JD-53-25
Washington, D.C.

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

THE WASHINGTON POST[1]

and

Case No. 5-CA-304208

WASHINGTON-BALTIMORE NEWS GUILD,
LOCAL NO. 32035 A/W THE NEWS GUILD,
COMMUNICATION WORKERS OF AMERICA,
AFL-CIO, CLC

Mathew S. Nagy, Esq.,
for the Acting General Counsel.
Robert Paul, Esq.,
for Charging Party.
Jessica Kastin, Esq., Makala L. Halkinrude-Allmaras, Esq., and Joseph B. Kennedy, Esq.,
for Respondent.

DECISION

STATEMENT OF THE CASE

ROBERT A. GIANNASI, Administrative Law Judge. This case opened on February 12, 2025, for discussion of preliminary matters and resumed for trial from March 31, 2025, to April 3, 2025. The complaint alleges that the Respondent violated Section 8(a)(1) of the Act by discharging reporter and employee Felicia Sonmez for engaging, from June 3, 2022, to about June 9, 2022, in protected concerted activity. The Respondent filed an answer denying the essential allegations in the complaint. The parties filed post-hearing briefs that I have read and considered.[2]

[1] The official corporate name is "W.P. Company, LLC" (Tr. 18).

[2] On the last day of the hearing the General Counsel moved to amend the complaint. After considering responses to a notice to show cause, I denied the motion. I include my order denying the motion in an appendix to this decision.

Based on the briefs and the entire record, including the testimony of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a limited liability company with an office and place of business in Washington, D.C., where it publishes and distributes "The Washington Post," a daily newspaper. Respondent is sometimes referred to herein as the "Post." I find, as Respondent admits, that it is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, and that the Charging Party (the Union or the Guild) is a labor organization withing the meaning of Section (2)(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

Background

The trial in this case produced some 200 documentary exhibits. The main witnesses were Sonmez for the General Counsel and Editors Sally Buzbee and Metea Gold for Respondent. All three were no longer with the Post by the time of the trial. There were three other witnesses who were not as prominent in the presentation of the case. The documentary evidence was loaded with public tweets, emails, and other messages that played an important part in this case.

Post reporters are among the unit employees represented by the Union and covered under a collective bargaining agreement between the Respondent and the Union. Jt. Exh. 2.

Felicia Sonmez began the second of her two stints of employment with Respondent in June of 2018 and worked as a breaking news reporter covering national politics until her discharge on June 9, 2022. She was one of five breaking news reporters under the leadership of Editor Donna Cassata. She reported to National Editor Metea Gold, who in turn reported to Executive Editor Sally Buzbee. During the relevant period in June of

2022, Buzbee headed the newsroom, the news gathering operation of the Post, consisting of reporters, photographers, designers, and others who help put together the newspaper. The newsroom had a staff of about 1000 employees, which included Sonmez. To complete the hierarchy, Buzbee reported to Publisher Fred Ryan. Tr. 46-50, 112-116.

Although not required by Respondent, Sonmez and the other Post reporters, who numbered in the "hundreds" (Tr. 49-50), were encouraged to monitor and use social media to share stories and obtain news ideas that were posted in real time. Sonmez, like most Post reporters, monitored Twitter, the site now called X, as a source for stories. Tr. 49-54,116-119, 564, 625, 676-677. Editors often sent reporters share requests, denoted by the "at" or the @ sign, linking to recent stories on social media. That sign indicates a specific recipient in public tweets. Tr. 120-121, 320-321. The Post has two social media policies, one for newsroom employees and one for all Post employees. Tr. 47-48, 491, Jt. Exhs. 4 and 5.

Sonmez's Twitter Activity

Sonmez's Twitter activity from June 3 to June 9, 2022, when she was discharged, is the main subject of this case. Although most reporters during this period worked in person in the newsroom, Sonmez worked remotely from home. Her work hours varied from day to day. But she communicated virtually with her editors and fellow reporters. Tr. 134.

In June of 2022, Sonmez had "hundreds" of Post employees who "followed" her on Twitter, meaning that they see every tweet she posts, and usually read them. The exchanges with her fellow Post reporters on Twitter are about news events on their beats, including background not covered in their stories. Sonmez had many other followers, totaling about 100,000, who again see every tweet she posts. Tr. 123-129. And, of course, those followers had their own followers which expanded the reach of her tweets. Tweeters often retweet the tweets they receive, further expanding the recipient pool. Moreover, tweets are public so millions and millions of people of all kinds and views could have access to original tweets. Tr. 121-122. Thus, as Sonmez herself admitted, the system has the effect of every tweet and retweet being amplified throughout the world. Tr. 477, 493. Indeed, this record includes responsive tweets to Sonmez that came from people she did not even know, including some offensive ones.

Friday, June 3

At 12:33 pm on Friday, June 3, Sonmez read a retweet sent publicly on Twitter by fellow Post reporter David Weigel of another Twitter user that read, "Every girl is bi. You just have to figure out if is polar or sexual." G.C. Exh. 1. Sonmez testified that she was shocked that a Post reporter would think it was not a problem to retweet something that was "so clearly stigmatizing women, bisexuality, and mental illness, all in one go." Tr. 135. Sonmez also testified she feared she personally would be stigmatized by the retweet because she was bisexual herself. Tr. 475-476, R. Exh. 2, p. 1.

Sonmez immediately sent a message, together with a screenshot of Weigel's retweet, to a group of 497 reporters on the politics breaking news channel of the Post's Slack internal messaging platform. She asked, "what is this?" Later, she added on that same internal site, "I guess everyone's fine with misogyny!" She also questioned the "silence from the company" in the face of what she called abuse of women reporters having our "social media feeds flooded with abuse, referencing social media responses to a previous story of hers. Several other reporters joined this thread agreeing that the Weigel retweet was wrong. At the conclusion of this thread, at 1:52 pm, National Editor Gold sent a Slack message to all newsroom reporters. on the politics breaking news thread, stating that she wanted to assure them that "The Post is committed to maintaining a respectful workplace for everyone. We do not tolerate demeaning language or actions." G.C. Exhs. 2 and 9, Tr. 135-143, 524-525.

Within minutes of the Weigel retweet and Sonmez's response, Gold had a private Slack exchange with Dan Eagen, the senior politics editor, and Sean Sullivan, Weigel's editor and supervisor. They condemned the retweet and discussed getting him to remove it and apologize. R. Exh. 3. Sullivan called and emailed Weigel, who was on a plane traveling to an assignment, about the Respondent's concern. He was eventually ordered to remove the offending retweet and to tweet an apology. In a 12:59 pm email to Sullivan, Weigel responded that he would, but that he had already "un RT'd it" about 15 minutes before. R. Exhs. 3-5.

At 12:37 pm., Sonmez sent a public tweet containing Weigel's retweet in which she stated, "Fantastic to work at a news outlet where retweets like this are allowed!" G.C. Exh. 3. She also retweeted a tweet from former CNN anchor, and, at the time, an independent journalist and

media commentator, Soledad O'Brien. Ms. O'Brien had answered Sonmez's original tweet 4 minutes later by stating, "It is TOTALLY NORMAL that a @washingtonpost political reporter retweets this misogynistic crap. Totally totally normal." G.C. Exh. 4. Tr. 147-149.

At about 12:45 pm, Sonmez's supervisor, Donna Cassata, sent Sonmez two private Slack messages stating that she had "raised your question about Dave's retweet with his editors" and that one was "reaching out" to Weigel. G.C. Exh. 6.

At 1:08 pm Weigel sent a public tweet saying he had removed his retweet of "an offensive joke," and issued an apology saying he did not mean to cause "any harm." G.C. E xh. 10. Weigel immediately returned to Washington and had an email exchange with Gold shortly after 2 pm, in which he apologized directly to her; she told him that there would likely be "consequences" for his retweet. R. Exh. 5. The following workday, Monday, June 6, Weigel received a 30-day suspension. G.C. Exh.129, R. Exh.12, Tr. 537.

At 1:19 pm, Sullivan updated Sonmez on Slack about how he had ordered Weigel to remove the retweet and apologize and that Weigel told him he had already untweeted it. R. Exh. 3. At this point, Sonmez knew that Weigel had removed his offensive retweet and apologized. R. Exh. 2, at p. 2, Tr. 475.

At 2:02 pm, Oliver Darcy, a CNN reporter, tweeted that the Post had issued a public statement condemning Weigel's retweet, for which Weigel apologized. Darcy quoted the Post's statement as follows: "Editors have made clear to the staff that the tweet was reprehensible and demeaning language or actions like that will not be tolerated." Darcy included his previous retweets of Weigel's tweeted removal and apology as well as Gold's earlier Slack message, referred to above. G.C. Exh. 10, Tr. 158-161.

At 2:12 pm, Gold called Sonmez on her cell phone to tell her that she was as concerned as Sonmez about the Weigel retweet and told her what was being done about it. Each testified in agreement to parts of the conversation. G.C. Exh. 12, Tr. 162-165, 530-539. But Gold testified that she told Sonmez that we "were taking swift action to deal with" the matter and "the Post does not condone this type of behavior." Tr. 532. Sonmez omitted that part. I credit Gold's account because it was more detailed and

supported by documentary evidence showing that the call was discussed in meetings with senior staff. Gold's contemporaneous written report of the call supports her testimony. R. Exh. 7.

At 3:17 pm, on June 3, Sonmez sent a private message to her supervisor, Donna Cassata, stating, "Kinda hard to 'do your best work' when colleagues' misogynist tweets are just popping up on your twitter thread." Cassata responded, "I know. It's been a rough day." G.C. Exh. 6. Since no specific Post colleagues aside from Weigel were the focus of Sonmez's reference, I assume she meant other people who did not work for the Post and apparently attacked her on Twitter. She specifically mentioned Stephen L. Miller, a conservative commentator, among those who targeted her. R. Exh. 2 at p. 5.

Sonmez's workday ended at 6 pm, but she continued thereafter to send public tweets. Beginning at 6:37 pm, Sonmez sent three separate tweets containing screen shots of the critical tweets she received, together with her comments, including: "Banner week for Twitter," showing that condemning sexism begets more sexism at "ever greater orders of magnitude," and "It's a delight;" and "an absolute delight." G.C. Exh. 13. She also received tweets and Slack messages that praised her courage for calling out the Weigel retweet. G.C. Exhs. 15, 40. At 6:49 pm, she tweeted: "Not sure whether an environment where employees feel free to retweet sexist jokes is one where all of us can 'do our best work'" G.C. Exh. 14.

Saturday, June 4

Sonmez did not, at this time, work on weekends. Tr. 178. Shortly after 1:pm on Saturday, she received an email at her Post email address from someone she did not know, with the subject, "Karen," a derogatory term for a demanding or complaining woman (Tr.179). It stated that Sonmez should keep her mouth shut and "legs spread open because you seem smarter that way!" G.C. Exh. 18, Tr. 178-179. At 2:17 pm, Sonmez sent a public tweet stating: "Truly a delight to be a woman online," sharing a screen shot of the above email. G.C. Exh. 19. A few minutes later, Sonmez tweeted: "Imagining a world where news organizations evenly enforce their social media policies rather than allowing certain reporters to feel entitled to tweet racial/sexist things without fear of repercussions, thus turning their colleagues into targets of online hate when they object." G.C. Exh. 20. In explaining why she sent that tweet, she testified that she was

voicing her "frustration" at the "vacuum of the leadership" of the Post that "caused individual reporters, such as myself, to become targets of online hate whenever they spoke out about things that were wrong." Tr. 181.

Thereafter, beginning at about 2:27 pm, fellow Post reporter Jose Del Real posted three public tweets. The first states that "repeated and targeted public harassment of a colleague is neither a good look nor particularly effective. It turns the language of inclusivity into clout chasing and bullying. I don't think this is appropriate." The second, sent at 2:29 pm, states that "Dave's retweet was terrible and unacceptable. But rallying the internet to attack him for a mistake he made doesn't actually solve anything. We all mess up in some way or another. There is such a thing as challenging with compassion." G.C. Exh. 21. At 2:31 p.m., Del Real tweets "I've had a long week and made the mistake of logging into Twitter. What a horror show. Can everyone just be kinder to each other?" G.C. Exh. 22.

From 8:56 pm on Saturday to 1:42 am the next morning, Sonmez sent some 15 different tweets, some original, some retweets with attacks on her attached, and responses to other tweets, including support for her position. G.C. Exhs. 24-31.[3] All were public tweets, but some were basically exchanges between her and Del Real. Sonmez. took umbrage at some of Del Real's language and defended her continuing twitter activity against comments "demeaning women," stating that her "timeline this past week" was full of women wondering "whether they can't trust the Post to report on them and for them." She also said Del Real's criticism of her "speaks volumes about your own priorities." G.C. Exh. 25. She invited him to consider the actual "targeted harassment" against her, attaching the "Karen" email discussed above. G.C. Exh. 26.

Sonmez's Twitter thread included details about a personal incident from years before, while she was working in Beijing, that illustrated what she called the "impact of silence in the face of misogyny." According to Sonmez, a woman tried to join a male soccer team and some of Sonmez's male colleagues at the time made sexist comments on the matter. She regretted not speaking out on that occasion, even though she "was sexually assaulted by the same man," because she was worried that she would be

[3] Because Twitter limits individual tweets to 280 words, some Twitter threads consist of consecutive individual tweets.

similarly vilified. She also said that, months later, she "came forward about" her "assault" because, even though she was still terrified, it was "even more terrifying to stay silent." G.C. Exh. 27.

At 9:55 pm, in the same thread, Sonmez tweeted (G.C. Exh. 27, p. 3):

> There are women you don't know, and who you will never meet, but who see a Post reporter retweet a sexist joke and wonder whether they're supposed to accept that as "normal" because no one at the Post says anything about it.
>
> Saying something matters to them. And it matters to me.

Del Real responded, tweeting, "I will always admire your bravery in sharing your story And I support your fight against retribution for doing so." Later, in another tweet, he told Sonmez, "Entirely separately, I hope you reconsider the cruelty you regularly unleash against colleagues." G.C. Exh. 27. Sonmez questioned Del Real's use of the word "cruelty," and Del Real responded condemning what he called Sonmez using twitter to make "public bulling" into a sweeping opera about principles." He again agreed that Weigel's retweet was offensive and should have been called out. But he said, [i]t was strongly condemned internally. So I'm confused about your implication otherwise." After a further exchange of public tweets between the two, Sonmez tweeted this: "Thank you Jose. My tweet wasn't directed at you but rather at those who have been reading your accusations against me" and "wondering what to make of them." G.C. Exh. 29.

Sunday June 5

At 9:31 am, Soledad O'Brien retweeted the Sonmez tweet from the day before that stated, "there are women who see a Post reporter retweet a sexist joke and wonder whether they're supposed to accept that as 'normal' because no one at the Post says anything about it. Saying something matters to them. And it matters to me." In the 9:31 am retweet, O'Brien responds, "[i]t absolutely matters. It also creates a record." Sonmez answers at 9:43 am, thanking O'Brien with three emojis (Tr. 210). G.C. Exh. 38.

At 9:01 am, Sonmez sent a tweet with an "at" to Gold and Buzbee, asking if the Post agreed that objecting to sexism is not "clout chasing," or

"harassment," or "cruelty," and attaching a tweet thread she sent out the night before about "why speaking out matters to me and other women." G.C. Exh. 32. Minutes later, she sent an email to Gold, Buzbee and Del Real on the same subject asking if it was "appropriate" for a Post employee to publicly "retaliate against a colleague for standing up against another colleague's sexist tweet.?" Sonmez attached a link to some of her earlier tweets. G.C. Exh. 35. At 9:50 am, Sonmez again emailed Buzbee, Gold and Del Real, attaching a group of tweets supporting her criticism of Weigel and Del Real. One criticizes the Post, which is blamed for creating the situation that is labeled a "failure." G.C. Exh. 41 at p. 8.

At 10:06 am, Sonmez retweeted a clearly offensive tweet from someone she did not know, with a statement that harassment of her on social media continues. G.C. Exh. 34, Tr. 221-222. At 11:09 am, Sonmez sent an email to Buzbee, Gold and Del Real, attaching an offensive email from an outside source calling her, among other things, "garbage." Gold responded, stating that she would send the offending messages to Security. G.C. Exh. 52, pp. 6-7.

At 10:10 am, Del Real sent an email to Sonmez with a copy to Buzbee and Gold, saying he was sorry about the attacks she was getting on Twitter, but he said the "twitter thread you sent about me invited a lot of hate toward me." He ended with: "Happy to discuss further." G.C. Exh. 44.

At 10:22 am, Sonmez sends another email to Buzbee, Gold and Del Real, with the subject line, "Objecting to sexism at the Post," and stating, "A few more reactions from folks online:" Attached were responses to one of her earlier tweets, one of which said that the Post "has a big issue with some of its male journalists. They may want to look into this because it seems like casual misogyny is tolerated." Another mentioned "misogyny" at the Post. G.C. Exh. 45, pp. 4-10. [4]

At 11:30 am on Sunday, Buzbee sent an email to "Newsroom Only," with the subject line, "respect and kindness." It states as follows (G.C. Exh.54):

We expect the staff to treat each other with respect and kindness

[4] The above email with its attachments was resent to the same recipients in another email at 2: 44 pm, with another attachment. G.C. Exh. 45, pp. 1-3.

> both in the newsroom and online. We are a collegial and creative newsroom doing an astonishing amount of important and ground-breaking journalism. One of the great strengths of our newsroom is our collaborative spirit.
>
> The Washington Post is committed to an inclusive and respectful environment free of harassment, discrimination or bias of any sort. When issues arise, please raise them with leadership or human Resources and we will address them promptly and firmly.

At 12:48 pm, Sonmez emailed Gold and Buzbee, attaching tweets, stating that there was "an army of right-wing trolls . . . now seizing on Sally's statement about 'kindness' and hailing it as an admonishment of me for publicly objecting to a colleague's sexist tweet." Gold replied in a 1:33 pm email that she had forwarded to Security the "disturbing" messages that Sonmez had sent her. Gold also told Sonmez that Post managers "take seriously and promptly address issues of bias, discrimination and harassment, and we are dealing directly with employees involved. We also want all employees to feel supported, which is why I reached out personally to you [on] Friday. I am happy to talk anytime—just let me know how I can be of help." G.C. Exh. 52, pp. 1-5.

At 1:05 pm, Sonmez sent a public tweet, with screen shots of the harassment she had been receiving, stating as follows: "Especially great when a statement from your newspaper's executive editor provides fodder for 'more' harassment." G.C. Exh. 55. Sonmez testified that Buzbee's email to the newsroom staff asking for civility "encourage[d]" more online harassment against her. Tr. 228. This was not true. Buzbee's statement was sent to Post colleagues in an email, clearly worded to lower the temperature among the Post employees engaged on Twitter. None of the screen shots attached to the tweet were shown to be from Post employees and there was no evidence that Buzbee was responsible for any tweets harassing Sonmez.

At 2: 41 pm, after learning about the twitter activity between Sonmez and Del Real that day, Gold sent a message to Post employees on Slack, "STOP TWEETING EVERYONE." G.C. Exh. 49.

At 3:24 pm, Del Real sent three separate tweets in succession, stating that he had come under a series of online attacks because he had

called for "compassion," in Sonmez's criticism of the Weigel retweet. He said he had temporarily deactivated his twitter account, but the attacks continued directed by "one person." He said he wanted to defend himself but found it difficult to find the line "between sympathizing and challenging with compassion." He therefore was "moving on and not engaging." G.C. Exh. 57. This was his last public tweet reflected in this record.

At 6:35 pm, Sonmez sent an email to Buzbee, copying Gold, asking if they were aware that Del Real had deactivated his Twitter account and blocked her from seeing his tweets. She also suggests that this violated Buzbee's email asking employees to treat each other with respect and kindness. G.C. Exh. 63. Later, she emailed them again, attaching some of the earlier tweets from Del Real and objecting to his blaming her for the online attacks on him. G.C. Exhs. 64, 65.

Monday, June 6[5]

At 8:29 am, on Monday morning, Buzbee replied to an email sent by Sonmez at 12:36 am. Sonmez's lengthy email, which included links to tweets, had complained about people who had been driving the "abuse" that she was experiencing online. She named several of them, including two of them, Glenn Greenwald and Christina Sommers, whom she identified in a timeline she prepared (R. Exh. 2, p. 3), as "right wing influencers." She also mentioned Del Real as contributing to her online harassment. G.C. Exh. 74. Buzbee replied saying that Human Resources would "reach out to her today on these issues," and that Security would also reach out, as Gold had told her on Sunday. G.C. Exh. 78.

At 4:14 pm, Oliver Darcy tweeted that the Washington Post had suspended Weigel for 30 days over his retweet of a sexist joke. G.C. Exh. 92. The document setting forth the suspension without pay is in evidence as G.C. Exh. 129 and R. Exh. 12.[6]

At some point on Monday, June 6, Sonmez retweeted her earlier tweet from Saturday where she stated that women "see a Post reporter

[5] Sonmez's scheduled work hours on Monday, June 6 were 1:30 pm to 10 pm. Tr. 266. But she was sent an email from her supervisor to start her shift at 4 pm. to cover a Congressional hearing that was to begin at 8 pm. G.C. Exh. 79.

[6] This was the first time Sonmez learned about Weigel's suspension. She did not retweet or reply in any way to Darby's tweet. Tr. 293.

retweet a sexist joke and wonder whether they're supposed to accept that as 'normal' because no one at the Post says anything about it." That tweet ended with this: "Saying something matters them. And it matters to me." G.C. Exh. 85, Tr. 284-285.

From 10:32 pm to 11:49 pm, Sonmez sent 14 consecutive tweets with screen shots of online harassment of her the past few days. G.C. Exh. 103. She testified as follows about the Twitter responses (Tr.325-326):

> Those images were screenshots of the virulent online harassment that I was subjected to that day and the previous days after I had spoken out about Dave Weigel's tweet. And they include all manner of comments about my appearance, my mental health, accusing me of being a psychopath, personality disorders. One person says I should absolutely be in prison for false rape allegations. One person tweeted a photo of an empty egg carton, which I believe is an online meme used to denigrate women who are above childbearing age or—or infertile. There's a lot of gender slurs. People blaming me for Dave Weigel's suspension, someone calling me a "social terrorist," someone asking me if I'm so ugly—"This chick is so ugly" and calling me a "half-man."

Late Monday night, there were communications in management circles about Sonmez's Twitter activity. Gold sent an email to Buzbee telling her that Del Real had complained about Sonmez's retweets of negative comments about him and that there were complaints from staff about Sonmez's tweeting activity, particularly after Weigel's suspension. Buzbee responded that Chief Human Resources Officer Wayne Connell was going to talk with Sonmez and Del Real the next day and Buzbee was going to talk to Publisher Fred Ryan. G.C. Exh. 56, R. Exh. 9.

Tuesday June 7

Sonmez's work shift on Tuesday, June 7 started at 1:30 pm and ended at 10 pm. Tr. 357, 400. Beginning at 9:13 am on Tuesday, Sonmez sent a series of 30 public tweets (Tr.367) about an internal report prepared in early 2020 about social media use at the Post. Sonmez stated that the report was in response to what she called "newsroom-wide outrage over my suspension" at that time. She continued, "[t]wo years later nothing has changed," attaching a link to a New York Times article about the present

controversy. She also attached a copy of the report, which she testified was made public by the New York Times sometime in 2020. Tr. 360. Sonmez complained about unequal treatment based on gender and reputation ("stars" were treated better). She specifically mentioned her 2020 suspension, which was later rescinded, when she was barred from "covering sexual assault," according to Sonmez for having revealed that she had herself been involved in a sexual assault (Tr.368). Sonmez continued by saying that the suspension forced her "to relive my trauma every day at work for nearly two years." She also stated that, at the time, she "hid in a hotel" for days "after being doxed and suspended." The Twitter thread ended at 11:32 pm with a quote from the report, "different rules for different people here." G.C. Exh. 108, Tr. 354-370. The earlier situation was apparently set off by a January 2020 tweet by Sonmez about a Kobe Bryant rape allegation, after which, according to Sonmez, she received an even greater online abuse than she received in the situation here. Tr. 334.[7]

Sonmez elaborated on the concerns that caused her to say in one of her tweets that "[t]he only thing that seems to actually bring about change is when the frustrations boil over into public view." The only example she gave was her own 2020 suspension and ban on doing sexual assault stories because of her own sexual assault. Tr. 367-368). Here is her testimony about that (Tr. 369):

> And my editors basically told me, too bad, you're going to have to just deal with it. That's—that's our decision. And it was only once I—for those years I did not speak publicly about the ban. I just . . . tried to keep my head down and just do a good job at work. But then, finally, when my mental health toll became too much, because I had—I was forced to constantly tell my coworkers why I was not able to—or why I was not allowed to write stories on that topic, and I had to repeatedly tell them that I was a survivor of sexual assault. As a result of the Post's policy, I finally publicly revealed the existence of that ban and the deep harm it was causing to me. And a news outlet, Politico, wrote about it. And I believe it was the next day, my editors announced that they were lifting that ban. And they wrote a letter of

[7] The Kobe Bryant tweet and related documents are reflected in G.C. Exh. 184, as to which I reserved ruling, along with related testimony. Tr. 332-347. I now rule that both the testimony and the exhibit are relevant, and both are admitted in evidence. The 2020 situation is clearly necessary background for G.C. Exh. 108, which was admitted in evidence as the tweet sent on June 7, 2022.

> apology to me explaining that they realized that the ban was not necessary. And so that was on my mind when I wrote this.

At least some of those tweets were retweeted by journalists who said that what was expressed might well apply to other media companies. G.C. Exhs. 115 and 116. At 11:45 am, Sonmez sent an email to Buzbee and Gold with a link to the entire Twitter thread. G.C. Exh. 112.

At 2:14 pm, Sonmez received an email at her Post email address that said, "Weigel won't take this lying down. And neither will we. We're tired of being pushed around. Felicia will soon understand." Sonmez rightly took this as a threat and forwarded it to Gold and Buzbee, as well as Matt Bohatch, the Post's Director of Security. Bohatch responded that he would look into the matter and "monitor social media accordingly." G.C. Exh. 121. At this point, Sonmez testified that she "began to fear more for my personal safety." Tr. 390.

In response to an email request from Human Resources Director Jennifer Legat to meet about "your concerns about the events that unfolded over the weekend," Sonmez checked on the availability of Guild representatives and agreed to meet. G.C. Exh. 117. The meeting took place at 4 pm on Zoom. In addition to Sonmez, Legat and Chief Human Resources Officer Wayne Connell were present for the Post, and Evan Yates and another person appeared for the Guild. According to Sonmez, the meeting lasted about an hour and a half (Tr.392). The meeting generally covered Sonmez's tweeting activities involving Weigel and Del Real, and the harassment she was receiving online. But Sonmez was not told to stop her Twitter activity or that she did anything improper. Tr. 75-79, 390-393.

Legat and Connell also met with Del Real. The next day, Connell sent the following email message to Buzbee (R. Exh. 17, G.C. Exh. 175):

> We have completed our meetings with Felicia and Jose. Further, we have concluded that Jose did not violate our policy prohibiting workplace harassment, nor did he create a hostile work environment. Factually, his initial engagement with heron Twitter was posted as a reply to her tweet, which would be seen only by those who took the time to access and read those replies. Felicia then amplified the reach of Jose's messages by posting them into her main twitter feed.

At 4:18 pm on Tuesday, Buzbee sent an email to the entire newsroom, emphasizing the importance of the Post's policies against attacking colleagues either in person or online. She said there were plans to update the social media policy, but, until then, the current policy "remains in effect." She then quoted from Rule 3 of the Respondent's Digital Publishing Guide as follows: "When it comes to your colleagues, be constructive and collegial: If you have a question or concern about something that has been published, speak to your colleague directly." In closing, Buzbee stated that Respondent "would enforce our policies and standards." G.C. Exh. 127.

Two minutes later, Buzbee sent an email to Sonmez asking if she was available to talk with her and Gold. Sonmez replied at 6:01 pm, "[l]et me check with the Guild to see if a steward might be available." G.C. Exh. 128. There was an agreement to meet at 8 pm on Zoom the next day. Buzbee confirmed the time and notified Sonmez that the HR investigation was still ongoing. It turned out that Buzbee was unable to make that meeting due to a delay in her return to Washington from an out of town engagement, so it was cancelled. G.C. Exh. 161.The meeting was never held. Tr. 440.

At 8:19 pm, Sonmez tweeted screen shots of Del Real's tweets about her on Sunday, stating that they were still up even though she had complained to management about them, suggesting that Del Real was responsible for the online threats and abuse she had been receiving. A fellow Post reporter, Lisa Rein, tweeted a response at 8:50 pm, addressed to Sonmez, "Please stop." Sonmez replied, implying that she would not until Del Real's tweets were taken down. G.C. Exhs. 136 and 137.

In another email to Gold and Buzbee at 9:22 pm, this time with copies to Connell and Legat, Sonmez reported on the meeting she had earlier that day with Connell and Legat. Then she referred to the Rein tweet mentioned above. She also stated, in a repeat of a theme in an earlier email, that she was still being bombarded with abusive tweets from "trolls and the likes of Glenn Greenwald," but she did not expect such open hostility from a colleague (presumably referring to Del Real) after raising a "legitimate workplace issue." G.C. Exh. 140. Sonmez's self-serving reference to raising a "legitimate workplace issue" was not explained further in her testimony about the exhibit (Tr. 412-413). Nor does her

subjective opinion matter in what objectively may be found as a matter of law about whether she was raising a workplace issue.

It appears that the last tweeting activity by Sonmez was on Wednesday, June 8. It was a retweet at 12:54 pm of an earlier tweet of hers. G.C. Exh. 156, G.C. Br. at 46. This was the end of 5 consecutive days of Twitter activity by Sonmez.

Harassment and Safety Concerns

As indicated above, throughout the period from June 3 through June 8, Sonmez received many tweets and messages in support of her position for calling out Weigel's sexist retweet. She tweeted appreciative responses to them. During the same period, she also received many tweets and messages critical of her position and indeed some of them were abusive and sexist.[8] She retweeted or screenshot many of these, both the favorable ones and the abusive ones. She also forwarded many, particularly the abusive ones, to her superiors, Gold and Buzbee.[9]

At first Sonmez seemed to welcome critical tweets and messages as a sort of badge of honor, sarcastically referring to them as a "delight," an "absolute delight, and "[t]ruly a delight to be a woman online." But she later grew increasingly concerned about the harassment and abuse, especially some of the emails to her Post email address. As indicated above, Post management contacted its Security Office to address Sonmez's concerns. After one such threatening message to Sonmez on Tuesday afternoon, the Post's Director of Security, Matt Bohatch, promised to check into the matter. The next morning, June 8, Bohatch sent an email to Sonmez stating that he had updated some of her protections on Twitter. He also

[8] Sonmez received an email at 11:16 am on the day she was fired with the subject line, "See you next Tuesday," calling her "a gigantic bitch." G.C. Exh.172. She forwarded the email to Gold, Buzbee and Bohatch. Tr. 448-450.

[9] R. Exh. 2 is a timeline prepared by Sonmez of her tweets and comments between June 3 and the date of her discharge on June 9. Many tweets and comments were about the harassment she was receiving online. She seemed particularly concerned, maybe obsessed, about those she described as coming from "right-wing influencers." She even listed the number of times each sent tweets attacking her over a 5-day period. According to Sonmez, one sent 177 tweets. R. Exh. 2 at p. 3 and again at p.61. But Sonmez won the tweeting contest. In reviewing the timeline, I counted well over 200 tweets or retweets that she herself sent about the Weigel retweet and its aftermath.

offered Sonmez security protection at her home. Sonmez thanked him but opted to hold off for now on having security at her home. R. Exh. 1.

Also, on June 8, Buzbee sent an email to Sonmez confirming the scheduled meeting that night, which was later cancelled, and telling her that the HR investigation was ongoing. Buzbee also said she knew Sonmez was in touch with Security and assured her that, "[y]our safety and the safety of all staff is a critical priority for us." Sonmez replied, without elaboration: "The Washington Post is not doing enough right now to protect my safety." G.C. Exh. 149.

Back at the Newsroom

Gold and Buzbee offered uncontradicted and mutually corroborative testimony, supported by emails and messages from reporters (R. Exhs. 9-13), that employees in the newsroom were complaining about Sonmez's tweeting activity throughout the period from June 3 to June 8. Gold and Buzbee, and others with whom they spoke, were present in the newsroom. Sonmez was not because she was working from home. Gold had conversations with employees in the newsroom and even received telephone calls from employees complaining about Sonmez's tweeting activities on Sunday. Tr. 539-560, 573- 575, 612-613. She testified that whenever employees in the newsroom saw a Sonmez tweet, they would huddle together and talk about it. She described employees being in "distress," and almost like the "whole staff being taken hostage by the situation." Tr. 559.

Buzbee's testimony was similar to Gold's. She testified that she had numerous conversations in which her staff raised the issue of Sonmez attacking her colleagues on Twitter. She testified that, while she was in her office the entire week, she received "5 to 10 drop-by visits each day with people talking about this issue and worried about this issue." Tr. 688. She also described what she called a lot of "angst" and "concern" about the issue among the staff. Tr. 624-629, 686-700, 770, 797.

Supportive of the above testimony were contemporaneous messages on Respondent's Slack system between Post reporters complaining about Sonmez's twitter activity. One group criticized Sonmez's continuous tweets after the Post had condemned Weigel's retweet and apologized. Others supported Del Real in the face of Sonmez's tweets about him. One

exchange, on June 5, had a reporter siding with Del Real, saying "I am really terrified about running afoul of Felicia." Another replied that she agreed and stated, "She is out of control." R. Exh. 14. In a Sunday email to Buzbee, Del Real stated he was "sorry about all the trouble today." He also said that he was "trying to remind people that Felicia is clearly hurting. Maybe I'm an idiot for still thinking so, but empathy is an important tool here as in other situations." R. Exh. 9. On Monday, Del Real sent an email to Gold saying Sonmez was still retweeting things about him well past midnight; and, on Tuesday, he told her she was continuing those tweets, attaching a link to them. R. Exh. 9.

The Denouement

Sonmez was discharged on Thursday, June 9, 2022. She was scheduled to begin her work shift at 4 pm that day, but she received an email at 1:42 pm from Wayne Connell telling her that she was discharged "effective immediately." G.C. Exh. 178, Tr. 448, 455. On June 15, 2022, the Guild protested the discharge by filing a grievance over the discharge and initiating the first step of the grievance procedure set forth in the collective bargaining agreement between the Post and the Guild. G.C. Exh. 180. The parties held one meeting on the grievance, sometime in July 2022. Tr. 90-93,459-461. But there was no resolution of the matter, and the Guild later decided not to take the case to arbitration. Tr. 108-109.

B. Discussion and Analysis

Applicable Legal Principles

An employer violates Section 8(a)(1) of the Act if it disciplines or discharges an employee because that employee engaged in protected concerted activity within the meaning of Section 7 of the Act. *Marburn Academy Inc*., 368 NLRB No. 38, slip op. 10 (2019), citing and discussing numerous authorities. Section 7 protects employee activity that is concerted and addressed to mutual aid and protection. Concerted activity is broadly defined as an activity that is engaged with or on the authority of other employees. The phrase mutual aid and protection focuses on whether the employees are seeking to improve their terms and conditions of employment. *Fresh & Easy Neighborhood Market, Inc.,* 361 NLRB 151, 152-153 (2014).

There are, however, limitations on protected concerted conduct and, in certain circumstances, otherwise protected communications may lose the protection of the Act. In *NLRB v. Local Union No. 1229, IBEW*, 346 U.S. 464 (1953) (*Jefferson Standard*), the Supreme Court reconciled Section 10(c) of the Act, which permits discharges for cause, with Section 7 and related sections that prohibit discharges for protected concerted activities. Thus, as the Court stated, communications in connection with labor disputes are not protected from discharge if they are "disloyal"—more precisely, if they amount to a "public disparaging attack" on the employer's product or business policies, "in a manner reasonably calculated to harm the company's reputation and reduce its income." Id. at 471. See also *NLRB v. Washington Aluminum Co.*, 370 U.S. 9, 17 (1972), citing *Jefferson Standard* for the proposition that Section 7 protections are not applicable to activities characterized as "indefensible" because they showed a "disloyalty" unnecessary to carry out legitimate protected activity. Both cases are discussed thoroughly in *MikLin Enterprises, Inc. v. NLRB*, 861 F.3d 812, 818-820 (8th Cir. 2017) (en banc), in which the Court made clear that *Jefferson Standard* does not require a showing of malice for the disqualifying disloyalty. Indeed, *Jefferson Standard* does not require an inquiry into whether there was a subjective malicious motive on the part of the employee; rather the inquiry is an objective one addressed to whether the communication could reasonably be viewed as an attack on the employer's reputation. Id. at 820-822.

Section 7 protections may extend to communications with third parties or the public through channels outside the immediate employer-employee relationship. *Eastex, Inc. v. NLRB*, 437 U.S. 556, 565 (1978). In such cases, the Board, following the *Jefferson Standard* rule set forth above, as well as a remand directive, applied a two-pronged test to determine whether Section 7 protections apply. The first, as to which the burden of proof falls on the General Counsel, is whether the communication is related to an ongoing labor dispute between employees and employers; and the second, as to which the burden falls on the employer, is whether the communication is "so disloyal, reckless or maliciously untrue" as to lose the protection of the Act. *Oncor Electric Delivery Company*, LLC, 373 NLRB No. 80, slip op. 3-4 (2024), on remand

from the United States Court of Appeals for the District of Columbia, 887 F.3d 488 (2018).[10]

In analyzing the step one issue, the Board in *Oncor* applied *Jefferson Standard* in relying on the definition of a "labor dispute" in Section 2(9) of the Act. Although no particular words or details are required, according to the Board, the key question is whether the communication to the recipient provided "enough information about a labor dispute to allow "third parties" to "filter the information critically." As the Board further stated, relevant factors could include the content and context of the communication, the intended audience, and the means of its distribution. 373 NLRB No. 80, slip op. 3-4.[11]

After considering the relevant factors, the Board in *Oncor* found that a union representative's brief two minute testimony before a state legislative committee was sufficiently clear as a safety complaint about a labor dispute, and the legislators were sufficiently knowledgeable on how to filter through the issue to establish the first step of the analysis. Thus, the Board, with Member Kaplan dissenting, found the testimony was protected concerted activity and the resulting discharge was unlawful.

Sonmez Was Not Engaged in a Labor Dispute on Twitter

Applying the test set forth by the Board in *Oncor* for protected third party communications, I find that General Counsel has not proved the first step, namely, that Sonmez's tweeting activity was sufficiently related to a labor dispute between the Post and its employees. Neither the content or the context of the communications by Sonmez, the intended audience, nor her means of communications provided the recipients enough information about a labor dispute to allow them to "filter the information critically."

On cross-examination of Sonmez, Respondent's counsel used Sonmez's affidavit to show that she had a broader purpose in her Twitter

[10] The Court of Appeals agreed with the Board's original finding on step two of the analysis so the only issue before the Board on remand was step one, whether the General Counsel established that the communication in that case was related to an ongoing labor dispute.

[11] In *Oncor*, the Board used the term "labor dispute" in Section 9 of the Act interchangeably with the language of Section 7. I see no significant difference and my decision would be the same whether I used either language in my analysis.

activity in this case than simply focusing on the Washington Post as "our" workplace. See Tr. 488-491. For a better understanding of her testimony and its context, I asked Sonmez to read the relevant passage in her affidavit on the matter. Here is what she read (Tr. 497):

> One way I use Twitter is as a platform to help others feel less alone and to help others feel seen and heard. This was a moment for me to say look, it's happening again. The same pattern happens over and over and this is not okay and for people to see what kind of abuse women, and specifically women journalists get online. Twitter is our workplace and for speaking up about something in my workplace, I received this really blatant misogyny.

Contrary to the quoted passage, Twitter was not Sonmez's workplace in the sense that her tweets were automatically part of her job. Indeed, much of her tweeting activity occurred on nonwork time, including over the weekend and late at night into early morning. I find that Sonmez's Twitter activity in this case was not part of her job and the "blatant misogyny" she received in response to her tweets was on her, not her employer. She was the one who chose Twitter for her communications to the public. Her employer authorized but did not require the use of Twitter; it was to be used for reporting breaking news or monitoring Twitter for sources of news stories and background. Sonmez, however, went well beyond that work-related use of Twitter.

By the end of the day on Friday, the immediate impact of Weigel's offensive retweet and Sonmez's reaction to it had calmed down. Sonmez knew that Weigel had removed his retweet and apologized and that the Post issued a public statement condemning Weigel's retweet. He would be suspended on Monday, the next workday. The overall Friday tweeting activity was mostly devoted to Weigel's offensive retweet and Sonmez's response to it. In my analysis, I focus mostly on Sonmez's subsequent tweeting which devolved into unprotected territory.

On Saturday Sonmez blamed her employer for "allowing certain reporters to feel entitled to tweet racist/sexist things without fear of repercussions, thus turning their colleagues into targets of online hate when they object.". Subsequent tweets falsely blamed Respondent for the considerable blowback Sonmez was receiving from Twitter, which was her choice to air her views. Sonmez also sent tweets that clearly stated that no

one at the Post was doing anything about Weigel's sexist retweet, which was sent on Friday. Two of the Sonmez tweets in this respect were sent on Saturday, a retweet by Soledad O'Brien on Sunday, and the last retweet by Sonmez was sent on Monday. These were repeated and knowing misrepresentations of the Post's quick reaction in condemning the Weigel retweet. For example, in a Slack message in the same thread in which Sonmez had initially called out the Weigel retweet, Gold told her staff that "we do not tolerate demeaning language or actions." Moreover, at 2:12 pm, the very day of Weigel retweet, Gold called Sonmez and told her that Respondent was "taking swift action to deal with" the matter and "the Post does not condone this type of behavior." Tr. 532. Sonmez's tweets not only falsely blamed her employer for the original retweet and her online criticism, but they had nothing to do with a labor dispute and were unnecessary to carry out legitimate protected activity. See *Mountain Shadows Golf Resort*, 330 NLRB 1238, 1241 (2000) (March 5 handbill found unprotected under *Jefferson Standard* because it attacked employer without reference to labor dispute).

Nor were Sonmez's tweets decrying sexism in her objection to Weigel's retweet and subsequent tweets part of a group employee concern or labor dispute with the Post. Sonmez's views are commendable in decrying sexism as a societal concern. But, as the quoted passage explaining Sonmez's reasons for using Twitter clearly shows, they were personal views inspired by her desire to use Twitter to help other women deal with online sexism. That is consistent with many of her tweets and retweets, including particularly those where she says she wants to speak to women who see sexist tweets and think it is normal. As she said in those tweets, "[s]aying something matters to them. And it matters to me." Those sentiments were in an original tweet sent on Saturday, picked up by Soledad O'Brien and retweeted on Sunday and finally retweeted again by Sonmez on Monday. The reference to women in general, and particularly the reference to speaking out mattering to "me," shows that Sonmez was speaking out for herself and her personal views about sexism in general rather than to support a labor dispute with her employer. In another lengthy Twitter thread explaining why she was speaking out against sexism, she went into detail about an incident in her past when she failed to speak up against sexism even though one of the people involved had sexually abused her. Also relevant in objecting to the Weigel retweet was, as Sonmez testified, that she was herself bisexual. None of this amounts to

protected concerted activity for mutual aid and protection in support of a labor dispute.[12]

The only detailed tweeting thread arguably related to a Post employee group concern was the lengthy one sent on Tuesday—four days into Sonmez's Twitter activity. This was regarding a 2020 internal report about the Post's social media policy, which Sonmez attached in its entirety. Even that, however, relied heavily on her own personal experiences. She tied the issuance of that report to her speaking out against sexism in June 2022. According to Sonmez, the 2020 internal report was inspired by her own suspension at that time, later rescinded, for being removed from covering sexual abuse stories because of her being a victim of sexual abuse.[13] But, aside from the attenuated time frame, this was only one of the concerns in her tweeting activity in June 2022. Sonmez's tweets were all over the place: some attacking sexism, others complaining about abusive responses to her tweets, including blaming her employer and a colleague for that abuse, and welcoming online praise from supporters. Significantly, the origin of Sonmez's tweeting activity was an objection to a retweet by a fellow Post reporter on grounds that it was sexist, consistent with her view that she wanted to speak out on that subject. Nothing in that first tweet referenced or discussed the Post's social media policy. See G.C. Exh. 3. Nor was the social media policy of the Post mentioned in the quoted passage set forth above, in which Sonmez explained why she was using Twitter during the relevant time frame.[14]

Even assuming that, contrary to the above analysis, the tweeting activity, either as a whole or considering only the tweets regarding the Post's social media policy, could be viewed as advancing a group Post

[12] Nor was her tweeting exchange with Del Real about a labor dispute between Post employees and their employer. Rather it was a personal dispute between two very passionate newspeople who disagreed on how hard to push public opposition to the Weigel retweet even after the Post made clear that it did not tolerate such language and after it forced Weigel to remove his retweet and suspended him.

[13] The report did mention Sonmez's suspension without naming her or giving details.

[14] Contrary to the General Counsel's contention (Br. at 68), Sonmez's June 4 tweet and her June 6 retweet that briefly mentioned the Post's social media policy prior to the lengthy June 7 thread were not sufficiently detailed to provide useful information to the Twitter audience about a labor dispute involving the Post and its employees. In her June 4 tweet, she made a cursory reference to the Post's social media policy, but she was more focused on the blowback she was receiving from her objection to the Weigel retweet, which she blamed on Respondent.

employee concern, I would still find that the tweeting activity was not protected because of the choice of the means of communication and how it was used.

Because Sonmez's communications were addressed to third parties, the requirement to prove a labor dispute calls for an analysis of the means used for those communications. And, as the Board has stated, the communication to the recipients must provide enough information to enable them to "filter the information critically." Here, the Twitter audience of potentially millions of people was not well suited to critically filter the information submitted by Sonmez, considering the vast number of tweets she produced over the period of 5 days and the broad audience in Twitterdom. Indeed, the inability to filter communications was exacerbated here because, as shown above, Sonmez's tweets were unfocussed. The audience was hard pressed to divine whether her concerns were objections to misogyny, objections to Del Real, objections to how the Post was handling the situation, or to the harassment she was receiving online.

In a different context, the Third Circuit Court of Appeals described Twitter as a "a public platform that limits tweets to 280 characters, which encourages users to express opinions in exaggerated or sarcastic terms." *FDRLST Media, LLC v. NLRB*, 35 F. 4th 108, 126 (2022). This record would not support such a benign view of Twitter. The tweeting exchanges in this case show that Twitter attracts users who respond quickly without much deliberation, tweet without regard to their knowledge of or expertise on the subject involved and are uninhibited in using language that they would likely not use if they were having a civil face-to-face personal conversation. Twitter was thus not a means, in this case, where recipients could be counted on to filter through communications critically to properly assess whether a labor dispute even existed, much less what it was.

In analyzing the required audience filter evidence, the Board in *Oncor* compared the communication in the case before it, which was ultimately found protected, with that in *Jefferson Standard*, which was not. In *Oncor*, the communication was a two minute presentation by a union official to a legislative committee looking into the safety issue being communicated. In *Jefferson Standard*, the communication was a handbill addressing the quality of an employer's television programing which the Court said, "diverted attention from the labor controversy" and "attacked public policies of the company, which had no discernible relation to that controversy." 346

U.S. at 476. In finding the *Oncor* communication protected whereas the *Jefferson Standard* communication was not, the Board said that, in one case, there was a targeted communication to an audience well versed in the issue and, in the other, a "broad undifferentiated audience" that extended "beyond the initial reader." 373 NLRB No. 80, slip op. 4.

The situation here is clearly distinguishable from that in *Oncor*, where the communication was direct and focused and addressed to recipients with the expertise of state legislators to filter through the labor dispute and its main complaint. Sonmez's Twitter communications here were more like the *Jefferson Standard* communications, which were addressed to a broad undifferentiated audience. Indeed, here, the communications were even less filtered for critical understanding. Unlike in *Jefferson Standard*, where there was one message distributed manually by handbill to individuals in a limited geographic area, here there were many unfocussed messages delivered instantly to a world-wide audience. That audience could not have had a full understanding of what Sonmez was tweeting about, certainly not enough of an understanding to be able to filter through to what may have been a legitimate labor dispute. Accordingly, I find that Sonmez's tweeting activity was not in support of a labor dispute. It was in support of her own special and broader interests.

Sonmez's Twitter Activity was Disloyal, Disparaging and Reckless

Even assuming, contrary to my findings above, that Sonmez's tweeting activity could be viewed as protected activity in support of a labor dispute, thus satisfying the first step of the Board's *Oncor* analysis, it would still be unprotected under the second step because it was disloyal, reckless and disparaged the employer's reputation. See *MikLin Enterprises, Inc. v. NLRB,* 861 F.3d at 822-823, citing authorities. The Board's second step definition of disqualifying factors in *Oncor*, which references "disloyal, reckless *or* maliciously untrue" communications (emphasis added) is stated in the disjunctive. It differs slightly from the one used in *MikLin*, which in turn adopted the definition of disloyalty used in *Jefferson Standard*. But Sonmez's tweeting fails under any of the definitions. I find that the Respondent showed by a preponderance of the evidence that Sonmez's activity was disloyal, recklessly disparaged the Post, and tended to publicly harm its reputation. Such activity was moreover unnecessary to engage in legitimate protected activity.

To put the following analysis in context, I note that, while Weigel took down his offensive retweet after 15 or at most 30 minutes, according to the factual statement, and apologized at the behest of the Post, Sonmez kept retweeting it, thus keeping it alive on Twitter and amplifying the very thing she was condemning. See Tr. 476. As shown above, Sonmez sent tweets that falsely stated that no one at the Post was doing anything about Weigel's sexist retweet. In fact, when she sent those tweets, she knew full well that the Post had condemned them and set in motion the discipline that the Post meted out to Weigel. These were repeated and knowing misrepresentations of the Post's quick reaction in condemning the Weigel retweet. They were reckless, certainly evincing reckless disregard for the truth. And they were also disloyal and disparaging of her employer within the meaning of the terms used in *Jefferson Standard*.[15]

Sonmez's disparagement went even further. She tweeted repeatedly that the Post was somehow responsible for the abusive responses she received from her Twitter activity. A typical example is one of her Saturday tweets, discussed above, that accused her employer of allowing employees to "tweet racial/sexist things without fear of repercussions" and turning her in to a target of hate when she objected. As indicated above, the first part of that accusation was not true. But the second part was also not true because it was Sonmez who chose to use Twitter and she is responsible for the reaction she received, not her employer. Indeed, she even blamed Buzbee for the Twitter responses she received after Buzbee told Post

[15] Contrary to the General Counsel's assertion (Br. at 84), "malicious motive" is not a *Jefferson Standard* requirement, as the Eighth Circuit made clear in *MikLin*, cited above. And *Valley Hospital Medical Center*, 351 NLRB 1250 (2007), cited and discussed by the General Counsel at Br. 85-89, is distinguishable both on the law and the facts. In that case, the Board stated that the "mere fact that statements are false, misleading or inaccurate is insufficient to demonstrate that they are maliciously untrue." Id. at 1252. The Board also noted that, although the communication in that case relied in part on statements of other employees, it reasonably and in good faith relied on such statements and other evidence. Id. at 1251 and 1253. Here, there were repeated false statements that were Sonmez's own, and they were more than "merely" false or misleading. She herself knew better from direct, not hearsay, evidence, and it was nowhere near reasonable for her to say the Respondent did nothing about the Weigel retweet. Finally, whatever the standards are for maliciously untrue statements, the Board's policy is stated in the disjunctive. Thus, reckless and disloyal statements are independently disqualifying. And here Sonmez's tweets were both reckless, at the least they had a reckless disregard for the truth, and disloyal.

reporters in an email to use civility in their social media posts. Here again she disparaged her boss without a rational basis.

The *MikLin* case supports a similar result here. In that case, the union was attempting to improve the sick leave of employees of the Jimmy John's sandwich shop whose employees it represented. In support of its labor dispute, several employees posted pictures depicting two identical sandwiches asking which one was prepared by a sick employee, falsely adding that the employees could not even call in sick. The Eighth Circuit ruled that the activity was not protected because it was disloyal, falsely attacking the employer's product, its food and its safety, thus reversing the Board that had found the activity was protected.

Here, like in *MikLin,* and also like in *Jefferson Standard*, where there was, unlike in *MikLin,* no intentional misrepresentation but a similar disparagement of a television station's program content, Sonmez's repeated public tweets were reckless, disloyal and disparaged the Post. They did as much harm to the employer's reputation as the conduct in *MikLin* and *Jefferson Standard*. The Post's public reputation as a nationwide news organization is at least as important as that of a local television station or a sandwich shop. Accordingly, Respondent has shown that the evidence met step 2 of the requirement for the loss of protected concerted activity.[16]

In these circumstances, I find that Sonmez was not engaged in protected concerted activities under Section 7 of the Act. Thus, the basic underpinning of the allegation that Sonmez's discharge was unlawful cannot be established under the Board's dual motive causation test in *Wright-Line.*[17] Accordingly, the General Counsel has not proved by a

[16] Nothing in this decision should be construed as prohibiting lawful social media communications about labor disputes. It is likely that a Twitter communication that meets the requirements in the Board's *Oncor* decision would be found to be protected concerted activity, especially if it were deemed comparable to lawful handbilling that simply appeals for public support. But that is not this case.

[17] *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 prove, among other things, that the employee engaged in protected concerted activity.

preponderance of the evidence that Respondent violated Section 8(a)(1) of the Act by discharging Sonmez.

Conclusion of Law

Respondent has not violated Section 8(a)(1) of the Act.

On these findings of fact and conclusion of law, and on the entire record, I issue the following recommended order:[18]

The complaint herein is dismissed in its entirety.

Dated at Washington, D.C., June 16, 2025

Robert A. Giannasi
Administrative Law Judge

[18] 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 waived for all purposes.

APPENDIX

ORDER DENYING MOTION TO AMEND COMPLAINT

The complaint in this case alleges that Respondent violated the Act by discharging Felicia Sonmez on June 9, 2022, for engaging in protected concerted activity. The underlying charge was filed with the Region on September 7, 2022. After a full investigation, including consideration of a lengthy statement of position submitted by Respondent, the complaint issued on August 28, 2024. An answer followed, and, after my appointment as trial judge, I held several pre-trial conference calls with the parties, mostly to discuss extensive subpoena issues, which thankfully were resolved after the first day of trial on February 12, 2025. Most of the subpoenaed material was sought by the General Counsel, who was able to go through the provided material before the trial resumed on March 31. Four days of trial followed. Then, on the last day of trial, after both sides had completed submitting testimonial evidence, the General Counsel filed a motion to amend the complaint.

The proffered amendment alleges that Respondent violated Section 8(a)(1) of the Act because it discharged Sonmez pursuant to a rule that states: "When it comes to your colleagues, be constructive and collegial: If you have a question or concern about something that has been published, speak to your colleague directly." The proposed amendment also alleges that Respondent selectively and disparately enforced the rule "by applying it only against employees who engaged in protected concerted activity." I issued a notice to show cause why the amendment should not be granted. All parties submitted responses, which I have read and considered. For the reasons stated below, I deny the motion.

The proposed amendment refers to Rule 3 of the Respondent's Digital Publishing Guidelines titled, "Be Professional." G.C. Exh. 46 at p. 15, Joint Exh. 4. The Guidelines, including Rule 3, were provided to the General Counsel in Respondent's position statement of December 8, 2022. In that position statement, the Respondent gave several reasons for Sonmez's discharge, including that she "violated The Post's standards on collegiality and inclusivity." G.C. Exh. 46,

p.1. On the next page the position statement quotes the exact language in Rule 3 of the Guidelines referenced in the proposed amendment and refers to an exhibit attached to the position statement that contains the complete copy of the Guidelines. The Guidelines were the only set of standards, rules or policy supplied in the position statement. Both the position statement and the exhibit include language in the rule, omitted in the proposed amendment, that nothing in the rule "should be interpreted as prohibiting communications protected by federal or state statutes." G.C. Exh. 46 at pp. 2 and 15. Buzbee's testimony, relied upon by the General Counsel to show that that was the first time the prosecutor learned that Rule 3 was a reason for the discharge, made an exact reference to Rule 3 of the Guidelines (Tr. 737), the same rule whose language was used in the position statement. Given the entirety of the position statement, the phrase, "violated The Post's standards on collegiality and inclusivity" as a reason for the discharge should easily have been construed as referring to Rule 3 of the Guidelines.

In *Stagehands Referral Service LLC,* 347 NLRB 1167, 1171 (2006) the Board sets forth its analysis in deciding whether complaint amendments are appropriate:

The Board's Rules and Regulations, Section 102.17, allows amendments if they are "just." The Board evaluates three factors: (1) whether there was surprise or lack of notice, (2) whether the General Counsel offered a valid excuse for its delay in moving to amend, and (3) whether the matter was fully litigated. (citation omitted).

For the reasons stated in the Respondent's response, I agree that an evaluation of the above factors does not favor an amendment this late in the proceeding. The Respondent was indeed surprised by the late amendment as illustrated by the reaction of counsel at the time the amendment was raised as an issue. Tr. 812-813. As shown above, the exact rule cited in the proposed amendment was quoted and presented to the General Counsel as a reason for the discharge in the Respondent's statement of position early in the investigation of this case. Yet it was not in the original complaint. The only reason offered for the delay in submitting the amendment was that the General Counsel only learned from Buzbee's testimony in this case that use of the rule was a basis for the discharge. But, as indicated

above, the position statement gave sufficient notice that violation of Guideline Rule 3 was at least one of the reasons for the discharge. That gave the General Counsel all the information needed to add any theory that included Rule 3 to the original complaint. At the least, it was certainly enough to investigate the matter further, which is what prosecutors are supposed to do before issuing a complaint, which in this case came over 2 years after the charge was filed. There was thus no valid reason for the delay.

As counsel for the General Counsel points out in his response at p.2 and again at p.10, the proposed amendment's allegation that Rule 3 is unlawful on its face needs no further evidence because the rule itself is already in evidence. But that was as apparent on December 8, 2022, when the position statement was presented, as it was on the last day of the hearing. Evidence of the alleged disparate and selective application of the rule was also available well before the proposed amendment since counsel for the General Counsel was satisfied that such evidence had already been introduced in the trial, stating that no further evidence was required to support the proposed amendment. Tr. 812. Contrary to the General Counsel's implication (Tr. 811), the Board's decision in *Stericycle Inc.*,372 NLRB No. 113, in August 2023, during the pendency of this case between complaint and trial, does not excuse the delay. The conduct described in the proposed amendment was recognized as violative of the Act well before *Stericycle* was decided. "The Board has long adhered to and applied the principle that discipline imposed pursuant to an unlawfully broad rule is unlawful." *Continental Group,* 357 NLRB 409, 410 (2011), citing numerous authorities. Discrimination or disparate treatment in the application of work rules has always been unlawful, as counsel for the General Counsel acknowledged by citing (Tr. 812) *Idaho Potato Processors*, 137 NLRB 910 (1962). See also *Stericycle*, 372 NLRB No. 113 at p. 2, fn. 3.

Finally, again contrary to the General Counsel, the issues in the proposed amendment have not been fully litigated. The proposed amendment advances a whole new theory of a violation, namely that Sonmez had been selectively discharged pursuant to a particular rule that was first alleged as unlawful in the proposed amendment. Had Respondent known of the new theory of violation prior to the hearing, it would have handled its defense differently, including the

preparation of its defense before trial. It would have cross-examined the General Counsel's witnesses differently and prepared and questioned its own witnesses differently. It would likely also have presented other evidence in the trial, particularly in response to the alleged selective and disparate application of the rule. The evidence that was presented at the trial is baked in and cannot be undone even if Respondent is given another chance to adduce further evidence. In these circumstances, to permit the amendment would not be fair or just and would instead be a denial of due process. See *Bruce Packing Co. v. NLRB,* 795 F.3d 18, 24 (D.C. Cir. 2015).

Accordingly, the motion to amend complaint is DENIED.

IT IS SO ORDERED:1

Dated at Washington, D.C., April 22, 2025.

Robert A. Giannasi
Administrative Law Judge