuff and Harris were lawful and nondiscriminatory. As explained in more detail below, I agree with the General Counsel that Respondent violated Section 8(a)(3) and (1) of the Act when it rescinded Cuff's job offer, and I also agree that Respondent violated Section 8(a)(1) of the Act when it discharged Harris.

**STATEMENT OF THE CASE**

This case was tried in Hampton, Virginia, on May 23-25, 2016. Jessica Kiwana Cuff, an individual, filed the charge in Case 05-CA-162795 on October 28, 2015.<sup>1</sup> The International Brotherhood of Teamsters, Local Union No. 822 (the Teamsters Union) filed the charge in Case 05-CA-167229 on January 6, 2016, and filed an amended charge on January 28, 2016.

On February 29, 2016, the General Counsel issued a consolidated complaint covering both of the cases listed above. In the consolidated complaint, the General Counsel alleged that Respondent violated Section 8(a)(3) and (1) of the Act by discharging, or refusing to hire, Cuff on or about October 13, 2015, because Cuff formed, joined and/or assisted a labor organization

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<sup>1</sup> All dates are in 2015 unless otherwise indicated.

and engaged in protected concerted activities. The General Counsel also alleged that Respondent violated Section 8(a)(1) of the Act by, on or about January 6, 2016, discharging employee Reginald Harris because he concertedly complained to Respondent on or about December 29, 2015, about the wages, hours and working conditions of Respondent's employees. Respondent filed a timely answer denying the alleged violations in the consolidated complaint.

#### PROCEDURAL ISSUES

During trial proceedings on May 25, 2016, counsel for Respondent requested that I admit an affidavit from witness Michael Cassidy into evidence. In connection with that request, counsel for Respondent represented that Cassidy was unavailable to testify because of a medical procedure (a knee surgery scheduled for May 23, 2016). Citing hearsay concerns, I denied Respondent's request to admit Cassidy's affidavit into evidence, but agreed to include the affidavit in the rejected exhibits file. (Transcript (Tr.) 624-625; see also R. Exh. 5 (par. 2).) Respondent did not request a continuance either before or during trial to accommodate any need to bring Cassidy in to testify after Cassidy recovered from surgery.

In an order dated June 3, 2016, I posed three interrogatories to Respondent to supplement the record with additional information related to Respondent's request to admit Cassidy's affidavit into the evidentiary record. Specifically, I asked Respondent to: (1) provide any medical evidence demonstrating that testifying at trial would have posed a threat to Cassidy's health; (2) provide any other information, including supporting documentation, that Cassidy was unavailable to testify in the trial in this matter; and (3) state, and provide any supporting documentation for, whether and when Respondent notified the General Counsel before trial that Respondent intended to offer Cassidy's affidavit into evidence during the trial. I also stated that the parties could, but were not required to, include any arguments in their posttrial briefs about whether Cassidy's affidavit should be admitted into the evidentiary record (taking Respondent's responses to the interrogatories into account), and if so, what weight the affidavit should be given.

On June 13, 2016, Respondent filed its responses to my interrogatories. Respondent represented (and provided some supporting medical records) that Cassidy had knee replacement surgery on May 23, 2016, and was discharged from the hospital on May 24, 2016, albeit with the likelihood that he would be using pain medication periodically and would need 30 days to "fully recover" from the surgery. Respondent did not notify the General Counsel before trial that it intended to offer Cassidy's affidavit into evidence, but Respondent asserted that neither party notified the other party "as to what evidence counsel intended to offer in support of their respective positions."

After considering Respondent's answers to my interrogatories and the parties' arguments in their posttrial briefs, I affirm my decision to exclude Cassidy's affidavit from the evidentiary record. Respondent asserts that Cassidy's affidavit is admissible under Rule 804 of the Federal Rules of Evidence, which states (among other things) that former testimony is not excluded by the rule against hearsay if the declarant was unavailable to testify at trial due to an infirmity or physical illness. (R. Posttrial Br. at 70-71.) Cassidy's affidavit, however, does not meet that standard. First, Respondent did not show that Cassidy was unavailable to testify at trial. While there is evidence that Cassidy was unavailable to testify for a period of up to 30 days after his

surgery on May 23, 2016, Respondent did not show that Cassady would have been unavailable to testify after that time period (nor did Respondent request that the trial be postponed or adjourned to a time when Cassady would have been available). Second, and perhaps more important, Cassady's affidavit does not meet the definition of former testimony covered by Rule 804  
 5 "because the General Counsel was not present and did not have an opportunity to develop the testimony by direct, cross, or redirect examination." *Mission Foods*, 350 NLRB 336, 348 (2007) (explaining that a key requirement for the former testimony exception in Rule 804 is that "the party against whom the evidence is now offered must have had a reasonable opportunity to cross-examine the declarant at the time of the former testimony").<sup>2</sup>

10 Respondent also asserts that Cassady's affidavit is admissible for the nonhearsay purpose of showing that, based on what Cassady told them, Respondent had a genuine, reasonable belief that Cuff lied to Respondent about attending her uncle's funeral shortly before Respondent decided to rescind its job offer to Cuff. (R. Posttrial Br. at 69-70.) Cassady's affidavit,  
 15 however, is not admissible for that purpose, for the simple reason that Respondent did not rely on Cassady's affidavit to develop its belief that Cuff lied about the funeral. Instead, Respondent relied on what Cassady verbally told them about Cuff. Respondent presented witness testimony during trial on that point, and I have considered that testimony in my review of the evidentiary record. (See, e.g., Findings of Fact (FOF), Section II(G), *infra*.)

20 In sum, Cassady's affidavit was properly excluded on hearsay grounds, and also on grounds of relevance and being cumulative (of testimony that Respondent presented about what Cassady told them). Accordingly, Respondent's Exhibit 5 will remain in the rejected exhibits file.

25 On the entire record,<sup>3</sup> including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

#### 30 FINDINGS OF FACT<sup>4</sup>

##### I. JURISDICTION

35 Respondent, a limited liability company with an office and place of business in Richland, Missouri, provides hair care services at military installations in the United States, including Joint Base Langley-Eustis in Hampton, Virginia. In conducting business operations in the 12 month

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<sup>2</sup> I have also considered Rule 807 of the Federal Rules of Evidence, which is the residual hearsay exception. I find that Respondent cannot rely on the residual hearsay exception regarding Cassady's affidavit because Respondent did not notify the General Counsel before trial of Respondent's intent to offer Cassady's affidavit as evidence, such that the General Counsel had a fair opportunity to meet and respond to that evidence.

<sup>3</sup> The transcripts and exhibits in this case generally are accurate, but I hereby make the following corrections to the record: p. 9, l. 16: "business" should be "petitions to revoke"; p. 10, l. 9: "be amended" should be "be deemed"; and p. 211, l. 6: "Clipper" should be "Clifford."

<sup>4</sup> Although I have included several citations in this decision to highlight particular testimony or exhibits in the evidentiary record, I emphasize that my findings and conclusions are not based solely on those specific citations, but rather are based on my review and consideration of the entire record for this case.

period ending on December 31, 2015, Respondent was engaged in providing barber services valued in excess of \$500,000 to retail customers. In conducting business operations in that same timeframe, Respondent purchased and received, at its Hampton, Virginia facility, goods, supplies and materials that are valued in excess of \$5,000 and came directly from points outside the State of Virginia. Respondent admits, and I find, that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

I also find that both the Teamsters Union and the Barbers' Association (a.k.a. Barbers' Bargaining Unit) for Langley Air Force Base are labor organizations within the meaning of Section 2(5) of the Act. As stated in Section 2(5) of the Act, the term "labor organization" means "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." Both the Teamsters Union and the Barbers' Association qualify as labor organizations under that definition, as employees participated in each of those organizations for the purpose of dealing with Respondent (and Gino Morena Enterprises, the company that preceded Respondent in providing hair care services at Langley) concerning the terms and conditions of employment for barbers in the bargaining unit. (See Discussion and Analysis, Section A(2), *infra*.)

## II. ALLEGED UNFAIR LABOR PRACTICES

### *A. Background*

#### 1. Langley Air Force Base barber shops

As part of the services that it offers at Langley Air Force Base (Langley), the Army and Air Force Exchange Service (AAFES) periodically selects a contractor to provide barber services on the base. Specifically, AAFES arranges for a contractor to provide barber services at three locations at Langley: the main shop, located at the commissary and base exchange (11-15 barbers); the Bethel Manor shop (3 barbers); and the Air Combat Command (ACC) shop (1 barber). (Tr. 22-23, 58-59, 83, 93-94, 292-294, 296; GC Exh. 15.)

#### 2. The Barbers' Association

The Barbers' Association (a.k.a. Barbers Bargaining Unit) is an informal association that was formed, at some point before 2005, by barbers who work at Langley. Consistent with its informal status, the Barbers' Association does not have regular meetings or require barbers to pay membership dues. Instead, certain barbers speak with each other from time to time about issues of concern and, when necessary, designate an experienced barber to serve as president and speak on the Barbers' Association's behalf (e.g., in negotiations with the contractor about wages, or as a mediator between management and the barbers if any problems arise in the barber shops). Clifford McDonald served as Barbers' Association president in 2005, and then decided to step down, with Reginald Harris becoming the new president after an informal vote by the barbers. Harris turned the Barbers' Association president position over to Jessica Cuff in 2014. (Tr. 96-101, 107, 210-212, 297-304, 395, 398-400; see also Tr. 29-30, 34-35.)

### 3. Collective-bargaining agreements between the Barbers' Association and Gino Morena Enterprises, LLC

5 In 2005, Gino Morena Enterprises, LLC (Gino Morena) began providing hair care services in Langley's barber shops pursuant to a contract with AAFES. In connection with that contract, Gino Morena executed a series of collective-bargaining agreements with the Barbers' Association. In those agreements, Gino Morena recognized the Barbers' Association as the exclusive bargaining agent for all barbers at Langley Air Force Base concerning "issues involving pay, wages, hours of work and other conditions of employment." (GC Exhs. 5-7 (Article I); see also R. Exh. 1 (p. 1).) Harris negotiated on behalf of the Barbers' Association for the collective-bargaining agreement that was in effect from October 4, 2010, to October 3, 2012, while Cuff filled that role for the Barbers' Association for the collective-bargaining agreement that was meant to be in effect from February 5, 2015, to February 4, 2017. (GC Exhs. 5-6; see also GC Exh. 7 (indicating that McDonald negotiated the collective-bargaining agreement that was in effect from November 1, 2005 to October 31, 2007); R. Exh. 1 (p. 1) (extending the 2005 collective-bargaining agreement through October 13, 2010); Tr. 102-107, 217, 303-304.)

20 In the agreements that Harris and Cuff negotiated, Gino Morena agreed that each individual barber would earn a 60 percent commission of the gross receipts for the services that he or she provided. In the management-rights clauses of those agreements, however, Gino Morena reserved the right to take a tip credit<sup>5</sup> against any wages or commissions. (GC Exh. 5 (pp. 3, 10); GC Exh. 6 (pp. 3, 10); see also GC Exh. 7 (p. 3) (indicating that under the 2005-2007 agreement, Gino Morena was not permitted to take a tip credit).) Based on a verbal agreement with Harris, Gino Morena did not actually collect a tip credit despite the language in the 2010 and 2015 collective-bargaining agreements that permitted it to do so. (Tr. 23-24, 60-61, 94, 182-183, 296-297.)

#### *B. June 2015 – AAFES Solicits Proposals for Providing Barber Services at Langley Air Force Base*

30 On June 15, 2015, AAFES issued a solicitation for proposals to provide barber services at Langley Air Force Base. AAFES included a copy of the February 2015 collective-bargaining agreement between Gino Morena and the Barbers' Association as an attachment to the solicitation for proposals. Both Gino Morena and Respondent<sup>6</sup> submitted proposals for the new

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<sup>5</sup> A tip credit is essentially a deduction that the employer takes from the barber's gross earnings as an offset for tips that the barber receives after providing services. Thus, if an employer imposed and collected an 18 percent tip credit on a barber's gross receipts, the barber's wages would be calculated as follows if the barber had \$100 in gross receipts and \$25 in tips: \$60 commission (60 percent of \$100) + \$25 tips (barber keeps full amount) - \$18 tip credit (18 percent of \$100) = \$67. By contrast, the same barber would earn \$85 (\$60 commission plus \$25 in tips) if the employer did not collect a tip credit.

Notably, the tip credit applies irrespective of whether the amount of the tip credit is greater or less than the actual amount of tips that the barber received (thus, if a barber only received \$10 in tips after providing \$100 in services, the employer would still collect an \$18 tip credit). However, the employer is required to ensure that the barber's overall compensation does not fall below a minimum hourly wage established in its contract with AAFES.

<sup>6</sup> Respondent, Sheffield Barbers, LLC, was founded by owners/partners/sisters Christina Deardeuff and Claudette Michels as a barber contractor that provides barber services at military installations in the

contract. (GC Exh. 4; R. Exh. 3; Tr. 458-463; see also Tr. 476-478, 561-564 (noting that while preparing its proposal, Respondent obtained copies of the 2005 and 2010 collective-bargaining agreements between Gino Morena and the Barbers' Association in response to a Freedom of Information Act request that Respondent sent to AAFES).)

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*C. September 2015 – Respondent is Awarded the Contract and Prepares to Provide Barber Services at Langley Air Force Base*

On September 3, 2015, AAFES awarded the Langley Air Force Base barber services contract to Respondent. (GC Exh. 4; Tr. 460.) Shortly thereafter, Respondent's contract manager Yvonna Bays called the main barbershop at Langley and informed Cuff that Respondent won the barber services contract and would be coming in as the barbers' new employer. Cuff told the rest of the barbers at Langley about Respondent's selection as the new contractor for barber services at Langley. (Tr. 108-109, 214, 402, 564.)

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Later in September, Bays advised Cuff that Respondent wanted to keep the barbers that were already working at Langley, and asked Cuff if she would assist with distributing job applications to the barbers. Cuff agreed, and thus collected job applications from current barbers who were interested in working for Respondent (including Cuff and Harris) and sent those materials to Respondent by courier on or about October 1, 2015. (GC Exhs. 8-10, 13; Tr. 109-110, 113-120, 304-305, 564-568.)

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Bays also asked Cuff in September about the Barbers' Association. Among other questions, Bays asked Cuff if she (Cuff) was in charge of the association, and if so, how was that possible since Cuff was also a manager. Cuff replied that she was not the manager of the barber shop, but rather filled in for D.A. as the manager when D.A. was not available. Bays also asked Cuff if the barbers paid union dues to the Barbers' Association, and asked if Cuff could provide her (Bays) with any minutes or notes from Barbers' Association meetings. Finally, Bays expressed some doubt about the validity of the collective-bargaining agreement between the Barbers' Association and Gino Morena because it looked like paperwork she had seen from Gino Morena in other contexts. Cuff explained that she bargained for whatever the barbers wanted and that the collective-bargaining agreement was not simply a contract that Gino Morena typed up. Bays replied "okay." (Tr. 110-113, 216-217, 239-240.)

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*D. September/October 2015 – Barbers Contact and Meet with the Teamsters Union*

The news of Respondent's selection as the barber services contractor prompted some barbers to ask Cuff questions such as how barber salaries would be affected. Cuff responded that she was not sure what Respondent was trying to do regarding salaries or the collective-bargaining agreement. In light of those concerns, Cuff suggested that the barbers contact the Teamsters Union to see if that union could offer the barbers some protection. (Tr. 122-123.)

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United States. At Fort Bragg, North Carolina, one of the locations where Respondent provides services, Respondent's barbers are represented by a union and are covered by a collective-bargaining agreement that the union negotiated with Respondent. (Tr. 457, 493, 495.)

On or about October 7,<sup>7</sup> Cuff, Harris and other barbers met with Teamsters Union representative Steven Jacobs in the food court next to the main barber shop. D.A. also attended the meeting even though he was the main barber shop manager. After Jacobs explained the process for establishing the Teamsters Union as the barbers' collective-bargaining representative, Cuff signed a union authorization card. (Tr. 220-221, 237-238, 260-262, 270-271, 274-275, 289, 314-315, 382-383, 385, 387.)

*E. October 9, 2015 – Respondent Visits Langley Air Force Base and Hires all Langley Barbers*

With the start date of the new contract approaching, Respondent sent representatives (including Deardeuff, Michels and Bays) to Langley Air Force Base on October 9 to meet with barber shop and base personnel, and generally prepare for Respondent to commence operations at Langley on October 15. Cuff notified other barbers that Respondent would be visiting.<sup>8</sup> In addition, due to the uncertainty about how Respondent would treat the barbers, Cuff suggested that if Respondent asked questions about the Barbers' Association, the barbers should acknowledge that they knew about the Association, but decline to answer questions about the collective-bargaining agreement (and thus leave it to Cuff to communicate with Respondent about that issue). (Tr. 217-219, 239, 307-309, 404-405.)

After arriving on October 9, Deardeuff and Michels spoke with D.A. and asked him if he was willing to continue managing the main barber shop. D.A. responded that he was willing to do so, and added that when he was off duty, Cuff served as manager.<sup>9</sup> (Tr. 470.)

While touring the Langley barber shops, Bays met Cuff in person for the first time, and asked Cuff what her role was with the Barbers' Association. When Cuff responded that she was the president of the Barbers' Association, Bays asked if Cuff had documentation showing that she (Cuff) had been appointed or elected president, or other documentation that Respondent could rely on if Respondent engaged in negotiations with Cuff about a collective-bargaining agreement. There is no evidence that Cuff had any such information to provide to Bays. (Tr. 569- 574 (noting that Bays also asked Cuff if she had any authorization cards signed by employees, or a certification from the NLRB authorizing the Barbers' Association to represent the barbers, and also noting that Bays again asked Cuff for documentation when barbers met with Respondent later on October 9 for a job fair), 588-589.)

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<sup>7</sup> Cuff and Harris were both unclear about the precise date of their first meeting with the Teamsters Union. I have given the most weight to Cuff's statement in her affidavit (a statement that Respondent introduced during cross examination) that the meeting occurred on October 7, because Cuff made the statement in her affidavit at a time that was closer to the events in question. (See Tr. 220-221.) Regardless, the evidentiary record shows that Respondent learned about Cuff's efforts to bring in the Teamsters Union before Respondent decided to rescind its job offer to Cuff. (See Tr. 479-480, 584-585; see also FOF, Section II(E), (F)(3), *infra*.)

<sup>8</sup> Cuff knew that Respondent would be visiting because Cuff and Bays texted each other about Respondent's visit. (GC Exh. 9.)

<sup>9</sup> At some point after Respondent's representatives arrived at Langley, Cuff and Harris informally had lunch with two representatives of Gino Morena who were also dining in the food court near the main barber shop. D.A. also joined the group for a while as they had lunch. During lunch, Cuff mentioned that the Langley barbers had met with the Teamsters Union. (Tr. 222-228, 235-237.)

Bays also asked Cuff about the collective-bargaining agreement between Gino Morena and the Barbers' Association. Among other questions, Bays asked Cuff who wrote the agreement. When Cuff responded that she and some other barbers met and typed up the agreement, Bays was concerned because she believed that the collective-bargaining agreement that Cuff signed was similar to other agreements involving Gino Morena and was not the product of an arms-length negotiation.<sup>10</sup> (Tr. 574-575, 590-591; see also Tr. 504-505 (Deardeuff also believed that the collective-bargaining agreement at Langley was similar to other agreements involving Gino Morena).)

At approximately 7:00 pm on October 9, shortly after the main barber shop closed for the day, Deardeuff and Bays conducted a job fair for the Langley Air Force Base barbers. First, Bays introduced Deardeuff and Michels as Respondent's owners and stated that Respondent would be hiring all of the barbers at Langley to work for Respondent.<sup>11</sup> Next, Deardeuff asked if the barbers were familiar with the collective-bargaining agreement between the Barbers' Association and Gino Morena. When none of the barbers responded, Deardeuff emphasized that she needed an answer to her question and asked if anyone was aware of the Barbers' Association. Barber Taaria Edwards then answered that she knew about the collective-bargaining agreement. At that point, Cuff stood up and stated that she had the Barbers' Association under control and that Respondent should direct any questions about the collective-bargaining agreement or the Barbers' Association to her. Deardeuff replied that Cuff should sit down because Deardeuff had already heard enough from Cuff, and only needed to know if other barbers knew about the agreement. Bays concluded the meeting by handing out a packet of forms that Respondent asked the barbers to fill out and return (along with copies of the barbers' drivers licenses, barbers' licenses and identification in the form of a social security card, passport or other government identification) on October 14, when Respondent planned to hold a training session for the barbers. (Tr. 31-33, 55-56, 68-69, 118, 126-130, 146, 168, 175-178, 305-310, 385, 409-411, 465-468, 500-503, 553, 557, 604-605; GC Exhs. 9, 11, 15.)

After the job fair, Cuff approached Respondent and explained that she was not sure if she would be able to attend the October 14 training session because Cuff's uncle had passed away earlier on October 9, and Cuff was planning to travel to Colorado to attend his funeral. Respondent told Cuff that she could do the training either before she left for the funeral or after she returned.<sup>12</sup> (Tr. 131-133, 166, 171, 229, 470, 502; GC Exh. 19.)

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<sup>10</sup> Deardeuff and Bays explained that Respondent had prior experience with bidding on contracts where there was an existing collective-bargaining agreement that Respondent determined was "false and incorrect." In particular, Respondent was suspicious of collective-bargaining agreements involving Gino Morena because Respondent believed those agreements included "wage schemes" that were not the product of arms-length negotiations and had the effect of discouraging other contractors from submitting bids because the collective-bargaining agreements, if valid, would make it difficult for the contractor to earn any money. (Tr. 493-495, 590-591.)

<sup>11</sup> Respondent admits that it only hired Cuff to work as a barber, and admits that it did not hire (or consider hiring) Cuff as a manager. (Tr. 587-588, 619.)

<sup>12</sup> I do not credit Deardeuff's testimony that Cuff stated in this conversation that she could not accept employment with Respondent. (See Tr. 502.) If that were true, there would have been no need for Respondent to subsequently withdraw its job offer to Cuff on October 13, or for Respondent to offer explanations for why it withdrew Cuff's job offer. See GC Exh. 12 (email from Respondent to Cuff in

In a separate conversation after the meeting, three barbers approached Deardeuff and stated that Cuff did not represent them, and asked what Deardeuff was talking about when she asked about the collective-bargaining agreement. Deardeuff replied that the barbers should let Respondent figure everything out and get back to them. (Tr. 536–537.) In addition, either on October 9 after the meeting or on the next day or so, D.A. advised Deardeuff that Cuff had brought in the Teamsters Union to speak with the barbers, and that barbers filled out authorization cards to have the Teamsters Union represent them. (Tr. 479–480.)

*F. October 10–12, 2015 – Developments after the October 9 Job Fair*

1. Cuff decides not to attend funeral

On or about October 10, Cuff checked the cost of flying to Colorado and determined that she would not be able to attend her uncle’s funeral because it was too expensive to do so. Cuff did not notify Respondent about her decision to forego traveling to the funeral, however, because Cuff planned to attend the October 14 training that Respondent scheduled. (Tr. 134–135, 170–171; see also Tr. 233.)

2. Barbers discuss Respondent’s tip credit policy

Upon reviewing the paperwork that Respondent handed out at the job fair, several barbers spoke with each other about how they were unhappy with Respondent’s tip credit policy. Specifically, although Respondent would continue to pay each barber a 60 percent commission on all services that he or she provided, Respondent (unlike Gino Morena) would deduct an 18 percent tip credit from each barber’s gross earnings. Thus, if a barber provided \$100 in services while working for Respondent, their take home pay would be \$42 (\$60 commission – \$18 tip credit) instead of \$60 (\$60 commission – \$0 tip credit), as it had been with Gino Morena. Although Cuff, Harris and several other barbers spoke with each other about their concerns about Respondent’s tip credit policy, and Cuff encouraged barbers to refuse to sign the tip credit notice, there is no evidence that either Cuff or Harris expressed those concerns to Respondent in this timeframe. (Tr. 24, 51, 60, 136–138, 176–177, 229–230, 310–311; GC Exh. 11 (pp. 3–4).)

3. Some barbers complain to Respondent about Cuff

On or about October 10–12, some of the barbers expressed concerns to Respondent about Cuff. According to Respondent, certain barbers stated that Cuff told them “that they had to join a union to keep their jobs with the new contractor.” Those barbers also told Respondent that Cuff “had only tried to get them to join the Teamsters [to] keep them from discovering that she had signed a document with [Gino] Morena without their knowledge.” (Tr. 584–585.)

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which Respondent withdrew its job offer to Cuff and did not mention any October 9 statement by Cuff that she was declining Respondent’s job offer); see also Findings of Fact (FOF), Section II(G), *infra*.)

*G. October 13, 2015 – Respondent Rescinds Cuff’s Job Offer*

On October 13, Cuff worked her last day for Gino Morena in the Langley Air Force Base barber shops. (Tr. 231.) Later in the evening on October 13, Respondent notified Cuff that it was rescinding its October 9 job offer to Cuff. Respondent stated as follows in its email:

Dear Ms. Cuff:

After further evaluation of the intended operational plan for the Langley barbershops, Sheffield will not be considering you for placement for the barber positions.

Thank you for applying with our company and good luck with your future endeavors.

(GC Exh. 12; see also Tr. 138–139, 247, 316–317, 471, 558.)<sup>13</sup> Cuff immediately telephoned Teamsters Union representative Jacobs to notify him that Respondent had rescinded her job offer. (Tr. 247.)

In a position statement dated December 10, 2015, Respondent explained that its decision to rescind its job offer to Cuff “was based solely on information from several employees that [Cuff] willfully and intentionally falsified a document and concealed actions from her predecessor coworkers and to [Respondent] for the purpose [of] enhancing an employer-dominated employment scheme.” (Tr. 583–585; see also Tr. 471–472 (explaining that Respondent decided not to employ Cuff because it believed Cuff had signed a fraudulent collective-bargaining agreement with Gino Morena, and believed that Cuff had been deceitful in representing herself as the president of an association that did not appear to exist), 548.)<sup>14</sup>

<sup>13</sup> On or about October 20, Respondent hired employee M.R. as a barber and part-time assistant manager at Langley Air Force Base. (GC Exh. 15; Tr. 509, 577.)

<sup>14</sup> Respondent maintains that that it was also motivated to withdraw its job offer to Cuff because it believed Cuff lied about going to her uncle’s funeral and instead spent her time working at a barber shop at Fort Eustis. In support of that theory, Deardeuff asserted that before Respondent decided to rescind its job offer to Cuff, Deardeuff learned from AAFES service business manager Mike Cassady on October 13 that Cuff was not at the funeral in Colorado and that he saw Cuff working at a barber shop in Fort Eustis. (Tr. 505–507, 510; see also Tr. 474, 546 (stating that Respondent first had concerns that the collective-bargaining agreement was fraudulent and that the Barbers’ Association did not exist, and that Respondent later found out that Cuff did not travel to Colorado for her uncle’s funeral and was working at Fort Eustis); 143, 499 (explaining that Cassady ensures that the barber shops and other service vending locations at Langley and Fort Eustis are in compliance with their contracts with AAFES).)

After considering the record as a whole, I do not find Deardeuff’s testimony to be credible as to Respondent having these additional concerns about Cuff when Respondent decided to rescind Cuff’s job offer on October 13. First, the General Counsel presented strong evidence that Cuff did not work at Fort Eustis on or before October 13. Indeed, Cuff testified that she worked at Langley on October 13 and did not start working at Fort Eustis until October 23. Cuff’s testimony on that point was corroborated by Teamsters Union representative Steven Jacobs, who testified that Cuff did not work at Fort Eustis before October 13 (Jacobs represents the barbers’ bargaining unit at Fort Eustis), and also explained that he made phone calls on October 14 to assist Cuff in obtaining a job at Fort Eustis after Respondent rescinded Cuff’s job offer. (Tr. 231, 249–250, 264–266; see also Tr. 140–142, 248–249, 264–266, 316–317 (explaining that Cuff and other barbers met with Jacobs on October 14 at the Golden Corral restaurant, where Cuff told Jacobs that Respondent rescinded her job offer); GC Exh. 20 (indicating that Cuff

*H. October 14, 2015 – Barbers Again Meet with Teamsters Union Representative*

At approximately 2:00 pm in the afternoon on October 14, several barbers met with  
 5 Teamsters Union representatives Steven Jacobs and James Wright at the Golden Corral  
 restaurant. Cuff, Harris and D.A. each signed cards authorizing the Teamsters Union to  
 represent them “in negotiations for better wages, hours and working conditions” with  
 Respondent. (Tr. 140, 160, 172–173, 262, 267–270, 272–273; GC Exhs. 17–18, 21; see also Tr.  
 237–238, 261–262, 313–315 (noting that some barbers, including Cuff and Harris, signed  
 10 authorization cards even though they also did so when they met with Jacobs on or about October  
 7).)

In addition, Cuff advised Jacobs and the other meeting attendees about Respondent’s  
 decision to rescind its offer to employ her at Langley. Cuff answered “yes” when Jacobs asked if  
 15 Cuff would be willing to work with Gino Morena at Fort Eustis, where the Teamsters Union  
 represented the barbers’ bargaining unit and there was a barber position available. Accordingly,  
 Jacobs contacted Gino Morena to encourage them to hire Cuff at Fort Eustis. (Tr. 140–142,  
 248–249, 263–266, 316–318.)

20 *I. October 14–19, 2015 – Transition to Respondent Operating the Langley Barber Shops*

1. The October 14 training session for Langley barbers

In the evening on October 14, Respondent held a training session for the Langley  
 25 barbers.<sup>15</sup> Among other topics, Respondent discussed: the tools that each barber would need to  
 provide; the supplies that Respondent would provide; scheduling; how to operate the new cash  
 register; Respondent’s expectations for barbers concerning hygiene and conduct while on duty;  
 and the responsibilities of shop managers. Bays also answered questions that several barbers had  
 about the tip credit that Respondent would be deducting from each barber’s gross sales. (Tr.  
 30 385, 433–434, 553, 577–578, 591–593; R. Exh. 16.)

2. October 15 – Respondent officially begins operating the Langley barber shops

On or about October 15, Respondent began operating the Langley barber shops pursuant  
 35 to its contract with AAFES. In connection with the final transition from Gino Morena’s contract  
 to Respondent’s contract, Respondent brought in a crew to clean the barber shops and install

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transferred to Fort Eustis on October 20).) Second, Deardeuff’s testimony about Respondent’s motivation  
 to rescind Cuff’s job offer conflicts with Respondent’s December 10, 2015 position statement (which is  
 discussed above and does not indicate that Respondent was motivated to rescind Cuff’s job offer based on  
 what Deardeuff allegedly learned from Cassidy), and also conflicts with a declaration that Deardeuff  
 made on February 11, 2016 (which does not mention any discussion with Cassidy, and states that  
 Respondent learned from employee M.D. on October 14 that Cuff did not go to her uncle’s funeral and  
 was working as a barber at Fort Eustis). (Tr. 547–548.) In any event, I will consider this additional  
 proffered motivation for Respondent’s decision to rescind Cuff’s job offer when I analyze the merits of  
 the allegations in the complaint.

<sup>15</sup> Cuff did not attend the training because Respondent had rescinded her job offer the night before.  
 (Tr. 139.)

Respondent's equipment immediately after Gino Morena vacated the shops. Respondent selected D.A. to manage the main shop, M.D. to manage the Bethel Manor shop, and Harris to manage the ACC shop on the two days that it was open (for the other three days each week, Harris worked as a barber in the main shop). All three managers handled money and paperwork, but D.A. and M.D. had the additional responsibilities of scheduling employees, recommending disciplinary action to Respondent, conducting performance interviews of job applicants, and recommending whether Respondent should hire particular job applicants. (Tr. 316, 318, 357-358, 463, 468-469, 475-476, 478; GC Exh. 15; R. Exh. 3, p. 4 (indicating that Respondent's contract to operate the Langley barber shops began on October 14); see also 318, 358 (explaining that although Harris was the "team leader" of the ACC shop, he was the only employee who worked in that shop when it was open).)

Although it addressed the topic of barber hygiene in the October 14 training, Respondent stressed the importance of barber hygiene on an ongoing basis because Respondent was required to meet certain hygiene standards as a condition of its contract with AAFES, and because AAFES personnel and other Langley personnel identified hygiene as an area for Respondent to focus on as the new operator of the Langley barber shops. In particular, Respondent heard concerns from some Langley personnel about keeping the barber shop floor clear of hair, and having barbers wash hands and disinfect their tools between customers. (Tr. 595-599; see also Tr. 518-520.)

The issue of barber hygiene, of course, was not new. When they worked for Gino Morena, barbers were expected to do the following between each customer: disinfect their tools with a disinfectant spray; and wash their hands with soap and water or, alternatively, clean their hands with hand sanitizer. Gino Morena also expected barbers to sweep around their barber chair after each customer to remove hair from the floor (or use an individual vacuum that the barber provided), but in practice, barbers might skip that step if the shop was busy, or sweep for each other if they had time to do so. (Tr. 25-27, 52-53, 62-63, 65, 67, 232-233, 328, 330.)

After Respondent began operating the Langley barber shops, however, it implemented its own procedures, some of which differed slightly from those of Gino Morena. Like Gino Morena, Respondent expected its barbers to disinfect their tools with disinfectant spray and wash their hands with soap and water between customers. Respondent, however, provided a different spray for barbers to use, and did not indicate that it was acceptable for barbers to use hand sanitizer in lieu of washing their hands (though some barbers continued that practice anyway). Respondent also installed a vacuum system in the main shop that would remove hair from the floor, as long as the barber was using clippers that could connect to the vacuum system (as opposed to shears, a comb, or clippers that were not compatible with the vacuum system). The new vacuum system, however, was noisy and ran at virtually all times (unless it was not operating temporarily) because it was on for the entire shop whenever one of the barbers was using it. More generally, barbers were expected to keep the floor around their chair clear of hair, either by using the vacuum system or sweeping. (Tr. 26-28, 49, 52-53, 62-68, 318-321, 328-330, 426, 430-434, 440-441; see also R. Exh. 4 (barber and beauty shop sanitation guidelines that Respondent kept in a handbook in each barber shop); Tr. 428-429, 594-595 (same).)

### 3. Respondent talks with Harris<sup>16</sup>

On or about October 16, Respondent (including Deardeuff, Michels and Bays) visited the ACC barber shop to do some repair work. While at the shop, Deardeuff and Bays spoke with Harris, who was finishing his work in the shop for the day. As part of their discussion, Harris voiced some frustration about Respondent's new procedures because he had worked as a barber for a long time and did things a certain way. In particular, Harris was reluctant to use a vacuum system at the ACC shop because he had never been required to do so at that location. Respondent agreed to permit Harris to continue working in the ACC shop without a vacuum system, but expected that Harris would use the vacuum system when he worked in the main barber shop. (Tr. 322-323, 326-327, 517, 529-530, 544-545; see also Tr. 292 (noting that at the time of trial, Harris had worked as a barber for 43 years).)

Respondent also told Harris that he was a good barber, and noted that Harris seemed to be the "alpha" amongst the Langley barbers and could make a good manager for one of the larger barber shops. Harris responded that he did not wish to take on additional duties because of his health, and then asked why Respondent did not hire Cuff. When Respondent answered that it did not hire Cuff because Cuff lied,<sup>17</sup> Harris was offended and told Respondent that Cuff did not lie. Harris added that Respondent came to the Langley barber shops with its "guns cocked" and "started firing without knowing things" and without asking the barbers. (Tr. 322-325, 365, 371-373, 375-377, 511-512, 529-530; see also Tr. 517.)

During this exchange, Deardeuff stated that she saw that Harris had signed one of the collective bargaining agreements between Gino Morena and the Barbers' Association, and asked Harris what it meant when he signed that agreement. Harris replied that he was a steward for the Barbers' Association and kept the peace between the barbers and the owner. (Tr. 478-479, 511; see also Tr. 379-380.)

#### *J. October 20 – Teamsters Union Files Petition to be Certified as the Collective-Bargaining Representative of the Langley Barbers*

On October 20, the Teamsters Union filed an RC petition to ask the National Labor Relations Board to begin the process of certifying the Teamsters Union as the representative of all barbers that Respondent employed at Langley. (R. Exh. 9 (noting that the Teamsters Union asked Respondent on October 19 to recognize it as the barbers' collective-bargaining representative, but did not receive a reply); Tr. 286-288, 535.) Although the Teamsters Union

<sup>16</sup> At times, the record is unclear whether Deardeuff or Bays (and, to a lesser extent, Michels) was the one who made certain statements to Harris. Since Deardeuff, Michels and Bays all occupy positions of authority for Respondent and thus had the authority to speak on Respondent's behalf, I have used the term "Respondent" when it is not clear whether Deardeuff, Michels or Bays made a particular statement.

<sup>17</sup> Harris gave conflicting testimony about whether Respondent specified exactly what it believed Cuff lied about. Compare Tr. 325, 376 (Harris testimony that Respondent said Cuff lied about the collective-bargaining agreement) with Tr. 377 (statement from Harris' affidavit that Respondent did not specify how Cuff lied). I have given more weight to Harris' statement in his affidavit (that Respondent did not specify how Cuff lied) because it is akin to an admission by a party opponent, and Harris made the admission at a point in time (December 2015) that was closer to the events in question than his trial testimony (May 2016). (See Tr. 380.)

requested that the Board hold an election in November 2015, the election was delayed because there were questions about the Barbers' Association's status as the barbers' collective-bargaining representative. (Tr. 267-268, 277, 281-285; see also Tr. 535-536.)

5 *K. October 23 – Cuff Begins Working for Gino Morena at Fort Eustis*

On or about October 19, Cuff went to Fort Eustis to talk with a manager and confirm that she would be coming to work at the Fort Eustis barber shop. Cuff officially “transferred” to a barber position with Gino Morena at Fort Eustis on October 20,<sup>18</sup> and then worked her first day at Fort Eustis on or about October 23. Notwithstanding her new job at Fort Eustis, Cuff continued to serve as president of the Barbers' Association at Langley, though she did not engage in any specific discussions or negotiations with Respondent concerning the Langley barbers. (Tr. 91, 140-141, 189, 194-195, 197-199, 244-245, 253-254; GC Exh. 20.)

15 *L. October/November 2015 – Early Points of Concern during Harris' Work for Respondent*

After Respondent began operating the Langley barber shops, some of the Langley barbers approached Harris and expressed unhappiness that, due to the new tip credit that Respondent was deducting, the amount of take home pay that barbers was lower than what they received from Gino Morena. Harris advised the barbers that he had the same problem with his paycheck, and conveyed his concerns about the barbers' lower paychecks to D.A., who was serving as the manager of the main barber shop and was also upset about having lower take home pay. (Tr. 334-335, 367, 443-445.)

On the other hand, on or about October 21, Respondent noted on Harris' personnel file that AAFES representative Michael Cassady was concerned with Harris' “verbal bashing.”<sup>19</sup> In addition, on or about November 2, Respondent spoke with D.A. to remind him that all barbers should be using the vacuum system, and to note that Cassady reported that Harris was “not using clippers.” D.A. replied that Harris was “old school” but would be okay. (R. Exh. 15; see also Tr. 610, 613.) There is no evidence, however, that Respondent gave any disciplinary warnings to Harris to address any concerns about the vacuum system, hygiene or verbal remarks in the shop. Instead, D.A. only gave general reminders to all barbers in the shop about keeping the floor clear of hair. (Tr. 329-331.)

35 *M. December 15 – Barbers' Association Disavows Any Interest in Representing Langley Barbers*

On December 15, Cuff sent a letter to Respondent on behalf of the Barbers' Association. Cuff stated as follows in the letter:

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<sup>18</sup> Although Cuff's employment with Gino Morena technically ended on October 14 when Gino Morena's contract at Langley expired, Gino Morena characterized Cuff's move to Fort Eustis as a transfer instead of a rehire or new hire. (Tr. 156, 159-160.)

<sup>19</sup> There is no evidence in the record about what Cassady meant by the term “verbal bashing,” or about what Respondent believed Cassady meant by that term. The evidentiary record does show, however, that Harris was not shy about speaking his mind on a variety of topics, including his views on how Respondent was doing as the new contractor for the Langley barber shops. (Tr. 76-77, 83, 87-88, 517; see also Tr. 423.)

Dear Mrs. Deardeuff,

5 I would like to bring to your attention that the Langley Barbers Association disclaims representation interest effective immediately as to the employees of Sheffield Barbers employed at Langley Air Force Base.

10 (R. Exh. 7.) Cuff sent the letter with the assistance of the Teamsters Union to clarify that the Teamsters Union could take over for the Barbers' Association as the collective-bargaining representative of the Langley barbers. (Tr. 192-194.)

*N. December 21 – PSAR Report Concerning the Bethel Manor Barber Shop*

15 On December 21, Cassady conducted a Personal Services Activity Review (PSAR) at the Bethel Manor barber shop at Langley. In that review, Cassady noted that the barbers at Bethel Manor were not consistent with sanitizing their clippers or with washing their hands between customers. Cassady elaborated on those issues as follows in his report:

20 [Regarding sanitizing clippers]: I noticed this procedure not to be 100%. This is a “hit and miss” practice. The clippers need to be sanitized after each use and 10 minutes is required for the sanitizer to be effective.

25 [Regarding washing hands]: I have witnessed hand washing is also a “hit and miss” action. Hands need to be washed between each customer.

All other sanitation requirements are in compliance.

30 (R. Exh. 12 (pp. 5-6); see also Tr. 522-526, 528-529, 539-540.)<sup>20</sup> Cassady sent the December 21 PSAR report to Respondent on December 29. Respondent did not issue written disciplinary letters to any of the three barbers who worked at the Bethel Manor barber shop, and did not issue any written discipline to M.D. (the manager of the Bethel Manor shop at the time) based on hygiene concerns. (Tr. 526, 542-543.)

35 *O. December 28 – Respondent asks Harris to Serve as Manager of the Main Barber Shop*

40 On or about December 27, D.A. notified Deardeuff that he no longer wished to be the manager of the main barber shop. Deardeuff said that would be fine, and instructed D.A. to give his keys to the main shop to James Willis, another barber at the shop. D.A. agreed, and continued working for Respondent at the main shop, but only as a barber. (Tr. 480, 512-513.)

On December 28, Deardeuff contacted Harris and, after stating that Harris was doing outstanding work, asked if he would be willing to serve as manager in the main barber shop. When Harris asked about D.A., Deardeuff replied that D.A. was no longer the main barber shop

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<sup>20</sup> The December 21 PSAR in the record appears to be missing several pages (12 out of 20 pages of the report were provided for the record), and the pages that were provided do not appear to be in sequential order. (See R. Exh. 12; Tr. 541-542.)

manager. Harris declined Deardeuff's request that he manage the main barber shop, explaining that he did not want to take on the duties of being manager because of his health. Deardeuff told Harris to keep up the good work and have a great day. (Tr. 336-337, 365-366, 373, 513, 554.)

5 *P. December 29 – Respondent Sends a Manager to Langley to Investigate  
how the Langley Barber Shops are Operating*

10 After D.A. decided to step down as the main barber shop manager at Langley, Respondent became concerned about the finances of all of the Langley barber shops because it was not receiving certain financial records, and also because it believed approximately \$13,000 in earnings was missing. Since a flood in Missouri prevented Deardeuff, Michels and Bays from traveling to Langley to review the matter, Respondent asked Clayborn Tillison<sup>21</sup> to travel to Langley to: conduct a financial audit of all barber shop finances; locate and secure all barber shop financial records (e.g., cash register journal tapes); and serve as manager of the Langley barber shops temporarily until Respondent could hire a suitable replacement. (Tr. 71-72, 79, 15 347, 439, 480-482, 484-485, 513-516, 538-539, 605-606, 629, 648, 658-659; see also Tr. 485 (noting that Tillison managed the Langley barber shops for one month); 539 (noting that Tillison had the authority to give verbal corrections or instructions to Langley barbers about their job duties and hygiene practices).)

20 On December 29, Tillison drove to Langley and started his audit<sup>22</sup> by observing the main barber shop from the lobby for approximately one hour. In particular, Tillison focused his attention on how the six barbers on duty were using the cash register and carrying out their other duties. Tillison noted that certain barbers (including Harris) were not using the vacuum system and that some hair was building up on the floor. Tillison also did not see Harris wash his hands or disinfect equipment when Harris finished clients and went to the cash register.<sup>23</sup> Tillison 25 telephoned Bays to advise her of his preliminary observations. (Tr. 337-338, 629-632, 648-651, 656-657; R. Exh. 15; see also Tr. 515-516.)

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<sup>21</sup> Tillison's regular job for Respondent was as a barber at Fort Bragg, North Carolina. At Fort Bragg, Tillison also served as the union steward for the Fort Bragg barbers, and served as the barber shop leader (with responsibilities such as screening and assessing job applicants for barber positions). Occasionally, however, Respondent asks Tillison to visit other barber shops to review financial and other issues. Tillison makes recommendations to Respondent based on his observations at other facilities, and Deardeuff, Michels and Bays make decisions about employee discipline based at least in part on Tillison's recommendations. (Tr. 481-482, 514-515, 531-533, 537-539, 627-628, 647.)

<sup>22</sup> Both Tillison and Harris testified about the events of December 29 related to Tillison's audit. In many ways, however, the two witnesses tended to talk past each other, such that depending on the topic, one witness provided most of the detail while the other witness glossed over the topic or did not address it at all. Thus, although Tillison and Harris have different perspectives about what happened on December 29, several parts of their respective testimony went un rebutted. I have credited any un rebutted testimony in my findings here.

<sup>23</sup> At some point during the day on December 29, Tillison asked Harris why he was not using the vacuum system in the main shop. Harris replied that he did not think that he had to because he did not use a vacuum at the ACC shop. Tillison stated that everyone needed to be hooked up to the central vacuum system in the main shop, and that in addition, barbers should sweep up any hair on the floor before starting another customer. (Tr. 638-639; see also Tr. 531 (indicating that Tillison informed Respondent of this conversation with Harris).)

Next, Tillison entered the barber shop and introduced himself to barber James Willis, and asked Willis to join him in the back room to talk about discrepancies with the cash register.<sup>24</sup> When Willis stated that D.A. was the manager, and that he (Willis) did not have anything to do with counting the money in the barber shop, Tillison asked Willis to turn in his cash register key, and also asked D.A. to come to the back room to join the meeting. Tillison asked D.A. if D.A. had any deposit slips, cash register journals or time sheets, and also asked D.A. if he was aware that the cash register journal was jammed. Tillison also counted the money in the cash register and told D.A. that some money was missing. D.A. became flustered while speaking with Tillison, and said that he did not know what Tillison was talking about and that he did not have any barber shop records to provide. (Tr. 72-74, 632-634, 651-652.)

While Tillison was meeting with D.A. and Willis, Harris entered the back room because he needed to obtain some sanitary neck strips. Seeing that D.A. looked shaken up, Harris paused to listen to the discussion, and then suggested that Tillison should calm down with his questioning of D.A. because D.A. was becoming overwhelmed. Harris added that he knew D.A. well and did not believe that D.A. would steal anything. Tillison responded that the discussion was not Harris' concern because Harris was not part of the barber shop management. After a few minutes, Harris left the back room and returned to the barber shop floor. (Tr. 74-75, 80, 345-347, 352-353, 382, 418-419, 439-440, 634-635, 652; see also Tr. 365 (noting that Harris decided to speak up on D.A.'s behalf because Harris was the "alpha" in the shop that other barbers came to with concerns).)<sup>25</sup>

Later in the morning, Tillison approached Harris and asked for the keys to the ACC shop and ACC cash register. In a joking manner, Harris asked "Yo, bro, you firing me already?" Tillison responded "no, man, I just got to check on some things." Harris gave Tillison the ACC shop keys and Tillison left the main barber shop. When Tillison returned to the main barber shop, he called Harris to the back room for a meeting. Tillison returned Harris' keys, and informed Harris that the ACC shop cash register was fine, and even contained an extra \$15.<sup>26</sup> Tillison then commented that most of the people in the barber shop looked stressed out as if something was wrong. Harris explained that Respondent was the issue because Respondent was taking a lot of the barbers' money, and some of the equipment was not working correctly. Tillison replied "yeah, you all not the only ones that's complaining." Harris and Tillison laughed, and then Harris returned to the barber shop floor. (Tr. 343-344, 368-370, 382, 417, 439.)

After finishing the haircut of one of his regular customers, Harris went to the cash register to ring up the appropriate charges, but made a mistake with the cash register such that

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<sup>24</sup> Tillison spoke with Willis first because Willis was using the barber's chair that was customarily assigned to the barber shop manager (the barber chair closest to the cash register), and because Tillison saw Willis open the cash register with a key. (Tr. 632-633, 653.)

<sup>25</sup> D.A. left the barber shop after finishing his meeting with Tillison, and his employment with Respondent concluded (either because D.A. quit, or because Respondent terminated him). (Tr. 75-76, 79, 254-255, 347-348, 483, 513-514, 644-645.) A few days later, Respondent terminated M.D., who had been serving as manager of the Bethel Manor barber shop. (Tr. 516-517, 657.)

<sup>26</sup> Harris explained that the extra \$15 was his personal money that he kept in the cash register to make change because he could not leave the ACC shop unattended. Tillison answered that any money in the register belonged to the company. Harris decided not to press the point and told Tillison to keep the \$15. (Tr. 343.)

the cash register showed a charge of \$29.50 instead of \$10.75. Harris asked Willis for help, and Willis suggested that Harris ask Tillison about the problem. Tillison told Harris how to redo the ticket, which Harris understood, but Harris did not understand what caused the register to show the incorrect \$29.50 charge. Tillison explained that Harris probably hit two register keys at the same time, resulting in a “double-ring” for one haircut. Harris denied making a mistake with the register, and asserted instead that the problem was with the new registers that Respondent provided. Tillison told Harris that he would correct the charges while Harris turned to his next customer. Harris complied, but voiced his opinion to the barbers and customers who were present that everything was better in the barber shops before Respondent took over, and that Respondent provided cheap cash registers that were not programmed properly. After contacting Deardeuff to tell her that Harris was complaining about the cash register and Respondent in front of customers, Tillison told Harris that he did not need to be talking in that manner on the barber shop floor, and asked Harris to calm down and continue to work.<sup>27</sup> (Tr. 85, 339–341, 530–531, 636–640, 653; R. Exh. 15; see also Tr. 84–85, 87, 341–342 (noting that before the cash register double ring, Harris told his customer that he was concerned about how Respondent was handling his pay and tips); 532 (noting that Tillison generally told Respondent that Harris was “a piece of work”).)

*Q. December 30 – Respondent Decides to Terminate Harris*

On December 30, 2015, Respondent decided to terminate Harris for “insubordination and improper actions.” (GC Exh. 14.) Deardeuff based that decision not only on Tillison’s report of the events of December 29, but also on her observations of Harris’ conduct on October 16 when she and other representatives of Respondent met with Harris at the ACC shop and Harris: “disparaged our company”; stated that “he didn’t like the new procedures [and he] didn’t like us”; and said that “poor Jessica Cuff” did nothing wrong. (Tr. 517–518; see also Tr. 458, 531–532 (explaining that Tillison makes recommendations to Respondent, and then Deardeuff, Michels and Bays discuss the issues and decide what kind of disciplinary action to take).) Respondent’s termination letter for Harris stated as follows:

Re: Insubordination and Improper Actions

30 December 2015

Dear Mr. Harris:

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<sup>27</sup> Harris denied “yelling and screaming” in front of anyone about the cash register, and also denied expressing “distaste or disagreement with [Respondent’s] operation of the contract.” (Tr. 353–354, 439.) I find that Harris’ denials on those points result from a dispute about semantics, insofar as Harris disputes any contention that he raised his voice, yelled or spoke inappropriately or negatively about Respondent during these events. That specific denial, however, is not inconsistent with my finding that Harris voiced his opinions about Respondent on December 29 – indeed, there is ample evidence in the record that Harris was not afraid to speak his mind with customers, barbers and with Respondent. (See, e.g., Tr. 324–325, 423, 426–427; see also Tr. 517 (Deardeuff testimony that Harris “was on his soapbox constantly”).) Harris’ extensive testimony at trial also reflected Harris’ capacity for expressing his point of views in a firm, but respectful tone. (See, e.g., Tr. 360–362, 364–365.)

Sheffield Barbers is the owner and the operator of AAFES contract LAN 15-216 for the performance of barber services at Langley AFB, VA for the next five years. You were hired as an employee to perform the specific services and duties as discussed during training meetings, in person meetings with the owners and through various documents posted throughout our buildings of operation.

On 29 December, 2015 Sheffield Barbers brought in an independent manager Clayborn Tillison to perform specific tasks involving contract performance and money discrepancy issues that did not have a direct concern with you as an employee.

During Mr. Tillison's discussion with Mr. Willis and Mr. Adams, you attempted to interrupt, and again after a cash register over-ring, you proceeded to become loud and vocal as to your distaste and disagreement with Sheffield's operation of our contract.

Sheffield has cautioned you about your blatant and negative attitude in the presence of customers and you still fail to honor your employee status. It has also come to our attention that you continue to fail to utilize the vacuum system implemented and mandated by Sheffield in the performance of cutting hair, this is a direct item of insubordination. You were observed during a PSAR inspection that you failed to disinfect your tools in between customers, and you also failed to wash your hands in between customers, and this is a direct violation of hygiene protocol and requirements.

Your continued insubordination has left Sheffield Barbers with no alternative but to terminate your position [effective] immediately. Please surrender [your] base identification, and building keys to Mr. Tillison, who will coordinate with you for the removal of your personal property from our barbershops.

Christina C. Deardeuff  
Managing Member

(GC Exh. 14.)

Respondent faxed a copy of Harris' termination letter to Tillison with instructions to deliver the letter to Harris. Tillison, however, did not have an opportunity to give the letter to Harris before leaving town for vacation on or about December 31. (Tr. 486, 642-643, 654-655.)

*R. January 1, 2016 – PSAR Report Concerning the Main Barber Shop*

On January 1, 2016, Cassady conducted a PSAR at the main barber shop at Langley. In that review, Cassady stated that "sanitation standards are being followed" and that he had a "satisfactory visit during this time period." Cassady did not note any concerns about the main barber shop or the practices of the barbers who worked at that location, apart from stating that "training is needed on fraud, waste and abuse." (R. Exh. 11 (pp. 5-6, 11, 15); see also Tr. 520-521, 525-527, 543-544.)<sup>28</sup>

<sup>28</sup> The January 1, 2016 PSAR in the record appears to be missing several pages (10 out of 20 pages of the report were provided for the record), and the pages that were provided do not appear to be in

*S. January 5, 2016 – Respondent Notifies Harris of his Termination*

5 In the morning on January 5, 2016, Harris was working in the main barber shop when  
 10 Tillison asked Harris to meet with him in the back room. When Tillison gave Harris his letter of  
 termination, Harris reviewed it, stated that he did not agree with it, and asked Tillison to call  
 Respondent’s main office. Tillison initiated the call, and after a brief debate with two women  
 who answered the call about the merits of Respondent’s decision to terminate Harris,<sup>29</sup> Harris  
 decided that he was not going to win the argument and left the barber shop after gathering his  
 belongings. (Tr. 291, 348–352, 381, 420–421, 445, 488, 642–645, 654-655.)

*T. Labor Proceedings in 2016*

15 On January 28, 2016, the Regional Director for Region 5 of the National Labor Relations  
 Board notified Respondent of his decision to dismiss the unfair labor practice charge that  
 Respondent filed in Case 05–CB–165823. The Regional Director did not find sufficient  
 evidence that the Barbers’ Association violated Section 8(b)(1)(A) of the Act by having a  
 supervisor of Gino Morena execute an employer-dominated collective-bargaining agreement or  
 by maintaining control of a non-existent bargaining unit. (R. Exh. 13.) In addition, the Regional  
 20 Director did not find sufficient evidence that the Barbers’ Association violated Section 8(b)(3) of  
 the Act by failing to collectively bargain with Respondent because, inter alia, “the evidence did  
 not show that the [Barbers’ Association] claimed to be the collective-bargaining representative of  
 [Respondent’s] employees or that it made a demand to bargain after [Respondent] became the  
 employer.” (R. Exh. 13 (noting that on December 15, 2015, the Barbers’ Association disclaimed  
 25 any representation interest in Respondent’s employees); see also Tr. 600–603.)

30 On an unspecified date in 2016, the Teamsters Union prevailed in an election to  
 determine whether it would serve as the collective-bargaining representative of Respondent’s  
 employees at Langley. (Tr. 33, 263, 267, 278–279, 288, 535.)

*U. Comparator Evidence*

35 Respondent does not have any written disciplinary procedures. Instead, depending on the  
 circumstances, Respondent may issue a verbal warning, a written warning, or terminate the  
 employee in question. (Tr. 491–492, 583.)

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sequential order. (See R. Exh. 11; Tr. 544.)

<sup>29</sup> Tillison denied calling Respondent’s main office. (Tr. 645.) I do not credit that testimony,  
 however, because Harris’ testimony that he insisted Tillison call the main office is consistent with other  
 testimony in the record that Harris was not hesitant to speak his mind, and it stands to reason that Harris  
 would have wanted to confront Respondent (specifically, Deardeuff, Michels and Bays) about the  
 allegations in the termination letter.

On the other hand, Harris was not able to identify who was speaking with him on the call. Although  
 it is certainly possible that Deardeuff, Bays and/or Michels were on the other end of the call, the record  
 does not establish that fact. (Tr. 350, 488.) Accordingly, I have not given weight to Harris’ testimony  
 about what the two women said during the call because it is not clear what role(s) the women held, if any,  
 for Respondent.

On January 29, 2016, Respondent issued a written warning to employee M.R. for “improper register procedures” that occurred after Respondent conducted additional training on cash registers and sales reporting. In the letter, Respondent stated that M.R. incorrectly entered a transaction for \$0.15 instead of \$15, and did not notify management about the error, resulting in \$14.85 not being reported to the cash register. (R. Exh. 17; see also Tr. 616–617.) Respondent could not locate, and thus did not produce, any documentation of disciplinary action that it took in the relevant time period concerning the Langley barbers and their hygiene practices or operation of the cash register. (Tr. 551–552, 582–583.)

## APPLICABLE LEGAL STANDARDS

### *A. Witness Credibility*

A credibility determination may rely on a variety of factors, including the context of the witness’ testimony, the witness’ demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole. *Farm Fresh Co., Target One, LLC*, 361 NLRB No. 83, slip op. at 13–14 (2014); see also *Roosevelt Memorial Medical Center*, 348 NLRB 1016, 1022 (2006) (noting that an administrative law judge may draw an adverse inference from a party’s failure to call a witness who may reasonably be assumed to be favorably disposed to a party, and who could reasonably be expected to corroborate its version of events, particularly when the witness is the party’s agent). Credibility findings need not be all-or-nothing propositions — indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness’ testimony. *Farm Fresh Co., Target One, LLC*, 361 NLRB No. 83, slip op. at 14. My credibility findings are set forth above in the findings of fact for this decision.<sup>30</sup>

### *B. Protected Concerted Activity for the Purpose of Mutual Aid or Protection*

To be protected under Section 7 of the Act, employee conduct must be both “concerted” and engaged in for the purpose of “mutual aid or protection.” Although these elements are closely related, Board precedent makes clear that they are analytically distinct, and also makes clear that the elements must be analyzed under an objective standard (such that an employee’s subjective motive for taking action is irrelevant). *Fresh & Easy Neighborhood Market*, 361 NLRB No. 12, slip op. at 3 (2014).

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<sup>30</sup> Respondent asserts that I should question Cuff’s and Harris’ credibility because they violated the sequestration order that I issued (see Tr. 6–8) and discussed their testimony during trial. Respondent’s only evidence in support of its argument, however, is that both Cuff and Harris compared Respondent’s decisions to discharge them to killing a snake by cutting the head off. (R. Posttrial Br. at 36 fn. 2 (citing Tr. 165, 343–344.)) Respondent, however, did not question either Cuff or Harris during trial about any discussions they may have had after I issued the sequestration order, and thus Respondent’s argument that Cuff and Harris violated the sequestration order fails because it is based on sheer speculation. Cuff and Harris could have discussed the “killing a snake” metaphor at any time after Cuff was discharged, or their use of that metaphor during trial could have been coincidental. Regardless, I do not have a basis to find that Cuff and Harris violated the sequestration order, and thus I do not question their credibility on that basis.

As the Board has explained, concerted activity includes not only activity that is engaged in with or on the authority of other employees, but also activity where individual employees seek to initiate or to induce or to prepare for group action, as well as individual employees bringing truly group complaints to the attention of management. *Fresh & Easy Neighborhood Market*, 361 NLRB No. 12, slip op. at 3; see also *Meyers Industries*, 268 NLRB 493, 497 (1984), remanded sub nom. *Prill v. NLRB*, 755 F.2d 941 (D.C. Cir. 1985), cert. denied 474 U.S. 971 (1985), supplemented *Meyers Industries*, 281 NLRB 882, 887 (1986), affd. sub nom. *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988). Notably, the requirement that, to be concerted, activity must be engaged in with the object of initiating or inducing group action does not disqualify merely preliminary discussion from protection under Section 7. In that regard, the Board has observed that inasmuch as almost any concerted activity for mutual aid or protection has to start with some kind of communication between individuals, it would come very near to nullifying the rights of organization and collective bargaining guaranteed by Section 7 of the Act if such communications are denied protection because of lack of fruition. In addition, the Board has recognized that the activity of a single employee in enlisting the support of his or her fellow employees for their mutual aid and protection is as much ‘concerted activity’ as is ordinary group activity. *Fresh & Easy Neighborhood Market*, 361 NLRB No. 12, slip op. at 3; see also *Whittaker Corp.*, 289 NLRB 933, 933 (1988) (explaining that the object or goal of initiating, inducing or preparing for group action does not have to be stated explicitly when employees communicate).

The concept of “mutual aid or protection” focuses on the goal of concerted activity; chiefly, whether the employee or employees involved are seeking to improve terms and conditions of employment or otherwise improve their lot as employees. In short, proof that an employee action inures to the benefit of all is proof that the action comes within the ‘mutual aid or protection’ clause of Section 7. The Board has explained that this holds true even if the employee who asks for support from coworkers in addressing an issue with management would receive the most immediate benefit from a favorable resolution of the issue. Specifically, under principles of solidarity, an employee who solicits assistance from coworkers to raise his or her issues to management is requesting that his coworkers exercise vigilance against the employer’s perceived unjust practices. The solicited employees, meanwhile, have an interest in helping the aggrieved employee — even if the aggrieved employee alone has an immediate stake in the outcome — because the next time it could be one of them that is the victim. *Fresh & Easy Neighborhood Market*, 361 NLRB No. 12, slip op. at 3, 5-6.

### C. Section 8(a)(1) Allegations

To prove that an adverse employment action violates Section 8(a)(1) of the Act, the General Counsel must demonstrate that: the employee engaged in activity that is “concerted” within the meaning of Section 7 of the Act; Respondent knew of the concerted nature of the employee’s activity; the concerted activity was protected by the Act; and Respondent’s adverse action against the employee was motivated by the employee’s protected, concerted activity. *Global Recruiters of Winfield*, 363 NLRB No. 68, slip op. at 16 (2015); *Lou’s Transport, Inc.*, 361 NLRB No. 158, slip op. at 2 (2014), enfd. \_\_\_ Fed. Appx. \_\_\_, 2016 WL 1359175 (6<sup>th</sup> Cir. 2016); *Correctional Medical Services*, 356 NLRB 277, 278 (2010); see also *Medic One, Inc.*, 331 NLRB 464, 475 (2000) (noting that “[e]vidence of suspicious timing, false reasons given in defense, failure to adequately investigate alleged misconduct, departures from past practices,

tolerance of behavior for which the employee was allegedly fired, and disparate treatment of the discharged employees all support inferences of animus and discriminatory motivation”). If the General Counsel makes such an initial showing of discrimination, then Respondent may present evidence, as an affirmative defense, demonstrating that it would have taken the same action even in the absence of the employee’s protected activity. See *Global Recruiters of Winfield*, 363 NLRB No. 68, slip op. at 16; *Timekeeping Systems, Inc.*, 323 NLRB 244, 244 (1997).

#### D. Section 8(a)(3) Allegations

The legal standard for evaluating whether an adverse employment action violates Section 8(a)(3) of the Act is generally set forth in *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1<sup>st</sup> Cir. 1981), cert. denied 455 U.S. 989 (1982). To sustain a finding of discrimination, the General Counsel must make an initial showing that a substantial or motivating factor in the employer’s decision was the employee’s union or other protected activity. *Pro-Spec Painting, Inc.*, 339 NLRB 946, 949 (2003). The elements commonly required to support such a showing are union or protected concerted activity by the employee, employer knowledge of that activity, and animus on the part of the employer. *Consolidated Bus Transit, Inc.*, 350 NLRB 1064, 1065 (2007), enfd. 577 F.3d 467 (2d Cir. 2009); see also *Medic One, Inc.*, 331 NLRB at 475 (noting that “[e]vidence of suspicious timing, false reasons given in defense, failure to adequately investigate alleged misconduct, departures from past practices, tolerance of behavior for which the employee was allegedly fired, and disparate treatment of the discharged employees all support inferences of animus and discriminatory motivation”).

If the General Counsel makes the required initial showing, then the burden shifts to the employer to prove, as an affirmative defense, that it would have taken the same action even in the absence of the employee’s union or protected activity. *Bally’s Atlantic City*, 355 NLRB 1319, 1321 (2010) (explaining that where the General Counsel makes a strong initial showing of discriminatory motivation, the respondent’s rebuttal burden is substantial), enfd. 646 F.3d 929 (D.C. Cir. 2011); *Consolidated Bus Transit, Inc.*, 350 NLRB at 1066; *Pro-Spec Painting*, 339 NLRB at 949. The General Counsel may offer proof that the employer’s reasons for the personnel decision were false or pretextual. *Pro-Spec Painting*, 339 NLRB at 949 (noting that where an employer’s reasons are false, it can be inferred that the real motive is one that the employer desires to conceal — an unlawful motive — at least where the surrounding facts tend to reinforce that inference.) (citation omitted); *Frank Black Mechanical Services*, 271 NLRB 1302, 1302 fn. 2 (1984) (noting that “a finding of pretext necessarily means that the reasons advanced by the employer either did not exist or were not in fact relied upon, thereby leaving intact the inference of wrongful motive established by the General Counsel”). However, a respondent’s defense does not fail simply because not all the evidence supports its defense or because some evidence tends to refute it. Ultimately, the General Counsel retains the burden of proving discrimination. *Farm Fresh Co., Target One, LLC*, 361 NLRB No. 83, slip op. at 14.

The *Wright Line* standard does not apply where there is no dispute that the employer took action against the employee because the employee engaged in activity that is protected under the Act. In such a case, the only issue is whether the employee’s conduct lost the protection of the Act because the conduct crossed over the line separating protected and unprotected activity. Specifically, when an employee is disciplined or discharged for conduct that is part of the res gestae of protected concerted activities, the pertinent question is whether the conduct is

sufficiently egregious to remove it from the protection of the Act. In making this determination, the Board examines the following factors: (1) the place of the discussion; (2) the subject matter of the discussion; (3) the nature of the employee's outburst; and (4) whether the outburst was, in any way, provoked by an employer's unfair labor practice. *Farm Fresh Co., Target One, LLC*, 361 NLRB No. 83, slip op. at 14 (citing *Atlantic Steel Co.*, 245 NLRB 814, 816 (1979)).

## DISCUSSION AND ANALYSIS

### A. *Did Respondent Violate the Act when it Rescinded its Job Offer to Jessica Cuff?*<sup>31</sup>

#### 1. Complaint allegation

The General Counsel alleges that Respondent violated Section 8(a)(3) and (1) of the National Labor Relations Act (the Act) by discharging, or refusing to hire, Jessica Cuff on or about October 13, 2015, because Cuff formed, joined and/or assisted a labor organization and engaged in protected concerted activities. (GC Exh. 1(g) (par. 5).)

#### 2. Analysis – application of the *Wright Line* framework

As set forth in more detail above, in September and October 2015, Respondent began making plans to operate the Langley barber shops under a contract that it won earlier in the year. As part of Respondent's preparations, Respondent communicated frequently with Cuff, who was working at Langley as a barber (and occasionally as a manager when the regular manager, D.A., was not available). In particular, Respondent asked Cuff a number of questions about the Barbers' Association since Cuff was the president of the association and signed the most recent collective-bargaining agreement between the Barbers' Association and Gino Morena, the outgoing contractor. Notwithstanding Cuff's responses to Respondent's questions, Respondent decided to rescind the October 9 job offer that it made to Cuff because Respondent believed that Cuff had signed a fraudulent collective-bargaining agreement with Gino Morena, and had tried to deceive Respondent by asserting that she represented the Barbers' Association, which did not actually exist. (FOF, Sections II(C)–(G).)

Based on the findings of fact that I have set forth above, I find that the General Counsel made an initial showing that Cuff's union or other protected activities were a substantial or motivating factor in Respondent's October 13 decision to rescind its job offer to Cuff. Cuff engaged in union and protected concerted activity by serving as the Barbers' Association president, and also by contacting the Teamsters Union to see if that entity might be able to serve

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<sup>31</sup> In analyzing this question, I note that I view Respondent's decision to rescind its job offer to Cuff as akin to a decision to discharge Cuff. Respondent hired all of the Langley barbers (including Cuff) on October 9. Cuff, therefore, was not merely a job applicant when Respondent rescinded her job offer on October 13 – instead, she had the barber job in hand, until Respondent withdrew it before Cuff had the chance to start working for Respondent. In any event, the question of whether Respondent refused to hire Cuff or discharged Cuff is ultimately a semantic question that does not affect the merits of the case, because the Board has explained that the *Wright Line* framework applies not only in discharge cases, but also in refusal to hire cases where the employer is a successor employer (such as here, where Respondent arguably was the successor employer to Gino Morena). *Planned Building Services*, 347 NLRB 670, 673–674 (2006), overruled on other grounds, *Pressroom Cleaners, Inc.*, 361 NLRB No. 57 (2014).

as the barbers' collective-bargaining representative. Respondent certainly was aware of Cuff's union activities because Respondent: knew that Cuff signed the Barbers' Association's most recent collective-bargaining agreement with Gino Morena; questioned Cuff about the Barbers' Association and the collective-bargaining agreement; and learned from D.A. and other barbers on or about October 9 that Cuff was in contact with the Teamsters Union about the possibility of the Teamsters Union serving as the barbers' collective-bargaining representative. And, the General Counsel demonstrated animus on Respondent's part by, among other things: Respondent's decision to cut Cuff off from speaking about the Barbers' Association at the October 9 job fair; the suspicious timing of Respondent's October 13 decision to rescind its job offer to Cuff, which came only days after Respondent's communications with Cuff on October 9 about the Barbers' Association and Respondent learning that Cuff had contacted the Teamsters Union; and Respondent's explicit assertions that it believed the Barbers' Association and the collective-bargaining agreement that Cuff signed as Barbers' Association president were fraudulent. (FOF, Sections II(C)-(G).)

As an affirmative defense, Respondent asserted that it also rescinded Cuff's job offer because it believed that Cuff lied about her plans to attend her uncle's funeral, and instead began working as a barber at Fort Eustis. That affirmative defense falls short. First, it is not at all clear that Respondent had any such concerns in its mind on October 13 when it decided to rescind its job offer to Cuff – although the record contains some evidence that Respondent learned that Cuff did not attend her uncle's funeral and began working at Fort Eustis, the record does not establish a reliable date on which Respondent learned that information. Second, and more important, even if were true that Respondent rescinded its job offer to Cuff because it believed Cuff lied about going to her uncle's funeral and instead worked at Fort Eustis, the fact remains (as Respondent admitted) that Respondent was also motivated to rescind Cuff's job offer because it believed that the Barbers' Association and the collective-bargaining agreement that Cuff signed as Barbers' Association president were fraudulent. (FOF, Section II(G).) Thus, at most, Respondent's affirmative defense establishes that it had two reasons for rescinding Cuff's job offer, one of which (Respondent's belief that Cuff's union activities on behalf of the Barber's Association were fraudulent) was clearly unlawful.

### 3. Analysis of additional defenses

In addition to its affirmative defense under *Wright Line*, Respondent offered several other defenses that I have reviewed and find lack merit. For example, in connection with its doubts about the Barbers' Association, Respondent argues that the Barbers' Association is not a labor organization under Section 2(5) of the Act. Therefore, Respondent maintains, the General Counsel cannot show that Respondent violated Section 8(a)(3) of the Act by rescinding Cuff's job offer because she formed, joined or assisted the Barbers' Association. (See R. Posttrial Br. at 73-77.)

I am not persuaded by Respondent's argument that the Barbers' Association is not a labor organization under the Act. Under Section 2(5) of the Act, the term "labor organization" means "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." See *Porto Mills, Inc.*, 149 NLRB 1454, 1471 (1964) (noting that the

term “labor organization” may encompass a wide variety of entities such as associations, clubs, committees, boards and councils). The Barbers’ Association qualifies as labor organization under that definition, as barbers participated in the Barbers’ Association for the purpose of dealing with Respondent (and Gino Morena) concerning the terms and conditions of employment for the Langley barbers. Indeed, Barbers’ Association representatives (including McDonald, then Harris, and then Cuff) negotiated multiple collective-bargaining agreements with Gino Morena, and helped mediate disputes between barbers and management. In addition, after Respondent won the contract to operate the Langley barber shops, the Barbers’ Association was available (through Cuff) to deal with Respondent about the terms and conditions of employment of the Langley barbers going forward. It matters not that, as Respondent points out, some barbers were not familiar with or did not support the activities of the Barbers’ Association — the fact remains that Barbers’ Association existed for the purpose of dealing with the Langley barbers’ employer about barber concerns and working conditions, and thus qualified as a labor organization under the Act. (FOF, Section II(A)(2)–(3), (C)–(E); see also *Electromation, Inc.*, 309 NLRB 990, 990–991, 997 (1992) (finding that action committees composed of 8 out of the employer’s 200 employees were labor organizations that were created for and served the purpose of dealing with the employer about conditions of employment).)<sup>32</sup>

Similarly, I did not find merit to Respondent’s argument that Cuff was not a genuine employee or job applicant. (R. Posttrial Br. at 79–80.) The evidence does not support that contention, because Cuff demonstrated her interest in working for Respondent by submitting a job application, attending Respondent’s October 9 job fair, and communicating regularly with Respondent as Respondent prepared to begin operating the Langley barber shops. Although Respondent maintains that Cuff’s job application omitted certain information (e.g., her social security number), Respondent never notified Cuff that those omissions were a point of concern, and rescinded Cuff’s job offer before Cuff had an opportunity to address any alleged deficiencies in her employment paperwork. (FOF, Section II(C), (E), (G).)

In sum, based on the foregoing analysis and my review of the entire record, I find that Respondent violated Section 8(a)(3) and (1) of the Act when it rescinded its job offer to Cuff on October 13, 2015, because of her union and protected concerted activities.

*B. Did Respondent Violate the Act when it Discharged Reginald Harris?*

1. Complaint allegation

The General Counsel alleges that Respondent violated Section 8(a)(1) of the Act by, on or about January 6, 2016, discharging employee Reginald Harris because he concertedly complained to Respondent on or about December 29, 2015, about the wages, hours and working conditions of Respondent’s employees. (GC Exh. 1(g) (pars. 6–7).)

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<sup>32</sup> I note that even if there were merit to Respondent’s argument about whether the Barbers’ Association qualifies as a labor organization, the General Counsel nonetheless established that Respondent violated Section 8(a)(3) and (1) by rescinding Cuff’s job offer because of Cuff’s activities with the Teamsters Union and because of Cuff’s protected concerted activities on behalf of the Langley barbers.

## 2. Analysis

5           Shortly after it rescinded Cuff’s job offer, Respondent paid a visit to Harris on or about October 16, 2015, while Harris was working in the ACC barber shop. Respondent commented that Harris might make a good manager because he seemed to be the “alpha” among the Langley barbers. Harris indicated that, because of his health, he was not interested in taking on the additional responsibilities that came with a manager position. In addition, Harris expressed frustration with Respondent’s new procedures, questioned why Respondent did not hire Cuff, and took issue with Respondent’s assertion that it did not hire Cuff because it believed Cuff lied. 10 Despite that initial exchange, Harris generally continued to work for Respondent without incident, though Respondent did receive some reports that Harris and other barbers were not using the vacuum system, and that Harris made unspecified remarks that Cassidy described as “verbal bashing.” (FOF, Section II(I), (L).)

15           Regardless of whatever concerns it had about Harris, on December 28, 2015, Respondent turned to Harris when it needed to find someone to step in as the main barber shop manager when D.A. left that position. Harris declined, citing health concerns. Respondent therefore sent in Tillison on December 29, 2015, to audit all barber shop finances and manage the shops temporarily. Tillison did not find any problems with how Harris handled finances at the ACC 20 barber shop (where only Harris worked on the two days a week that the ACC shop was open), but Tillison (on December 29): observed that Harris was not using the vacuum system in the main shop; and did not see Harris wash his hands or disinfect his equipment between customers. In addition, Harris and Tillison had conflicts when: Harris tried to speak up on D.A.’s behalf when Tillison was questioning D.A. about finances in the main barber shop; and Harris entered a 25 “double ring” charge on the cash register that had to be corrected, and then voiced his frustration (with barbers and customers present) that things were better in the barber shops before Respondent took over and brought in cash registers that were not programmed properly. Finally, in response to Tillison’s question about why the Langley barbers seemed stressed, Harris told Tillison that the barbers felt that way because Respondent was keeping a lot of the barbers’ 30 money, and because some of the new equipment that Respondent provided was not working correctly. (FOF, Section II(O)–(P).)

35           Ultimately, Respondent decided to terminate Harris’ employment, and notified him of that decision on January 5, 2016. Although the termination letter that Respondent prepared relied in large part on Tillison’s report to Respondent about the events of December 29, 2015, Respondent explained that its decision to terminate Harris was also based on Harris’ alleged insubordinate conduct when Respondent met with him on October 16, 2015. (FOF, Section II(Q), (S).)

40           As an initial matter, Respondent denies that Tillison was one of its supervisors or agents, as those terms are defined in Board precedent. (See R. Posttrial Br. at 102–104.) On the question of whether Tillison was Respondent’s agent, “[t]he Board applies the common law principles of agency in determining whether an employee is acting with apparent authority on behalf of the employer when that employee makes a particular statement or takes a particular 45 action.” *Pan Oston Co.*, 336 NLRB 305, 305 (2001) (collecting cases and other supporting authority). “Apparent authority results from a manifestation by the principal to a third party that creates a reasonable belief that the principal has authorized the alleged agent to perform the acts

in question.” Id. at 305–306. “Either the principal must intend to cause the third person to believe the agent is authorized to act for him, or the principal should realize that its conduct is likely to create such a belief.” Id. at 306. “The Board’s test for determining whether an employee is an agent of the employer is whether, under all of the circumstances, employees would reasonably believe that the employee in question was reflecting company policy and speaking and acting for management,” taking into account “the position and duties of the employee in addition to the context in which the behavior occurred.” Id. “The Board may find agency where the type of conduct that is alleged to be unlawful is related to the duties of the employee. . . . In contrast, the Board may decline to find agency where an employee acts outside the scope of his or her usual duties.” Id. “Although not dispositive, the Board will consider whether the statements or actions of an alleged employee agent were consistent with statements or actions of the employer. The Board has found that such consistencies support a finding of apparent authority.” Id. And finally, the Board has emphasized that “an employee may be an agent of the employer for one purpose but not another.” Id.

Applying that standard, I find that Tillison was one of Respondent’s agents while Tillison worked at the Langley barber shops.<sup>33</sup> Respondent sent Tillison to the Langley barber shops to serve, as Respondent put it, as an “independent manager.” In connection with that assignment, Respondent gave Tillison the responsibility of auditing all barber shop finances, as well as the responsibility of managing the barber shops for a month until Respondent could find someone to replace him. Thus, Tillison could question and instruct barbers about their job duties (including duties related to using the cash register and following Respondent’s hygiene procedures). Further, after arriving at Langley, Tillison served as Respondent’s eyes and ears concerning how the barber shops were running, and also served as the conduit for Respondent’s communications with the barbers, including Respondent’s decision to terminate Harris. (FOF, Section II(P).) In light of the extent of Tillison’s responsibilities, the Langley barbers would reasonably believe that Tillison had the authority to speak and act as Respondent’s agent during his month-long assignment at Langley. See *SAIA Motor Freight, Inc.*, 334 NLRB 979, 979 (2001) (finding that a foreman was an agent vested with apparent authority, and noting that the foreman, inter alia, assigned and directed the employees’ work, and conducted employee meetings at which he discussed work-related matters); *Cooper Industries*, 328 NLRB 145, 146 (1999) (finding that three hourly paid “facilitators” were agents who had actual and apparent authority to act on the employer’s behalf because the employer vested the facilitators with authority to implement the employer’s policies on the production floor, and because the employer held out the facilitators as the “primary conduits for communications between management and team employees on a wide variety of employment and production matters”), enfd. 8 Fed. Appx. 610 (9<sup>th</sup> Cir. 2001.)

Turning to the question of whether Respondent unlawfully discriminated against Harris, I find that the General Counsel made an initial showing that Respondent violated Section 8(a)(1)

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<sup>33</sup> Since I find that Tillison was Respondent’s agent during the time period that Respondent sent him to Langley to investigate barber shop finances and temporarily manage the barber shops, I need not address the parties’ arguments about whether Tillison was a supervisor under Section 2(11) of the Act.

I also note that Respondent’s arguments about whether Tillison was Respondent’s supervisor or agent have a limited impact on the merits, because even if Tillison were not Respondent’s agent, the fact remains that: Respondent relied on Tillison for information about Harris’ conduct; and Respondent (not Tillison) decided to terminate Harris based, at least in part, on Harris’ protected concerted activities. (See Discussion and Analysis, Section B(2), *infra*.)

of the Act when it discharged Harris. First, Harris engaged in concerted activity that was protected by the Act. On October 16, Harris objected to Respondent's decision to rescind Cuff's job offer, asserting that Respondent came to the Langley barber shops with its guns cocked and started firing without first consulting with the barbers. Harris also objected to the new  
5 procedures that Respondent implemented. Similarly, on December 29, Harris objected to how Tillison was questioning D.A. (who at that point was no longer a manager) and tried to vouch for D.A. by saying he (Harris) did not think that D.A. would steal anything. Harris also told Tillison that the barbers were stressed because they were receiving lower pay and because some of Respondent's equipment was not working correctly. And, after the problem with the cash  
10 register double ring, Harris (with other barbers present, as well as customers) objected to Respondent's overall management of the barber shops and the quality of the cash registers that Respondent provided. All of that conduct was protected concerted activity because Harris was bringing group complaints to Respondent's attention and, in the case of the remarks on  
15 December 29 when other barbers and customers were present, was also seeking to induce other barbers to join him in taking group action. Further, Harris' conduct was for the purpose of mutual aid and protection, because it was all directed at improving the Langley barbers' working conditions under Respondent's management. See *Guardian Industries Corp.*, 319 NLRB 543, 548-549 (1995) (explaining that an employee engages in protected concerted activity when he or she attempts to educate other employees about working conditions, and also when he or she  
20 criticizes management's decision to discipline another employee).

Second, Respondent was aware of the concerted nature of Harris' activity. As a preliminary matter, Respondent itself recognized early on that Harris was the "alpha" that other Langley barbers looked to. Beyond that, Respondent knew of the concerted nature of Harris' activity because: Deardeuff, Bays and Michels were all present when Harris voiced his concerns  
25 on October 16; Tillison reported a number of Harris' December 29 comments to Respondent; and Tillison's knowledge of any other protected concerted activity that Harris engaged in on December 29 (e.g., Harris' explanation to Tillison about why the barbers seemed stressed) is imputed to Respondent since Tillison was Respondent's agent at the Langley barber shops  
30 during his month-long assignment there as an independent manager. See *Hausner Hard-Chrome of KY, Inc.*, 326 NLRB 426, 428 (1998) (explaining that when agency status is established, the statements and conduct of an employer's agent are attributable to the employer).

Third, Respondent's decision to discharge Harris was motivated by Harris' protected, concerted activity. Harris' discharge letter explicitly faults Harris for "attempt[ing] to interrupt" when Tillison questioned D.A. about barber shop finances on December 29, and also faults Harris for being "loud and vocal as to your distaste and disagreement with [Respondent's] operation of [its] contract" at Langley after the cash register double ring incident on the same day.<sup>34</sup> (FOF, Section II(Q).) In addition, during trial, Deardeuff indicated that Harris' October

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<sup>34</sup> Respondent did not argue that Harris engaged in conduct on December 29 that was so egregious as to lose protection under the Act, and thus waived any defenses on that basis. Such an argument would not be viable in any event because the evidentiary record does not support a finding that Harris engaged in conduct on December 29 that crossed the line between protected and unprotected conduct. (See FOF, Section II(P) (describing Harris' conduct on December 29); FOF, Section II(Q) (Harris' termination letter, in which Respondent only maintained that Harris was "loud and vocal" on December 29 about his disagreement with how Respondent was operating its contract); see also *Thalassa Restaurant*, 356 NLRB 1000, 1000 fn. 3 (2011) (agreeing that an off duty restaurant employee engaged in protected activity when

16 remarks about Respondent's procedures and decision to rescind Cuff's job offer factored into Respondent's decision to discharge Harris. Consistent with Deardeuff's testimony, in Harris' discharge letter, Respondent characterized Harris' conduct on December 29 as "continued insubordination" that left Respondent "with no alternative but to terminate [Harris'] position effective[] immediately."<sup>35</sup> (FOF, Section II(Q).)

I am not persuaded by Respondent's argument, as an affirmative defense, that it would have discharged Harris even in the absence of Harris' protected concerted activities. Respondent predicates its defense on the proposition that, as asserted in the December 30 discharge letter, Harris' discharge was warranted for the following infractions that were unrelated to any protected concerted activities: not using the vacuum system that Respondent installed in the main barber shop; not washing hands between customers; and not disinfecting his tools between customers. Respondent's argument fails because there is no evidence that it ever discharged (or issued written discipline to) one of the Langley barbers for these types of hygiene-related infractions. Indeed, although Cassidy noted in a December 21 PSAR inspection report that the barbers at the Bethel Manor shop were not consistent with disinfecting their tools or washing their hands between customers,<sup>36</sup> Respondent did not issue any written disciplinary to (much less decide to discharge) the barbers or the manager who worked at that location. (See FOF, Section II(N).) Respondent therefore failed to prove its affirmative defense, and the General Counsel's initial showing that Respondent discriminated against Harris stands.

Based on the foregoing analysis, I find that Respondent violated Section 8(a)(1) of the Act when, on January 5, 2016, it discharged Harris because he engaged in protected concerted activities on or about October 16 and/or December 29, 2015.

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he and a group of nonemployees entered the restaurant during evening dining hours to deliver a letter protesting the employer's alleged labor law violations; the Board noted that there was no evidence that the group: disturbed the handful of customers present, blocked the egress or ingress of anyone, was violent or caused damage, or prevented any other employees from performing their work); *Saddle West Restaurant*, 269 NLRB 1027, 1041-1043 (1984) (finding that an employee engaged in protected concerted activity when she spoke with other employees about supporting a boycott of the employer's newly leased restaurant facility, even if the employee may have spoken in a strident, boisterous or vehement manner and customers may have been able to overhear the employee's remarks).)

<sup>35</sup> Put another way, Respondent was not happy about Harris' remarks on October 16, but did not take action against him at that time. However, when Harris turned down Respondent's December 28 request to step in as manager, and then engaged in the conduct that Tillison reported on December 29, those were the proverbial straws that broke the camel's back, and Respondent decided to discharge Harris based on his conduct on both October 16 and December 29.

With that stated, I note that Respondent's decision to discharge Harris was motivated by Harris' protected concerted activity even if I were to disregard the events of October 16. As indicated above, in Harris' discharge letter, Respondent explicitly faulted Harris for engaging in protected concerted activity on December 29.

<sup>36</sup> I note that in Harris' discharge letter, Respondent incorrectly asserted that Harris committed these infractions during the PSAR inspection. Harris, of course, did not work at the Bethel Manor shop, where the infractions noted in the PSAR occurred. (See FOF, Section II(I)(2), (N), (Q); compare FOF, Section II(R) (January 1, 2016 PSAR inspection report about the main barber shop, where Cassidy found that all sanitation standards were being followed).)

## CONCLUSIONS OF LAW

1. By rescinding its job offer to Jessica Cuff on October 13, 2015, because she engaged in union and protected concerted activities, Respondent violated Section 8(a)(3) and (1) of the Act.

2. By discharging Reginald Harris on January 5, 2016, because he engaged in protected concerted activities on or about October 16 and/or December 29, 2015, Respondent violated Section 8(a)(1) of the Act.

3. By committing the unfair labor practices stated in Conclusions of Law 1-2 above, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

## REMEDY

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

Respondent, having discriminatorily rescinded its job offer to Jessica Cuff, and having discriminatorily discharged Reginald Harris, must offer them reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges they would have enjoyed absent the discrimination against them. Respondent must also make Cuff and Harris whole for any loss of earnings and other benefits.<sup>37</sup>

Backpay for both Cuff and Harris shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173

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<sup>37</sup> As part of its request for make whole relief, the General Counsel asked that I order Respondent to reimburse Cuff and Harris for all search-for-work and work-related expenses, regardless of whether they received interim earnings that exceed those expenses during any particular calendar quarter or during the overall backpay period. Thus, under the General Counsel's proposal, a discriminatee who had no interim earnings for the first quarter of 2016 (for example) but spent \$100 searching for work would be entitled to reimbursement for their \$100 search-for-work expenses.

I cannot accept the General Counsel's requested remedy on this issue because it is contrary to established Board law. As things currently stand, a discriminatee is entitled to expenses incurred while seeking or maintaining interim employment, but those expenses are deducted from the discriminatee's interim earnings in the appropriate calendar quarters. See, e.g., *Webco Industries*, 340 NLRB 10, 10 fn. 4, 16 (2003); *Flannery Motors, Inc.*, 330 NLRB 994, 995 (2000). Thus, if a discriminatee has no interim earnings in a particular quarter, the discriminatee is precluded from recovering any search-for-work or work-related expenses for that quarter. I am bound to follow established Board precedent.

For similar reasons, I also cannot grant the General Counsel's request that I order Respondent to pay consequential damages to reimburse Cuff and Harris for costs they incurred as a result of Respondent's unfair labor practices. As the Board has recognized, a change in Board law would be required for me to award consequential damages. See, e.g., *Guy Brewer 43 Inc.*, 363 NLRB No. 173, slip op. at 2 fn. 2 (2016). Since I must follow existing Board law (which does not authorize me to award consequential damages), the General Counsel must direct its request for consequential damages to the Board.

(1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). Respondent shall also be required to expunge from its files any references to its unlawful decisions to rescind its job offer to Cuff and to discharge Harris, and within 3 days of thereafter shall notify Cuff and Harris that this has been done and that those unlawful decisions will not be used against them in any way.

Respondent shall compensate Cuff and Harris for the adverse tax consequences, if any, of receiving a lump-sum backpay award. Within 21 days of the date that the amount of backpay is fixed, either by agreement or Board order, Respondent shall file with the Regional Director for Region 5 a report allocating the backpay award to the appropriate calendar year(s). *Advoserv of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>38</sup>

#### ORDER

Respondent, Sheffield Barbers, LLC, Richland, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Rescinding job offers to barbers because they engage in union and protected concerted activities

(b) Discharging employees because they engage in protected concerted activities.

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

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

(a) Within 14 days from the date of the Board's Order, offer reinstatement to Jessica Cuff and Reginald Harris to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges they would have enjoyed absent the discrimination against them.

(b) Make Jessica Cuff and Reginald Harris whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any references to the unlawful decisions to rescind its job offer to Jessica Cuff and to discharge Reginald Harris

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<sup>38</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

and, within 3 days thereafter, notify them in writing that this has been done and that those unlawful decisions will not be used against them in any way.

5 (d) Compensate Jessica Cuff and Reginald Harris for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 5, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

10 (e) Within 14 days after service by the Region, post at its facility in Richland, Missouri and at its facilities at Langley Air Force Base in Hampton, Virginia, copies of the attached notice marked "Appendix."<sup>39</sup> Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places including all places  
15 where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the  
20 pendency of these proceedings, Respondent has gone out of business or closed the facilities involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since October 13, 2015.

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

Dated, Washington, D.C. August 9, 2016

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Geoffrey Carter  
Administrative Law Judge

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<sup>39</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES

**Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose 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 rescind job offers to barbers because they engaged in union and protected concerted activities.

WE WILL NOT discharge employees because they engaged in protected concerted activities.

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

WE WILL offer reinstatement to Jessica Cuff and Reginald Harris to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges they would have enjoyed absent the discrimination against them.

WE WILL make Jessica Cuff and Reginald Harris whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

WE WILL compensate Jessica Cuff and Reginald Harris for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 5, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year(s).

**SHEFFIELD BARBERS, 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.nlr.gov](http://www.nlr.gov).

Bank of America Center, Tower II, 100 S. Charles Street, Suite 600, Baltimore, MD 21201-4061  
(410) 962-2822, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/05-CA-162795](http://www.nlr.gov/case/05-CA-162795) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., 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, (410) 962-2864.