Thank you for submitting this case to Advice. We conclude that the Employer did not violate Section 8(a)(1) by creating an unlawful impression of surveillance through its Intelligence Analyst job posting. Regardless of whether any employee saw the job posting on the Employer’s website before it was amended, the posting would not lead a reasonable employee to assume that their union or other protected activities have been placed under surveillance. See, e.g., National Hot Rod Assn., 368 NLRB No. 26, slip op. at 2-3 (July 29, 2019) (employees would not reasonably assume their union activities were under surveillance where they were not conducting their activities in secret and the employer’s statement did not suggest that it had detailed knowledge of specific activities). There was nothing in the posting to indicate that the Intelligence Analyst would be surreptitiously gathering information on employee union activity rather than analyzing publicly available union data. It is not illegal for an employer to hire someone to run a lawful anti-union campaign pursuant to Section 8(c). Additionally, the allegation is inchoate as the Employer was seeking someone through the posting to do these job duties in the future, and the posting was not a description of current duties of any agent of the Employer. Therefore, the Region should dismiss this charge, absent withdrawal.

This email closes this case in Advice. Please contact us with any questions or concerns.