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

IMPACT WELLNESS CENTER, INC.

and **Case 28-CA-221411**

MELISSA TREJO, an Individual,

Case 28-CA-223540

and

LAWRENCE THOMAS, an Individual.

***Sara S. Demirok*, Esq.,**
for the General Counsel.
***Karen Rose*, Esq.,**
for the Respondent.

DECISION

STATEMENT OF THE CASE

LISA D. ROSS, Administrative Law Judge. This case was tried before me on February 5 and 6, 2019, in Las Vegas, Nevada. The consolidated complaint, as amended at the hearing, alleges that Respondent violated Section 8(a)(1) of the Act by coercively interrogating employees and threatening them with discharge for engaging in protected concerted activities. Tr. 11-15, GC Exh. 1(e). The complaint also alleges that Respondent violated Section 8(a)(1) of the Act by discharging employees Melissa Trejo and Lawrence Thomas because of their protected concerted activities.

Both counsel for the General Counsel and Respondent presented witness testimony along with documentary evidence. After the trial, counsel for the General Counsel and Respondent filed briefs, which I have read and carefully considered. Based upon the entire record, including the testimony of the witnesses, my observation of their demeanor, and the parties' briefs, I make the following

I. FINDINGS OF FACT

A. Jurisdiction

Respondent, a nonprofit corporation that provides out-of-school programs for children with mental health or behavioral disorders and educational or recreational deficits, has an office and place of business located in Las Vegas, Nevada. During a representative 12-month period, it purchased and received, at its Las Vegas facility, goods valued at more than $50,000 and received gross revenues in excess of $250,000. Accordingly, I find, as Respondent admits, that it is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act and a heath institution within the meaning of Section 2(14) of the Act.

B. Background

Carolyn Pridgeon is Respondent's founder and serves as its executive director. She creates the curriculum and sets the daily activity for the children in the program, coordinates transportation for outside activities and is responsible for day-to-day operations, including scheduling staff. Tr. 31-32. Pridgeon works with a three-member Board of Directors, of which she is a member. The other members are Clinical Supervisor Amia Mulholland and Board President Gloria Hollowell. Mulholland does not ordinarily work at Respondent's facility but is primarily responsible for providing clinical training to staff members. Tr. 34-37, 87 184-185, 207.

Pridgeon testified that Respondent's workplace is fast-paced and that its employees often encounter difficult behaviors from the children. She acknowledged that the jobs are so intense and overwhelming that many employees leave within the first 30 days of their employment. As a result, she is lenient in the enforcement of work rules. Tr. 42-45.

Melissa Trejo was hired by Respondent on May 5, 2018, as an adolescent support staff member, before becoming the transportation coordinator on May 17 and serving in that role until her termination on May 21, 2018. Lawrence Thomas, who is disabled and wheel-chair bound, was hired on April 17, 2018 as an early start adolescent program provider. He was later moved to a part-time support staff role at the request of his job coach and remained in that position until May 21, 2018, when he left Respondent's employ. The General Counsel asserts that Thomas was terminated, and Respondent contends that he quit. In May 2018, five additional staff members worked for Respondent: Business Manager Keisha Casalberry; Therapist Felicia Thomas, who also acted as clinical supervisor in Pridgeon's absence; Program Provider Brooke Elder; and transportation employees Marco Walker and someone identified in the record as "Mr. Vic." Tr. 37, 51-52, 57-59, 66-68, 179,184, 232-235.[1]

On May 17, all employees attended an orientation meeting presided over by Pridgeon. At that meeting, Castleberry was introduced as Respondent's new business manager and employees were told that they were to contact her when Pridgeon was unavailable. Tr. 67-69, 233-236. Pridgeon also testified that she told employees that time-off requests from employees were to be addressed to Casalberry. Tr. 124. Thus, it is clear that Casalberry was given actual or, at the least, apparent authority to act as an agent for Respondent under Section 2(13) of the Act and I so find. See *Southern Bag Corp*., 315 NLRB 725 (1994).

After the orientation meeting, Pridgeon offered Trejo the transportation coordinator position previously held by Walker, and Trejo accepted. Tr. 234-235. Later, that evening, all employees attended a training session led by Mulholland on de-escalation and conflict resolution techniques. Tr. 185-187, 237-239. At some point during the session, Trejo left, at Pridgeon's direction, to transport the children still at Respondent's facility back home. Tr. 239-243.

Beginning sometime in mid-May, Trejo had conversations with Thomas about not getting paid on time. Tr. 268-270. She and Thomas also discussed other work-related concerns such as the ratio of staff to children, lack of breaks, and lack of organization and directives from

[1] When referring to Lawrence Thomas hereafter in this decision, I will refer to Thomas. When referring to Felicia Thomas, I will use her full name.

management. These conversations included employee Elder. Tr. 270, 273-274, 297-299, 324-325, see also GC Exh. 8(b).

C. Events of May 19 and May 20, 2018

Pridgeon was out of state and not at the facility on the weekend of May 19 and 20. Tr. 65, 89. On Saturday, May 19, Trejo and Elder were assigned to take a group of children to a local skating rink. Casalberry, who was given authority by Pridgeon to manage available cash (Tr. 66, 136), gave Trejo and Elder money to pay for the children's admission. But, when the group arrived, Trejo and Elder learned that the money provided was insufficient because the money they were given covered the weekday rate, which was lower than the weekend rate that actually applied. Trejo called Casalberry to report the problem and was told to take the children to Burger King for lunch. Tr. 258-259. Later that day, Trejo, Elder and Casalberry met at the facility, along with Felicia Thomas. They discussed work-related matters including the money shortfall, the stress associated with the high ratio of staff to children, the lack of breaks and transportation issues, many of which involved Pridgeon's management style. Casalberry promised to bring these concerns to Pridgeon's attention. Tr. 266-268.[2]

On the morning of Sunday, May 20, Trejo arrived at Respondent's facility to begin picking up the children and transporting them to the facility. She was, at first, unable to access information about whom to pick up or the applicable addresses. But that matter was resolved after a call to Pridgeon. Tr. 244-257. In that context, the three people at the facility at the time, Trejo, Thomas and Casalberry, discussed Respondent's disorganization and lack of communication. Tr. 247, 316-318.

Later, on the same day, Casalberry was watching the children when Heavenly, a previously institutionalized troubled child who was admitted to Respondent's program after a court proceeding (Tr. 78-79), began engaging in disruptive behavior after Casalberry sent her to a time out. At some point, Heavenly snatched something from Casalberry's hand and Casalberry reacted by telling her "little girl, you're not going to sit there and snatch anything out of my hand." Then things got "really out of control" and the child went into another room and closed the door. Tr. 249-251. Casalberry then asked Trejo, who was present at the time, to call Pridgeon, which she did. Pridgeon, told Trejo to have Casalberry take the other children to a park and to contact the police, which she did. Trejo also contacted the child's mother and the child's social worker, neither of whom was able to come and attend to the child, so the child was taken away by the medical ambulance that arrived with the police to a local hospital. Throughout this period Trejo was in constant telephone contact with Pridgeon. Tr. 252-257. She also sent emails to Pridgeon detailing the events as set forth above. The emails are time-noted at 4:43 pm and 5:37 pm. GC Exh. 6 and 7.[3]

[2] The above is based on Trejo's uncontradicted testimony. None of the other participants in these events and discussions testified in this trial. Pridgeon, who, of course, was not present, attempted to blame Trejo for the money shortfall, but it is clear that Casalberry was left in charge of the operation that day, including the disbursement of the money. Pridgeon's testimony, which apparently relied on a hearsay report about what she described as the chaotic Saturday events from Felicia Thomas the next Monday, was rambling and senseless. Tr. 136-142. As a result, and because, as indicated below, I found Pridgeon generally an unreliable witness, I reject Pridgeon's testimony on this point.

[3] What happened with Heavenly is based on Trejo's credible uncontradicted testimony since the only other person with first-hand knowledge of the matter was Casalberry who did not testify.

At some point on Sunday evening, May 20, Pridgeon called Trejo to discuss the Heavenly incident. Pridgeon told Trejo that she had seen everything that happened with Heavenly on the surveillance camera system and that Casalberry was responsible for aggravating the child. She also asked Trejo what she thought about Casalberry and Trejo replied that she was frustrated, like the others, by the problems at the facility. They also discussed the skating rink incident of the day before. Tr. 257-259.[4]

Also, on Sunday evening, May 20, according to Pridgeon, Casalberry called her and complained about the stress of her job, describing the incident with Heavenly, the problem child, earlier that day. Pridgeon's testimony about this conversation did not mention who if anyone was responsible for not handling Heavenly appropriately; the only matter discussed was about taking the other children to the park. Tr. 89-92. In that call, Pridgeon also learned from Casalberry that the employees were talking about their work-related concerns. Casalberry told Pridgeon that she overheard Trejo, Thomas and Elder talking to each other "about their concerns and about how they felt about their employment at Impact." Tr. 91. Pridgeon expressed displeasure that those concerns had not been brought to her attention at the recent staff meeting, mentioning in particular the complaints about pay. Tr. 92.[5]

D. Events of May 21, 2018

At 6:20 a.m. on Monday, May 21, Elder sent an email to Pridgeon notifying Pridgeon that she was resigning her position and attached a letter, also dated May 21, making her resignation effective June 1. In that letter, Elder cited the concerns discussed earlier with Trejo and Thomas, specifically, "the unorganized transportation process, issues with communication, and last month's payment issue." GC Exh. 8(b). Pridgeon replied to the email with one of her own at 12:31 pm that same day, thanking Elder for the advance notice she provided for leaving but stating that it was best if Elder left immediately. GC Exhs. 8(a) and (b).

Also, that morning, Pridgeon called Trejo and requested that Trejo send her an email about what happened during the skating rink and Heavenly incidents. Tr. 116, 263-264. At 11:10 a.m., Trejo sent an email to Pridgeon providing the details of those incidents consistent with her uncontradicted testimony about them, as set forth above. She also repeated some of the work-related concerns that the employees had recently discussed, as set forth above. In the email, Trejo complained about the failure to reimburse her and Elder for work-related expenses in the skating rink incident. She also related her frustrations and those of "the rest of the staff" with the lack of organization and communications from management, as well as the inadequate ratio of staff to children. She ended the email on a positive note stating: "I hope you don't get

[4] The above is based on the credible testimony of Trejo, much of which was confirmed in her email to Pridgeon the next day, as discussed later in this decision. Pridgeon acknowledged that she and Trejo had a conversation about the Heavenly and skating rink incidents on Sunday, but she did not mention anything about observing what happened on the camera system or stating that Casalberry was to blame for escalating the matter. Tr. 64. Pridgeon's testimony was not as detailed as Trejo's about the call. Moreover, when Pridgeon testified again later in the hearing, after Trejo had testified as described above, she did not deny Trejo's testimony about observing the incident on camera and blaming Casalberry. In these circumstances, and because, as I point out later in this decision, I found Trejo a much more reliable witness than Pridgeon, I credit Trejo's version of the conversation between the two as set forth above.

[5] According to Pridgeon, Casalberry left Respondent's employ the next day since she was only Respondent's business manager for 4 days. Tr. 89, 92.

offended and just hear [me] out because I mean well and so do the others. Everyone wants things to be in order so things [can] run smooth once summer camp starts." GC Exh. 2.

At 12:26 p.m., Pridgeon replied to Trejo's email with an email of her own terminating Trejo. GC Exh. 2. A letter titled "Written Notification of Termination of Employment," dated May 21 and signed by Pridgeon, was provided to Trejo. The letter specifies the reasons for Trejo's termination as follows (GC Exh. 5, errors in the original):

- Failure to comply scheduling policies, employee documented more than 15 minutes late first week of hire.
- Failure to comply with labor laws (continued to forget to clock in and out, never took breaks and lunches as requested and scheduled) .
- Facility Incident happened on May 28, 2016 resulting in a child being removed from the facility by police and ambulance, after investigation staff and children provided statements that Ms Melissa behavior towards the youth provoked her to get irritate. Ms Melisaa also did follow incident reporting procedures rendered verbally by the Executive Director.
- Does not have the required professional skill set and patience to independently handle working in a fast-past environment and notifying of problems, issues or emergencies pertaining to job role in a calm respectful manner.
- Upon hire employee accepted offered salaried position for 500.00 per week and was paid early a week. But insisted on additional wages be paid outside company payroll practices, requesting bus passes to get to work.
- Employee intentionally worked passed scheduled hours 3 occasions due to inability to follow basic map directions while transporting youth home.
- Employee constantly whistle blower daily in the work place by spreading gossip and disrespectful remarks about the owner and other members of management. Second day of work Employee clocked out and left work 30 minutes early due to a 'lazy employee "whom was the Clinical Supervisor at the time.
- Employee didn't process the temperament to work with behaviorally challenged kids

On the witness stand, Pridgeon described what she meant by her reference, in the termination letter, to Trejo's whistleblower activity. She testified that Trejo was "talking to everybody," and "failing to talk to me." Pridgeon was concerned that Trejo was "going around me, and not directly talking to me." Tr. 154. Later, under questioning from her own counsel, she repeated her view of a whistleblower. She testified that she objected to employees who discussed their workplace "concerns" with other employees rather than with the management people who could resolve them. Tr. 178 Indeed, Pridgeon virtually admitted that the discharge was the result of Trejo's May 21 email setting forth employee complaints about work-related issues. She testified as follows: "The day that she drafted the email and said that—that this was the reason why I terminated her. Tr. 155.

Pridgeon's concern about employee work-related complaints is also confirmed by her admission that she called employees on May 21 to check out the validity of Trejo's report about those complaints. Tr. 94, 100-104, 112. In describing her call to employee Marco Walker, Pridgeon testified that she told him that she received an email from Trejo which included his

name. She then asked "what's up? What's going on? Do you have any concerns?" Walker answered that he had talked with Trejo but told her he did not have "any issue with my work conditions," a position he repeated to Pridgeon. Tr. 103-104.

Another employee Pridgeon called that morning was Thomas. At 7:24 am, Thomas had emailed Pridgeon asking whether he should report for work that day. Tr. 112, 319, GC Exh. 4. Later, Pridgeon called Thomas and asked him about the email Trejo had sent Pridgeon concerning work-related matters. He replied he was unaware of the email, but Pridgeon told him about it and asked him if he felt the same way. Thomas replied that he agreed with the email and said that he thought the "place was disorganized" and Pridgeon was "unapproachable." Tr. 320-321. Pridgeon then said that, if he felt that way, she no longer needed him. Tr. 321. Thomas subsequently called Trejo, learned about her email, and told her he had been fired. Tr. 322-323. Trejo corroborated Thomas's testimony about his call to her that morning. Tr. 272-273. The above is based on Thomas's credible testimony, which supports the finding that I make that he was terminated by Respondent.[6]

Credibility[7]

Four witnesses testified in this proceeding: Trejo, Thomas, Pridgeon and Mulholland. Trejo and Thomas were candid and reliable witnesses, whose testimonies in relevant parts were mutually corroborative. Trejo's testimony was also in important parts uncontradicted and supported by documentary evidence. Mulholland appeared to be a truthful witness, although the most significant part of her testimony involved providing a professional opinion to Pridgeon about the Heavenly incident based on Pridgeon's hearsay report to her about what happened in that incident. But Pridgeon's report to Mulholland did not even mention Casalberry, who was in charge of the situation, and erroneously blamed Trejo instead of Casalberry for yelling at Heavenly and being in the child's face. Tr. 190-196. Thus, although Mulholland herself was unsure about some of her testimony on this point (Tr. 195), any recommendation she may have made to Pridgeon about the propriety of staff actions with respect to handling Heavenly on that occasion was significantly flawed and unreliable.

I found Pridgeon a completely unreliable witness. I have discussed above the reasons for discrediting some of her testimony where it conflicted with more reliable testimony from other

[6]Pridgeon confirmed that she talked with Thomas on Monday, but her testimony about that conversation is internally inconsistent. She first testified that she called him because she wanted his views on Saturday's skating rink incident. Tr. 94, 112, 114-115. Later, she testified that she wanted to talk to him about the Heavenly incident on Sunday. Tr. 115. But neither reason makes any sense because Thomas was not involved in or privy to those incidents. Indeed, Pidgeon herself went on to describe the conversation in terms of work-related complaints, particularly Thomas's conversations with Trejo with respect to pay issues (Tr. 94-97, 111-112, 115), thus confirming Thomas's testimony that that was the focus of Pridgeon's call. Pridgeon also testified that, during that conversation, Thomas quit his employment (Tr. 108), but I specifically reject her testimony on that point as not credible. In addition to the internal inconsistencies in her testimony about the conversation, it was rambling and unfocussed.

[7] I have based my credibility findings on multiple factors, including, but not limited to: the witness's detail about and familiarity with the subjects covered by the testimony given; established or admitted facts; the impact of bias on the witness's testimony; the quality of the witness's recollection; testimonial consistency; the presence or absence of corroboration; the weight of the evidence; the witness's demeanor while testifying; inherent probabilities; and reasonable inferences that may be drawn from the record as a whole. *Daikichi Sushi*, 335 NLRB 622, 633 (2001), enfd. 56 Fed.Appx. 516 (D.C. Cir. 2003); *New Breed Leasing Corp. v. NLRB*, 111 F.3d 1460, 1465 (9th Cir.), cert. denied 522 U.S. 948 (1997).

witnesses. For example, I discredited her testimony about her May 21 conversation with Thomas, including her testimony that Thomas quit his employment. Much of Pridgeon's testimony was disjointed, unfocussed and internally contradictory. Moreover, as she herself conceded, her memory was faulty on significant events in this case. Tr. 175. Pridgeon's testimony about the Trejo discharge decision was all over the lot. Although, in response to a question from Respondent's counsel, she denied she fired Trejo because she was "complaining," her narrative testimony, both before and thereafter, particularly in defining Trejo's whistleblowing activity cited above, makes clear that she did. Other aspects of Pridgeon's testimony about the Trejo discharge demonstrate her lack of credibility. For example, she testified that she consulted her Board of Directors after the Trejo email, that the members told her to contact the employees mentioned in the email to get their views, and that Mulholland asked her "how does she [referring to Trejo] list all of these people in the email?" Tr. 100-102. But Mulholland, the only Board member aside from Pridgeon who testified in this proceeding, testified that she never learned of the email until after Trejo was fired. Tr. 190-192. Pridgeon also suggested that the Board participated in the discharge decision. Tr. 59-60, 101, GC Exh. 2. But Mulholland testified that the discharge decision was Pridgeon's to make. Tr. 190-192. Finally, Pridgeon at one point testified that she made up her mind to fire Trejo on Sunday night, May 20, after talking to Casalberry (Tr. 65), but later she testified that she made up her mind after talking to Mulholland on May 21. Tr. 148. In these circumstances, I cannot credit Pridgeon's denial that she fired Trejo for complaining about working conditions. In short, Pridgeon's testimony was so unreliable that I cannot credit it on any significant issue in this case unless it is viewed as an admission against interest or is corroborated by other reliable testimony.

II. ANALYSIS

The Discharges

It is well settled that an employer violates Section 8(a)(1) of the Act when it disciplines or discharges employees for engaging in concerted activities for the purpose of mutual aid or protection. *Marburn Academy, Inc.*, 368 NLRB No. 38, slip op. 10 (2019). Where, as here, the General Counsel alleges that Respondent discharged employees for engaging in protected concerted activity, the legality of the discharges turns on the motive for the employer's actions. This requires an analysis under the Board's decision in *Wright Line*, 251 NLRB 1083 (1980), enf'd on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.,* 462 U.S. 393 (1983). Under *Wright Line,* the General Counsel must satisfy an initial burden of showing by a preponderance of the evidence that the employee's protected or union activity was a motivating factor in a respondent's adverse action. If the General Counsel meets that initial burden, the burden shifts to the respondent to show that it would have taken the same action even absent the employee's protected activity. The respondent does not meet its burden merely by showing that it had a legitimate reason for its action; it must persuasively demonstrate that it would have taken the same action in the absence of the protected conduct. And if the respondent's proffered reasons are pretextual—either false or not actually relied on—the respondent fails by definition to meet its burden of showing it would have taken the action for those reasons absent the protected activity. See *Pratt (Corrugated Logistics), LLC*, 360 NLRB 304, 312-314 (2014); *Pro-Spec Painting, Inc.,* 339 NLRB 946, 949 (2003); and *Golden States Food Corp.*, 340 NLRB 382, 385 (2003).

Applying the above principles, I find that Respondent discriminatorily discharged both Trejo and Thomas because they engaged in protected concerted activities, complaining about the working conditions of Respondent's employees.

I first consider whether Trejo and Thomas engaged in protected concerted activity because Respondent denies (R. Br. 8-9) that they did. I find that they did indeed engage in protected concerted activity. They talked among themselves, and with fellow employee Elder, about their concerns over working conditions and they brought these concerns to the attention of management, as shown in the factual statement. Some of those discussions included Business Manager Casalberry, an agent of Respondent, who brought the employee concerns to the attention of Pridgeon on May 20. Those group concerns were again brought to the attention of Pridgeon in Trejo's email the next day shortly before Trejo and Thomas were terminated. Thus, it is clear, contrary to Respondent's contention (R. Br. 9-10), that Respondent knew about the concerted protected activity of Trejo and Thomas. The complaints involved pay and reimbursement issues, ratios of staff to children and the disorganization and lack of communication from management. All were group concerns about working conditions, which employees have a right to discuss among themselves and bring to the attention of management. See *Marburn Academy,* cited above, slip op. 10-11.

Next, I consider Trejo's discharge. I find that the General Counsel has clearly satisfied the initial burden of proving that a motivating factor in her discharge was her concerted protected activity. As shown above, Trejo discussed and brought to management's attention specific work-related concerns that she shared with fellow employees, which constituted protected concerted activities. Most importantly, she repeated them in an email to Pridgeon on the morning of May 21. Less than 2 hours later she was fired. One of the reasons given in Trejo's termination letter for her discharge was her "whistleblowing activities," which, as Pridgeon described them in her testimony, discussed above in the factual statement, covered Trejo's concerted protected activities. That this was the reason for the termination is also shown by Pridgeon's calls, after receiving the email, to other employees asking them whether they shared Trejo' work-place concerns. Indeed, as shown in the factual statement, Pridgeon virtually admitted that Trejo's email concerns caused the discharge. In these circumstances, the General Counsel has easily satisfied the initial *Wright Line* burden.

Nor has Respondent shown that it would have discharged Trejos for a lawful reason in the absence of her concerted protected activity. In view of the overwhelming evidence even from Pridgeon's own testimony that the reason for Trejo's discharge was an unlawful reason, it is hard to give any credence to any other reason set forth in the termination letter.

In addition to the whistleblowing reason, the Heavenly incident was mentioned as one of the reasons for the discharge in the termination letter. But that reason was a pretext. The credited uncontradicted testimony of what happened does not show that Trejo did anything wrong. It was Casalberry who apparently aggravated a difficult situation by using sharp language with Heavenly and it was Casalberry who was in charge of the facility at that time. Indeed, in a conversation with Trejo after the incident, Pridgeon confirmed that Casalberry was responsible. Moreover, it is obvious that Trejo very competently took charge of a volatile situation and brought it to a conclusion, communicating repeatedly with Pridgeon every step of the way.

It is unclear how Pridgeon came to blame Trejo rather than Casalberry for the Heavenly incident, but it likely had something to do with the fact that, in the Sunday evening conversation between her and Casalberry, Pridgeon first learned about Trejo's work-related complaints. That was the most significant part of the conversation because, in the discussion of the Heavenly incident in that same conversation, there was no specific mention of the inappropriate handling of Heavenly. Moreover, the fact that Casalberry quit at about this time, apparently due to the stress of the job, supports the notion that it was she and not Trejo who bore the brunt of the blame. Trejo repeated her work-related complaints in her May 21 email. Thus, when Pridgeon talked to Mulholland that same day, she erroneously reported to Mulholland that it was Trejos and not Casalberry who had words with Heavenly and was yelling and in the child's face. Pridgeon's failure to consider Casalberry's culpability in the matter shows that she was not interested in handling the matter on the facts, but rather wanted to use the incident as a pretext to advance a seemingly lawful reason instead of the actual unlawful reason for the discharge of Trejo.

The other reasons listed in the termination letter for Trejo's discharge were mostly generalities or objections to alleged conduct that occurred earlier in her employment without contemporary criticism. The variety of the reasons listed suggests an attempt to show that numbers might make up for substance. But surely anything that happened before May 17, when Trejo was promoted to the position of transportation coordinator, was not objectionable. Those reasons are also rejected because they came from a discredited witness. Significantly, despite Pridgeon's testimony with respect to her alleged concerns over the skating rink incident, that matter was not even mentioned as a reason for Trejo's discharge in the termination letter. In any event, the credited uncontradicted testimony shows that Trejo was not at fault for the lack of resources to cover the admission charges on that occasion. If anyone was responsible it was Casalberry or Pridgeon herself because they were responsible for providing the money for the admission charges.

In short, I find that, except for the whistleblowing reason, which is essentially an unlawful reason, none of the other reasons listed in the termination letter were actual reasons for the discharge. None of those other reasons in any event would have caused Trejo's discharge in the absence of her concerted protected activities.[8]

Turning to Thomas, I find that he too was discharged for his concerted protected activities. He supported Trejo in discussing and bringing to management's attention work-related concerns. Significantly, Pridgeon called him on May 21 after she received Trejo's email. She asked Thomas whether he agreed with Trejo's work-related concerns and he said he did, pointing out his own concerns about Pridgeon's management of the operation. Then he was peremptorily fired in the same telephone call. A more obvious causal connection between an adverse action and an unlawful reason could hardly be imagined. But the fact that he was

[8] Also supportive of my finding of discrimination against Trejo is the contemporaneous treatment of employee Elder, who participated with Trejo and Thomas in discussions about work-related concerns. She likewise brought those concerns to the attention of Pridgeon on the morning of May 21 in her resignation letter setting a June 1 date as her last day. Pridgeon's reaction was to reject the June 1 date and to terminate Elder immediately. Although Respondent's action in advancing Elder's termination date was not alleged as an unfair labor practice, it certainly was done because she, like Trejo and Thomas, engaged in protected concerted activities. Further support for the Trejo discrimination finding is my finding with respect to the discrimination against Thomas the same day, as discussed below.

terminated contemporaneously with the termination of Trejo for the same reason also supports that conclusion. Indeed, the fact that Thomas was fired for agreeing with Trejo's email and another employee, Walker, who said he disagreed with Trejo's email, was not makes the discrimination against Thomas crystal clear. Respondent does not give any other reason for its decision because it alleged that Thomas quit his employment, an allegation I rejected based on my credibility determination.

Accordingly, I find that Respondent violated Section 8(a)(1) of the Act by discharging employees Trejo and Thomas because of their protected concerted activities.

The Other Alleged Violations

The General Counsel asserts that Respondent also violated Section 8(a)(1) by coercively interrogating employees Walker and Thomas when Pridgeon called them on May 21 to ask them what they knew about the work-related complaints mentioned by Trejo in her email of the same day and whether they agreed with Trejo. GC Br. 36-37. I agree with the General Counsel. Pridgeon's inquiries about the views of Walker and Thomas on Trejo's email clearly sought information about their own protected activities. The coercive nature of the questions is highlighted by the answers Pridgeon received. Thomas said he agreed, and he was fired. Walker said he did not, and he was retained. Other indicia of coercion include the fact that the questioning came from Respondent's highest ranking official and that it occurred in the context of two discriminatory discharges that occurred on the same day. In these circumstances, I find that Pridgeon's questioning could reasonably tend to restrain, coerce or interfere with the Section 7 rights of employees in violation of Section 8(a)(1) of the Act. See *Hard Hat Services, LLC*, 366 NLRB No. 106, slip op. 6-7 (2018).

On the other hand, I find unpersuasive the General Counsel's assertion (GC Br. 37-38) that Pridgeon's statement to Thomas that she no longer needed him, the basis of the discharge finding, constituted a separate threat in violation of Section 8(a)(1). It was not a threat; it was the language of an actual discharge, which was found to have violated the Act. In these circumstances, I see no need for the additional violation sought by the General Counsel. Accordingly, this particular allegation of the complaint is dismissed.

Conclusions of Law

1. By discharging employees Melissa Trejo and Lawrence Thomas for engaging in protected concerted activity, Respondent has violated Section 8(a)(1) of the Act.
2. By coercively interrogating employees about their concerted protected activities, Respondent has violated Section 8(a)(1) of the Act.
3. The above violations are unfair labor practices within the meaning of the Act.
4. Respondent has not otherwise violated the Act.

Remedy

Having found that Respondent violated Section 8(a)(1) of the Act in certain respects, I will order that Respondent cease and desist from its unlawful activity and post an appropriate notice. I will also order that Respondent offer employeesTrejo and Thomas full reinstatement to their former jobs, or those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and to make them

whole for any loss of earnings and other benefits they may have suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F.W. Woolworth Co.,* 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). Respondent shall also compensate Trejo and Thomas for search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings in accordance with *King Soopers, Inc.,* 364 NLRB No. 93 (2016). Respondent shall also compensate Trejo and Thomas for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director a report allocating the backpay award to the appropriate calendar years in accordance with *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[9]

ORDER

Respondent, Impact Wellness Center, Inc., its officers, agents, successors and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise disciplining employees because of their concerted protected activity.

(b) Coercively interrogating employees about their concerted protected activity.

(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 this order, offer employees Melissa Trejo and Lawrence Thomas reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

(b) Make employees Trejo and Thomas 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 reference to the unlawful discharges of employees Trejo and Thomas, and, within 3 days thereafter, notify them in writing that is has been done and that the unlawful actions will not be used against them in any way.

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

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

(e) Within 14 days after service by the Region, post, at its Las Vegas, Nevada facility, copies of the attached notice marked "Appendix."[10] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 21, 2018.

(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 the Respondent has taken to comply.

It is further ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not found herein.

Dated at Washington, D.C., September 9, 2019.

Lisa D. Ross
Administrative Law Judge

[10] 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 or 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 discharge or otherwise discipline employees because of their concerted protected activities listed above.

WE WILL NOT coercively interrogate employees about their concerted protected activities listed above.

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

WE WILL offer Melissa Trejo and Lawrence Thomas reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

WE WILL make Melissa Trejo and Lawrence Thomas whole, with interest, for any loss of earnings and other benefits suffered as a result of our discrimination against them, plus reasonable search-for-work and interim employment expenses; and remove from our files any references to the unlawful actions taken against them.

WE WILL compensate Melissa Trejo and Lawrence Thomas for the adverse tax consequences, if any, of receiving a lump sum backpay award, and WE WILL file with the Regional Director for

Region 28, within 21 days of the date the amount of the backpay is fixed, either by agreement or Board order, a report a report allocating the backpay award to the appropriate calendar years.

IMPACT WELLNESS CENTER, INC.
(Employer)

Dated_____By _____
(Representative) (Title)

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

2600 North Central Avenue, Suite 1400 Phoenix, AZ 85004-3099
(602) 640-2160, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/28-CA-221411 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

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

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTIE OF COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (602) 416-4755.