The Region submitted this COVID-19 case for consideration of whether the Employer violated Section 8(a)(1) of the Act by: (1) discharging the Charging Party on [�인원], 2020 because, in a group setting, [인원] stated [인원] did not think the employees should be training new employees because a new coworker [인원] had trained had COVID-19; and (2) informing the Charging Party that [인원] conduct constituted spreading rumors and directing [인원] not to do so. We conclude that even assuming the Charging Party engaged in PCA here, [인원] discharge for disclosing the identity of [인원] coworker whom [인원] believed to have COVID-19, and repeating this to multiple employees, was lawful. Further, we conclude the Employer’s statements to the Charging Party against spreading rumors were not coercive because, reasonably interpreted, they do not prohibit or interfere with the exercise of employees’ Section 7 rights.

In the Board’s recent decision in General Motors LLC, 369 NLRB No. 127, slip op. at 1 (July 21, 2020), the Board clarified that “if the General Counsel alleges discipline was motivated by Section 7 activity and the employer contends it was motivated by abusive conduct, causation is at issue” and a Wright Line analysis appropriate. 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), approved in NLRB v. Transportation Management Corp., 462 U.S. 393 (1983). We believe a Wright Line analysis is equally appropriate here, where the Employer, a food processing plant, discharged the Charging Party because of [인원] false statements regarding [인원] coworker’s health status, effectively identifying the co-worker, and the effect of those statements on the workplace. The Employer did not discipline—or even remark upon—the Charging Party’s objection to training new employees or any concerted refusal to do so because of the risk of catching COVID-19.

Rather, the evidence shows that Charging Party told several co-workers that an individual known to them as [인원] had contracted COVID-19, and that [인원] learned this from the individual’s [인원]. However, the Employer reasonably believed that the Charging Party was causing panic amongst [인원] co-workers by spreading what amounted to a false rumor and by identifying the employee as having COVID-19 when, in fact, [인원] did not have the illness. The Employer’s conclusion that the Charging Party’s claim about the individual was false was based on its own contacts with the employee. Notably, the [인원] upon whom Charging Party relied for the information now denies it. Under the circumstances, the Employer reasonably concluded that the Charging Party’s claims that the employee was diagnosed with COVID-19, and that the Charging Party learned this information from the employee’s [인원], were false.

Further, the Charging Party’s identification of the [인원] as having COVID-19 caused immediate concern among [인원] coworkers, who approached management individually to ascertain the truth of the Charging Party’s assertion. To set employees’ minds at ease, the Employer was compelled to call a meeting after the Charging Party’s discharge to review its coronavirus policies and safeguards and explicitly inform employees that there were no tested positive cases at the facility. Thus, even assuming Charging Party engaged in PCA, we conclude the Employer demonstrated it would have discharged [인원] anyway. Notwithstanding the Charging Party’s belief that the individual had COVID-19, the evidence is insufficient to show that [인원] did and the Employer reasonably believed [인원] did not. Thus, the Charging Party conveyed false and otherwise highly
sensitive information about a co-worker to multiple employees and breached the co-worker’s privacy in doing so. Relying on those facts, the Employer was within its rights to discharge the Charging Party.

Finally, we do not find the Employer’s warnings to the Charging Party that *** was spreading rumors and should not do so to have coerced employees in the exercise of their Section 7 rights. While not rising to the level of a workplace rule, see Shamrock Foods Co., 369 NLRB No. 5, slip op. at 4 (2020), these remarks are akin to a lawful civility rule. See Boeing Co., 365 NLRB No. 154, slip op. at 4 n.15 (2017) (where Board finds civility rules to constitute “common sense standards of conduct” that even if “viewed as potentially interfering with NLRA rights . . . any adverse effect would be comparatively slight because a broad range of activities protected by the NLRA are consistent with basic standards of harmony and civility.”). Along those lines, the warning issued here is not coercive, and must be found lawful.

Because the allegations lack merit, the Region should dismiss the amended charge, absent withdrawal.

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