

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

NOVA BASEMENT SYSTEMS, INC.

and

Case 25-CA-250547

JOHN NAUGHTON

Ashley Miller, Esq.,
for the General Counsel.
Nicholas Otis, Esq.,
for the Respondent.

DECISION

STATEMENT OF THE CASE

KIMBERLY R. SORG-GRAVES, Administrative Law Judge. On April 30, 2020, Region 25 of the National Labor Relations Board (Board) issued a complaint based on a charge filed by John Naughton (Charging Party) alleging that Nova Basement Systems, Inc. (Respondent) violated section 8(a)(1) of the National Labor Relations Act (Act) when it discouraged Charging Party from engaging in union activity and violated Section 8(a)(3) when it terminated Charging Party because of his union activities. (GC Exh. 1(e).); 29 U.S.C. § 158.

I heard this matter on December 16, 2020, via video conference, and I afforded all parties a full opportunity to appear, introduce evidence, examine and cross-examine witnesses, and argue orally on the record. After carefully considering the entire record, including my observation of the demeanor of the witnesses, and the parties' briefs¹ I find that

FINDINGS OF FACT

Jurisdiction and Labor Organization Status

Respondent, Nova Basement Systems, Inc., is a corporation with an office and a place of business in LaPorte, Indiana, where it engages in basement waterproofing, crawl space

¹ Counsel for General Counsel timely filed a posthearing brief by the due date of January 20, 2021. Respondent's counsel mistakenly filed Respondent's posthearing brief with Region 25 and not the Division of Judges on January 20. On January 22, 2021, Respondent's counsel filed the posthearing brief and a motion requesting the acceptance of the untimely filed brief with the Division of Judges. I issued a notice to show cause why Respondent's posthearing brief should not be accepted under the circumstances to which neither General Counsel nor Charging responded. Accordingly, I find no evidence that any party suffered undue prejudice by Respondent's untimely filing of its brief with the Division of Judges and accept it as part of the record in this matter. See *International Union of Elevator Construction*, 337 NLRB 426, 427 (2002).

encapsulation, and foundation repair. (GC Exh. 1(e).) In conducting business operations during the calendar year prior to the issuance of the complaint, Respondent purchased and received goods valued in excess of \$50,000 directly from points outside the State of Indiana and performed services valued in excess of \$50,000 in States other than the State of Indiana. (GC Exh. 1(e) and 1(g).) I find that Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. (GC Exh. 1(e) and 1(g).)

I find that Laborers' Local Union No. 81, a/w Laborers' International Union of North America (Union) is a labor organization within the meaning of Section 2(5) of the Act. (GC Exh. 1(e).) Based on the foregoing, I find that this dispute affects commerce, and that the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

Unfair Labor Practices

1. Background

Jim Nova founded Nova Basement Systems, Inc. in LaPorte, Indiana in 1977. (Tr. 19, 50, 259-260.) Nova Basement Systems, Inc. performs "residential and some commercial waterproofing and foundation repair." (Tr. 134.) In December 2014, Jim Nova sold the business to three of his employees at the time: Mike Flores (Flores), Terresa Draves (Draves), and David Naughton.² (Tr. 55, 222, 260.)

Flores started working for Respondent in 2007, working as a receptionist, service coordinator, sales employee, and manager. (Tr. 48.) After the sale in December 2014, Flores became the general manager. (Tr. 19, 164.) In this capacity, he oversees the sales and service departments, manages the production department, and assists in personnel matters such as hiring and firing. (Tr. 20.) Draves first started working for Respondent 16 years ago in the company office, handling accounting, payroll, and insurance; then she became an owner and the vice-president and continues to oversee these aspects of the company. (Tr. 221-222.) David Naughton worked for Respondent as a laborer, foreman, and service technician for 30 years. (Tr. 259.) David Naughton became the president after the sale. (Tr. 260.) In this capacity, he oversees production, performs inventory, and assists in personnel matters such as hiring and firing. (Tr. 260.)

Charging Party was employed by Respondent between April 2015 until October 12, 2019.³ (Tr. 35.) Initially, Charging Party worked for Respondent as an installer and foreman. (Tr. 51.) Charging Party earned both an hourly wage and 10 percent commissions for projects he sold to customers. (Tr. 51-52.) As a foreman, Charging Party worked with employees "underneath him" in the company hierarchy. (Tr. 51.) On November 5, 2015, Respondent issued Charging Party a written disciplinary memo, instructing him to stop "cursing of the crew in a customer's house." (R. Exh. 39; Tr. 109.) On June 6, 2019, Respondent wrote another disciplinary memo to Charging Party for the same behavior. (R. Exh. 48; Tr. 109.) Respondent issued this memo after

² David Naughton and John Naughton are brothers. (Tr. 260.)

³ All dates are in 2019 unless otherwise noted.

another employee⁴ reported to Flores that the Charging Party had “insulted and belittled” him. (Tr. 105; R. Exh. 48.)

5 Because Respondent thought Charging Party “couldn’t get along with other employees,” Respondent reassigned him to a service technician position in which he mostly worked alone. (Tr. 51, 96.) Respondent described this job change as a demotion and noted that Charging Party was upset with the change. (Tr. 51, 110; R. Exh. 40). However, Michael Miller (Miller),⁵ a production manager who has worked for Respondent for twelve years, testified that Charging Party was promoted to service technician. (Tr. 254.) Miller explained that he considered this change a promotion because “most guys strive for that, because then they can work by themselves, instead of working on a crew, because it is easier.” (Tr. 255.) Up until the time of his discharge, Charging Party continued to work as a service technician. (Tr. 50.) In this capacity, he visited customers’ residences to service and repair existing systems. (Tr. 135.) To preserve individuals’ privacy, to the extent practicable I do not use the full names of those who did not testify. The citation to the record provides clarity as to whom I am referring if such information is necessary for interested parties.

20 Respondent knew of a “laundry list of different types of violations” throughout Charging Party’s employment in addition to his difficulties working with others. (Tr. 80.) Firstly, Respondent received “countless” calls from the public about Charging Party’s driving. (Tr. 39.) On February 18, 2016, Respondent warned Charging Party about his “fast and aggressive” driving. (R. Exh. 40.) In response, Charging Party admitted to this accusation and agreed to slow his driving speed. (R. Exh. 40.) On March 26, 2019, Respondent received a call from a member of the public who was “very upset” when Charging Party pulled a U-turn in front of her and cut her off while driving a company vehicle. (R. Exh. 41.) On May 10, 2019, a police officer pulled Charging Party over for speeding in a company vehicle. (R. Exh. 46.) The police officer reported that Charging Party’s speed “constituted reckless driving” that “he could have been arrested for.” (R. Exh. 46.) Additionally, multiple members of the public saw this incident and complained to Respondent. (R. Exh. 46.) On June 7, 2019, a member of the public called Respondent to complain about Charging Party’s speeding, saying that the company vehicle was “flying like a bat out of hell.” (R. Exh. 50.)

35 Next, Respondent had issues with the lack of cleanliness in Charging Party’s work vehicle. (Tr. 100.) Flores testified that he wanted company trucks to be clean “from a professionalism standpoint” so customers would “want to spend thousands of dollars with the company.” (Tr. 100–101.) On November 5, 2015, Flores instructed Charging Party to clean out his truck at least once per week. (R. Exh. 39.) On October 2, 2019, Respondent issued a disciplinary memo to Charging Party when he left early without cleaning his truck and instructed another employee to clean it for him. (R. Exh. 54.)

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⁴ To preserve individuals’ privacy, to the extent practicable I do not use the full names of those who did not testify. The citation to the record provides clarity as to whom I am referring if such information is necessary for interested parties.

⁵ At hearing, the parties stipulated that “at all material times, Michael Miller has held the position of [p]roduction [m]anager for the Employer, and has been a supervisor for the Respondent within the meaning of Section 2(11) of the Act, and an agent of the Respondent within the meaning of Section 2(13) of the Act.” (Tr. 8.)

Furthermore, Flores testified that Respondent “would constantly get feedback from customers saying that John wasn’t thorough” and that he was too “quick in and out of the homes.” (Tr. 101.) For example, on June 6, 2019, Respondent issued Charging Party a disciplinary memo stating that a customer complained when Charging Party did not inspect a crawlspace and did not clean a pit thoroughly. (R. Exh. 48.) On October 1, 2019, Respondent issued Charging Party a disciplinary memo stating that a customer’s boxes needed replacing after Charging Party claimed to have cleaned them. (R. Exh. 52.)

Lastly, Respondent was aware of Charging Party’s attendance violations. (GC Exh. 13.) On May 2, 2019, Charging Party skipped a company meeting. (GC Exh. 7.) Between January 5 and October 12, Charging Party had eight unexcused absences and nine tardies. (R. Exh. 34.) Initially, Respondent’s attendance discipline policy was discretionary rather than imposing specific penalties for violations. (Tr. 31.) Respondent claims that it did not impose penalties on Charging Party for attendance violations, vehicle cleanliness, or driving complaints in part because David Naughton, Charging Party’s brother, is the president and an owner of Respondent. (Tr. 80.) Due to this family relationship, Respondent “wanted to keep giving him a chance” rather than terminating Charging Party. (Tr. 80.)

On September 1, Respondent instituted a new attendance policy. (Tr. 26; R. Exh. 37.) Under the new policy, if an employee commits 6 attendance violations in a 6-month period, he or she is suspended for 1 week and loses a conditional bonus. (Tr. 30.) Termination is the punishment for nine violations within a calendar year. (Tr. 30.) The new policy was not retroactive; thus, violations only started to count after September 1. (Tr. 31.) However, the policy mentioned that certain disciplinary penalties could be bypassed in cases of serious employee problems, thereby justifying termination without “going through the usual progressive discipline steps.” (Tr. 80; GC Exh. 2.)

Although Respondent did not initially penalize Charging Party for attendance violations, Respondent did discipline and previously terminated several other employees for attendance violations. (Tr. 62–69, 83–86; R. Exhs. 1–4, 6, 7.) One such employee had two attendance violations before the new attendance policy was implemented and seven violations after the new policy was instituted. (Tr. 67–68; R. Exh. 6.) However, when deciding to terminate this employee, Respondent did not consider the violations before September 1 and only considered violations after the new attendance policy went into effect. (Tr. 67–68.) Notably, the employee appears to have stopped coming to work, because he was absent 7 weekdays in a row. (R. Exh. 6.) The record evidence does not support a finding that Respondent strictly enforced any non-discretionary discipline policies, including its new attendance policy.

2. Events leading to John Naughton’s discharge

On or around September 30, Charging Party performed an annual service for customer Collins (Collins). (Tr. 71; R. Exh. 8.) Charging Party found rodent damage to the membrane installed in the crawlspace by Respondent. (Tr. 161.) He contracted with Collins to clean out the debris left by the rodents as a side job separate from his work for Respondent.⁶ (Tr. 161.)

⁶ Respondent was aware that Charging Party and other employees performed side jobs and made no assertion that such side jobs were inappropriate. (Tr. 82.)

Charging Party testified that he did not know how to bid the job because warranties and other factors affect repair costs. Charging Party met with Flores and explained that rodents had made a large mess in the crawl space including holes in the membrane. Flores instructed him to bid the job for total replacement at \$6500 and as an hourly rate for making repairs to the damaged areas. Charging Party communicated the options to Collins, who was not happy about either option. (Tr. 162.)

Collins contacted Respondent and ultimately spoke to Flores. (Tr. 72; R. Exh. 8.) On October 7, Flores went to Collins' home to inspect the crawl space. Flores claims to have found evidence that Charging Party did not crawl through the entire crawlspace to inspect it per his job duties but did not assert that he found any damage except in the area where Charging Party took pictures. (Tr. 72-74.) Flores concluded that the damage could be repaired for \$750. (Tr. 75.) Flores reduced the cost to \$350 to appease Collins who displeased with the repair cost because she believed the clean space membrane "to be a rodent type," apparently meaning rodent resistant, which it is not. (Tr. 75; R. Exh. 8.)

Flores claimed that Charging Party quoted Collins the replacement price which was highly inflated based upon the limited damage and that Charging Party failed to do his job properly because it appeared that he did not crawl through the entire crawlspace. (Tr. 72-73.) Respondent insinuates that he quoted this price to make the commission from the sale of the new system.⁷ Charging Party claims that he only suggested the \$6500 amount because Flores instructed him to include that amount as the total system replacement cost. (Tr. 161-162.) I credit Charging Party's statement that he provided Collins with the replacement cost and the hourly fee for repairing the damage and that Collins was unhappy with both. As discussed more thoroughly below, I generally credit Charging Party's testimony based upon several factors. In addition to those factors with respect to this testimony, I find that Collins belief that the membrane system installed by Respondent was supposed to be rodent resistant adds credence to Charging Party's testimony that she was not happy with either quote he gave her. This continued to be the case when Flores spoke with Collins which ultimately caused him to reduce the price to 50 percent of the repair costs. Therefore, I find that Collins' dissatisfaction was at least not fully caused by Charging Party as Respondent asserts.

Throughout September and October, Charging Party had four tardies and two unexcused absences, totaling six attendance violations. (Tr. 282; GC Exh. 11.) Although the new attendance policy stated this number of violations would result in a suspension and total bonus loss, Respondent did not impose those penalties on Charging Party. (R. Exh. 37; Tr. 90, 282.) Instead, on October 9, Flores texted Charging Party and another employee and informed them that he was removing half of their cash bonuses in response to their attendance violations. (Tr. 100, 137; GC Exh. 11; R. Exh. 58, 69.) Because the other employee only had three attendance violations compared to Charging Party's six violations, Flores admitted that Charging Party "got better treatment." (Tr. 282; R. Exh. 69; GC Exh. 11.)

Later that same day, Charging Party called Corey Campbell, the representative of the Union. (Tr. 136-137.) Charging Party decided to reach out to Campbell after Flores took away

⁷ Draves testified that Charging Party could have made \$700 in commissions if Collins chose to replace the entire system. (Tr. 228.)

the cash bonus from him and another employee.⁸ (Tr. 137.) Charging Party called Campbell to discuss unionizing his fellow employees at Nova. (Tr. 137.) Campbell asked Charging Party to contact all the hourly employees to determine employee interest in the Union. (Tr. 137; GC Exh. 14.) Charging Party discussed unionization with nearly all of his fellow hourly employees that same day. (Tr. 139, 192.)

On or around October 10, Charging Party claims that Production Manager Miller joked with him, saying he heard Charging Party wanted to unionize Nova. (Tr. 188.) Charging Party and Miller were friends, and Miller was not Charging Party's direct supervisor. (Tr. 78, 135.) On October 10, Miller called Charging Party and said, "You need to knock the union crap off. I was stopped by Mike Flores this morning and asked what I know about you trying to set up a meeting at the Union Hall with Nova employees." (Tr. 139, 175.)

While the record contains no clear date for this conversation, sometime between October 9 and October 11, Flores, Draves, and David Naughton, spoke with Miller about the Charging Party "trying to bring the Union in." (Tr. 168, 240-241).⁹ During this conversation, Draves admitted that the owners were "shocked" and "floored" by Charging Party's effort to unionize. (Tr. 241-242.) On October 10, Miller expressed to Charging Party his displeasure for working with a union. (Tr. 173-174, 236, 253.) On October 11, Flores, Draves, and David Naughton held a meeting to discuss Charging Party's termination. (Tr. 21, 43.) Respondent claims that they collectively decided to terminate Charging Party on this same day due to the customer complaint, attendance policy violations, and driving complaints. (Tr. 38.) Respondent decided to discharge Charging Party on Saturday, October 12, after his shift because less employees would be present at that time. (Tr. 44-45.)

On October 12, Charging Party was late to work because of car issues. (Tr. 142.) After Charging Party finished working in the early afternoon, Flores, Draves, and Dave Naughton held a meeting with Charging Party (Tr. 143-144, 190, 266.) As he entered the office, Charging Party saw six new disciplinary write-ups laid out on the desk in front of Flores and Draves¹⁰. (Tr. 179, 190; GC Exh. 12.) Flores completed, signed, and dated the write-ups on October 12, but four of the six write-ups covered three performance issues and a tardy that occurred between October 1 and 7. The other two covered his tardiness and discharge on October 12. With the exception of prior attendance write-ups, other discipline documents in the record do not reflect a gap in time between the conduct and the issuance of the discipline as three of the performance write-ups issued on October 12 do. (GC Exhs. 4-11.)

When Charging Party saw the write-ups, he asked "What are you guys doing? Terminating me?" (Tr. 190.) Flores' stated that the reasons for termination included the customer's complaint, attendance violations, and not cleaning the truck properly. (Tr. 144.)

⁸ Charging Party testified that he felt there were going to be repercussions about unionization because, while working at a job in Michigan City several years ago, he asked Dave Naughton and Flores why the company did not unionize. Dave Naughton and Flores said "they wanted nothing to do with union jobs or being a unionized company." (Tr. 140-141.)

⁹ Although this conversation is disputed, I find Draves' testimony credible on this issue because her testimony was an admission against self-interest.

¹⁰ Charging party recalled seeing 7 write-ups but it appears that he misremembered or miscounted as the documentary record includes only 6 write-ups dated October 12.

5 However, Charging Party's termination write-up stated that "based on all prior convictions, and being late today being the final basis, we decided to let John go." (Tr. 240; R. Exh. 8.) David Naughton, Draves, and Flores admitted that this portion of the letter was inconsistent with their testimony that they had already decided to terminate John Naughton on October 11. (Tr. 44, 240, 268.)

10 After realizing he would be terminated, Charging Party said some "choice words" and "stormed out" of the meeting. (Tr. 128.) While clocking out for the last time, Charging Party claims that, when he mentioned his attempt to unionize, Flores and Draves laughed in his face. (Tr. 192.) After leaving the termination meeting, Charging Party called Corey Campbell to explain the reasons Respondent gave for terminating him. (Tr. 145.) Corey Campbell advised John Naughton to file a complaint with the National Labor Relations Board. (Tr. 203; GC Exh. 14.)

15 About a week and a half after his termination, Charging Party spoke to Miller. (Tr. 154.) Charging Party testified that Miller told him that he "shouldn't have been messing around with the union" and that he wouldn't have lost his job if he acted differently. (Tr. 155.)

20 3. Credibility and antiunion animus

25 My credibility analysis relies upon a variety of factors, including, but not limited to, the witness's demeanor, the context of the witness testimony, 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. See *Double D Construction Group*, 339 NLRB 303, 303-305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. 56 Fed.Appx. 516 (D.C. Cir. 2003). Credibility findings regarding any witness are not likely to be an all-or-nothing determination; therefore, I may believe that a witness testified credibly regarding one fact but not on another. *Daikichi Sushi*, 335 NLRB at 622.

30 I credit Charging Party's testimony that Miller discouraged him to unionize. This testimony is strengthened by Miller's admission that they discussed unionizing prior to Charging Party's termination and Miller's statement that he did not want to join the union himself. (Tr. 252-253.) Although Miller testified that he did not threaten or interrogate Charging Party, he is a current supervisor and not likely to testify in such a way that may harm Respondent. (Tr. 248, 253.) Additionally, Charging Party's willingness to admit facts potentially unfavorable to him, such as admitting to conduct for which he had been disciplined in the past and the fact that he used "choice words" and "stormed out" when terminated, suggests similar honesty in recalling his conversations with Miller. (Tr. 144.) Finally, Charging Party's demeanor remained the same throughout his testimony. He gave consistent, straightforward answers regardless of the question or who was asking it.

45 I do not credit Flores' testimony that the reasons for terminating Charging Party were his driving ability, attendance, the customer price complaint incident, and other customer complaints of him rushing through projects. (Tr. 96.) Firstly, according to Respondent's new attendance policy, which was not retroactively imposed on other employees, Charging Party should have

been suspended instead of terminated. (Tr. 67–68, 86; R. Exh. 37.) As for the other alleged reasons for termination, Flores testified that Respondent wanted to keep giving Charging Party a chance because of the relationship with his brother, David Naughton. (Tr. 86.) Despite Charging Party’s numerous infractions, Respondent did not terminate Charging Party until 3 days after he contacted the Union. (Tr. 136–137; R. Exh. 8.) This close proximity in timing suggests that John Naughton’s union activity played at least some part in Flores’ decision to finally terminate him. (Tr. 136–137, 142.)

Additionally, Flores was not direct in answering questions throughout his testimony, often speaking in general terms and changing his answers, particularly regarding dates. For example, explaining that he was “nervous,” Flores mistakenly stated that he started working for Respondent in 2017 when he actually started working in 2007. (Tr. 48.) Flores could not remember the time of the meeting to discuss Charging Party’s termination, first stating it “probably would have been late afternoon” but then later guessing it would be “around midday.” (Tr. 77.) Flores admitted that he was “bad with timelines and dates.” (Tr. 55.) Furthermore, Flores stated that he “mainly used verbal discipline” and often did not document discipline in written form. (Tr. 96.) Finally, I considered the inconsistency in the record between Charging Party’s three write-ups issued on October 12 for conduct that allegedly occurred on October 1, 2, and 7 and other discipline documents that did not reflect such a gap in time between the conduct and write-up. (GC Exhs. 4–11; R. Exh. 7.) Flores contended that he spoke to Charging Party about this conduct on those dates but could not recall any specifics about any of those supposed conversations. (Tr. 120–125.) This inconsistency in the timing of Charging Party’s write-ups and Flores inability to remember any specifics about addressing these issues with Charging Party further discredits Flores’ testimony surrounding Charging Party’s termination.

I do not credit David Naughton’s testimony that the prior-mentioned disciplinary violations were the reasons for Charging Party’s termination. (Tr. 268.) David Naughton’s testimony is discredited by his statement that Charging Party always found “a way to make money without working.” (Tr. 271.) The fact that David Naughton mentioned this opinion in the context of Charging Party’s attempted unionization suggests antiunion animus. Additionally, David Naughton testified that he knew of “John’s theories and schemes” for “forty-some years.” (Tr. 270.) Given David Naughton’s long-term knowledge of his brother’s idiosyncrasies and numerous disciplinary infractions, Respondent’s decision to not terminate Charging Party until after he tried to unionize further suggests antiunion animus.

I do not credit Draves’ testimony that the prior-mentioned violations were the reasons for John Naughton’s termination. (Tr. 223.) Firstly, Draves testified that the owners “had multiple conversations” about terminating Charging Party throughout his employment but ultimately chose not to terminate Charging Party until after he engaged in union activity. (Tr. 224.) While Draves denies that his union activity played a role in the decision to terminate Charging Party, Draves, like Flores and David Naughton, failed to explain how more of the same conduct from Charging Party caused his termination on October 12, contradicting Flores’ testimony that Respondent wanted to keep giving Charging Party a chance. (Tr. 80, 224.) Furthermore, Draves admitted that the three owners discussed Charging Party’s union activity before deciding to terminate him. (Tr. 232.) Draves contradicted Miller’s testimony when she stated that Miller told Charging Party that Charging Party was making a mistake with his union activity. (Tr. 236.)

Miller's statement further suggests Respondent's antiunion animus is the true reason for Charging Party's termination.

5 Considering the totality of the evidence and the demeanors of the witnesses, I credit Charging Party's testimony over Draves,' Flores,' and Dave Naughton's testimonies to the extent that they conflict.

ANALYSIS

10 **1. Respondent violated section 8(a)(1) of the Act when it interrogated Charging Party for engaging in union activity**

15 The complaint alleges that Respondent violated Section 8(a)(1) of the Act when Miller "interrogated employees about their Union membership, activities, and sympathies" on or around October 10. (GC Exh. 1(e).) Respondent denies that this interrogation occurred. (GC Exh. 1(g).) Section 8(a)(1) of the Act makes it an unfair labor practice for employers "to interfere with, restrain, or coerce" employees' Section 7 rights. The rights employees have under Section 7 are "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing."

20 Under Section 2(11), supervisors can legally bind an employer. See *Oster Specialty Prod., Div. of Sunbeam-Oster Corp.*, 315 NLRB 67 (1994) (The Board found an 8(a)(1) violation when a supervisor told an employee "I've been hearing some things about you lately, some bad things about you . . . I've heard you're for the union."). Miller testified that his job responsibilities included "keeping track of the crews, scheduling the crews, helping out the
25 crews, answering questions, miscellaneous shop things." (Tr. 248.) Because Miller assigned and directed employees when he scheduled and oversaw crews and answered employee questions, I agree with the parties' stipulation that he is a supervisor under Section 2(11).¹¹ (Tr. 8.)

30 The test for whether an employer violated Section 8(a)(1) is not dependent on the employer's motivation or on the employer's success in coercing, restraining, or interfering with employees' Section 7 rights. *Gissel Packing Co.*, 395 U.S. 575 (1969); *Almet, Inc. & United Steelworkers of America, AFL-CIO-CLC*, 305 NLRB 626 (1991). Rather, the test for 8(a)(1) violations is whether the employer's conduct tended to interfere with the free exercise of employees' Section 7 rights. *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 617 (1969). The Board has found that such an interference occurs when an employer interrogates employees about their
35 union activity. *Kumho Tires Georgia*, 370 NLRB No. 32, slip op. at 6 (2020). The Board also considers the total factual context and may view the employer's conduct from the position of impacted employees. *NLRB v. E. I. du Pont & Co.*, 750 F.2d 524, 528 (6th Cir. 1984) (citing *Henry I. Seigel Co. v. NLRB*, 417 F.2d 1206, 1214 (6th Cir.1969)).

¹¹ Sec. 2(11) of the Act defines a supervisor as "any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

5 In instances of supervisor interrogation, the Board considers “whether under all the
circumstances the interrogation [of an employee] reasonably tends to restrain, coerce, or interfere
with rights guaranteed by the Act.” *Scheid Electric*, 355 NLRB 160, 160 (2010); *Bloomfield*
Health Care Center, 352 NLRB 252 (2008), quoting *Rossmore House*, 269 NLRB 1176, 1178
10 fn. 20 (1984). In this analysis, the Board considers several factors, including “the identity of the
questioner, the place, and method of the interrogation, the background of the questioning and the
nature of the information sought, and whether the employee is an open union supporter.” *Scheid*
Electric, supra at 160 (citing *Stevens Creek Chrysler Jeep Dodge*, 353 NLRB No. 132, slip op. at
2 (2009)).

15 Here, Miller, a supervisor, first joked with Charging Party at work about unionizing
Nova, saying “Hey, I heard . . . you guys are going to unionize Nova.” (Tr. 188–189.) Then,
Miller called Charging Party and told him to “knock that union crap off” and that Flores
contacted Miller to ask if Miller “knew anything about . . . [Charging Party] unionizing or
20 trying to unionize the employees.” (Tr. 139, 188.) Additionally, Draves testified that, during this
conversation, Miller warned Charging Party that he was “making a mistake” by unionizing. (Tr.
236.) Miller’s conversation over the phone included harsh language, instructing Charging Party
to cease union activity, and mentioned Flores, who engages in hiring and firing, inquiring about
his union activity. (Tr. 119, 20.) As to the nature of the information sought, the relevant concern
25 is whether the employer appears to seek information in order to take action against individual
employees. *Bourne v. NLRB*, 332 F.2d 47, 48 (2d Cir. 1964). The information sought was
specifically about Charging Party’s individual union activities. (Tr. 139, 188.) Finally, Charging
Party quickly became known as an open union supporter by asking nearly all of his fellow hourly
employees whether they would be interested in learning about the union. (Tr. 139, 192.)

30 Importantly, “[t]he Act does not make it illegal per se for employers to question
employees about union activity.” *Trinity Servs. Grp., Inc. & United Food & Commercial*
Workers Union, Local 99, 368 NLRB No. 115, slip. op at 2 (2019). However, once an
interrogation interferes with, restrains, or coerces an employee’s Section 7 rights, it is unlawful.
Rossmore House, 269 NLRB 1176, 1177–1178 (1984). Considering Miller’s identity as a
supervisor, the use of harsh language to “knock that union crap off,” the mentioning of Flores’
desire to know specific information about Charging Party’s unionization effort, and Charging
Party’s status as an open union supporter, this interrogation is an unlawful interference with
35 Charging Party’s Section 7 right to engage in union activity.

40 Although Miller testified that he did not interrogate Charging Party, he is a supervisor
and not likely to testify in such a way that may harm Respondent. (Tr. 248, 253.) Further, the
fact that Miller was not a direct supervisor of Charging Party does not materially reduce the
coercive nature of the interrogation. (Tr. 78); See *Rockwell Manufacturing Co., Kearney*
Division, 142 NLRB 741, 748 (1963), enfd. 330 F.2d 795 (7th Cir. 1964), cert. denied 379 U.S.
890 (1964) (finding a number of interrogations coercive, several of which “were made by
supervisors to employees not directly supervised by them” who “clearly went out of their way to
talk . . . to such employees as well as those in their own departments”). Additionally, Miller
45 testified that he spoke with Charging Party about unionization and admitted that he did not want
to join a union himself, reinforcing that a negative conversation about unions did occur. (Tr.
253.) Finally, Draves’ testimony that Miller told Charging Party he was “making a mistake” by

unionizing further supports the conclusion that Miller interrogated Charging Party about his union activity. (Tr. 236.)

5 Importantly, “[w]here an interrogation is accompanied by . . . other violations of Section 8(a)(1) of the Act, there is no question as to the coercive effect of the inquiry.” *SALA Motor Freight, Inc.*, 334 NLRB 979, 980–981 (2001). As such, the subsequent termination of Charging Party¹² accompanied by Miller’s interrogation further supports the finding that Respondent interfered with Charging Party’s Section 7 rights.

10 Considering the testimony, credibility of all parties, and the entire record, I find that Miller interrogated Charging Party about his union activity, thereby interfering with Charging Party’s Section 7 to join a labor organization and ultimately violating Section 8(a)(1).

15 **2. Respondent violated Section 8(a)(3) and 8(a)(1) when it terminated Charging Party because of his union activities.**

20 The complaint alleges that Respondent violated Section 8(a)(3) and Section 8(a)(1) of the Act when it terminated Charging Party due to Charging Party’s attempt to unionize. (GC Exh. 1(e).) Respondent admits that it terminated Charging Party but denies the allegation that it did so because of Charging Party’s union activity. (GC Exh. 1(g).)

25 Sec. 8(a)(3) of the Act prohibits an employer from discriminating “in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.” The test to determine whether an employer’s conduct is in violation of Section 8(a)(3) of the Act is established in *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). First, General Counsel has the burden of showing by a preponderance of the evidence that a substantial or motivating factor in the employer’s decision to take the action was the employee’s union activity. *Pro-Spec Painting, Inc.*, 339 NLRB 946, 949 (2003); *Vulcan Basement Waterproofing of Ill. v. NLRB*, 219 F.3d 677, 684 (7th Cir. 2000). General Counsel’s burden is usually met when it shows the employee engaged in union activity, the employer had knowledge of that activity, and the employer had animus towards that activity. *Consolidated Bus Transit, Inc.*, 350 NLRB 1064, 1065 (2007), enfd. 577 F.3d 467 (2d Cir. 2009); 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”).

40 Under Section 8(a)(3), employers may not discriminate against employees who contact a union. See *Hialeah Hospital & United Brotherhood of Carpenters & Joiners of America, Local No. 1554, Affiliated with United Brotherhood of Carpenters & Joiners of America, AFL-CIO & Guillermo Manresa*, 343 NLRB 391, 393–394 (2004). Here, Charging Party clearly engaged in union activity when he contacted the union representative after Respondent took away Charging Party’s and another employee’s cash bonuses. (Tr. 136–137.) Additionally, under Section 45 8(a)(3), an employer may not discriminate against employees who try to organize a union. See

¹² As analyzed below, I find the subsequent termination of Charging Party to be an additional 8(a)(1) violation.

Custom Bent Glass Co., Custom Glass Corp. Saxonburg Industries, & Custom Resources Co. & Aluminum, Brick & Glass Workers Int'l Union, AFL-CIO-CLC, 304 NLRB 373 (1991). Here, Charging Party tried to organize a union when he contacted nearly all of his fellow hourly employees to give them the opportunity to learn about the Union. (Tr. 139, 192.) As such, the first element of union activity is met.

After the first element is met, General Counsel must establish employer knowledge of the union activity under *Wright Line*. An employer's knowledge of the union activity may be inferred from circumstantial evidence using the entire record. See *Windsor Convalescent Center of North Long Beach*, 351 NLRB 975, 983 fn. 36 (2007). Here, I need not enter into a circumstantial evidence analysis, as all three owners testified to knowing about Charging Party's union activity, either through their conversation with Mike Miller or because other employees complained to them about Charging Party's unionization efforts. (Tr. 168, 232, 240-241, 243, 269, 277.) As such, General Counsel has established the second element of employer knowledge.

Next, regarding the animus element of General Counsel's burden, *Tschiggfrie Properties, Ltd.*, 368 NLRB No. 120, slip op. at 11 (2019), clarified that the General Counsel does not "sustain his burden by producing—in addition to evidence of the employee's protected activity and the employer's knowledge thereof—any evidence of the employer's animus or hostility toward union or other protected activity. Instead, the General Counsel must establish that a causal relationship exists between the employee's protected activity and the employer's adverse action against the employee." Here, animus on the part of the employer occurred when Miller told Charging Party to "knock that union crap off," Miller's statement that Charging Party wouldn't have lost his job if he acted differently regarding the union, and Draves' statement that the owners were "shocked" and "floored" by Charging Party's efforts to unionize. (Tr. 139, 155, 241-242.)

The timing between the union activity and termination demonstrates the additional causal relationship required under *Tschiggfrie*. Timing has long been an acceptable way of showing antiunion animus. See *Edward G. Budd Mfg. Co. v. NLRB*, 138 F.2d 86 (3d Cir. 1943). Here, Respondent did not terminate Charging Party until three days after he contacted the Union. (Tr. 136-137; R. Exh. 8.) This close proximity in timing demonstrates a causal relationship between Charging Party's union activity and collective decision to finally terminate him. (Tr. 136-137, 142.) This evidence of timing is further strengthened by the "laundry list of different types of violations" throughout Charging Party's employment. (Tr. 80.) The fact that Respondent only chose to terminate Charging Party after he contacted the Union, after previously allowing numerous disciplinary violations, serves as evidence of pretext. In finding animus towards union activity, the Board may ultimately "rely only on the timing of the discharge and evidence of pretext" *BS&B Safety Systems, LLC & United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Industry & Service Workers Int'l Union, AFL-CIO/CLC*, 370 NLRB No. 90, slip op. at 1 (2021). Although "[a]n employer who has tolerated bad behavior in the past is not forced to continue to do so," the entire factual context, including Miller's interrogation of Charging Party about his union activity and Miller's later statement that Charging Party wouldn't have lost his job had he acted differently, further demonstrate pretext. *Vulcan*, 219 F.3d at 689-690. As such, with this third *Wright Line* element met, General Counsel meets its initial burden.

Once General Counsel meets this initial burden, then the burden shifts to the employer to prove that it would have taken the same action even in the absence of the employee's union or protected activity. *Adams & Associates, Inc.*, 363 NLRB No. 193, slip op. at 6 (2016); *Libertyville Toyota*, 360 NLRB No. 141, slip op. at 4 (2014); enfd. 801 F.3d 767 (7th Cir. 2015).

5 Here, Respondent offered several other legitimate reasons for terminating Charging Party, including attendance, not cleaning his truck, not being thorough enough when visiting customer homes, and the customer complaint incident. As none of these proffered reasons discriminates against Charging Party's effort to establish a labor organization, Respondent has met this initial burden.

10 After Respondent establishes its burden, General Counsel may still prove a violation of Section 8(a)(3) if it demonstrates the employer's reasons for its conduct 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 unlawful if the surrounding facts reinforce that inference.)

15 Here, a compelling reason for finding Respondent's asserted reasons for discharging Charging Party pretextual is timing. The conduct that Respondent cites as reasons for firing Charging Party is the same conduct in which he has engaged for years, but Respondent chose to keep employing him until he tried to unionize. Although Respondent denies that union activity played a role in the decision to terminate Charging Party, Draves, Flores, and David Naughton, failed to explain
20 how more of the same conduct from Charging Party caused the discipline in this instance when Respondent previously repeatedly overlooked similar conduct. (Tr. 80, 224.) They emphasized the recent customer complaint, but as discussed above, the customer believed the system was supposed to be rodent resistant and was dissatisfied with any repair costs. The record contains no evidence that Charging Party was in anyway responsible for the customer's misunderstanding.
25 Finally, with the exception of prior attendance write-ups, other discipline documents in the record do not reflect a gap in time between the conduct and the issuance of the discipline as the 3 performance write-ups issued to Charging Party on October 12 do. (GC Exhs. 4-11.) This backdating of disciplinary documents further suggests that Respondent was attempting to conceal the real motive behind the discharge and that the reasons it gave for terminating
30 Charging Party on October 12 were pretextual.

35 Considering the testimony, credibility of all parties, and the entire record, I find that Respondent terminated Charging Party due to his union activity, thereby violating Section 8(a)(3) of the Act.

40 Having found that Respondent violated Section 8(a)(1) when it interrogated Charging Party and violated Section 8(a)(3) when it terminated Charging Party, the analysis of whether Respondent violated Section 8(a)(1) when it terminated charging party logically follows. Clearly, terminating Charging Party for engaging in union activity unlawfully interferes with Charging Party's Section 7 right to organize a union. See *In Re Bowling Transportation, Inc.*, 336 NLRB 393 (2001). As such, considering the testimony, credibility of all parties, and the entire record, I find that Respondent violated Section 8(a)(1) of the Act when it terminated Charging Party due to his union activity.

45

CONCLUSIONS OF LAW

1. Respondent, Nova Basement Systems, Inc., in LaPorte, Indiana, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
- 5 2. At all material times, the Laborers' Local Union No. 81, a/w Laborers' International Union of North America (Union), has been a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent violated Section 8(a)(1) of the Act, on about October 10, 2019, by interrogating employees about their union membership, activities, and sympathies.
- 10 4. Respondent violated Section 8(a)(3) and (1) of the Act, on October 12, 2019, by discharging employee John Naughton in retaliation for his union activities.
5. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

15 REMEDY

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

20 Specifically, having found that the Respondent unlawfully discharged John Naughton because he formed, joined, and assisted Laborers' Local Union No. 81, a/w Laborers' International Union of North America (Union) and engaged in concerted activities, and to discourage other employees from engaging in these activities, I shall order the Respondent to offer him full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed. I also shall order that the Respondent make John Naughton whole, with interest, for any loss of earnings and other benefits that he may have suffered as a result of the unlawful discharges. 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), 30 compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

In accordance with our decision in *King Soopers, Inc.*, 364 NLRB No. 93 (2016), enfd. in pertinent part 859 F.3d 23 (D.C. Cir. 2017), I shall also order the Respondent to compensate 35 John Naughton for his search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

40 I shall order the Respondent to compensate John Naughton for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 25, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee. *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016). In addition to 45 the backpay-allocation report, I shall order the Respondent to file with the Regional Director for

Region 25 a copy of the backpay recipient's corresponding W-2 form reflecting the backpay award. *Cascades Containerboard Packaging*, 370 NLRB No. 76 (2021).

5 Additionally, I will order the Respondent to remove from its files any reference to the unlawful discharge of John Naughton and to notify him in writing that this has been done and that the unlawful discharge will not be used against him in any way.

10 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹³

ORDER

The National Labor Relations Board orders that the Respondent, Nova Basement Systems, Inc., LaPorte, Indiana, its officers, agents, successors, and assigns shall

15 1. Cease and desist from

(a) Discharging or otherwise discriminating against employees because they support Local 4 and engage in concerted activities, or to discourage other employees from engaging in these activities.

(b) Coercively interrogating employees about their union membership, sympathies, or activities.

20 (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 John Naughton full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make John Naughton whole for any loss of earnings and other benefits suffered as a result of the unlawful discharge, in the manner set forth in the remedy section of this decision.

25 (c) Compensate John Naughton for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 25, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.

(d) File with the Regional Director for Region 25 a copy of the backpay recipient's corresponding W-2 form reflecting the backpay award.

35 (e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of John Naughton and, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

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

¹³ If no exceptions are filed as provided by Sec. 102.48 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.

(g) Post at its facility in LaPorte, Indiana, copies of the attached notice marked “Appendix.”¹⁴ Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent’s authorized representative, shall be posted by 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, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 10, 2019.

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

DATED, WASHINGTON, D.C., MARCH 10, 2021.

Kimberly Sorg - Graves

KIMBERLY R. SORG-GRAVES
ADMINISTRATIVE LAW JUDGE

¹⁴ If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. 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 a representative 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 discharge or otherwise discriminate against any of you because you support and assist a union or engage in protected concerted activities, or to discourage other employees from engaging in these activities.

WE WILL NOT coercively interrogate you about your union membership, sympathies, or activities.

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

WE WILL, within 14 days from the date of the Board's Order, offer John Naughton full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make John Naughton whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge, minus any net interim earnings, plus interest, and WE WILL also make him whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate John Naughton for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and we will file with the Regional Director for Region 25, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

WE WILL file with the Regional Director for Region 25 a copy of each the recipient's corresponding W-2 form reflecting the backpay award.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to our unlawful discharge of John Naughton and we will, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

NOVA BASEMENT SYSTEMS, 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.nlr.gov
Minton-Capehart Federal Building, 575 N. Pennsylvania Avenue, Room 238, Indianapolis, IN 46204-1577
(317) 226-7381, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/25-CA-250547 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND
MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS
CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE
REGIONAL OFFICE'S COMPLIANCE OFFICER, (317) 991-7644.