

**UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

<b>3484, INC. and 3486, INC.,</b>	)	
	)	Case No. _____
Petitioners,	)	
	)	NLRB Case Nos.
v.	)	27-CA-278463,
	)	27-CA-278592,
<b>NATIONAL LABOR RELATIONS</b>	)	27-CA-279117
<b>BOARD,</b>	)	
	)	
Respondent.	)	
	)	

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**PETITION FOR REVIEW OF THE DECISION AND ORDER  
OF THE NATIONAL LABOR RELATIONS BOARD**

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Petitioners 3484, Inc. and 3486, Inc. respectfully petition for review of the Decision and Order of the National Labor Relations Board dated March 7, 2024, in NLRB Case Nos. 27-CA-278463, 27-CA-278592, & 27-CA-279117, a copy of which is attached as Exhibit A.

The Petition is filed under Fed. R. App. P. 15 and 10th Cir. R. 15. This Court’s jurisdiction rests on 29 U.S.C. § 160(f) because Petitioners, who are aggrieved by the Board’s final order, have transacted business within the geographic boundaries of the Tenth Circuit.

Respectfully submitted this 20th day of March, 2024.

*/s/ Oliver J. Dunford*

OLIVER J. DUNFORD

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*Attorney for Petitioners*

### CERTIFICATE OF SERVICE

I certify that the foregoing document was served by electronic mail and United States First Class Mail, on March 20, 2024, on the following:

<b>Respondent</b>	<b>Charging Party</b>
Nathan A. Higley NLRB Region 27 1961 Sout St., Suite 13-102 Denver, CO 80294-3005 Nathan.higley@nlrb.gov <i>Counsel for the General Counsel</i>	Ryan Spillers Gilbert & Sackman 3699 Wilshire Blvd., Suite 1200 Los Angeles, CA 90010-2732 rspillers@gslaw.org <i>Counsel for Charging Party</i>
Matthew S. Lomax Regional Director NLRB Region 27 1961 Stout St., Suite 13-103 Denver, CO 80294 matthew.lomax@nlrb.gov	International Brotherhood of Teamsters Local 222 Joshua Staheli, Business Agent 2641 South 3270 West Salt Lake City, UT 84119 jstaheli@ht399.org
Roxanne L. Rothschild Executive Secretary National Labor Relations Board 1015 Half St. SE Washington, DC 20570 Roxanne.rothschild@nlrb.gov	International Brotherhood of Teamsters Local 399 Joshua Staheli, Business Agent 4747 Vineland Ave. North Hollywood, CA 91602 jstaheli@ht399.org

/s/ Oliver J. Dunford

OLIVER J. DUNFORD

Dated: March 20, 2024

**3484, INC. & 3486, INC.**  
**PETITION FOR REVIEW OF THE DECISION AND ORDER**  
**OF THE NATIONAL LABOR RELATIONS BOARD**

**EXHIBIT A**

*NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**3484, Inc., and 3486, Inc., as alter egos and/or single employer, and International Brotherhood of Teamsters Local 399**

**3486, Inc., and 3484, Inc., as alter egos and/or single employer and International Brotherhood of Teamsters Local 222.** Cases 27–CA–278463, 27–CA–278592 and 27–CA–279117

March 7, 2024

DECISION AND ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS PROUTY AND WILCOX

On February 27, 2023, Administrative Law Judge Gerald M. Etchingham issued the attached decision. The Respondents filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge’s rulings, findings,<sup>1</sup> and conclusions, to amend the remedy, and to adopt the recommended Order as modified and set forth in full below.<sup>2</sup>

1. Section 8(a)(1) violations by Respondent 3484, Inc.

For the reasons stated by the judge, we affirm his conclusion that Respondent 3484, Inc. violated Section 8(a)(1) of the Act when Supervisor Jennifer Ricci interrogated employee April Hanson by asking whether she knew if any of the drivers in the transportation department were considering unionization.

We also affirm the judge’s finding that Ricci’s subsequent instruction to Hanson to keep their conversation confidential constituted an additional 8(a)(1) violation,

<sup>1</sup> The Respondents have implicitly excepted to some of the judge’s credibility findings. The Board’s established policy is not to overrule an administrative law judge’s credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

No exceptions have been filed to the judge’s finding that the Respondents are not alter egos and/or a single employer.

<sup>2</sup> We shall amend the judge’s Conclusion of Law 5 to delete an inadvertent reference to impression of surveillance as there is no allegation or finding that Respondent 3484, Inc. created an impression of surveillance. We shall further amend the judge’s conclusions of law and modify the judge’s recommended Order to conform to our findings herein and to the Board’s standard remedial language. We shall substitute new notices to conform to the Order as modified.

but we rely on a different rationale than the judge. The judge incorrectly applied an interrogation analysis. Consistent with the complaint allegation, we find that Ricci’s request to Hanson following their conversation to “Please don’t say anything I just said” constituted an unlawful confidentiality instruction. See *First American Enterprises d/b/a Heritage Lakeside*, 369 NLRB No. 54, slip op. 3–4 (2020) (confidentiality instruction directed to a single employee violates 8(a)(1) when it infringes on the employee’s Sec. 7 rights and the employer does not have a legitimate business justification that outweighs the Sec. 7 right). Ricci’s instruction that Hanson keep confidential the fact that she asked if the drivers were considering unionizing infringed on Hanson’s Section 7 right to discuss the union-related conversation with other employees, and the Respondents gave no business justification for requesting confidentiality. It also interfered with Hanson’s Section 7 right of access to the Board by infringing on her right to discuss the incident with a Board agent and to file an unfair labor practice charge. Thus, we find that Respondent 3484, Inc. violated Section 8(a)(1) when Ricci instructed Hanson to keep the unlawful interrogation confidential.

2. Section 8(a)(1) violations by Respondent 3486, Inc.

For the reasons stated by the judge and those set forth below, we affirm the judge’s conclusion that Respondent 3486, Inc. violated Section 8(a)(1) when Transportation Coordinator Brett Miller interrogated and threatened employee Roy Brewer.

The judge found that Miller was a Section 2(11) supervisor and acted as a Section 2(13) agent of Respondent 3486, Inc. The Respondents excepted to Miller’s status as a Section 2(11) supervisor but failed to argue that the judge erred in finding that Miller possessed the statutory indicia of authority to suspend, promote, and demote. Possession of just one of the statutory indicia of supervisory authority is sufficient to establish supervisory status, and thus, we affirm the judge’s finding that Miller was a 2(11) supervisor solely based on the absence of exceptions to the findings that he possesses those statutory indicia. See *Arlington Electric, Inc.*, 332 NLRB 845, 845 (2000). Further, the Respondents filed bare exceptions to the judge’s finding that Miller was acting as a Section 2(13) agent of Respondent 3486, Inc. when he interrogated Brewer. The Respondents have not presented any argument in support of this exception. Therefore, in accordance with Section 102.46(a)(1)(ii) of the Board’s Rules and Regulations, we shall disregard this exception. See, e.g., *Holsum de Puerto Rico, Inc.*, 344 NLRB 694, 694 fn. 1 (2005), enfd. 456 F.3d 265 (1st Cir. 2006).

In affirming the judge's finding that Respondent 3486, Inc. violated Section 8(a)(1) when Miller threatened Brewer by stating the production would move to Canada if union activity continued, we also rely on *Dentech Corp.*, 294 NLRB 924, 925 (1989) (finding an 8(a)(1) violation when an agent of the employer made the threat that the employer would move to Canada if the employees continued engaging in union activity).

### 3. Section 8(a)(3) violations

We affirm the judge's finding that the drivers' subsequent strike on the 3486 production was motivated at least in part by Miller's unfair labor practices, and thus qualifies as an unfair labor practice strike. See *Golden Stevedoring Co.*, 335 NLRB 410, 411 (2001). For the reasons set forth below, we also adopt the judge's finding that Respondent 3486, Inc. violated Sec. 8(a)(3) and (1) by discharging and refusing to reinstate nine unfair labor practice strikers despite their unconditional offer to return to work. The judge nominally applied *Wright Line*, 251 NLRB 1083 (1980), enfd. 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), pursuant to *General Motors, LLC*, 369 NLRB No. 127 (2020), and ultimately found that the Respondents failed to show that any striker actually participated in any picket-line misconduct. Thus, he concluded that the discharges were discriminatorily based on the strikers' protected conduct, not the alleged misconduct. In adopting the finding of this violation, we note that *Lion Elastomers LLC*, 372 NLRB No. 83 (2023), overruled *General Motors*, supra, and reinstated, among other setting-specific standards, *Clear Pine Mouldings, Inc.*, 268 NLRB No. 173 (1984), enfd. mem. 765 F.2d 148 (9th Cir. 1985). *Clear Pine Mouldings*, however, applies in cases where at least some degree of picket-line misconduct has undisputedly taken place, and therefore does not apply here. Instead, when raising a picket-line misconduct defense to the allegation of unlawful discharge or discipline of a striker, the employer has the burden to show an "honest belief" that the striker engaged in the misconduct. See *General Telephone Co. of Michigan*, 251 NLRB 737, 738-739 (1980) (citing *Rubin Bros. Footwear, Inc.*, 99 NLRB 610, 611 (1952) and *NLRB v. Burnup & Sims, Inc.*, 379 U.S. 21, 23 fn. 3 (1964)). An honest belief "requires some specificity in the record linking particular employees to particular acts of misconduct." *Beaird Industries*, 311 NLRB 768, 769 (1993). Here, as found by the judge, the record does not reflect the predicate misconduct by specific strikers. Therefore, we find that the Respondents failed to sustain their burden and that their refusal to reinstate the nine

unfair labor practice strikers was a violation of Sec. 8(a)(3) and (1).<sup>3</sup>

### AMENDED CONCLUSIONS OF LAW

1. Substitute the following as Conclusion of Law 5.

"5. The Respondent 3484, Inc., by Supervisor Ricci, violated Section 8(a)(1) of the Act on April 13, 2021, by instructing driver Hanson to keep management's interrogation about employees' union activity confidential."

### AMENDED REMEDY

Having found that the Respondents engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we amend the judge's remedy in the following respects.

Having found that Respondent 3486, Inc. violated Section 8(a)(3) and (1) by discharging nine unfair labor practice strikers, the remedy would ordinarily include an order requiring it to offer full reinstatement to the employees within 14 days from the date of our Order. However, in light of the fact that Respondent 3486, Inc. has ceased operations, we shall not order the immediate reinstatement of the employees. Instead, we shall order Respondent 3486, Inc., in the event that it resumes the same or similar business operations, to offer Jake Bolinder, Roy Brewer, Bucky Elder, Michelle Fleming, Ben Fox, Jayson Gueso, April Hanson, Tim Lester, and John VandeMerwe full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

In view of the fact that Respondent 3484, Inc. and Respondent 3486, Inc. have ceased operations of their respective productions, we shall order them to mail a copy of the attached notices to the last known addresses of their former employees in order to inform them of the outcome of this proceeding.

### ORDER

The National Labor Relations Board orders that:

A. Respondent 3484, Inc., Salt Lake City, Utah, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating employees about their union activity.

<sup>3</sup> In affirming the judge's finding that the unfair labor practice strikers were entitled to backpay when the employer unlawfully denied the workers' request for reinstatement, we rely on *Harris-Teeter Super Markets, Inc.*, 242 NLRB 132, fn. 2 (1979), enfd. sub nom. *Local 525, Meat, Food and Allied Workers Union v. NLRB*, 644 F.2d 39 (D.C. Cir. 1981).

(b) Instructing employees to keep management's interrogation about their union activity confidential.

(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) Post at its Salt Lake City, Utah facility copies of the attached notice marked "Appendix A."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 27, 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. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. Because the Respondent has ceased operations, we shall also require the Respondent to duplicate and mail, at its own expense, and after being signed by the Respondent's authorized representative, copies of the notice to all employees who were employed by the Respondent at any time on or after April 13, 2021.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 27 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.

B. Respondent 3486, Inc., Salt Lake City, Utah, its officers, agents, successors, and assigns, shall

<sup>4</sup> If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the facilities reopen and a substantial complement of employees have returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]."

If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted and Mailed by Order of the National Labor Relations Board" shall read "Posted and Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

1. Cease and desist from

(a) Coercively interrogating employees about their union activity.

(b) Threatening employees with closure and relocation of their work facility if they engage in union activity.

(c) Discharging or otherwise discriminating against employees for engaging in an unfair labor practice strike.

(d) 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) In the event the Respondent resumes operations, offer unfair labor practice strikers Jake Bolinder, Roy Brewer, Bucky Elder, Michelle Fleming, Ben Fox, Jayson Gueso, April Hanson, Tim Lester, and John VandeMerwe full reinstatement to their former jobs or, if those jobs no longer exist, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make unfair labor practice strikers Jake Bolinder, Roy Brewer, Bucky Elder, Michelle Fleming, Ben Fox, Jayson Gueso, April Hanson, Tim Lester, and John VandeMerwe whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms, suffered as a result of their unlawful discharges, in the manner set forth in the remedy section of the judge's decision.

(c) Compensate the affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 27, 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.

(d) File with the Regional Director for Region 27, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of unfair labor practice strikers Jake Bolinder, Roy Brewer, Bucky Elder, Michelle Fleming, Ben Fox, Jayson Gueso, April Hanson, Tim Lester, and John VandeMerwe, and within 3 days thereafter, notify the employees in writing that this has been done and that the discharge will not be used against them in any way.

(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 desig-



nated 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.

(g) Post at its Salt Lake City, Utah facility copies of the attached notice marked “Appendix B.”<sup>5</sup> Copies of the notice, on forms provided by the Regional Director for Region 27, 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. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. Because the Respondent has ceased operations, we shall also require the Respondent to duplicate and mail, at its own expense, and after being signed by the Respondent’s authorized representative, copies of the notice to all employees who were employed by the Respondent at any time on or after June 11, 2021.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 27 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 7, 2024

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<sup>5</sup> If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the facilities reopen and a substantial complement of employees have returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that “This notice is the same notice previously [sent or posted] electronically on [date].”

If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted and Mailed by Order of the National Labor Relations Board” shall read “Posted and Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

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Lauren McFerran, Chairman

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David M. Prouty, Member

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Gwynne A. Wilcox, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A  
 NOTICE TO EMPLOYEES  
 POSTED BY ORDER OF THE  
 NATIONAL LABOR RELATIONS BOARD  
 An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us 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 coercively question you about your union activity.

WE WILL NOT instruct you to keep management’s interrogations about your union activity confidential.

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

3484 INC.

The Board’s decision can be found at <http://www.nlr.gov/case/27-CA-278463> 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.





APPENDIX B

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us 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 coercively question you about your union activity.

WE WILL NOT threaten you with closure and relocation of your work facility if you engage in union activity.

WE WILL NOT discharge or otherwise discriminate against you for engaging in an unfair labor practice strike.

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, in the event we resume operations, offer unfair labor practice strikers Jake Bolinder, Roy Brewer, Bucky Elder, Michelle Fleming, Ben Fox, Jayson Gueso, April Hanson, Tim Lester, and John VandeMerwe full reinstatement to their former jobs or, if those jobs no longer exist, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make unfair labor practice strikers Jake Bolinder, Roy Brewer, Bucky Elder, Michelle Fleming, Ben Fox, Jayson Gueso, April Hanson, Tim Lester, and John VandeMerwe whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest, and WE WILL also make them whole for any other direct or foreseeable pecuniary

harms suffered as a result of the unlawful discharges, including reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 27, 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 year(s) for each employee.

WE WILL file the Regional Director for Region 27, within 21 days of the date the amount of backpay is fixed by agreement or Board order, or such additional time as the Regional Director may allow for good cause shown, a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of unfair labor practice strikers Jake Bolinder, Roy Brewer, Bucky Elder, Michelle Fleming, Ben Fox, Jayson Gueso, April Hanson, Tim Lester, and John VandeMerwe, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

3486, INC.

The Board's decision can be found at <http://www.nlrb.gov/case/27-CA-278463> 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.



*Nathan Higley, Esq.*, for the General Counsel.  
*Joan M. Andrews, Esq.*, for the Respondents.

DECISION

STATEMENT OF THE CASE

GERALD M. ETCHINGHAM, Administrative Law Judge. This case was tried over 3 days in Salt Lake City, Utah, from May 17—19, 2022. The International Brotherhood of Teamsters Local 399, (Local 399 Union) filed the charge in Case 27—CA—

278463 on June 11, 2021,<sup>1</sup> against Respondent 3484, Inc. (3484, Inc. or 3484-movie production) and another charge in Case 27–CA–278592 against 3484, Inc. on June 15, and a first amended charge in the same case against 3484, Inc. and Respondent 3486, Inc. (3486, Inc. or 3486-movie production) on February 2, 2022. The International Brotherhood of Teamsters Local 222 (Local 222 Union) filed the charge in Case 27–CA–279117 against 3486, Inc. on June 28, and its first amended charge in this case on January 18, 2022, and its second amended charge against Respondents 3484, Inc. and 3486, Inc. (collectively Respondents) on February 2, 2022. (GC Exhs. 1(a), 1(c), 1(e), 1(g), 1(i) and 1(k).)<sup>2</sup> The General Counsel issued the complaint on February 3, 2022. Respondents filed a timely answer denying all material allegations.

The complaint alleges that the Respondents violated Section 8(a)(3) and (1) of the National Labor Relations Act, as amended (the Act), when various supervisors/agents interrogated employees about their union activities, asked employees to keep the interrogation confidential, threatened employees that Respondent’s film production would shut down if employees unionized, and/or because of this conduct, Respondent’s employees participated in an unfair labor practice strike and after making an unconditional offer to return to work, Respondents permanently replaced and refused to reinstate the unfair labor practice strikers including approximately nine drivers. For the reasons detailed below, I find the General Counsel has met the burden to prove some of these allegations by a preponderance of the evidence.

On the entire record,<sup>3</sup> including my observation of the de-

<sup>1</sup> All dates are in 2021 unless otherwise noted.

<sup>2</sup> Abbreviations used in this decision are as follows: Transcript citations are designated by “Tr.” with the appropriate page number; citations to the General Counsel exhibits are denoted by “GC Exh.”; “R Exh.” for Respondent’s exhibits; “R Br. for Respondent’s closing brief; and “GC Br.” for General Counsel’s closing brief. Although I have included several citations to the record to highlight particular testimony and/or exhibits, my findings and conclusions are based not solely on the evidence specifically cited, but rather on my review and consideration of the entire record.

<sup>3</sup> The transcripts and exhibits in this case generally are accurate. However, I hereby make the following corrections to the trial transcripts (Tr.) at 38, ll. 13–14: “And I have many other drivers to drive that piece of equipment . . .” should be “And I do not have any drivers to drive that piece of equipment;” Tr. at 48, l. 2 “. . . because it’s not working out” should be “. . . because it’s not worth that much.”; Tr. at 54, lls. 12–16: “Q Who tells you where to set up and park all of the equipment on a particular production? There’s a location. . . .” should be at line 12: “Q. Who tells you where to set up and park all of the equipment on a particular production?” and line 13: “A. There’s a locations manager that gets the location that we’re shooting at, and for the next day. So I would go to him, and he will tell me what he has for us to park, where—where we’re to park at.”; Tr 58, ll. 5–6: “. . . he is, in fact, a 211 supervisor” should be “he is, in fact, a 611(c) supervisor;” Tr. 60, l. 25: “Mr. Wulf” should be “Mr. Miller;” Tr. at 61, l. 2: “Judge Etchingham” should be “Mr. Higley;” Tr. at 126, l. 14: “A. So of – of the people that I called . . .” should be “STAHLEI: A So of—of the people that I called . . .;” Tr. at 152, l. 6: “I’ll you answer the question” should be “I’ll allow you to answer the question;” Tr. at 184, l. 17: “6I” should be “GC Exh. 6(c);” and Tr. at 447, l. 8: “the combinations to all the employees” should be “the accommodations to all the employees;”

meanor of the witnesses, and after considering the General Counsel’s and Respondent’s closing briefs, I make the following

## FINDINGS OF FACT

### I. JURISDICTION

Respondent 3484, Inc. and Respondent 3486, Inc., are each State of Utah corporations, who share the same place of business office facility located at 1483 S. Major St., Salt Lake City, Utah (the Salt Lake City facility), and have been engaged in the business of film production with 3484, Inc.’s primary purpose being the production of a film entitled: “Christmas at the Madison” (the 3484-movie) and 3486, Inc.’s primary purpose being the production of a film entitled: “Love at the Pecan Farm” (the 3486-movie). Each Respondent admits, and I further find, that during the 12-month period ending January 27, 2022, Respondents each purchased and received at Respondents’ Salt Lake City facility goods valued in excess of \$50,000 directly from points outside the State of Utah. Respondents also admit, and I further find, that each Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 399 Union and Local 222 Union are each labor organizations within the meaning of Section 2(5) of the Act. (Tr. at 11–13.)

### II. ALLEGED UNFAIR LABOR PRACTICES

#### A. Background Facts

Each Respondent film production, 3484, Inc. and 3486, Inc. is owned and produced by David Wulf (Wulf or Owner Wulf). Wulf is sole owner, sole director, and sole officer of each film production. (Tr. at 72; GC Exh. 1(o) at 5; GC Exh. 1(s) at 4; GC Exhs. 9–14.)

Owner Wulf’s regular custom and practice is to incorporate each of his productions separately such that the two movies involved in this case are incorporated in Utah as 3484, Inc. and 3486, Inc. with 3484, Inc. incorporated on January 25, 2021 with Owner Wulf as its owner, sole director, and sole officer. (GC Exhs. 9–13.) 3484, Inc. is governed by its own set of articles of incorporation and bylaws but the language of these are identical for each production except for the dates of incorporation and names of productions. Id. Production on the 3484-movie began on April 21. (GC Exh. 14(a).)

3486, Inc. was incorporated on April 5, 2021, also with Owner Wulf as its sole owner, director, and president with production beginning on June 13. (GC Exhs. 11, 13, and 15(a).) 3486, Inc. is governed by its own set of articles of incorporation and bylaws. Id.

In addition, each production company also shared the same physical address in Salt Lake City, same telephone number, and e-mail addresses. (Tr. at 211–213, GC Exhs. 10–13.) Each entity was distinct, however, as each requires new filings and fees, as well as applications for permits and tax credits and separate tax filings. (Tr. at 215.) Besides the ability to apply for new tax credits and efficient accounting, another reason for the practice of establishing separate entities is to protect the intellectual property (IP) value of each film script so that when a movie is sold, there cannot be overlap with the IP and to prevent liability incurred by one production from affecting others. (Tr. at 216–

218.) There are also an underlying writer agreement with each movie production. Thus, it is important that Owner Wulf and each corporation's management maintain the distinction between them. Id.

At the time of the hearing, 3484, Inc. and 3486, Inc. were no longer ongoing businesses as each film had completed and each movie production held no assets other than "a little bit of cash." (Tr. at 216, 218.)

Owner Wulf explains that he incorporates each separate movie or TV show he produces for accounting purposes and that each production has its own set of distinct scripts, budgets, and purposes such as avoiding overlapping intellectual property, props, wardrobe, cast and story, and he incorporates the productions to limit his personal liability exposure. (Tr. at 216–218.) No evidence was presented, however, showing Owner Wulf's purpose of incorporating Respondents to be for evading liability for labor debts or other liabilities incurred under the Act nor did Owner Wulf ignore corporate formalities to the point of operating any of the Respondents as his own personal piggy-bank.

Jennifer Ricci, (Supervisor Ricci) worked as the line producer on 3484, Inc. and the Unit Production Manager on 3486, Inc. and admits that Wulf employed her in 2021. (Tr. at 70.) Owner Wulf admits that Supervisor Ricci has authority to act for him at times as a line producer or as a unit production manager as Supervisor Ricci is usually in charge of safety and all departments on a set. (Tr. at 370–371.) The parties stipulate and I further find that Ricci is a statutory supervisor and agent of Respondents under Sections 2(11) and (13) of the Act. (Tr. at 235.)

Supervisor Ricci's usual duties in movie productions for Owner Wulf included hiring a crew, managing the budget, making sure the crew is safe, and then just everyday responsibilities making sure that the production is running smooth every day, checking in with all the departments, and making sure everything is going on track for the film. (Tr. at 71.)

Brett Miller (Miller or Transportation Coordinator Miller) was hired to be transportation coordinator on 3484, Inc. and 3486, Inc. by Owner Wulf. (Tr. at 33, 50, 192.) Miller has 38 years of experience doing transportation coordinator work in the TV and movie industry and he has worked for Owner Wulf approximately seven times prior to Respondents' movie productions in 2021. Miller has also worked on various other productions over the years and with other employers not associated with Owner Wulf. (Tr. 51.) Miller was a member of the L399 Union during Respondents' productions here.

Miller's duties as the transportation coordinator included getting vehicles, trucks, trailers, and equipment that each movie required as well as cars used in a movie to various set locations during production. (Tr. at 33–34.) Miller, as transportation coordinator, was also responsible for hiring his transportation drivers crew for each movie production including hiring his transportation captain assistant. (Tr. 33–34.)

Miller opined that he had the same authority to hire drivers, discipline drivers, approve absences, and direct drivers with their daily driving schedules and instruct drivers specifically how to position vehicles and equipment for both the 3484-movie and 3486-movie productions. (Tr. at 51.) Miller later

clarified that the locations manager has authority and not Miller to determine *where* to park the trucks, trailers, and vans each day on location but Miller as transportation coordinator has full authority to determine *how* these same vehicles and equipment are parked or positioned each day on set. (Tr. at 54, 64–67.)

Miller describes the duties of a transportation captain as being "the driver of the ship" and running the set on a daily basis in constant consultation by phone with Miller. (Tr. at 35.) Miller instructs the captain what to do during the day and the captain is frequently on the phone with Miller as transportation coordinator. Id. Miller also plans in advance with the captain's assistance how the vehicles with equipment will be parked the next day on a movie set and the timing that Miller wants the captain to park the trailers. Id.

Miller also explains that it is important that the captain learns how to park trailers and trucks straight so that they look good when they are parked. (Tr. at 35–36.) Miller further opines that many of the things a captain does on a movie set are done through frequent communications with Miller as transportation coordinator. Id.

Miller opines that as transportation coordinator, he has the ultimate authority to direct drivers on *how* to park the various vehicles on set each day at the production of the 3486-movie without permission from Owner Wulf or Supervisor Ricci. (Tr. 43–44.)

The drivers hired by Miller for the 3484, Inc. movie and the 3486, Inc. movie were almost identical except he hired Dustin Stone (Stone) to be transportation captain for the 3484-movie and Roy Brewer (Brewer or Captain Brewer) as transportation captain on the 3486-movie.<sup>4</sup> (Tr. t 458; GC Exhs. 14 at f; GC Exh. 15 at e.) Miller further describes Brewer as the best choice to be transportation captain for the 3486-movie in place of Stone because Miller knew that Brewer was the most mild-mannered and best thinker of all the drivers that Miller had to choose from in June 2021. (Tr. at 36.)

Transportation Captain Brewer had been a driver on movie and TV production sets for 14 years in June 2021 and he had worked on production sets for Owner Wulf approximately 3–4 times before the 3484-movie production. (Tr. 474.) Because Brewer was on break from the Yellowstone TV production shooting schedule in June 2021, Brewer was available to work on the smaller 3484-movie and 3486-movie productions at that time. (Tr. at 475–476.) It was not unusual for Brewer to fill-in his downtime as driver from working on union productions such as the Yellowstone show at Paramount with short nonunion driver work like the Respondents' movies here in April and June, respectively.

One of the extra job responsibilities held by Captain Brewer on the 3486-movie production is that with Miller's assistance, they set each driver's schedule for each day of the 3486-movie production for call times each morning. (Tr. at 41–42, 53–54.) Miller had ultimate authority over what time each driver would

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<sup>4</sup> Miller explains that while he usually hires Stone as transportation captain in 2021 as he did on the 3484-movie, Stone was unavailable to act as captain on the 3486-movie so Miller spoke to Stone about this and Stone recommended that Miller hire Brewer to be transportation captain for the 3486-movie. Tr. 36.

report for work on the 3486-movie production for the shoot. (Tr. at 42, 53–54.) Transportation Coordinator Miller opines that he did not need permission from Owner Wulf or Supervisor Ricci to set drivers' call times to start work each day on the 3486-movie production. Id. Once Miller gets a call sheet, he talks with his captain on the phone and then they go through the drivers and see what time each driver should come in to help Respondent save on overtime each day, bringing people in at different times, and Miller would be authorized to determine each driver's work schedule call time each day. (Tr. at 42, 53–54.)

Miller also explains how he had full discretion without the need for Owner Wulf's or Supervisor Ricci's permission to determine which driver would drive each vehicle each day on the production of the 3486-movie. (Tr. at 43.)

Besides drivers Miller and Stone on the 3484-movie, Miller hired drivers Brewer, Josh Kielkowski, Tim Lester (Lester), Cliff Pope, Jake Bolinder (Bolinder), John Heath, Ben Fox (Fox), Jayson Gueso (Gueso), Bucky Elder (Elder), and Michelle Fleming (Fleming) for a total of 13 drivers for the 3484-movie production.<sup>5</sup> (GC Exh. 14 at f.) Most of these drivers were members of the Local 222 Union at this time. (Tr. at 62.)

Nine of these same drivers, plus new driver John VandeMerwe (VandeMerwe), also worked on the 3486-movie with Miller as transportation coordinator and Brewer as captain as the 3486-movie did not have Kielkowski, Pope, or Heath as drivers because some of Miller's regular drivers were busy working elsewhere in June 2021.<sup>6</sup> (Tr. 34; GC Exh. 15 at e.) Thus, as with drivers in the 3484-movie, most of the drivers on the 3486-movie were members of the Local 222 Union at this time.

Miller further explained that he hires drivers by word of mouth based on their past work as drivers with Miller on other TV and movie productions, and by asking around town or other friends and utilizing Miller's years of experience in the industry and his connections over 38 years. (Tr. at 34–35, 51.) Typically, for work with Respondent, Miller opines that all drivers are hired for a production at least one or two weeks before the first day of shooting. (Tr. at 68.)

Miller also determines who to hire as a driver for a film production based on his many years working in the industry and also knowing the drivers' specific licensing for various vehicles, their prior driving history such as whether they have been in accidents and based on their observed driving skills for each hired driver as well as the friendships he has developed over the years with the drivers and their friendships with other crew members or drivers along with other people in other departments on the set. (Tr. at 34–35, 43, 45.)

Miller explains that he made the decision to hire the transportation crew for the 3486-movie production and that Miller did not need final approval before making the hiring offers to

<sup>5</sup> Driver Hanson was actually hired by Supervisor Ricci not Miller for the 3484 and 3486-movies. Tr. at 52–53, 192.

<sup>6</sup> Miller incorrectly recalled only 8 drivers on the 3486-movie production but the crew list dated 6/1/21 provides for 9 not counting Miller as Transportation Coordinator. See Tr. at 53; GC Exh. 15 at e.

the 9 drivers on the production. (Tr. 45.)

Miller further opined that he has learned over the years to know what type of drivers work well with other departments on a movie set as well as who doesn't get along so he tried to hire the best fit of drivers and match them to a particular movie set crew looking at all departments including hair and makeup, camera crew, the electrical and grip departments, wardrobe and special effects crews. (Tr. at 35.)

Miller opines that with Owner Wulf's production company on the 3484-movie and the 3486-movie, Miller was authorized by Wulf and Ricci to evaluate the performance of each of the drivers and Miller describes this as occurring by his monitoring each driver's behavior and work performance each day driving and using the truck radio to communicate while driving to each day's set. (Tr. at 37.) Miller further opines that he learned a lot by observing each driver's driving and radio etiquette as Miller interprets a driver's etiquette and determines how a driver will interact with other departments of the movie set. Id.

Transportation Coordinator Miller further opined that although he had never officially terminated a driver on his crew for bad behavior over his long career, he has, in fact, not rehired a driver for a production going forward after he talked to that driver about his or her bad etiquette behavior more than once. (Tr. at 38–39.)

Miller opines that as transportation coordinator, he has full authority to reprimand, discipline, suspend, or issue an oral or final warning to a driver just short of an official job termination. (Tr. at 40, 44.)

Miller further admits that if he wanted to officially terminate a driver on a production, he would seek either Owner Wulf's or Supervisor Ricci's permission to do so. (Tr. at 38–39, 44, 370–371.) Moreover, Supervisor Ricci and/or Owner Wulf sign deal memos which officially hire drivers at Wulf's various productions and Miller has no authority to change a driver's rate of pay on a movie production for any of the seven productions Miller and Wulf have worked together over the years except Miller is authorized to promote or demote a driver to and from the captain position on his crew which would affect their pay as captains are paid more and have more responsibilities than other transportation department drivers.<sup>7</sup> (Tr. 51–52, 54.)

Miller further explained that occasionally over the years, a driver recommended for hire by Miller to Wulf and Ricci will actually start working as a driver for Respondent before signing

<sup>7</sup> I reject Owner Wulf's testimony that Transportation Coordinator Miller is not a supervisor under the Act because Miller cannot hire or fire anyone and Miller was not responsible for any safety of the drivers. (Tr. at 370–371.) Wulf ignores the fact that neither Wulf nor Ricci ever denied the hiring of any driver recommended to them by Miller to drive on a Wulf production, Miller had authority to discipline drivers and suspend them and issue a final warning. Also, Miller had authority to instruct and set all drivers' daily schedules which can affect overtime unless Miller schedules to avoid it. (Tr. at 42.) Moreover, Miller had full authority to grant or deny any driver's request to miss work and promote or demote a driver to and from the captain position without Owner Wulf or Supervisor Ricci's permissions. (Tr. at 40–66.) Even Supervisor Ricci admits that she would trust Miller and defer to Miller's driver recommendation for hirings given his years of experience in the industry. (Tr. at 75.)



their deal memo. (Tr. at 66.) Supervisor Ricci admits that if Transportation Coordinator Miller, as a department head, presented her with a list of drivers who he recommends, Supervisor Ricci would just trust Miller's judgment and defers to Miller for the driver hirings because of Miller's numerous years of experience in the movie production business. (Tr. at 75.)

In addition, Transportation Coordinator Miller made a point of explaining that neither Owner Wulf nor Supervisor Ricci has ever vetoed and not formally hired any driver recommended by Miller for a movie or TV production. (Tr. at 51, 53, 67.) Miller further explains that if Ricci did not like some potential driver recommended by Miller to be hired for a production for any reason, Ricci need only mention this to Miller or suggest that he not make the potential driver and offer to drive. *Id.* Also, Supervisor Ricci has her own authority and hired driver Hanson for the 3484-movie. (Tr. at 52–53, 88, 192.)

Miller recounted one or more incidents where he has told a driver that they have messed up and that this was their last chance or final warning before being terminated. (Tr. at 40.) Miller strongly believed that he had full authority and discretion to issue a final warning to any driver and that he did not need Owner Wulf's or Supervisor Ricci's permission to issue a final warning to a driver. (Tr. at 40–41.)

Transportation Coordinator Miller also opines that he has full authority to grant or deny any driver's request to miss work or release them from their driving duties on any production for a day or more without Owner Wulf's or Supervisor Ricci's prior approval. (Tr. at 41.)

Miller also opines that he had full authority without needing permission from Owner Wulf or Supervisor Ricci to demote a captain to the regular driver position and replace or promote one of the other drivers to captain. (Tr. at 44.)

Local 399 Union business agent Joshua Staheli (Staheli) opined that he has known Transportation Coordinator Miller for eight years before the 3486-movie production and Staheli opines that he needed to inform Miller that the drivers were on strike on June 13 because Staheli believes that Miller is a supervisor of the transportation department and Staheli opines that the transportation coordinator is typically a supervisor position and that in all of Staheli's 20 years of experience, he recalled having it said to him across the bargaining table that "transportation coordinator" is a supervisor position. (Tr. at 95, 186.)

Staheli, who is based in Los Angeles, also works with the motion picture theatrical division at the International Teamsters union as a regional representative and he assists local unions like the Local 222 Union in Utah as one of 13 western states and Canada. Staheli helps negotiate collective-bargaining agreements (CBAs) between local units like the Local 222 Union on various motion picture or TV productions as part of his overall jurisdiction and working relationship with the Alliance of Motion Picture and Television Producers and the Teamsters, the employer group. (Tr. at 95–99.)

Staheli's contact at the Local 222 Union was with its business agent Grant Edwards (Edwards) in Salt Lake City in 2021. (Tr. at 96, 444.)

The General Counsel's amended complaint alleges that 3484, Inc. and 3486, Inc. are alter egos and single employers.

Respondents deny these allegations.

*B. The 3484-Movie Production – Supervisor Ricci's Unlawful Interrogation of Driver Hanson*

In April, Local 399 Union representative Staheli recalls first hearing about Owner Wulf as Staheli was contacted in early April from Utah-based drivers who were interested in organizing and employed at the Wulf production otherwise known as the 3484-movie production. (Tr. at 99–100; GC Exh. 14.)

Staheli opined that every union motion picture driver in Utah in April 2021 would know to contact either Staheli at Local 399 Union or Edwards at Local 222 Union to organize at a nonunion company like Wulf's 3484-movie production. (Tr. at 100.)

Staheli recalled that the drivers at the 3484-movie production wanted to organize this production and get a union contract in place. (Tr. at 101, 140–141.) Staheli opined that the multiple drivers who contacted him at this time were members of the Local 222 Union. *Id.*

In April, Ricci had heard by word of mouth around Salt Lake City that a union might be trying to organize the drivers or the transportation department on the 3484-movie production. (Tr. at 88.) At this time, Hanson was a van driver employed in the 3484-movie production. (Tr. at 52–53, 88.)

On April 13, between 5:34 p.m. and 5:39 p.m., Ricci texts driver Hanson the following and asks: "Hi. When you are be [siq.] yourself could we chat?" (GC Exh. 3.)

Next, Ricci telephones Hanson and Ricci asks Hanson if Hanson had heard anything about the drivers organizing in the 3484-movie production. (Tr. at 88.) Hanson responds telling Ricci that she was not aware of the drivers organizing at that time in April 2021. *Id.*

Ricci explains that she called Hanson about this in particular because she and Hanson had a working relationship and Ricci knew that Hanson was not a supervisor. (Tr. at 89.)

Supervisor Ricci further describes her April 13 conversation with Hanson as lasting for just a minute and Ricci recalls asking Hanson: "Are you hearing of transportation flipping the show?" (Tr. at 89.) Ricci next interprets her question to Hanson as being the same as asking Hanson whether she has heard anything about the drivers trying to get a union contract or turning the 3484-movie show into a union project. (Tr. at 89–90.)

Immediately after their meeting at 5:38 p.m. in April 13, Ricci texts Hanson instructing Hanson: "Please don't say anything I just said" and advising Hanson to keep their conversation confidential and private and just between Ricci and Hanson. (Tr. at 88–92; GC Exh. 3.)

Staheli decided not to try and organize the drivers at the 3484-movie production because he determined that to do so would be almost impossible because the drivers were just sitting in one location for an extended period of time to make the 3484-movie and they were nearing the end of production. (Tr. at 102, 141–142.)

Staheli candidly explained that most of the organizing drivers' leverage comes from the moving of vehicles so that walking off a job would have a large effect on production and since the 3484-movie did not involve the moving of vehicles, there would not be a huge effect if the drivers walked off the job to attempt to unionize the 3484-movie. (Tr. at 102, 141–142.)

Staheli further clarified saying that withholding employment services is a common tactic for organizing. (Tr. at 144.)

*C. The 3486-Movie Production*

1. Transportation Coordinator Miller's retaliatory threat to drivers and his unlawful Interrogation of drivers about union activities on Friday, June 11

In early June, the drivers employed at a Hallmark production for Owner Wulf again and they continued their interest in organizing and contacted Staheli again before the production of the movie entitled, "Love at the Pecan Farm" or the 3486-movie production. (Tr. at 102-103.) Staheli did not initially tie the 3486-movie production to Owner Wulf until later around June 10 when he saw the crew list where the name of 3486-movie production and Owner Wulf were referenced. (Tr. at 104-105; GC Exh. 15.)

Staheli conducted a Utah business search and found Owner Wulf as agent of service for the 3486-movie production. (Tr. at 105.)

Prior to June 10, Staheli had asked Local 399 Union Representative Lindsay Daugherty (Daugherty) to approach Owner Wulf about organizing his TV and movie productions and later asked her if she had. She said no she had not, so she told Staheli—" [L]et me call him." (Tr. at 145.)

Also, at least a couple of days before June 11, Miller claims that he informed the Local 399 Union that he would be working on the nonunion 3486-movie. (Tr. at 62.)

Miller also recalls, incorrectly, that Brewer told him that there is a union rule that if drivers did not report to the union when they were taking a nonunion job, like the 3486-movie production job, that they face suspension by the union. (Tr. at 46, 68, 470.) Captain Brewer and Staheli more convincingly explained that there is no such rule and union drivers like Brewer and Miller were free to work nonunion jobs as much as they want which Brewer worked all the time in his downtime from his regular union driving work. (Tr. at 470.)

On June 10 and 11, Union Representative Daugherty emails Owner Wulf asking to discuss unionizing the production of the 3486-movie. (GC Exh. 4(b).)

On June 11, Union representative Staheli contacts Supervisor Ricci about organizing the 3486-movie production. (Tr. at 106; GC Exh. 4(b).)

Also, on June 11, Daugherty informs Owner Wulf that she and Staheli from the Local 399 Union have jurisdiction in the 13 Western States and that she had left Wulf an unanswered voicemail on June 10. The email to Wulf also states that Staheli also left Supervisor Ricci a message on June 11 on her cell phone and that they were reaching out to Owner Wulf in regards to the 3486-movie production for a possible Teamsters' CBA with the 3486-movie production and Daugherty asked Owner Wulf to let them know when he was available to discuss a possible one-off project labor agreement. (R Exhs. 14 and 16.) Staheli and Daugherty were making efforts to organize the drivers on the 3486-movie production. (Tr. at 106.)

On Friday, June 11, Owner Wulf told Transportation Coordinator Miller that the transportation crew drivers on the 3486-movie set were considering some type of union action with the Local 399 Union but Miller does not recall hearing that the

drivers had actually done anything official with the Local 399 Union yet. (Tr. at 45.)

Captain Brewer was a member of the Local 222 Union in June 2021. (Tr. at 471.)

Captain Brewer knew that Transportation Coordinator Miller was a member of the Local 399 Union in June 2021 but, more importantly, Brewer also knew that Miller was against the union coming in to organize and flip the 3486-movie production. (Tr. 471.)

By June 11, however, Transportation Coordinator Miller admits that he had heard from Owner Wulf that local unions were getting involved in the 3486-movie production at this time trying to organize and flip the production. (Tr. at 45-46; GC Exh. 6.)

Miller also admits that he told Captain Brewer and Staheli that Owner Wulf had received email correspondence from the Local 399 Union from June 10 and 11 saying that the union might be coming to organize the drivers at the 3486-movie production. (Tr. at 46-47, 56-58; GC Exh. 6.)

On Friday, June 11, while Owner Wulf and Transportation Coordinator Miller were very busy getting things ready to start the new production and transporting vehicles and equipment to start production of the 3486-movie in or around St. George, Utah on June 13, Owner Wulf contacted Miller and instructed Miller to contact the Union and figure something out. Specifically, Owner Wulf asked Transportation Coordinator Miller to take care of this Local 399 Union interfering with the start of production on the 3486-movie set. (Tr. 47-49, 57, 59.)

The conversations and texts between Miller for Owner Wulf and Respondent 3486, Inc. to Brewer, Staheli and other drivers on the crew of 3486, Inc. contained Owner Wulf's frustrated threat through Miller that by continuing to engage in union activities at the 3486-movie production would cause Owner Wulf to stop the film production and transfer it to Canada or elsewhere to get away from union activities. Owner Wulf was frustrated that the Local 399 Union presented him a contract on short notice immediately before the start of the 3486-movie production. (Tr. at 359-360, 362-363, and 385-386.)

Miller responded to Wulf telling Wulf that he would take care of it, as he usually does solving problems that arise on movie production sets for Wulf. (Tr. 48-49, 57, 59.)

Brewer confidently denies that he ever spoke to Miller about trying to organize and get a union collective bargaining agreement set up for the production of the 3486-movie. (Tr. at 471.)

Miller also recalled asking Captain Brewer: "Do you know who called the union?" (Tr. at 46, 458.) Miller admits having a conversation with Captain Brewer and/or other drivers from the 3486-movie transportation crew and Miller further admits asking the drivers: "hey, are any of the drivers talking about the union?" (Tr. at 46, 105.)

Also, on June 11, at approximately 6 p.m., Staheli confirmed the same conversation with Captain Brewer where Brewer calls and tells Staheli that Brewer had just been contacted by Miller and Miller asked Brewer if someone was talking to the Union? (Tr. at 105-106.)

On June 11, Transportation Coordinator Miller also admits telling Brewer something to the effect of "if the union comes in to organize these drivers, the [3486-movie] production is going



to go to Canada.” (Tr. at 47, 58, 115; GC Exh. 1(a); GC Exh. 4(c).) Moreover, Miller further explained that he told Brewer and Local 399 Union representative Staheli that: “they [Owner Wulf and/or Hallmark Films<sup>8</sup>] would probably take their [future] shows to Canada—or—or Hallmark will take their shows somewhere else...” (Tr. at 47, 58; GC Exh. 6(a).)

Also, Miller testified that on June 11:

[Owner] Mr. Wulf called me and told me that [union representative] Lindsay [Daugherty of L399 Union]<sup>9</sup> . . . emailed him [on June 10] or called him, and [Wulf asked Miller] could I, you know, talk with [union representative] Josh [Staheli of Local 399 Union] or whoever after the—because usually, if it’s not worth,—if it’s not so much money, like, worth – need, I think, because I have to call in, too, to my unit and tell them we’re not working. Usually, they—they’ll just say, ok, go ahead and do it, because it’s not worth that much.” (Tr. at 47–48, 56–57, 59, 105; GC Exh. 1(a).)

I find that Transportation Coordinator Miller made up some of these statements specifically about needing to get approval from either the Local 399 Union or the Local 222 Union to work on nonunion matters<sup>10</sup> (Tr. at 47–48, 56–57, 59, 62, 68.)

Instead, I find that Owner Wulf directed Miller to stop the union organizing immediately by communicating to the Local 399 Union and Captain Brewer and the drivers’ crew on the 3486-movie production that any unionizing activities or union interference from the drivers, including Brewer, would lead to Owner Wulf taking the 3486-movie production and all future production work to Canada or elsewhere away from the potentially unionizing drivers’ crew at the 3486-movie production.

I further find that Miller’s role for Owner Wulf and Supervisor Ricci over the years was to be a problem-solver and he took on Owner Wulf’s demand on June 11 that Miller “*would take care of it*” as Miller contacting Captain Brewer, other drivers, and Local 399 Union Representative Staheli and communicating this curt and direct threat that if the drivers, including Brewer, did not immediately stop their union organizing activities at the 3486-movie production, Owner Wulf would take his movie and TV production work elsewhere—perhaps Canada and all future projects. (Tr. at 47, 57–59–60, 115; GC Exh. 1(a).) (Emphasis added.) In addition, Supervisor Ricci also said the same thing to Staheli in the parking lot of the Leeds Market before the strike on June 13 that if organizing happens on the 3486-movie production or in the future, that work will leave Utah and Owner Wulf will take it outside Utah and go to Canada. (Tr. at 115.)

Also, on Friday, June 11 at approximately 7:46 p.m., Staheli texts Miller asking him to confirm that “David [Owner Wulf] is

saying they’ll pack up and go to Canada if the drivers want to organize?” (Tr. at 184–185; GC Exh. 6(a).)

Miller responds: “David [Wulf is] [S]aying that Hallmark will pack up and go to Canada. . . .”<sup>11</sup> (GC Exh. 6(a).)

Captain Brewer and Local 399 Union representative Staheli confidently denied that there was any requirement that union members like Miller and Brewer were required to report to their unit managers and get pre-approval to work all nonunion jobs. (Tr. at 470.) Moreover, Brewer opines without hesitation that working on nonunion productions like the 3484 and 3486-movies for Owner Wulf did not affect his union benefits including his pension in any way. (Tr. at 470, 476.)

In fact, Transportation Coordinator Miller explains that after the shooting of the 3486-movie concluded, Miller had communications with Wulf in which Miller attempted to explain his communications with Local 399 Union representative Staheli and Captain Brewer from June 11-13, 2021 regarding Union activity. (Tr. at 59.) Miller also sent Wulf a copy of a texted message of a conversation that Miller had with Local 399 Union representative Staheli not between Miller and Captain Brewer. (Tr. at 60.)

Transportation Coordinator Miller further admits that sometime *after* June 2021, he told Wulf that he (Miller) had “stretched the truth” regarding the things that Miller had said to Local 399 Union representative Staheli including the threat to stop production of the 3486-movie if the drivers, including Brewer, did not immediately stop their union organizing activities at the 3486-movie production on June 11. (Tr. at 47, 57–60.)

I reject Transportation Coordinator Miller’s attempt to walk back his threat from June 11 to Staheli, Brewer and the drivers and try to rewrite history as I find that Owner Wulf and Supervisor Ricci frequently authorized Transportation Coordinator Miller to speak for them and represent Respondent’s position and statements toward union activity and employee discipline. When Owner Wulf asked Miller to contact the union and figure something out and take care of things, I find that Owner Wulf fully authorized Miller to speak for Respondent which resulted in Miller threatening Captain Brewer, Local 399 Union Representative Staheli, and the drivers that if they did not immediately stop their union organizing activities, Respondent would shut down production of the 3486-movie and future TV and movie production and Owner Wulf and Respondent would take this production work elsewhere, most likely to Canada. (Tr. 47–49, 57–60, 115.) Therefore, I further reject Miller’s statement that he acted alone on his own without Owner Wulf’s authority to negotiate with the union when Miller threatened the drivers and Staheli on June 11.<sup>12</sup> (Tr. at 60–61.)

<sup>8</sup> Hallmark Films was Owner Wulf’s client who commissioned Wulf to produce the 3484 and 3486-movies. (Tr. at 47.)

<sup>9</sup> Transportation Coordinator Miller remembered who Lyndsay Daugherty was because he had hired Daugherty before on another movie Miller and Wulf worked on and Miller hired Daugherty for that movie in 2006. (Tr. at 57.) Miller also knew that Daugherty was a union representative for Local 399 Union in June 2021. *Id.*

<sup>10</sup> Brewer opines that he does nonunion production work anytime he is available to do nonunion work which is infrequently since most of Brewer’s production work is tied to unionized jobsites. (Tr. at 475.)

<sup>11</sup> Owner Wulf has entered into union agreements in some of his past productions but in this case Wulf’s threat to the drivers and Staheli communicated by Miller on June 11 is the result of Wulf being upset that the Local 399 Union presented him with a CBA and pressured him over the weekend giving him short notice of these union activities before filming was scheduled to commence the morning on June 13. (Tr. at 359–360, 362–363, 385–386.)

<sup>12</sup> I also reject Owner Wulf’s self-serving denial that he ever authorized Transportation Coordinator Miller to do whatever Miller thought necessary to move past the union organizing activities on June 11 in the

As a result of Transportation Coordinator Miller's threat to Brewer and the other drivers that Owner Wulf will retaliate and take his movie and TV production work to Canada or elsewhere if the drivers continue to organize or bring in a union and also Miller's interrogating drivers about their union activities, Staheli filed an unfair labor practice charge on June 11 at approximately 7:30 p.m. (the June 11 ULP charge). (Tr. at 105–106, 161; GC Exh. 1(a); GC Exh. 5a.)

On June 11 at 7:46 p.m., Staheli sent Owner Wulf an email with a copy of the June 11 ULP charge to inform him that Wulf's subordinates, Transportation Coordinator Miller, were committing ULPs. (Tr. at 109, 161; GC Exh. 4(c).)

## 2. Events on Sunday June 13 and the drivers' strike

### a. *The drivers unanimously vote to strike the 3486-movie production.*

Union representative Staheli recalled sending Owner Wulf a draft CBA to recognize and allow the drivers on his 3486-movie production to organize so they can receive health insurance and retirement benefits in a signed CBA. (GC Exh. 4(c).) Staheli intended the proposed CBA go to Owner Wulf for his consideration rather than to Supervisor Ricci or Transportation Coordinator Miller. (Tr. at 144.)

After filing the June 11 ULP charge, Staheli flew to Las Vegas the next day and rented a large SUV and drove to St. George, Utah, to continue his efforts to organize the drivers at the 3486-movie production and discuss getting a contract with Owner Wulf. (Tr. at 106, 110.) Staheli planned to use the SUV if the drivers voted to go on strike to take them back to Salt Lake City. Id.

Staheli explained that before June 13, he knew the difference between an unfair labor practice strike (ULP strike) where the strikers get their jobs back and an economic strike where strikers can be replaced with other employees. (Tr. at 111.) Staheli confidently opined that he intended that any strike by the drivers at the 3486-movie production would be a *ULP strike* so the drivers could get their jobs back given the fact that he had filed the June 11 ULP charge for the drivers.<sup>13</sup> Id. Later, Staheli received instruction from the Local 399 Union Attorney Ryan Spillars to tell the drivers they were striking due to the June 11 ULP charge so it would be a ULP strike and the potential strikers would be able to get their jobs back after the strike. Id.

Miller recalled that for the 3486-movie, the drivers' group with all the trucks, trailers, vans, and equipment for the shoot traveled to southern Utah on Saturday, June 12 and that the shooting of the 3486-movie was set to start on Sunday morning, June 13. (Tr. 56.)

On June 12, Staheli also recalled emailing Captain Brewer a

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3486-movie production. In addition, I reject Wulf's statement that he would never say what Miller threatened nor would Wulf ever authorize that to be said. (Tr. 371–372.) Owner Wulf admits that he runs his production company as a top-down dictatorship and the drivers reasonably believed Miller's retaliatory threat that Owner Wulf would take his production to Canada or elsewhere if the drivers did not stop their union activities on June 11. (Tr. at 46–60, 115, 371.)

<sup>13</sup> Staheli opined that his understanding of a ULP strike comes from classes taken at the Teamsters Leadership Academy years before the June 13, 2021 ULP strike in this case. (Tr. at 159–160.)

standard list of Unfair Labor Practices (ULPs) against companies that Staheli wanted Brewer to share and communicate with other drivers at the 3486-movie production. (Tr. at 112–114, 160.)

The emailed list also informs Brewer that: "Brett [Miller] has already [siq.] committed some [ULPs] and it wouldn't surprise me if he does several more times today and tomorrow. I have already filed a charge with the NLRB, the more we have the better the leverage." (Tr. at 114, 161; GC Exh. 5a.) Staheli further opines that he had an interest in halting unfair labor practices coming from the 3486-movie production and that is why Staheli sent Brewer the list of ULPs. (Tr. at 170–171.)

The 3486-movie shoot started on June 13 in southern Utah at the St. George, Hurricane, and Leeds area. (Tr. at 63.)

Brewer opines that Local 399 Union representative Staheli was involved in organizing the drivers' strike on Sunday, June 13 and that Staheli ensured that the drivers knew the purpose of the strike. (Tr. 458–459.)

Staheli admits that the production shoot on June 13–14 was at a time when there were still very strict protocols in place for Covid-19 and that Supervisor Ricci would occasionally instruct Staheli to put on his mask and Staheli offered Supervisor Ricci the results of his recent Covid-19 testing before he went on the set, which for Staheli and the drivers was mostly outdoors in the Leeds Market parking lot on June 13.<sup>14</sup> (Tr. at 155–156.)

Staheli and business representative Edwards and Tuttle were all on the Leeds Market location for the morning shoot starting around 8 a.m. on Sunday, June 13 for approximately 6 hours and had gotten to know the drivers while the 3486-movie production went forward as they stayed mostly on the edge of the parking lot. (Tr. at 118, 169, 445.)

Staheli admits that his regular custom and practice organizing drivers at a film shoot is to walk over to the transportation drivers on a set and start talking with them. (Tr. at 147–148.)

Staheli explained that despite any pulled permit for shooting the 3486-movie, the Leeds Market was open to the public throughout the morning shooting of the 3486-movie there and he saw people actively shopping at the Leeds Market and coming and going from the publicly open Leeds Market from the parking lot. (Tr. at 147.)

In fact, Staheli recalled a moment the morning of June 13 where he had gone into the Leeds Market to buy a sandwich. (Tr. at 168–169; R Exh. 3 at 1.) Staheli told Ricci that he was looking for a sandwich and she said okay because the market was actually open to the public and not a closed set as Staheli, Edwards and Local 222 Union Representative Garrett Tuttle (Tuttle) witnessed people driving up to the market and going in and checking out having bought whatever item brought them to the market that Sunday morning like ice or whatever they needed to go fishing. Id. In fact, I further find that the lease agreement between 3486, Inc. and the Leeds Market or Muse Grocery Co. specifically carves out an exception to the lease being

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<sup>14</sup> Staheli and all of the drivers saw that Supervisor Ricci was not wearing her mask during the morning shoot on June 13 and thought it was "very humorous" that she was not wearing a mask yet she was telling everyone else to put their masks on while outside in the parking lot at the Leeds Market. (Tr. at 156.)

a closed-set exclusive use contract for all “customers during regular business hours” which is what Staheli, Edwards, and Tuttle were on June 13—customers during regular business hours. (R. Exh. 3 at 1.)

Staheli recalls having another conversation at the Leeds Market with Supervisor Ricci where he talked to Ricci and referenced the possibility of getting a union contract for the 3486-movie production. (Tr. at 122–123.) In response, Supervisor Ricci called Owner Wulf and got him on speakerphone very briefly and stepped away and told Staheli after speaking with Wulf that she would have to get back to him about organizing at the 3486-movie production. (Tr. at 123.)

Staheli also described a common refrain he was aware of going into the production of the 3486-movie that other prominent producers besides Owner Wulf have said that if union organizing happens in Utah, shows and related work would leave Utah and go to Canada. (Tr. at 114–115.)

In fact, Staheli also recounted how Miller’s text on June 11 and Staheli’s conversation with Supervisor Ricci on June 13 at the Leeds Market parking lot before the strike vote both communicated the same thing—Owner Wulf would take his production work to Canada if organizing happens at the 3486-movie production. (Tr. 47–49, 57–60, 115; GC Exh. 6.)

Edwards also recalls Supervisor Ricci being friendly to the three union agents on the set at the Leeds Market during the morning of June 13 and she offered them drinks, snacks if they wanted, and just advised them to stay away from the set while the film was shooting but for the most part Edwards recalls being able to move pretty much wherever they wanted and at no time did Ricci tell Edwards to leave. (Tr. at 445–446.)

The drivers had set up trucks, trailers, vans, and equipment for the first day of shooting the 3486-movie at the Leeds Market grocery store in Leeds, Utah that Respondent had leased for the movie in southern Utah. (Tr. at 459, 463.)

Brewer recalled that the production group, including the drivers, had just completed filming for the day around noon on June 13 before the drivers’ group voted to strike the movie set. (Tr. at 460–463.) With the completion of the day’s shooting at the Leeds Market grocery store in southern Utah, Brewer opined that the production crew was getting ready to move the set to the Pecan Farm along with all of the trucks, trailers, equipment, vans and crew. (Tr. at 462–463.)

Brewer recalled that when the morning’s shooting stopped before the crew moved everything to the Pecan Farm, Staheli reminded the drivers as a group that Respondent had committed some unfair labor practices and Staheli indicated that he and the Local 399 Union were going to help the drivers organize to try to fix the ULPs. (Tr. at 115–117, 459–461; GC Exh. 20.)

Specifically, Staheli said: “I told them [the drivers at this time] that the company was moving [to the Pecan Farm] and that based on the [June 11] ULPs, I wanted to vote them for a strike,” and Staheli wanted the drivers to vote on whether to conduct a ULP strike.<sup>15</sup> (Tr. at 117–119.)

Between noon and 1 pm on June 13, to determine which, if

any, drivers were interested in striking, Staheli took a secret vote of the drivers on location in Southern Utah. (Tr. at 116, 119, 458–462; GC Exh. 20.) Brewer recalled that the vote was conducted by a ballot with paper and it was a secret ballot. No names, just yes or no and each driver filled out a piece of paper and the 9 ballots were collected in a hat and then counted.<sup>16</sup> Id.

Staheli described that the 9 Local 222 Union drivers put a “yes” on the little pieces of paper and dropped their vote into a baseball cap and then they counted them and found the vote was an enthusiastic and unanimous “yes” to strike with exclamation marks and expletives added to the “yes” votes. (Tr. at 119.)

Staheli explained that he called the vote at that time because the company was going to move the shoot to the Pecan Farm and Staheli assumed that once there he would no longer have contact with the drivers as they would be under Supervisor Ricci’s and Transportation Coordinator Miller’s supervision for the rest of the day. (Tr. at 119.)

The 9 striking drivers were Captain Brewer, Elder, Fleming, Lester, Fox, VandeMerwe, Gueso, Hanson, and Bolinder. (GC Exh. 1(e); GC Exh. 1(g); and GC Exh. 1(i).)

Local 222 Union Representative Tuttle counted the votes and the result was a unanimous vote to strike from the Local 222 union drivers’ crew including Brewer. (Tr. at 460.) Edwards, a business agent also from Local 222 Union was present with Staheli and the nine voting drivers. (Tr. at 116.) Supervisor Ricci was about 50 feet away from the voting drivers at this time. (Tr. at 116.)

I further find that the strike at the 3486-movie production was specifically intended to be based on the June 11 ULP charge filed by Local 399 Union making it a ULP strike and not an economic strike.

The strike occurred “just off to the side of the [movie] set” at Leeds Market that the drivers were working on in southern Utah. (Tr. at 459, 461; GC Exh. 20.)

*b. The drivers’ post-strike activities and picketing on June 13*

On June 13, at approximately 1pm, Respondent admits that the drivers in the 3486-movie transportation department ceased work and the ULP strike began. (Tr. at 123.)

At this time, Staheli informed Supervisor Ricci and texted Transportation Coordinator Miller that the 9 driver employees had unanimously voted to strike the 3486-movie production. (Tr. at 120–123; GC Exh. 6a.)

Staheli convincingly denies telling Supervisor Ricci that the purpose of the ULP strike was to get a contract because that was not the purpose of the strike. (Tr. at 122.) It was intended all along to be a ULP strike based on the June 11 ULP charge.

After the strike was officially called by the drivers after the unanimous ballot count, Brewer recalls that the drivers next separated and unloaded equipment at the Leeds Market grocery store to determine which vehicles and equipment could be safely returned to the requisite owners other than Owner Wulf. (Tr. at 463.)

<sup>15</sup> Prior to this strike vote, Staheli admits he had organized strikes hundreds of times before, primarily in the Los Angeles area but he had experience in 2014 organizing in Utah before 2021. (Tr. at 117, 140.)

<sup>16</sup> Brewer further recalled that the baseball hat they used to collect ballots and determine who favored a strike, the hat belonged to Local 222 Union representative Garrett Tuttle. (Tr. at 460.)

Supervisor Ricci was trying to get the crew to leave the Leeds Market parking lot and travel to the Pecan Farm in Hurricane, Utah. (Tr. at 116.)

Brewer and Saheli, in particular, knew they needed to take “reasonable precautions” to make sure that the vehicles and equipment at the production was not damaged in the work stoppage so not to lose the trust that the various venter owners had in them.

Brewer further states that various things were unloaded and, in particular, there was a truck with equipment that Brewer knew belonged to the 3486-movie production company, and the drivers were asked if the truck could be unloaded despite the strike and they unloaded this equipment. (Tr. at 463.)

The drivers continued to help unload and gather some of the equipment from trucks, trailers, and vans. (Tr. at 124, 463.) Staheli recalls telling Supervisor Ricci that the drivers were on strike and that they were not going to move the equipment. (Tr. at 120.)

Brewer also recalled that one of the drivers, Gueso, got upset after the strike began because he had worked strikes in Hawaii before and did not think the drivers should be helping unload equipment *after* the strike was called because according to Gueso, drivers who helped unload equipment after a called strike were, in essence, crossing their own picket line. (Tr. 465.) Brewer recalled that Gueso thought the striking drivers should be providing Respondent less help once the strike had been called. Id.

Brewer, who is from Hawaii, also explained that in response he reminded Gueso that they were not in Hawaii and that things were different in Utah, and Brewer recommended that Gueso and the other striking drivers listen to and follow the directions of the organizing union agents and make sure the drivers were doing everything correctly during the ULP strike. (Tr. at 465.)

Staheli texts Miller at 2:40 p.m. on Sunday June 13 informing him that the drivers had voted to strike the 3486-movie production. (GC Exh. 6(a).)

Transportation coordinator Miller next asks Staheli if he and the drivers can speak to Owner Wulf before doing anything drastic with the equipment, trucks, and trailers and Staheli responds telling Miller that he has been trying to talk to Wulf since the prior Thursday, June 10. (Tr. at 184–185; GC Exh. 6(a) and (b).)

Miller next texts Staheli that Miller is also trying to call Owner Wulf and that Wulf is “probably mad at me [Miller].” (GC Exh. 6(b).) Owner Wulf and Supervisor Ricci seemed ill-prepared and quite surprised by the timing of the ULP strike.

Brewer’s understanding as to who owned the various trucks, trailers, vans, and equipment at the shoot of the 3486-movie was that it was leased to the movie by a variety of different entities or vendors some including Wulf and the production company but others by vendors in Utah and Salt Lake City. (Tr. at 463.)

Staheli and Brewer focused on taking reasonable precautions and moving vehicles and equipment to the Best Western hotel and later to Salt Lake City that were owned by vendors and lease companies other than Owner Wulf who owned his own lease company called Redline. (Tr. at 372–373, 390, 408–409.)

Staheli and Brewer met up with Miller and Owner Wulf,

Collier and others later on June 13 at the hotel after Owner Wulf had summoned the local police with claims of trespass on private property, stolen property, tortious interference, theft, vandalism, intimidation, and other “nefarious actions” by the union and the nine striking drivers. (GC Exh. 4(a).) Daugherty and Staheli respond that no such strike misconduct has occurred and at no time did the local police take action against any of the strikers or union representatives. In fact, all of Respondent’s counter-claims against the union and/or striking drivers were dismissed prior to the hearing in this matter.

Brewer made some phone calls to various vendors who own some of the equipment and trucks or trailers on the production set and Brewer defended taking the equipment from the Leeds Market set because he explained equipment is leased from different companies and vendors and those vendors were contacted to see what they wanted the striking drivers to do with their equipment, they did not want it abandoned, so they asked for their equipment to be returned to them in Salt Lake City. (Tr. at 472.)

Brewer continued to take reasonable precautions to safely return vehicles and equipment and recalled speaking to Dustin Stone who is part of the DJS Equipment Rental company and Stone had at least 2 stake bed trucks rented for the 3486-movie, one of which was a fueler and one with bathrooms on trailers. (Tr. 472.) Brewer further explained that he believed that abandoning this property would have resulted in a larger financial loss to the owner Stone and other vendors and Brewer did not want to lose trust built up over the years with these vendors so he contacted them and informed them of the drivers’ strike on June 13. (Tr. at 473.)

When the strike started, Staheli also understood that Owner Wulf owned some of the equipment at the shoot but could not explain the break-out of ownership between Wulf and other vendors who owned other vehicles and equipment at the shoot. (Tr. at 152–153.) Owner Wulf admitted that he learned at least one if not more vendors had authorized the removal of its equipment to the striking drivers or the union representatives like Staheli. (Tr. 391–392.)

Staheli recalled that Lamond Reynolds owned the camera truck, Britani Alexander owned trailers, Josh Kielkowski and Dustin Stone owned most of the power vehicles that were pulling various trailers. (Tr. at 153.)

Staheli also called most of the owners of the production equipment for the 3486-movie production that he knew to tell them that the drivers had voted to strike. (Tr. at 124–125.) Staheli specifically recalled taking reasonable precautions with the various vehicles and equipment and talking with vendor Josh Kielkowski and Dustin Stone, part-owner of the DJS and Britani Alexander, an owner or principal in a rental company. (Tr. at 124–125.) Staheli also recalls talking with Lamond Reynolds who owned one of the camera trucks. Id. All of these owners or vendors asked Staheli to make sure their equipment got safely back to Salt Lake City. (Tr. at 126.)

Staheli admits that he had authority from owners and vendors of the trucks, trailers, vans, and equipment, other than Owner Wulf, to remove trucks, trailers, and equipment from the Leeds Market and the Pecan Farm on June 13 and 14. (Tr. at 155.)



Miller was not among the strikers, and he was opposed to the Union campaign. (Tr. 276, 471.) He was noticeably absent after the strike was called, failing to answer phone calls or appear until filming began at the Pecan Farm later that day. (Tr. 278, 290, 292–293, 363, 378–379.) Miller remained employed by Respondent throughout filming and continued working on the production, including lending his personal truck to haul equipment. (Tr. 292–294, 354–355, 418–419.)

Staheli told Brewer and the other striking drivers that the owners of various vehicles and equipment had requested that the striking drivers take their vehicles and equipment back to Salt Lake City so the striking drivers determined which pieces of vehicles and equipment to collect from the Leeds Market and the Pecan Farm and bring to the Best Western hotel parking lot before driving them safely back to Salt Lake City the next day. (Tr. at 170.) Staheli also knew that one of the striking drivers was related to one of the owners of equipment or vehicles and he knew what equipment to move away from the production set. Id.

Staheli identified equipment and vehicles at the production to include 2 work trucks owned by a local company in Salt Lake City, a generator owned by Wulf, and a Sprinter Van owned by somebody else, a prop truck also owned by somebody who Staheli did not know. (Tr. at 125.)

Approximately eight pieces of equipment, four trucks and four trailers, were relocated. (Tr. 238–239, R Exh. 2; GC Exh. 16(b).) Later, after calling the police, Owner Wulf informed Staheli that there was private property inside some of the vehicles, which he then removed. (Tr. 170, 430; GC Exh. 16(a).) The police determined it was a civil matter, and no charges were filed. (Tr. 165, 393.) Respondent testified that it had lease agreements with the vendors but no lease agreement was ever produced. (Tr. 265, 391.)

Staheli acknowledges that Owner Wulf emailed Staheli and Staheli discovered that evening at the Best Western hotel parking lot that one of the vehicles owned by a vendor and moved by a striking driver actually contained some private property inside of it owned by Wulf that should have been left at the Pecan Farm. (Tr. at 169–170.)

At one point Miller texted Staheli requesting him to take a picture truck, a brand-new GMC or Chevy pickup truck back to Salt Lake City because Miller had borrowed it from a dealership, and he did not want miles put on its odometer as it happened to be parked on top of a trailer owned by one of the vendors Staheli had called and not Wulf. (Tr. at 126.)

Staheli also recalled telling Supervisor Ricci that the camera truck would be leaving soon to go to the Best Western Hotel and he and some of the drivers put equipment cases on the sidewalk next to where the camera truck was parked. (Tr. at 153–126, 153–154.) Staheli also recalled instructing striking drivers to move equipment to the Best Western Hotel and some of the trucks were driven to the Pecan Farm in Hurricane, Utah to hook up to other trailers and bring them to the best Western Hotel for the night. (Tr. at 154.)

Staheli believed that the hair and makeup truck was never brought to the Leeds Market and was located at the base camp at the Pecan Farm on June 13. (Tr. at 154.) Staheli also knew there was a supplies trailer that was not owned by any vendor

and belonged to Wulf.

Staheli recalled there were approximately two vehicles left on set at the Leeds Market parking lot the afternoon of June 13 and those being an electric truck and a grip truck, that Staheli and the striking drivers believed they did not have permission to move. (Tr. at 165–166.) Staheli instructed the striking drivers to leave the keys with the trucks because Staheli and the striking drivers knew they were not moving these two vehicles.<sup>17</sup> (Tr. at 171.) Staheli also recalls being asked by Supervisor Ricci where the keys to these two vehicles were located. (Tr. at 165–166.)

The two vehicles with keys that Supervisor Ricci could not locate were both owned by Redline and Wulf, which explains why they were not moved by the striking drivers and were the grip truck and an electric truck owned by Owner Wulf. (Tr. at 166, 202–203.) Staheli recalls that Supervisor Ricci instructed Second Assistant Director Copier to find the keys to the two trucks. Id.

Staheli recalled responding several times that he thought the keys were located “on the vehicles” or on the trucks because the drivers indicated to Staheli that the missing keys were located on the vehicles which Staheli describes as being a common practice in Los Angeles productions (Tr. at 166–167, 340–341.) Staheli was not involved in hiding the missing keys on June 13. (Tr. at 171–172.)

Staheli further explains that on a movie production if you are going to leave a truck somewhere, generally the keys are hidden so not to show up in the movie and if the vehicle is being left in a parking lot, Staheli would not expect the keys to be left in an easy place to find them like a visor because the truck could be stolen so Staheli suggests that a driver would most likely leave the keys in a place where another film driver would be able to find them like a headlight or a step depending on the size of the vehicle and never on a tire or a visor. (Tr. at 173.)

Respondent was unable to locate the keys to the electric truck and retained a locksmith in order to access and operate it. (Tr. at 252, 299.) The cost was approximately \$600. (Tr. at 278.) Respondent found an old spare key on the grip truck so the locksmith was only needed on the electric truck. (Tr. at 299–300.) Driver Fox had been operating the electric truck. (Tr. at 310.) Respondent could not identify which driver had operated the grip truck but guessed that it was John VanderMerwe. (Tr. at 279, 310.) Miller had knowledge of who was operating both vehicles, but Respondent did not ask him. (Tr. at 310–311.)

Staheli asked Supervisor Ricci what she wanted done with the equipment, and she instructed him to just “do what you have to do, and we’ll do what we have to do.” (Tr. 126–127.)

Later, that evening at the Best Western hotel, Staheli showed Owner Wulf this common hiding spot on the camera truck at

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<sup>17</sup> Staheli explained that it is common practice to leave keys on vehicles that might need to be moved during a movie production because drivers on a set frequently need to move a vehicle immediately from time-to-time. (Tr. at 172.) Staheli further explains that new union member drivers are taught at orientation to never take the keys with them because as soon as you’re in the bathroom or you’ve gone back to the stage, is when the production is going to need to immediately move the vehicle and therefore need the keys to be there “on the vehicle.” (Tr. at 172.)

the hotel on the headlight.<sup>18</sup> (Tr. at 166–167.)

For the next hour or so, Staheli recalls that drivers went to the Best Western Hotel and some went to the Pecan Farm to picket and retrieve vehicles and equipment and Staheli went to the hotel where the crew had reservations to stay the night, a Best Western hotel near a Black Bear Diner restaurant. (Tr. at 126–127.)

Staheli next describes how some of the drivers took vehicles and equipment directly to the hotel instead of the Pecan Farm to park overnight at the hotel. Staheli also recalled how Supervisor Ricci had the hotel lock out drivers from their rooms and cancel all of the hotel rooms for the striking drivers and the drivers had 3 minutes to remove their personal belongings from the hotel room.

Staheli next went to the hotel and paid for the striking drivers' hotel rooms for the night so basically Staheli and the striking drivers gathered all of the equipment that was going back to Salt Lake City at the Best Western hotel to stay overnight on June 13. (Tr. at 127, 446–448.)

Staheli opined that based on his overhearing Supervisor Ricci instruct the movie's second assistant director Chris Copier (Copier), a non-Teamster employee at the 3486-movie production, to drive the largest commercial vehicle that was at the Leeds Market when the strike began on June 13, Staheli thought Transportation coordinator Miller and Copier continued to operate some of the trucks at the 3486-movie production in place of the striking drivers on and after June 13. (Tr. at 132–133.)

Brewer did not organize the drivers' ULP strike on June 13 and Brewer further explains that as transportation captain, he has to make calls on what happens at a job for equipment and vehicles brought to the set by him and under his responsibility to take reasonable precautions for caring for and maintaining and driving it to keep it safe. (Tr. 473–474.)

On June 13, Miller had mechanical problems with his truck and trailer and was surprisingly absent at the start of 3486-movie production for much of June 13, at the Leeds Market grocery store or to witness the drivers' ULP strike, events at the Best Western hotel, or at the Pecan Farm. (Tr. 55.)

Despite being away from the Leeds Market grocery store and the Pecan Farm, Transportation Coordinator Miller was in frequent contact with Captain Brewer who informed Miller that one of the drivers got a tractor stuck pulling into the Pecan Farm where the 3486-movie was being shot the afternoon on June 13. (Tr. 55.)

At 5:07 p.m. on Sunday, June 13, Staheli texts Miller asking him whether Miller wants to come get the picture car, etc. from the Best Western Hotel and Miller responds telling Staheli to just take it back to Salt Lake City since it's on the trailer and Staheli next tells Miller that the striking drivers think they "should probably leave the truck, trailer, and gator so David

[Owner Wulf] doesn't think [the drivers are] stealing them." (GC Exh. 6(b).) Miller responds saying "OK, sounds good." Id.

Brewer recalled that he did not have a first conversation with Owner Wulf until later in the evening on June 13 at the dirt parking lot next to the Best Western hotel at the end of the day where the drivers and the rest of the production crew for the 3486-movie were staying. (Tr. 468.)

Brewer recalled that Wulf approached Brewer when the striking drivers were organizing the equipment and trucks in the parking lot to get them ready and reasonably secured for the night. (Tr. at 468–469.)

Brewer next describes that Wulf and an associate of his approached him on June 13 in the Best Western parking lot when Brewer was locking his truck and had never really spoken to Wulf before this time other than to just acknowledge him at the corporate office in Salt Lake City.

Brewer then explains that while they are walking and talking Owner Wulf says to Brewer:

Hey, Roy... hey, you know, we would – we—we can't turn this over to these guys—these out-of-staters. You know, they --- we can't let them take over and do what we have here. (Tr. at 468–469.)

Brewer opines that at this time Owner Wulf was trying to urge Brewer to stop striking and cross the picket line and continue to work on the 3486-movie as its transportation captain as before the ULP strike earlier in the day. (Tr. at 468–469.)

Brewer did not respond to Owner Wulf's request and confidently denies being embarrassed about voting for the ULP strike, striking, or picketing. (Tr. at 469.)

Brewer next observed Owner Wulf talking to 2-3 striking drivers after he left Brewer with his assistant.

At 7:24 p.m. on Sunday, June 13, Staheli texts Miller asking him when the crew call is on Monday, June 14 and Miller responds telling Staheli that crew call is 10:30 a.m. (GC Exh. 6(b) and (c).)

Staheli next asks Miller if the 3486-movie production had wrapped up yet and Miller responds saying that he believes they just wrapped up and that he "sees things going undercover now." (Tr. at 184–185; GC Exh. 6(c).)

### 3. Picketing events of Monday, June 14 at the Pecan Farm

Edwards and Brewer recalled that picketing took place on Monday, June 14 at the Pecan Farm with the striking drivers and Edwards. (Tr. at 448.) Before going to the site, however, Edwards stopped at the local police station and notified them of the upcoming picketing, let them know what the picketers would be doing, pointed out the geographic area that the picketers intended was disclosed to the police, and that peaceful picketing was intended. (Tr. at 448–449.)

Edwards further recalled that when the picketers first arrived, they parked right across from the Pecan Farm on a dirt shoulder of the road. (Tr. at 449.) Later the picketers discovered from the police that they were actually parked on private property where sunflowers were planted so they quickly moved their vehicles up the road a way and parked off the shoulder where the police indicated was appropriate for parking. (Tr. at 450.)

One of the strikers drove the stake bed truck to the Pecan

<sup>18</sup> Staheli further explained that in his experience, in the movie industry, almost every truck has the keys on it and in Los Angeles, almost every lock is the same code and Staheli further explained that he was surprised that the camera truck and other vehicles at the 3486-movie production were not covered in hide-a-keys where most films would be covered and every production would have a master key which is put in a hide-a-key and put on the truck. (Tr. at 167–168.)



Farm picketing on June 14. (Tr. at 455.) Edwards also knew that someone brought portable bathrooms to the picketing but he did not know the identity of the owners of the portable bathrooms but understood them to be rented for the movie production. (Tr. at 455.)

They arrived at the Pecan Farm at approximately 8 or 8:30 a.m. and picketed for 3–4 hours. (Tr. at 450.)

Brewer is unsure if picketing occurred on June 13 and/or June 14,<sup>19</sup> but I find that it occurred exclusively on June 14 and when it did, the picketing occurred to the side of the 3486-movie set by people on the Pecan Farm. (Tr. at 466.) Brewer identifies GC Exh. 21 as a copy of a photograph of the striking production drivers taken on the day of picketing and who were standing outside of the Pecan Farm fence off to the side with the filming of 3486-movie taking place on the Pecan Farm on the inside of the fence. (Tr. 466.)

The picketers chanted, called out Owner Wulf, and clarified that they had no animosity toward the crew. (Tr. 303, 304.) They held signs saying, “Stop the war on workers” and, “Honk”. (GC Exh. 21.) They also used a bullhorn. (Tr. 242, 453.) Respondent asserts that some actors were upset by the strike. (Tr. 253, 263.) Temperatures were high that day, and actors did not have use of trailers, so Respondent arranged with the Pecan Farm owner to use a building for the benefit of air conditioning. At an extra expense of \$500 but no receipt was produced. (Tr. 255–256, 279–280.)

Brewer further identifies drivers Bolinder, Fox, Pops, Lester, VanderMerwe and Brewer and Staheli. (Tr. 466–467.) Brewer also explained that some of the nondrivers on the production crew quietly approached the striking drivers to say that they supported the drivers’ striking and picketing. (Tr. 467–468.)

On June 14, Brewer also recalled that a megaphone was used by the striking drivers during filming of the 3486-movie and Brewer was aware that use of the megaphone would disrupt filming. (Tr. 469–470.)

Edwards also was aware that a bullhorn was being used to the picketing on June 14 to announce that the picketers were there, but Edwards did not know when any filming would occur on the 3486-movie production that day and he did not have a copy of the call sheet. (Tr. at 453.) Edwards admitted that his intent on picketing the 3486-movie set on June 14 was to disrupt filming that day. (Tr. at 453–454.)

Edwards did not meet Owner Wulf while picketing the movie set and, therefore, never told him that the reason the drivers were striking was for pension and benefits. (Tr. at 454.)

Brewer describes how the picketers were standing about 30–40 yards from the film production crew on June 14 on the other side of the fence from them when the film production crew moved the set to become more like 100 yards away. (Tr. 474–475.) Brewer opines that the 3486-movie production crew moved to 100 yards away from the picketers because they heard the striking drivers’ voices and this may have affected the sound quality when they were only 30–40 yards away. (Tr. at

477.)

At no time during the picketing did anyone from the production crew come over to the picketers and tell them they were disturbing filming. (Tr. at 475.) There was never any violence or vandalism connected to the ULP strikers’ picketing of the 3486-movie production. The police never asked the picketers to stop picketing. (Tr. at 450.)

At some point in time, the local police arrived to inform the picketers that the country road or easement where they were picketing was not a public right-of-way but actually part of the Pecan Farm owner’s property with an adjacent owner so the picketers disbanded for the day without any further incidents and they were not cited for trespassing. (Tr. at 449–452, 476.)

Respondent also alleged that its equipment was damaged sometime after it arrived in southern Utah. (Tr. 305.) According to Respondent, the window of an Owner Wulf trailer was gouged by a knife. (Tr. 305–307, 321, 323–324, 373, R Exh. 7.) Respondent admitted, however, that it did not know exactly how it was caused or who caused it. (Tr. 324, 408.) That same trailer was missing trim and had a flat tire. (Tr. 308, 321, R Exh. 5; R Exh. 8.) Respondent believed the damage to the trim was intentional but did not know how it occurred or who caused it. (Tr. 325–326.)

Although the tire was flattened as a result of a puncture, Respondent offered no evidence, including photos, of the location of the puncture or the object that caused it. (Tr. 309, 428.) Wulf added that there was additional damage, in the form of a dent. (Tr. 375–376; R Exh. 11.) Respondent did not witness any of the damage occur and has no suspicions as to who caused it. (Tr. 305, 383, 408, 420.)

Access to the trailer was not restricted in any way. (Tr. 348.) It had been transported to and from a towing center after arriving in southern Utah. (Tr. 321–323.) Nevertheless, Respondent concluded that the damage was caused by the transportation department because of the timing of the damage, because the transportation department had custody of the equipment, and because the damage occurred “mostly” on Owner Wulf’s equipment. (Tr. 347, 372, 415.)

Other than those circumstances, Respondent had no evidence that the damage was intentionally caused. (Tr. 415.) It is unknown what damage was repaired and when. (Tr. 326, 409–410.) Typically, the transportation coordinator and captain are responsible for inspecting trailers for damage. (Tr. 319.) Respondent did not consult Transportation Coordinator Miller about the damage. (Tr. 319.) Normally, damages are noted in a production report. (Tr. 320.) Respondent did not do so with respect to the incidents at issue in this case. (Tr. 320–321.) Respondent filed charges against Local 222 and Local 399, alleging that the Union had damaged and misappropriated its property. (Tr. 421–423, GC Exh. 17; GC Exh. 18.) Both charges were dismissed. (Tr. 424–426, GC Exh. 19.)

#### 4. Events After Tuesday, June 14

The 3486-movie continued along its production schedule after June 14 and filming completed on July 2. (R Exh. 20.)

I further find that on or about June 17, Respondent 3486 received correspondence from Local 222 Union stating that it was making an unconditional offer to return to work effective June

<sup>19</sup> Based on the testimony of others, I find that the picketing at the Pecan Farm occurred on June 14 as minimal filming took place at the end of June 13 after the strike was called and the production crew left the Leeds Market on or after 2 pm.

17, 2021, at 11:59 p.m. M.T. and that Local 222 characterized its strike as an unfair labor practice strike. (GC Exh. 1(s) at 5.)

Owner Wulf stated twice that he would have rehired nine striking drivers had they asked instead of the union. (Tr. 223.) He then added that he would have conditioned their reinstatement on their ability to prove that they were not responsible for any vandalism. (Tr. 224.)

On June 15, Respondent hired two replacement drivers who remained employed throughout the rest of the production. (Tr. 227–228, 257, 259, 261, 282.) Otherwise, each time Respondent needed to move vehicles and equipment, it hired additional drivers on each occasion. (Tr. 259, 282–284.)

On June 17, Local 222 Union principal officer Spencer Hogue (Hogue) emails Owner Wulf notice of cessation of the drivers' ULP strike and picketing activity will end dated June 16 (June 17 Unconditional Offer to Return to Work) as well as an unconditional offer to return all striking employees to work at the 3486-movie production. (Tr. at 129–131; GC Exh. 7.)

Specifically, the June 17 Unconditional Offer to Return to Work informs Owner Wulf that:

... Teamsters Local 222, on behalf of all striking employees, notifies the Company [3486-movie production] that the current unfair labor practice strike will end on Thursday, June 17, 2021, at 11:59 p.m. Mountain Daylight Time. All picketing activity of this production will also end on Thursday, June 17, 2021, at 11:59 p.m. Mountain Daylight Time.

Teamsters Local 222, on behalf of all striking employees, makes an unconditional offer for all striking employees to return back to work effective Thursday, June 17, 2021, at 11:59 p.m. Mountain Daylight Time.

Please contact Joshua Staheli at (818) 421-6718 or [jstahe-li@ht399.org](mailto:jstahe-li@ht399.org) to discuss the details of the return to work for the striking employees.

(GC Exh. 7b.)

Staheli opined that he selected the June 17 date for the striking drivers to end the strike and picketing and unconditionally return to work at the 3486-movie production because he was familiar with the production schedule and he believed that Owner Wulf would be needing to hire drivers at that time so the notice was sent to try and get the striking drivers their jobs back. (Tr. at 131.) Staheli thought shooting for the production on June 17 would be in Salt Lake City. Id.

Respondent 3486 admits that it did not reinstate any of the 9 named individual striking drivers—Captain Brewer, Elder, Fleming, Lester, Fox, VandeMerwe, Gueso, Hanson, or Bolinder on June 18 or anytime thereafter. (GC Exh. 1(e); GC Exh. 1(g); GC Exh. 1(i); GC Exh. 1(s) at 5.)

On June 20, legal counsel for the 3486-movie production emailed Staheli, and Hogue a letter regarding the 3486-movie production and, among other things, the letter provides that the 3486-movie production “is currently in the process of filming a motion picture—“Love at the Pecan Farm”—in the State of Utah and to direct the letter to the attention of the Local 222 Union’s and Local 399 Union’s lawyers if each local has a legal representative. (R Exh. 1 at 1.)

The letter continues stating that the 3486-movie production has received the June 17 Unconditional Offer to Return to

Work, and that the 3486-movie production rejects this request to return to work for a variety of reasons and that 3486-movie production will vigorously defend the various ULP charges filed by Local 222 Union and Local 399 Union at the NLRB and the 3486-movie production alleges that various of its equipment and property was vandalized which would negate any right to reinstatement. (R Exh. 1 at 1–2.)

On June 24, Staheli received a screenshot Facebook posting from Gueso who copied a Facebook posting from Second Assistant Director Copier that around June 17, Copier was looking to hire Class A or commercial drivers for the 3486-movie production as Copier remained second assistant director on the production. (Tr. at 133–135; GC Exh. 15a.)

In response to Copier’s Facebook advertisement, Staheli re-shared it into the Local 222 Union’s Facebook group to prevent other commercial drivers from taking the striking drivers’ jobs at the 3486-movie production. (Tr. at 133.)

Filming in the 3486-movie production ended on July 2. (R Exh. 20.)

I further find that all of the charges, as amended, were properly served on Respondents in this case.

### III. ANALYSIS

#### A. Credibility

A credibility determination may rely on a variety of factors, including the context of the witness’ testimony, the witness’ demeanor, and 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. *Double D Construction Group*, 339 NLRB 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 need not be all-or-nothing propositions—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness’ testimony. *Daikichi Sushi*, 335 NLRB at 622. My credibility findings are generally incorporated into the findings of fact set forth above.

I find demeanor the critical factor in resolving this case. Based on consideration of the arguments of counsel on the issue, but relying to a very large degree on my personal observations of the witnesses at hearing and conclusions regarding the relative demeanor of the conflicting witnesses as well as the concurrent documentary evidence or lack thereof, I credit Brewer, Transportation Coordinator Miller, and Local 399 Union representative Staheli as to most aspects of their testimony, and credit Supervisor Ricci only to the extent her testimony is consistent with each of the above-referenced witnesses such as Ricci’s agreement with Miller and Staheli that Miller was a supervisor and that Ricci would defer to Miller’s recommended hiring judgment for drivers due to his vast number of years’ experience in the film industry and her trust in his judgment.

Otherwise, I further find that Supervisor Ricci tended to exaggerate her safety concerns at the outside filming and the alleged extent of damage to various personal property owned by Owner Wulf or his other business entities. Brewer was especially convincing as he discussed the accelerating union campaign from June 11 through the strike vote on June 13 and his

efforts with Staheli, thereafter, to take reasonable precautions to protect, separate, and return various vehicles and equipment safely to their owners in Salt Lake City.

Transportation Coordinator Miller was in a particularly difficult position between his drivers and Owner Wulf on the 3486-movie production from June 11-13.<sup>20</sup> Miller was one of Owner Wulf's supervisors on both film productions with authority to hire and direct each of the drivers before they voted and began their ULP strike on June 13 and Miller took the brunt of Wulf's ire trying to stop the union organizing at the 3486-movie production, while working closely on many prior films with most of the same drivers who, unlike Miller, wanted to unionize the 3486-movie production. Brewer, Miller, and Staheli were particularly truthful when they recalled the events on June 10-13, before Miller tried to walk back his statements when confronted by Owner Wulf.

Owner Wulf was credible when he explained his ownership of Respondents, the reasons why he incorporates each film he produces, and how he strictly follows corporate governance protocol for each different film. I also found that Owner Wulf was evasive and untruthful in many of his statements and opinions to the point that he was not a credible witness and could not be relied on for most of his testimony. For example, Owner Wulf lied whether Transportation Coordinator Miller had hiring authority and authority to discipline drivers and direct each driver's daily work schedule to the point where Miller would delay a driver's arrival if it would save the production overtime. In addition, Owner Wulf lied when he accused Daugherty of sending him threatening and intimidating emails telling him he was going to have a bad day when, in fact, all Daugherty said to Wulf was that "[i]t sounds like you had a really hard day yesterday [on June 13]. (GC Exh. 16a and 16c.) Moreover, when Owner Wulf tried to get Brewer to cross the picket line and return to work the evening of June 13, Wulf further described Brewer as being embarrassed or ashamed to be part of the ULP strike and claiming that Brewer told him he was afraid of losing his union pension if he cooperated with Wulf on June 13 when, in fact, Brewer confidently denied this and continued to actively participate in the ULP strike and picketing the next day. (Tr. at 378-379, 454, 468-470.)

Respondent witnesses Copier and Littlejohn were not credible witnesses as they appeared very rehearsed in their responses on direct testimony and evasive and vague responding on cross-examination. Littlejohn, in particular, was the least credible witness and I reject all of his testimony that is not verified by documentary or other more reliable evidence as I note that his testimony started at 12:37 pm and ended at 1:09 pm and he spoke quicker than any witness in all my years at hearings as his responses appeared to be part of a script he had memorized. In fact, Littlejohn admits that he is an actor with bit parts in 3 of Owner Wulf's productions over the years including the 3486-movie and he appeared to be "acting" with his quick and re-

hearsed responses at hearing. (Tr. at 354-355.)

*B. Respondents Are Not Alter Egos of Owner Wulf or Single Employers*

In paragraph 2(l) of the complaint and caption in this case,<sup>21</sup> it is argued that 3486, Inc. was the single employer with, alter-ego of and successor to 3484, Inc. despite the fact that each of Owner Wulf's film productions are separate film entities with distinct start and finish dates in 2021, different movies with divergent business purposes and storylines, and *not* ongoing businesses.<sup>22</sup>

The single-employer analysis is inapplicable here where I find that this case does not involve two ongoing businesses being operated by a common person. See *NYP Acquisition Corp.*, 332 NLRB 1041, fn. 1 (2000), enfd. *Newspaper Guild of N.Y. Local 3 v. NLRB*, 261 F.3d 291 (2d. Cir. 2001.) (Single-employer analysis inapplicable since the instant case does not involve two ongoing businesses coordinated by a common master.); see also *NLRB v. Hospital of San Rafael, Inc.*, 42 F.3d 45, 50 (1st Cir. 1994) (same).

The complaint also alleges that the Respondents are alter egos of each other.

In this case, I further find that the General Counsel has failed to establish that 3484, Inc. and 3486, Inc. are alter egos.

The Board considers several factors when determining whether alter ego status has been shown. Specifically, the Board considers whether two entities have substantially identical ownership, management and supervision, business purpose, operation, customers, and equipment. *Fallon-Williams, Inc.*, 336 NLRB 602, 602 (2001) (citing *Crawford Door Sales Co.*, supra). "The Board also looks to 'whether the purpose behind the creation of the alleged alter ego was legitimate or whether, instead, its purpose was to evade responsibilities under the Act.'" *Liberty Source W*, 344 NLRB 1127, 1136 (2005) (quoting *Fugazy Continental Corp.*, 265 NLRB 1301, 1302 (1982), enfd. 725 F.2d 1416 (D.C. Cir. 1984)). No single one among these factors is determinative, and not all of the indicia need be present for the Board to make a finding of alter-ego status. *Id.*; *Standard Commercial Cartage, Inc.*, 330 NLRB 11, 13 (1999); *MIS, Inc.*, 289 NLRB 491, 492 (1988).

While I find that in this case, Respondents each share the same common ownership, management, and supervisors, there was insufficient evidence presented which proves that there is a lack of arm's length dealings between the two entities or that one entity was formed to avoid union obligations under the Act or due to antiunion motive.

I further find; however, that in the instant case, the evidence is insufficient to demonstrate that 3484, Inc. and 3486, Inc. possess a common business purpose, operations, customers, and equipment. Respondents are each a different film production s and I find that they were created with markedly different business purposes, operations, customers, and equipment.

<sup>20</sup> Even Respondent witness 2<sup>nd</sup> Assistant Director Copier saw this and commented that Transportation Coordinator Miller had "a very strange relationship through the rest of the shoot"...after the ULP strike started and that "Brett [Miller] was in a difficult position." Tr. at 310-311.

<sup>21</sup> The General Counsel's closing brief, however, omits any argument that the Respondents here are a single employer.

<sup>22</sup> There is a chance that one or both of the Hallmark film productions might develop into a sequel or spin-off production, but I find this is too speculative to change the status of 3484, Inc. or 3486, Inc. to an ongoing business.

Instead, 3484, Inc. and 3486, Inc. have entirely different business purposes since they are two unrelated movie productions with different names, writers, intellectual property, permits, casts, crews, and props, costumes, storylines, and equipment, and film production for 3484, Inc. was complete and ceased being an ongoing business as of April 2021 and the film production 3486, Inc. was complete and ceased being an ongoing business as of early July 2021. (Tr. at 227; R. Exh. 20.)

In reviewing the evidence and authorities, I conclude the General Counsel has failed to meet his burden. Owner Wulf is neither a sole proprietor nor a joint employer. He does own, manage, and supervise both the 3484-movie production and the 3486-movie production and while both are film productions, they are different films – 3484, Inc. is “Christmas at the Madison” and 3486, Inc. was “Love at the Pecan Farm.” They are very different and distinct from each other with unique names, permits, casts, crews, props, costumes, storylines, and equipment. (Tr. at 215–218.)

Each movie production is also a separate piece of intellectual property for a script, so when the movie is sold, there will be no overlap with the IP of a predecessor or successor. Each film production also has its own underlying writer agreement and there is also a separate tax filing done. It is very important to maintain the distinction between them. Besides the ability to apply for new tax credits and efficient accounting, another reason for the practice of establishing separate entities is to protect the intellectual property (IP) value of each film script so that when a movie is sold, there cannot be overlap with the IP and prevent liability incurred by one production from affecting others. (Tr. at 216–218.)

Owner Wulf is not a business entity, or employs anyone, in his individual capacity. He is the sole owner, sole director, president and sole shareholder of 3484, Inc. and 3486, Inc. He has created and incorporated all his movie productions to shield himself from personal liability.

Each entity is distinct, however, as each requires new filings and fees, as well as applications for permits. (Tr. at 215.) At the time of the hearing, 3484, Inc. and 3486, Inc. were no longer ongoing businesses as each film had completed and each movie production held no assets other than “a little bit of cash.” (Tr. at 216, 218.)

Owner Wulf’s involvement in the hiring, firing, and other employment decisions affecting the crew on each of his productions including the 3484 and 3486-movies, was initially in his role(s) as an agent of each separate production and as its president and sole director; it was never in his individual capacity or as a “separate” or “another” employer. I find there has been no evidence presented that shows that Owner Wulf had any anti-union motive for incorporating 3484, Inc. or 3486, Inc. in 2021. Furthermore, I find that Owner Wulf does not use any of his production companies as his own personal piggy-bank, or that Wulf disregards corporate governance of each separate corporate production or that 3484, Inc. or 3486, Inc. were incorporated to avoid labor liability under the Act. Moreover, I further find that Wulf did not exhibit any lack of respect given to the separate identity of 3484, Inc. or 3486, Inc. by him. While there may be little value other than the potential for a TV or movie sequel or spin-off after a production ends, that alone does not

invalidate the corporate form or make nefarious Owner Wulf’s or his agents’ actions simply because they both control and benefit from the services the entity was designed to provide.<sup>23</sup>

Accordingly, for the reasons stated above, I find that 3484, Inc. and 3486, Inc. were not single employers or alter egos.

*C. Transportation Coordinator Miller was a Supervisor on June 11-13, 2021*

The Complaint alleges that at all material times, Brett Miller was a supervisor within the meaning of Section 2(11) of the Act and/or an agent of Respondents within the meaning of Section 2(13), acting on Respondents’ behalf. Respondents assert that Transportation Coordinator Miller is not a statutory supervisor or agent. I find that the evidentiary record overall establishes that Miller was a statutory supervisor at all times material to the complaint’s allegations. The record evidence further establishes that all material times Miller was an agent of 3486, Inc. within the meaning of Section 2(13) of the Act.

Generally, the Act excludes supervisors from the ambit of its employee protections. 29 U.S.C.A. § 152(11). The Act defines a “supervisor” as:

[A]ny 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 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.

(Id.; § 152(11).) The traditional three-part test for determining supervisory status is: (1) whether the putative supervisor holds the authority to engage in one or more of the above supervisory functions; (2) whether the putative supervisor uses independent, rather than routine or clerical judgment in exercising that authority; and (3) whether the putative supervisor holds that authority in the interest of the employer. *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 712–13 (2001) (citing

<sup>23</sup> I further find that for Owner Wulf to be held personally liable for violations of the Act, the General Counsel would need to pierce the corporate veil. Under Board law, the corporate veil is pierced only when: (1) there is such unity of interest and lack of respect given to the separate identity of the corporate entity by its shareholders or members that the personalities and assets of the entity and that of the individuals are indistinct, and (2) adherence to the corporate structure would sanction a fraud, promote injustice, or lead to an evasion of legal obligations. See *White Oak Coal*, 318 NLRB 732, 735 (1995), enfd. mem. 81 F.3d 150 (4th Cir. 1996). See also *Ace Masonry, Inc.*, 363 NLRB 1741, 1751 (2016). Owner Wulf’s initial funding of both 3484, Inc. and 3486, Inc. from his personal assets to get things started for each movie production, alone, is not enough. See *Huard v. Shreveport Pirates, Inc.*, 147 F.3d 406, 412–413 (5th Cir. 1998); *Lieberman v. Corporacion Experiencia Unica, S.A.*, 226 F.Supp.3d 451 (E.D. Pa. 2016). There is no evidence Wulf failed to respect/maintain corporate formalities or acted with intent to defraud, promote injustice, or evade legal obligations. See *NLRB v. Greater Kansas City Roofing*, 2 F.3d 1047, 1052–1053 (10th Cir. 1993); and *Board of Trustees of Mill Cabinet Pension Trust Fund for Northern California v. Valley Cabinet & Mfg. Co.*, 877 F.2d 769 (9th Cir. 1989). I, therefore, decline to pierce the corporate veil.



*NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573–74 (1994).

Supervisory status may be shown if the alleged supervisor has the authority either to perform a supervisory function or to effectively recommend the same. The statutory definition of a supervisor is read in the disjunctive. Possession of any one of the enumerated powers, if accompanied by independent judgment and exercised in the interest of the employer, is sufficient to confer supervisory status. *Kentucky River*, above at 713. Supervisory status may likewise be established if the individual in question has the authority to effectively recommend one of the powers, but effective recommendation requires the absence of an independent investigation by superiors and not simply that the recommendation be followed. *Children's Farm Home*, 324 NLRB 61, 65 (1997).

The supervisor has to at least act or effectively recommend such action “without control of others and form an opinion or evaluation by discerning and comparing data.” *Oakwood Healthcare, Inc.*, 348 NLRB 686, 692–693 (2006).

Indicia other than those enumerated in Section 2(11) of the Act are secondary indicia. Although secondary indicia may be considered in determining supervisory issues, they are not dispositive. In the absence of one of the enumerated primary indicia, secondary indicia, standing alone, are insufficient to establish supervisory status. *St. Francis Medical Center-West*, 323 NLRB 1046 (1997).

Secondary indicia of supervisory status include, but are not limited to, the individual's: designation as a supervisor; attendance at supervisory meetings; receipt of management memos; responsibility for a shift or phase of the employer's operation; authority to grant time off to other employees; responsibility for inspecting the work of others; responsibility for reporting rule infractions; receipt of privileges exclusive to members of management; and compensation at a rate higher than the employees supervised.

In this case, Transportation Coordinator Miller effectively recommended the hiring of most of the driving crew on the 3484, Inc. and 3486, Inc. film productions which he had done before in the 7 other productions he worked on for Owner Wulf. In addition, Miller also had the undisputed authority to discipline drivers during the film productions as there was no refutation of his issuing final warnings, suspensions, or not recalling a driver on a future film production after they had performed badly. Moreover, Transportation Coordinator Miller assigned drivers their daily schedules without any input from Owner Wulf or Supervisor Ricci, as Miller would consult with Captain Brewer and determine how each driver would park various vehicles, trailers, trucks, vans, and equipment and what time of the day they would work with an eye on being efficient to save on the payment of overtime. Miller also had full authority to select his captain to drive on a film and Miller could demote a captain or promote a driver to captain without any input or approval by Owner Wulf or Supervisor Ricci.

Supervisor Ricci agreed that she would defer to Transportation Coordinator Miller's independent judgment for hiring drivers based on her trust of his recommendations and given his years of experience as a transportation coordinator in the industry. (Tr. at 75. ) Local 399 Union representative Staheli also

persuasively opined that the crew position of transportation coordinator is a supervisory position in his many years of experience in the film production industry and this opinion was never refuted by Respondents. See *T.K. Productions, Inc.*, 332 NLRB 110, 112, fn. 12 (2000)(Parties stipulate that Transportation Coordinator Tancharoen is a supervisor and agent as defined by the Act who hired drivers and a transportation captain for an Arizona film production.)

I find that Transportation Coordinator Miller is a supervisor and agent of Respondents as defined by the Act.

#### D. The 3484-Movie Production

1. On April 13, 2021 Respondent, by Supervisor Ricci, interrogated employees about union activities

The General Counsel complaint at paragraph 5(a) alleges that on about April 13, Respondent 3484, Inc., by Ricci, by telephone, interrogated employees about their union activities. (GC Exh. 1(o) at 5.)

Supervisor Ricci violated §8(a)(1), when, after hearing in early April that a union might be trying to organize the drivers on the 3484-movie production, she texts driver Hanson on April 13 between 5:34 and 5:39 p.m., and asks: Hi. When you are by yourself, could we chat? (GC Exh. 3.)

Next, Supervisor Ricci telephoned and asked driver Hanson whether Hanson has heard anything about the drivers organizing in the 3484-movie production. Specifically, Supervisor Ricci interrogates Hanson asking: “Are you hearing of transportation flipping the show?” (Tr. at 89.) Ricci next interprets her question to Hanson as being the same as asking Hanson whether she has heard anything about the drivers trying to get a union contract or turning the 3484-movie show into a union project. (Tr. at 89–90.)

Ricci explains that she called Hanson about this in particular because she and Hanson had a working relationship and Ricci knew that Hanson was not a supervisor. (Tr. at 89.)

Hanson responded to Supervisor Ricci telling Ricci that she was not aware of the drivers organizing at that time at the 3484-movie production in April 2021. (Tr. at 88.)

In *Westwood Healthcare Center*, 330 NLRB 935 (2000), the Board held that these factors determine whether an exchange is an unlawful interrogation:

- (1) The background, i.e., is there a history of employer hostility and discrimination?
- (2) The nature of the information sought, e.g., did the interrogator appear to be seeking information on which to base taking action against individual employees?
- (3) The identity of the questioner, i.e., how high was he or she in the company hierarchy?
- (4) Place and method of interrogation, e.g., was employee called from work to the boss's office? Was there an atmosphere of unnatural formality?
- (5) Truthfulness of the reply.

Id. at 939.

In applying these factors, however, the Board concluded that:

In the final analysis, our task is to determine whether under all the circumstances the questioning at issue would reasonably

tend to coerce the employee at whom it is directed so that he or she would feel restrained from exercising rights protected by Section 7 of the Act.

Id. at 940.

I find that under the totality of the circumstances here, the April 13 Supervisor Ricci and driver Hanson exchange was an unlawful interrogation. These factors are determinative: the questioning involved a protected activity (i.e., union organizing activities); there is no evidence that driver Hanson was a union supporter, there is extensive evidence of animus in this case and the successor 3486-movie production involving unlawful confidentiality requests from management, threats, and unlawful firings; Supervisor Ricci, a high-ranking official and second only to Owner Wulf, had a high-level of authority during 3484-movie production as she does with all of Owner Wulf's film productions (i.e., she reported directly to Owner Wulf, spoke for 3484, Inc., actually hired driver Hanson in this case); the questionings occurred over a private telephone call where it was only Supervisor Ricci and driver Hanson, at the end of a film workday and Supervisor Ricci insists that the conversation be just between Ricci and Hanson as she asks that Hanson be alone by herself, which involved driver Hanson talking to Supervisor Ricci in private away from other drivers.

Moreover, I further find that under all of the circumstances here, Supervisor Ricci's April 13 questioning of driver Hanson would reasonably tend to coerce Hanson so that she would feel reasonably obligated to disclose any knowledge she had of union activity to Supervisor Ricci and that Hanson would also reasonably feel restrained from exercising rights protected by Section 7 of the Act such as joining any organizing activities on 3484, Inc. or successive films knowing that Supervisor Ricci was monitoring union activities very closely and wanting them kept confidential. Therefore, I find that Ricci's April 13 interrogation amounted to an unlawful interrogation in violation of Section 8(a)(1) of the Act.

2. On April 13, 2021 Respondent, by Supervisor Ricci, instructed employees to keep the interrogation described above in Section D.1. above confidential.

The General Counsel's complaint at paragraph 5(b) alleges that on or about April 13, Respondent 3484, Inc., by Ricci, instructed employees to keep the interrogation described above in section D.1. confidential. (GC Exh. 1(o) at 5.)

Immediately after their April 13 meeting at 5:38 p.m. Supervisor Ricci texts Hanson instructing Hanson: "Please don't say anything I just said" and advising Hanson to keep their conversation confidential and private and just between Ricci and Hanson. (Tr. at 88-92; GC Exh. 3.)

I find that under all of the circumstances the April 13 Supervisor Ricci and driver Hanson exchange was another unlawful interrogation. These factors are determinative: the confidentiality request from Supervisor Ricci involved a protected activity (i.e., keeping potential union organizing activities confidential); there is no evidence that driver Hanson was a union supporter, there is extensive evidence of animus in this case and the successor 3486-movie production involving unlawful interrogation from management, threats, and unlawful firings; Supervisor Ricci, a high-ranking official and second only to Owner Wulf,

had a high-level of authority during 3484-movie production as she does with all of Owner Wulf's film productions (i.e., she reported directly to Owner Wulf, spoke for 3484, Inc., actually hired driver Hanson in this case); the confidentiality request was not related to any ongoing disciplinary investigation for which a business purpose might justify the instruction, the confidentiality instruction also occurred over a private telephone call where it was only Supervisor Ricci and driver Hanson, at the end of a film workday and Supervisor Ricci insists that the conversation be just between Ricci and Hanson as she asks that Hanson be alone by herself, which involved driver Hanson talking to Supervisor Ricci in private away from other drivers.

I further find that under all of the circumstances here, Supervisor Ricci's April 13 confidentiality instruction to driver Hanson would also reasonably tend to coerce Hanson so that she would feel reasonably obligated to keep this conversation with Ricci confidential and Hanson would also reasonably feel restrained from exercising rights protected by Section 7 of the Act such as joining any organizing activities on 3484, Inc. or successive films knowing that Supervisor Ricci was monitoring union activities very closely and wanting them kept confidential. Therefore, I find that Ricci's April 13 request that Hanson keep her interrogation confidential amounted to an unlawful conduct in violation of Section 8(a)(1) of the Act.

#### *E. The 3486-Movie Production*

1. On June 11, 2021 Respondent, by Supervisor Miller, interrogated employees about union activities

The General Counsel's complaint at paragraph 5(c) alleges that on about June 11, Respondent, by Transportation Coordinator Miller, interrogated employees about their union activities. (GC Exh. 1(o) at 6.)

On Friday, June 11, Owner Wulf told Transportation Coordinator Miller that the transportation crew drivers on the 3486-movie set were considering some type of union action with the Local 399 Union but Miller does not recall hearing that the drivers had actually done anything official with the Local 399 Union yet. (Tr. at 45.)

Captain Brewer was a member of the Local 222 Union in June 2021. (Tr. at 471.)

In June, Captain Brewer knew that Transportation Coordinator Miller was against the union coming in to organize and flip the 3486-movie production. (Tr. 471.)

By June 11, however, Transportation Coordinator Miller admits that he had heard from Owner Wulf that local unions were getting involved in the 3486-movie production at this time trying to organize and flip the production. (. at 45-46; GC Exh. 6.)

Miller also admits that he told Captain Brewer and Staheli that Owner Wulf had received email correspondence from the Local 399 Union from June 10 and 11 saying that the union might be coming to organize the drivers at the 3486-movie production. (Tr. at 46-47, 56-58; GC Exh. 6.)

Brewer confidently denies that he ever spoke to Miller about trying to organize or get a union CBA set up for the production of the 3486-movie. (Tr. at 471.)

Miller also recalled asking Captain Brewer: "Do you know who called the union?" (Tr. at 46, 458.) Miller admits having a



conversation with Captain Brewer and/or other drivers from the 3486-movie transportation crew and asking the drivers: “hey, are any of the drivers talking about the union?” (Tr. at 46, 105.)

Also, on June 11, at approximately 6 p.m., Staheli confirmed the same conversation with Captain Brewer where Brewer calls and tells Staheli that Brewer had just been contacted by Miller and Miller asked Brewer if someone was talking to the Union? (Tr. at 105–106.)

Once again, the Board factors to determine whether an exchange is an unlawful interrogation:

- (1) The background, i.e., is there a history of employer hostility and discrimination?
- (2) The nature of the information sought, e.g., did the interrogator appear to be seeking information on which to base taking action against individual employees?
- (3) The identity of the questioner, i.e., how high was he or she in the company hierarchy?
- (4) Place and method of interrogation, e.g., was employee called from work to the boss's office? Was there an atmosphere of unnatural formality?
- (5) Truthfulness of the reply.

*Westwood Healthcare Center*, 330 NLRB 935, 939 (2000).

I find that under all of the circumstances the June 11 Transportation Coordinator Miller and Captain Driver Brewer exchange was an unlawful interrogation. These factors are determinative: the questioning involved a protected activity (i.e., union organizing activities); there is no evidence that Captain Driver Brewer was a union supporter at the 3486-movie production, there is extensive evidence of animus in this case and the predecessor 3484-movie production involving other unlawful interrogation and confidentiality instruction from management, threats, and unlawful firings; Transportation Coordinator Miller is the highest-ranking driver official and only Owner Wulf and Supervisor Ricci rank higher, Miller had a high-level of authority over the drivers during 3486-movie production as he does with all of Owner Wulf's film productions (i.e., he reported directly to Owner Wulf); Miller asked Brewer the question on Owner Wulf's request; the questioning occurred over a private telephone call where it was only Transportation Coordinator Miller and Captain Brewer, which involved Captain Driver Brewer talking to Transportation Miller in private away from other drivers and crew.

Moreover, I further find that under all of the circumstances here, Transportation Coordinator Miller's June 11 questioning of Captain Driver Brewer would reasonably tend to coerce Brewer so that he would feel reasonably obligated to disclose any knowledge he had of union activity and he would also reasonably feel restrained from exercising rights protected by Section 7 of the Act such as joining any organizing activities on 3486, Inc. or successive films knowing that Transportation Coordinator Miller was monitoring union activities very closely. Therefore, I find that Miller's June 11 interrogation amounted to an unlawful interrogation in violation of Section 8(a)(1) of the Act.

2. On June 11, 2021, Respondent, by Supervisor Miller, threatened employees that Respondent's film production would shut

down if employees unionized.

The General Counsel's amended complaint at paragraph 5(d) alleges that on about June 11, Respondent, by Miller, threatened employees that Respondent's film production would shut down if employees unionized. (GC Exh. 1(q) at 2.)

On June 10 and 11, Union Representative Daugherty emails Owner Wulf asking to discuss unionizing the production of the 3486-movie. (GC Exh. 4(b).) On June 11, Union representative Staheli contacts Supervisor Ricci about organizing the 3486-movie production. (Tr. at 106; GC Exh. 4(b).)

Also, on June 11, Daugherty informs Owner Wulf that she and Staheli from the Local 399 Union have jurisdiction in the 13 Western States and that she had left Wulf an unanswered voicemail on June 10 to Wulf and that Staheli also left Supervisor Ricci a message on June 11 on her cellphone and that they were reaching out to Owner Wulf in regards to the 3486-movie production for a possible Teamsters' CBA with the 3486-movie production and Daugherty asked Owner Wulf to let them know when he was available to discuss a possible one-off project labor agreement. (R Exhs. 14 and 16.) Staheli and Daugherty were making efforts to organize the drivers on the 3486-movie production. (Tr. at 106.)

On Friday, June 11, Owner Wulf told Transportation Coordinator Miller that the transportation crew drivers on the 3486-movie set were considering some type of union action with the Local 399 Union but Miller does not recall hearing that the drivers had actually done anything official with the Local 399 Union yet. (Tr. at 45.)

Captain Brewer knew that Transportation Coordinator Miller was against the Union coming in to organize and flip the 3486-movie production. (Tr. 471.)

By June 11, however, Transportation Coordinator Miller admits that he had heard from Owner Wulf that local unions were getting involved in the 3486-movie production at this time trying to organize and flip the production. (Tr. at 45–46; GC Exh. 6.)

Miller also admits that he told Captain Brewer and Staheli that Owner Wulf had received email correspondence from the Local 399 Union from June 10 and June 11 saying that the union might be coming to organize the drivers at the 3486-movie production. (Tr. at 46–47, 56–58; GC Exh. 6.)

On Friday, June 11, while Owner Wulf and Transportation Coordinator Miller were very busy getting things ready to start the new production and transporting vehicles and equipment to start production of the 3486-movie in or around St. George, Utah on June 13, Owner Wulf contacted Miller and instructed Miller to contact the union and figure something out. Specifically, Owner Wulf asked Transportation Coordinator Miller if Miller can take care of this Local 399 Union interfering with the start of production on the 3486-movie set. (Tr. 47–49, 57, 59.)

Miller responded to Wulf telling Wulf that he would take care of it, as he usually does solving problems that arise on movie production sets for Wulf. (Tr. 48–49, 57, 59.)

Brewer confidently denies that he ever spoke to Miller about trying to organize and get a union CBA set up for the production of the 3486-movie. (Tr. at 471.)

On June 11, Transportation Coordinator Miller also admits

telling Brewer something to the effect of “if the union comes in to organize these drivers, the [3486-movie] production is going to go to Canada.” (Tr. at 47, 58, 115; GC Exh. 1(a); GC Exh. 4(c).) Moreover, Miller further explained that he told Brewer and Local 399 Union representative Staheli that “they [Owner Wulf and/or Hallmark Films] would probably take their [future] shows to Canada – or – or Hallmark will take their shows somewhere else. . . .” (Tr. at 47, 58; GC Exh. 6(a).)

Also, Miller testified that on June 11:

[Owner] Mr. Wulf called me and told me that [union representative] Lindsay [Daugherty of L399 Union]<sup>24</sup> . . . emailed him [on June 10] or called him, and [Wulf asked Miller] could I, you know, talk with [union representative] Josh [Staheli of Local 399 Union] or whoever after the -- because usually, if it's not worth, -- if it's not so much money, like, worth -- need, I think, because I have to call in, too, to my unit and tell them we're not working. Usually, they—they'll just say, ok, go ahead and do it, because it's not worth that much.” (Tr. at 47–48, 56–57, 59, 105; GC Exh. 1(a).)

I find that Transportation Coordinator Miller made up some of these statements specifically about needing to get approval from either the Local 399 Union or the Local 222 Union to work on nonunion matters. (Tr. at 47–48, 56–57, 59, 62, 68.)

I further find that Owner Wulf most importantly wanted Miller to stop the union organizing immediately by communicating to Captain Brewer, the rest of the drivers' crew on the 3486-movie production, and the Local 399 Union, that any unionizing activities or union interference from the drivers, including Brewer, could lead to Owner Wulf taking the 3486-movie production and all future production work to Canada or elsewhere away from the potentially unionizing drivers' crew at the 3486-movie production.

I further find that Miller's admitted role for Owner Wulf and Supervisor Ricci over the years was to be a problem-solver and he took on Owner Wulf's demand on June 11 that Miller “would take care of it” as Miller contacting Captain Brewer, other drivers, and Local 399 Union Representative Staheli and communicating this curt and direct threat that if the drivers, including Brewer, did not immediately stop their union organizing activities at the 3486-movie production, Owner Wulf would take his movie and TV production work elsewhere – perhaps Canada and all future projects. (Tr. at 47, 57–60, 115; GC Exh. 1(a).) (Emphasis added.) In addition, Supervisor Ricci also said the same thing to Staheli in the parking lot of the Leeds Market before the strike on June 13 that if organizing happens on the 3486-movie production or in the future, that work will leave Utah and Owner Wulf will take it outside Utah and go to Canada.<sup>25</sup> (Tr. at 115.)

<sup>24</sup> Transportation Coordinator Miller remembered who Lyndsay Daugherty was because he had hired Daugherty before on another movie Miller and Wulf worked on and Miller hired Daugherty for that movie in 2006. (Tr. at 57.) Miller also knew that Daugherty was a union representative for Local 399 Union in June 2021. Id.

<sup>25</sup> Staheli also explained that he had heard this same threat to remove work to Canada if a union came in and tried to flip the production by other prominent film producers in Utah besides managers at the 3486-movie production. (Tr. at 115.)

Also, on Friday, June 11 at approximately 7:46 p.m., Staheli texts Miller asking him to confirm that: “David [Owner Wulf] is saying they'll pack up and go to Canada if the drivers want to organize?” (Tr. at 184–185; GC Exh. 6(a).)

Miller responds: “David [Wulf is] [S]aying that Hallmark will pack up and go to Canada. . . .” (GC Exh. 6(a).)

I further find that Owner Wulf and Supervisor Ricci frequently authorized Transportation Coordinator Miller to speak for them and represent Respondent's position in making statements toward union activity and employee discipline. When Owner Wulf asked Miller to contact the union and figure something out and take care of things, I find that Owner Wulf fully authorized Miller to speak for Respondent which resulted in Miller threatening Captain Brewer, the other drivers, and Local 399 Union Representative Staheli that if they did not immediately stop their union organizing activities, Respondent would shut down production of the 3486-movie and future TV and movie production and Owner Wulf and Respondent would take this production work elsewhere, most likely to Canada. (Tr. 47–49, 57–60, 115.) While Owner Wulf denies ever making such a statement about pulling his work to Canada or elsewhere due to union organizing, he does not refute contacting Transportation Coordinator Miller on June 11 to voice his frustrations about the union possibly interfering with the start of the 3486-movie production and instructing Transportation Coordinator to take care of this potential union interference. (Tr. at 371–372.)

“The Board has long held that the standard to be used in analyzing statements alleged to violate Section 8(a)(1) is whether they have a reasonable tendency to coerce employees in the exercise of their Section 7 rights. Intent is immaterial.” *KSM Industries, Inc.*, 336 NLRB 133, 133 (2001) (citing *Concepts & Designs*, 318 NLRB 948, 954, 955 (1995), and *Puritech Industries*, 246 NLRB 618, 622–623 (1979)). The Board considers the totality of circumstances in assessing the reasonable tendency of an ambiguous statement or a veiled threat to coerce. Id. Whether or not the employee changed their behavior in response is not dispositive, nor is the employee's subjective interpretation of the statement. See *Boar's Head Provisions Co.*, 370 NLRB No. 124, slip op. at 16 (2021); *Sunnyside Home Care Project*, 308 NLRB 346, 346 fn. 1 (1992). The Board therefore considers the total context of the alleged unlawful conduct from the viewpoint of its impact on employees' free exercise of their rights under the Act. See *American Tissue Corp.*, 336 NLRB 435, 441–442 (2001).

Based on my factual findings set forth above, I find merit in this complaint allegation concerning Transportation Coordinator Miller's unlawful threats to Captain Brewer, other drivers, and Local 399 Union representative Staheli on June 11 over the telephone and by text message. The conversations and texts between Miller for Owner Wulf and Respondent 3486, Inc. to Brewer, Staheli and other drivers on the crew of 3486, Inc. contained Owner Wulf's frustrated threat through Miller that by continuing to engage in union activities at the 3486-movie production would cause Owner Wulf to stop the film production and transfer it to Canada or elsewhere to get away from union activities.

Turning to the merits of the allegation, I find that Miller's statement unlawfully coerced Captain Brewer, and other driv-

ers. An employer violates Section 8(a)(1) by acts and statements reasonably tending to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. *The Continental Group, Inc.*, 353 NLRB 348, 350 (2008). The Board has found that similar warnings to employees regarding protected activities convey a threatening message that engaging in such activities would put them at risk of adverse consequences and thus violate Section 8(a)(1). Indeed, the Board has found statements milder than the Respondent's—such as warnings to “be careful,” “watch out,” or “watch your back,” even where the manager or supervisor was genuinely concerned for the warned employee's job security and intended the warning as friendly advice—to constitute unlawful threats. See, e.g., *Gaetano & Associates Inc.*, 344 NLRB 531, 534 (2005); *St. Francis Medical Center*, 340 NLRB 1370, 1383-1384 (2003); *Jordan Marsh Stores Corp.*, 317 NLRB 460, 462 (1995).

Here, given the totality of the circumstances, Transportation Coordinator Miller's June 11 telephoned and texted statements were coercive as a threat of unspecified reprisals. An identical statement from Supervisor Ricci to Staheli on June 13 before the ULP strike followed Miller's June 11 threat and would have the natural effect of impermissibly dissuading Brewer, other drivers and Staheli from engaging in protected activities or run the risk of suffering a fate of the 3486-movie production shutting down. Miller's June 11 statement to Brewer, other drivers and Staheli therefore violated Section 8(a)(1). See *Martech MDI*, 331 NLRB 487, 500 (2000), *enfd.* 6 Fed.Appx. 14 (D.C. Cir. 2001) (respondent violated Sec. 8(a)(1) of the Act by telling employees they had better stop thinking about the union). As such, I conclude that Transportation Coordinator Miller's June 11 statements to Captain Brewer, other crew drivers, and Staheli that Owner Wulf would take his 3486-movie production and future film productions to Canada or elsewhere if 3486, Inc. was to unionize or continue engaging in union activities amounted to an unlawful threat in violation of Section 8(a)(1) of the Act.<sup>26</sup>

*F. Respondent 3486, Inc. Violated Section 8(a)(3) of the Act by Terminating and Refusing to Reinstate Nine Striking 3486-Movie Production Drivers*

The complaint in this case further alleges at paragraphs 6 and 8 that Respondent 3486, Inc. violated Section 8(a)(1) and (3) of the Act on or about June 18, 2021, and continuing, by terminating and permanently replacing and refusing to reinstate the unfair labor practice strikers including drivers Brewer, Elder, Fleming, Lester, Fox, VandeMerwe, Gueso, Hanson, and Bolinder (the nine ULP striking drivers) and by this conduct Respondent 3486, Inc. has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization.

Generally, in an unfair labor practice strike, workers withhold their labor to protest their employer engaging in activities that they believe to be a violation of labor law. The Board holds

<sup>26</sup> Respondent's closing brief argues that there can be no ULP strike on June 13 because there was no ULP committed on June 11 by Miller. R Cl. Br. at 25. I reject this argument as being contrary to the facts and legal authorities cited above.

that a work stoppage constitutes an unfair labor practice strike if it is motivated, at least in part, by the employer's unfair labor practices. *Post Tension of Nevada, Inc.*, 352 NLRB 1153 (2208).

Here, that is what happened between noon and 1pm at the Leeds Market in Leeds, Utah, as the drivers voted unanimously on June 13 to go on strike due to Respondent's June 11 ULP charges. I further find that the General Counsel has put forth a preponderance of evidence showing that the partial-to-full motivation behind the drivers' ULP strike on June 13 was caused by the Respondent's unfair labor practices on June 11, and that the ULP strike was not solely motivated to obtain favorable terms of employment as argued by the 3486, Inc. (Tr. at 105-106, 109-120, 160-161, 170-171, 458-463; GC Exhs 1 (a), (e), (g), and (i); GC Exh. 4(c); GC Exh. 5a; R Cl. Br. at 23-26.) Workers in an unfair labor practice strike cannot legally be discharged or permanently replaced.

When an unfair labor practice strike concludes, workers who were on strike are entitled to be reinstated even if it means replacement workers have to be discharged as long as the strikers have submitted an unconditional offer to return to work. See *Capitol Steel & Iron Co. v. NLRB*, 89 F.3d 692 (10<sup>th</sup> Cir. 1996)(Employer impermissibly failed to reinstate unfair labor practice strikers where union made unconditional offer to return to work ); *Pennant Food Co.*, 347 NLRB 460 (2006). Also, workers in unfair labor practice strike are entitled to back pay if the National Labor Relations Board (NLRB) finds that the employer unlawfully denied the workers' request for reinstatement.

Strikers who have been found guilty of strike misconduct or who have been discharged “for cause” under Section 10(c) of the Act, however, need not be reinstated, notwithstanding that the work stoppage was an unfair labor practice strike. See *NLRB v. Washington Aluminum Co.*, 370 U.S. 9 (1962); *NLRB v. Electrical Workers (IBEW) Local 1229*, 346 U.S. 464 (1953).

Striker misconduct is determined applying a *Wright Line* standard. *General Motors, LLC*, 369 NLRB No. 127, slip op. at 1.

Here, I find that the nine ULP striking drivers are entitled to reinstatement and backpay from June 18 through the end of the 3486-movie production on July 2, 2021, because the drivers submitted their June 17 Unconditional Offer to Return to Work and their conduct both picketing on June 14 at the Pecan Farm and gathering and moving vehicles and equipment did not fall outside of protection under the Act. Respondent has failed to prove that striker misconduct occurred. I reject this argument as being vague, uncertain, and failing to contain adequate specific evidence in support as there are no individual drivers identified as having committed vandalism misconduct and Respondent 3486, Inc. evidence does not adequately show the before and after state or condition of the various allegedly vandalized items. As a result, I find that Respondent 3486, Inc. has failed to satisfy its burden of proof showing that any vandalism materially affected any of the personal property owned by Respondent 3486, Inc. and used for filming.

I further find that Respondent also provided vague and incomplete evidence in support of other alleged driver striker and union misconduct. I find that none of the alleged damage to

vehicles or equipment is material enough to turn a reimbursable ULP strike with a valid request for reinstatement for the nine ULP striking drivers to become null and void. As pointed out by the General Counsel, the photograph evidence and testimony do not properly establish both a before and after condition for all of the alleged vandalized vehicles and equipment, the missing truck keys resulted in the added expenditure of approximately \$600 for a single locksmith opening one of the vehicles which I find to be an immaterial amount of money given the film project involved here. (Tr. 246, 278; R Exhs. 5, 7–9, and 11.) In addition, there is no evidence that any of the strikers or union representatives committed misconduct such as violence or vandalism resulting in police indictments, police arrests or citations and no material interruption with filming the 3486-movie. Therefore, I find that Respondent 3486, Inc. refused to reinstate all 9 striking drivers for reasons unlawfully based on the drivers' protected conduct and not because of proven abusive conduct.

Therefore, I find that Respondent 3486, Inc. violated Section 8(a)(1) and (3) of the Act on or about June 18, 2021, and continuing, by terminating and permanently replacing and refusing to reinstate the unfair labor practice strikers including drivers Brewer, Elder, Fleming, Lester, Fox, VandeMerwe, Gueso, Hanson, and Bolinder (the nine ULP striking drivers) and by this conduct Respondent 3486, Inc. has been unlawfully discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization. Moreover, I further find that Respondent's refusal to reinstate the nine ULP striking drivers violated Sections 8(a)(3) and (1) of the Act.

*Respondents' Other Affirmative Defense Arguments Fall Short*

Finally, Respondent's claim that it did not believe the union represented drivers is unpersuasive. There is no evidence that Respondent 3486, Inc. challenged the union's representative status when Staheli and Dougherty approached Owner Wulf and Supervisor Ricci about signing a contract. Also, the drivers were interested in organizing the 3484-movie production and Respondent already knew this and it carried over to the 3486-movie production thereby Respondent had notice that its drivers wanted union representation. Furthermore, this fact should have been clear when all nine drivers participated in the strike, all unanimously voted for the ULP strike, and later when several displayed picket signs with explicit union affiliation. Moreover, Respondent's witnesses claimed that drivers mentioned their loyalty to the union and their vested interest in union benefits during the course of the strike.

The first apparent mention of the issue of representation is in Respondent counsel's June 28 letter, (R Exh. 1), in which Respondent asserts that the union must file a petition for recognition without citing any legal authority for this request. I reject this argument that that Respondent was not obligated to reinstate drivers because the union did not file a petition for representation. This defense is not properly before me as it was not raised in Respondent's answer to the complaint. (GC Exh. 1(s) at 6.) It was not raised until 11 days after the union offered to return drivers to work and four days before production ended. Given the short shooting schedule and the administrative pro-

cess required for elections, it would have been impossible for the Board to conduct an election during the course of the drivers' employment.

CONCLUSIONS OF LAW

1. The Respondents, 3484, Inc. and 3486, Inc. have been employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 399 Union and Local 222 Union are labor organizations within the meaning of Section 2(5) of the Act.

3. From April 2021—early July 2021, Transportation Coordinator Brett Miller was a supervisor and agent of Respondents 3484, Inc. and 3486, Inc as defined by Sections 2(11) and (13) of the Act.

4. The Respondent 3484, Inc., by Supervisor Ricci, violated Section 8(a)(1) of the Act on April 13, 2021, by interrogating employees about their union activity.

5. The Respondent 3484, Inc., by Supervisor Ricci, violated Section 8(a)(1) of the Act on April 13, 2021, by interrogating and creating an impression among its employees that their union activities were under surveillance by the Respondent when Ricci asked driver Hanson to keep their conversation about union activities private.

6. The Respondent 3486, Inc., by Transportation Coordinator Miller, violated Section 8(a)(1) of the Act on June 11, 2021, by interrogating employees about their union activity.

7. The Respondent, 3486, Inc., by Transportation Coordinator Miller, violated Section 8(a)(1) of the Act on June 11, 2021, by threatening to close its business if employees chose the Union as their bargaining representative or continued engaging in union activity.

8. The Respondent 3486, Inc violated Sections 8(a)(3) and (1) of the Act on June 18, 2021, by terminating and refusing to reinstate nine drivers, Brewer, Elder, Fleming, Lester, Fox, VandeMerwe, Gueso, Hanson, and Bolinder, due to their ULP strike and union activity on June 13, 2021, after receiving the June 17 Unconditional Offer to Return to Work.

9. The unfair labor practices found affect commerce within the meaning of Section 2(6) and (7) of the Act.

10. All other complaint allegations are dismissed.

REMEDY

Having found that the Respondent engaged in certain unfair labor practices, I shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that Respondent violated Section 8(a)(3) and (1) by terminating and refusing to reinstate nine drivers, Brewer, Elder, Fleming, Lester, Fox, VandeMerwe, Gueso, Hanson, and Bolinder, due to their ULP strike and union activity on June 13, 2021, I order the Respondent 3486, Inc. to rescind the terminations and notify the 9 drivers this has been done. Respondent 3486, Inc. must also remove the nine driver terminations from their records, and Respondent 3486, Inc. shall notify them in writing that this has been done and that the disciplinary actions including termination will not be used against them in any way. Respondent 3486, Inc. must offer all nine drivers full reinstatement to their former jobs or, if the job



no longer exists, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make each driver whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

In accordance with *Thryv, Inc.*, 372 NLRB No. 22 (2022), Respondent 3486, Inc. shall compensate each of the nine drivers for any other direct or foreseeable pecuniary harms incurred as a result of the unlawful termination of their employment, including reasonable search-for-work and interim employment expenses, if any, regardless of whether these expenses exceed interim earnings. Compensation for these harms 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.

In accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014), Respondent shall compensate each of the nine drivers for the adverse tax consequences, if any, of receiving a lump-sum backpay awards, and, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016), Respondent 3486, Inc. shall, within 21 days of the date the amount of backpay is fixed, either by agreement or Board Order, file with the Regional Director for Region 27 a report allocating backpay to the appropriate calendar year(s) for each of the nine drivers.

I will order that each of the Respondents post a notice at the Salt Lake City facility in the usual manner, including electronically to the extent mandated in *J. Picini Flooring*, 356 NLRB 11, 15–16 (2010). In accordance with *J. Picini Flooring*, the question as to whether an electronic notice is appropriate should be resolved at the compliance phase. *Id.* supra at 13.

In addition, in accordance with *Containerboard Packaging-Niagara*, 370 NLRB No. 76, as modified in 371 NLRB No. 25 (2021), Respondent is ordered to file, with the Regional Director for Region 27, a copy of W-2 form reflecting the backpay award for each of the nine drivers, Brewer, Elder, Fleming, Lester, Fox, VandeMerwe, Gueso, Hanson, and Bolinder.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended.<sup>27</sup>

#### ORDER

Respondents, 3484, Inc. and 3486, Inc., Salt Lake City, Utah, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees about which employees supported the Union;

(b) Interrogating employees and creating an impression among its employees that their union activities were under surveillance;

<sup>27</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Threatening employees that Respondent 3486, Inc. will shut down and move its business to Canada or elsewhere if employees chose to be represented by the Union or continued engaging in union activity;

(d) Terminating the nine drivers, Brewer, Elder, Fleming, Lester, Fox, VandeMerwe, Gueso, Hanson, and Bolinder, due to their ULP strike and union activity on June 13, 2021, and not offering immediate reinstatement on June 18, 2021, after receiving an unconditional offer to return to work;

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their 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, rescind the terminations of the 9 drivers, Brewer, Elder, Fleming, Lester, Fox, VandeMerwe, Gueso, Hanson, and Bolinder, and remove from its files any references to them, and within 3 days thereafter, notify each of the 9 drivers in writing that this has been done and that these unlawful acts will not be used against them in any way.

(b) Post at its facility in Salt Lake City, Utah, copies of the attached notice marked "Appendix."<sup>28</sup> Copies of the notice, on forms provided by the Regional Director for Region 27, after being signed by the Respondents' authorized representative, shall be posted by the Respondents 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 Respondents customarily communicate with its employees by such means. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since April 13, 2021.

(c) Within 21 days after service by the Region, file with the

<sup>28</sup> If the Respondents' facility involved in these proceedings is open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the facility reopens and a substantial complement of employees has returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." 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."

Regional Director for Region 10 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.

(d) Within 21 days after service by the Region, file, with the Regional Director for Region 27, a copy of W-2 form reflecting the backpay award for the nine drivers, Brewer, Elder, Fleming, Lester, Fox, VandeMerwe, Gueso, Hanson, and Bolinder,

APPENDIX

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us 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 interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL NOT ask you whether employees are considering organizing into a union.

WE WILL NOT ask you to keep our questions about union activity confidential.

WE WILL NOT threaten to relocate film production if you choose to be represented by or support a union.

Employees who strike because we violated the National Labor Relations Act are Unfair Labor Practice strikers. Generally, Unfair Labor Practice strikers are entitled to return to their jobs when they make an unconditional offer to do so.

WE WILL NOT refuse to return Unfair Labor Practice strikers to their jobs when they offer to return to work.

WE WILL pay all Unfair Labor Practice strikers for all wages and other benefits lost as a result of our refusal to reinstate them after the June 17, 2021, unconditional offer to return to work.

WE WILL place all Unfair Labor Practice strikers on a preferential hiring list for any productions produced by David Wulf, and thereafter offer each employee reinstatement when work becomes available, and before other drivers are hired for such work.

3484, INC. AND 3486, INC.

The Administrative Law Judge’s decision can be found at <https://www.nlr.gov/27-CA-278463> 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.





UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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March 20, 2024

Oliver J. Dunford  
Pacific Legal Foundation  
4440 PGA Boulevard, Suite 307  
Palm Beach Gardens, FL 33410

**RE: 24-9511, 3484, INC. and 3486, INC., v. NLRB**  
Dist/Ag docket: 27-CA-278463,, 27-CA-278592,, 27-CA-279117

Dear Counsel:

Your petition for review has been docketed, and the case number is above. **Within 14 days** from the date of this letter, Petitioner's counsel must electronically file:

- **An entry of appearance and certificate of interested parties** per 10th Cir. R. 46.1(A) and (D).
- **A docketing statement** per 10th Cir. R. 3.4.

In addition, any counselled entities that are required to file a Federal Rule of Appellate Procedure 26.1 disclosure statement must do so **within 14 days of the date of this letter**. All parties must refer to Federal Rule of Appellate Procedure 26.1 and Tenth Circuit Rule 26.1 for applicable disclosure requirements. All parties required to file a disclosure statement must do so even if there is nothing to disclose. Rule 26.1 disclosure statements must be promptly updated as necessary. *See* 10th Cir. R. 26.1(A).

**Also within 14 days**, Respondent's counsel must electronically file an entry of appearance and certificate of interested parties. **Attorneys that do not enter an appearance within the specified time frame will be removed from the service list.**

Within 40 days from the date of service of the petition for review, the respondent agency shall file the record or a certified list. *See* Fed. R. App. P. 17. If a certified list is filed, the entire record, or the parts the parties may designate, must be filed on or before the deadline set for filing the respondent's brief. *See* 10th Cir. R. 17.1.

We have served the petition for review on the respondent agency via electronic notice using the court's ECF system. Petitioner must serve a copy of the petition for review on

all parties, other than the respondent(s), who participated in the proceedings before the agency. *See* Fed. R. App. P. 15(c).

The [Federal Rules of Appellate Procedure](#), the [Tenth Circuit Rules](#), and [forms](#) for the aforementioned filings are on the court's [website](#). The Clerk's Office has also created a set of [quick reference guides](#) and [checklists](#) that highlight procedural requirements for appeals filed in this court.

Please contact this office if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Wolpert', with a long horizontal flourish extending to the right.

Christopher M. Wolpert  
Clerk of Court

cc: David Habenstreit  
Matthew S. Lomax  
Roxanne L. Rothschild

CMW/jm