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

**DOLGEN CORP, LLC, d/b/a
DOLLAR GENERAL**

and **Cases 01-CA-284330
01-CA-286021
01-CA-287491**

**UNITED FOOD AND COMMERCIAL
WORKERS INTERNATIONAL UNION,
LOCAL 371, AFL-CIO**

Jo Ann P. Howlett, Esq., for the General Counsel.
Michael E. Lignowski, Stephanie Moll, Ryan Sears, Esqs, (Morgan, Lewis & Bockius, LLP, Washington, D.C.) for the Respondent.

DECISION

Arthur J. Amchan, Administrative Law Judge. This case was tried in Hartford, Connecticut from January 31, to February 3, and from April 17 to April 18, 2023.[1] The Union, Local 371 of the United Food and Commercial Workers International Union, filed the charges giving rise to this case, on October 12, 2021, November 5, 2021, and December 10, 2021.

The General Counsel issued a consolidated complaint on August 15, 2022. On the record and after reading the parties' briefs[2] I make the following:

Findings of Fact

Jurisdiction

Respondent, Dolgen Corporation (Dolgen), has its headquarters in Goodlettsville, Tennessee. It operates between 14,000 and 18,000 retail stores throughout the United States, including the store in Barkhamsted, Connecticut (Dolgen store # 18060), the facility directly involved in this case. Dolgen derives gross revenues in excess of $500,000 annually and in

[1] Virtual Zoom sessions were conducted on January 19 and January 30, 2023, regarding the General Counsel's subpoena and Respondent's petition to revoke the subpoena.

Tr. 766, line 14: the word kill should be show.

[2] The General Counsel seeks changes in existing Board law with respect to a number of issues in this case. In that I am bound to follow current law, I decline to address the requested changes, such as that regarding captive audience meetings.

excess of $50,000 directly from locations outside of Connecticut. Respondent is an employer engaged in commerce within the meaning of section 2(2), (6) and (7) of the Act. The Union, Local 371 of the United Food and Commercial Workers International Union is a labor organization within the meaning of Section 2(5) of the Act.

Overview of the case

On September 22, 2021, the Union filed a petition to represent a unit of employees at Respondent's Barkhamsted, Connecticut store. The next day 2 representatives from Dolgen's corporate headquarters arrived at the store, Janie Farris, Director of Operational Effectiveness and Daniel Lovelace, Senior Director of Labor Relations. Over the next several weeks, leading up to a representation election conducted at the Barkhamsted store on October 22, 2021, Farris and Lovelace were joined by other corporate officials, including Justin Hancock, a senior manager of operational effectiveness, who is a subordinate of Farris and Kathy Reardon, Respondent's Chief People Officer.[3]

The General Counsel alleges that these individuals engaged in surveillance of the Barkhamsted employees and also created the impression that employees' union activities were under surveillance.

The General Counsel also alleges that Respondent violated the Act by requiring employees to attend meetings conducted by the Labor Relations Institute in order to discourage union activity, cornering employees to require them to listen to anti-union conversations and by more closely supervising the work of Barkhamsted employees.

The General Counsel further alleges that Respondent implicitly threatened employees that the Barkhamsted store would close by informing them that the Dollar General store in Auxvasse, Missouri, the only other unionized Dollar General store, was closed as a result of its employees voting to unionize.

The General Counsel alleges that Respondent violated the Act by soliciting employees' grievances and impliedly promising to remedy them. Further, it alleges that Respondent remedied employee grievances during the critical period between the representation petition and election. It did so by transferring and then terminating the District Manager in whose Dolgen district the Barkhamsted store was located. The unpopularity of the District Manager was one of the principal reasons for employees to seek union representation.

Finally, the General Counsel alleges that Respondent violated Section 8(a)(3) and (1) by discharging Jacob Serafini on October 8, 2021, in retaliation for his union and other protected activity and to discourage other employees from engaging in such activities and from voting in favor of union representation on October 22. On the basis of the record in this case and after

[3] Reardon is essentially the head of the corporate human relations department. Respondent appears to believe that it is material that Farris, Lovelace and Hancock are not corporate officers, e.g., Tr. 942-43. All 3 are agents of Respondent. That they are not corporate officers is irrelevant. It is also irrelevant that employees may not have complained or objected to these managers' conduct, or even what employees subjectively thought about this conduct.

considering the briefs filed by the General Counsel and Respondent, I make the following additional findings of fact.

Shortly before September 21, 2021, Dolgen's District Manager for the area including Barkhamsted, George Morgan, and an individual from Respondent's Asset Protection Division visited the Barkhamsted store. They held a meeting with Basel Soukarieh, the store manager, who was well-liked by the store employees. Morgan apparently accused Soukarieh of theft in a loud conversation overheard by some employees. This caused some of the store's approximately 6 employees to fear not only for Soukarieh's job, but their own, Tr. 613-16. G.C. 17, page 9.

As a result, on September 17, 2021, the employees contacted the Union and met with Jessica Petronella, an organizing director for UFCW Local 371. Some of the employees signed union authorization cards. The Union then filed a petition with the NLRB to represent a unit of the Barkhamsted employees, which included sales associates and the assistant store manager, Shellie Parsons, on September 21, 2021.

The presence of corporate officials at Barkhamsted and at other stores in Connecticut.

Starting on September 22, 2021, the day after the representation petition was filed, Janie Farris, Daniel Lovelace, Justin Hancock and Kathy Reardon, who are corporate officials based in Tennessee,[4] went to the Barkhamsted store in response to the union petition. Farris and Lovelace arrived at the Barkhamsted store on September 22. Hancock and other employees who reported to either Hancock, Farris or Lovelace went to other stores in Connecticut to see if there was any union activity elsewhere in the State.

These individuals had no other reason to go to Barkhamsted apart from the representation petition and had never been there previously. They apparently, as of April 2023, have not been back to the Barkhamsted store since the end of the 2021 union organizing campaign, Tr. 394, 609, 810. In addition, other officials from corporate headquarters canvassed every (or almost every) Dollar General store in Connecticut at the same time primarily to determine whether there was any union activity at those stores, Tr. 499-500. The fact that these individuals visit other stores for other reasons at other times, is irrelevant.

Lovelace and Farris, who arrived at the store on September 22, spoke with store employees for several days before telling them the purpose of their presence at the store.[5] However, they immediately began soliciting grievances with the explicit and/or implied promise to remedy them, Tr. 153, 160, 272-275.[6] Not only did Respondent promise to remedy

[4] Some of these people work remotely from other locations. For example, Farris works remotely from Missouri.

[5] To the extent Respondent's witnesses testified otherwise, their testimony is belied by Lovelace's notes that indicate that on Day 3 (September 24), Janie and Daniel "decide to have petition conversation with store associates," G.C. 13 p. 6.

[6] On day one Farris asked employees if they had any concerns, Tr. 153. I infer this led Parsons to complain about George Morgan. Respondent repeatedly asked Jacob Serafini if there was anything it could fix, Tr. 272. Other examples: Daniel Lovelace told Muhammed that Dollar General would pay for his training and not charge him for it, G.C. Exh. 13, p. 8, 9. Justin Hancock's encouragement to Muhammed and coaching to help Mo become a store manager, G.C. Exh. 13, pp. 11, 14. Similar

employees' grievances, it quickly did so by replacing District Manager Morgan with Jason Ransom, who had jurisdiction over Barkhamsted previously. Prior to coming to Barkhamsted, none of the corporate officials had ever heard of Morgan, Tr. 464. Janie Farris informed employee Shellie Parsons on about September 26, that Morgan had been replaced, G.C. Exh. 13 p. 10, Tr. 166. The "new" District Manager, Jason Ransom, met with employees on September 27, Id. at 12 and began talking to the store employees the next day. [7]

Daniel Lovelace was at the store continuously for 4 weeks and did not leave until after the representation election. The length of his stay and that of Farris and Hancock, was unprecedented. Normally, the visits of these individuals to stores would not be more than a few days at most, very rarely more than a week.

Employees responded to the inquiries from Farris and other corporate representatives. For example, Shellie Parsons, who had signed a union authorization card, complained to Ms. Farris about the lack of a response from District Manager Morgan about her allegations of sexual harassment by an employee, who by September 2021 no longer worked for Dollar General.

Additionally, Farris told Shellie Parsons that she could become a store manager, G.C. Exh. 13 p. 14. She also told Parsons that a Dollar General store in Auxvasse, Missouri had voted for union representation and then was closed, Tr. Tr. 167-169,[8] 873-885. I find incredible Farris' testimony that Parsons initiated the conversation about Auxvasse or a store in Missouri that had closed after voting for union representation. Respondent has not put forth any credible evidence

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conversations with Shellie Parsons, Id. at 14. Assuring Mo, he could not be fired if unjustly accused of theft, Id. at 16, Promises and assurances to Jenn Canto about unruly customers and scheduling, Id. at 18.

[7] Ransom reported to Regional Manager John Hicks, who appears to have been kept entirely out of the loop with regard to what was transpiring at the Barkhamsted store.

[8] This evidence was elicited by the General Counsel reading Parsons' affidavit into the record over Respondent's objection. At hearing, Parsons testified that she did not recall who told her about the other store closing. However, I find that Parsons does remember that Farris told her about the store closing. She initially enthusiastically supported the Union, even giving interviews to a Washington Post reporter. She is obviously worried about losing her job, as did Jacob Serafini, if she cooperates with the Union or the General Counsel further. She is also worried that further cooperation will hurt her chances of being promoted to store manager, a possibility raised by Respondent's corporate representatives during the weeks just prior to the election. The General Counsel's reading of the affidavit was perfectly proper, and I consider it to be more credible than Janie Farris's testimony that she mentioned the Auxvasse, Missouri store closing only in response to Parsons' inquiry. *Three Sisters Sportswear,* 312 NLRB 853, 865 (1993) enfd. 55 F. 3d 684 (9th Cir. 1993); *Snaider Syrup Corporation,* 220 NLRB 238, 238 fn 1, 244-245 (1975); Federal Rule of Evidence 803(5).

I do not believe Parsons' testimony at Tr. 195 that she did not read her affidavit, merely signed it. That testimony is the result of what Ms. Parsons deems to be in her best interests at the present time. Parsons still works at the Barkhamsted store as an assistant manager, Tr. 809-11, 1022. Parsons in a telephone call with the General Counsel's trial counsel about the affidavit told counsel that she was telling the truth and then signed the affidavit. She had no reason to lie about what was in the affidavit. I find the facts as stated in the affidavit are accurate. I also note that Janie Farris, as Respondent's corporate representative, was in the courtroom when Parsons testified and spoke with Parsons about a month before this trial began.

In addition to the Missouri store, employees at a Dollar General in New Jersey may also have sought unionization.

that Parsons would have been aware of that prior to talking to Farris. Parsons testified that she did not think Barkhamsted employees were aware of any other Dollar General store having received a representation petition prior to September 22, 2021, but that they were told that, Tr. 167-69. Farris, who is based in Missouri, on the other hand, was very familiar with the circumstances of the Auxvasse store closure. I find that Farris brought this up to instill fear that a pro-union vote would likely lead to the closure of the Barkhamsted store.[9] G.C. Exh. 3 strongly suggests that threats of plant closure were made to employees other than Parsons.

Daniel Lovelace told Parsons, who was an assistant store manager, that she knew how to run the Barkhamsted store better than anyone else, Tr. 607-08. As of the April 2023 trial, the other assistant store manager, Muhammed, had been promoted to a store manager position; Parsons had not.[10]

Janie Farris, Daniel Lovelace and Justin Hancock, were acting as part of a rapid response team set up by Dolgen corporate headquarters to respond to union organizing, Tr. 526, 572.[11] On their fifth day at the Barkhamsted store, on about September 26, Farris and Lovelace were joined by Hancock, a subordinate of Farris', who had been visiting 10-12 other Dollar General stores in Connecticut as part of the rapid response team's reaction to the representation petition at Barkhamsted. G.C. Exh. 13, p. 10 establishes that Hancock was introduced to employees on that date. Afterwards, Hancock was at the store virtually every day through the election on October 22.

Farris and Lovelace were also at the store constantly for almost an entire month, Tr. 394, 949-950, G.C. Exh. 13. They would spend most of each day at the store working in the vicinity of the employees, Tr. 950. 953. During the period prior to the election, there was hardly a time when one of these individuals was not in the store.

At times, even higher-level officials, such as Kathy Reardon, Dolgen's Executive Vice President of Labor Relations and Chief People Officer (head of human resources) spent time at the Barkhamsted store. Reardon was at the store talking to employees on at least 2 days., Tr. 794.[12] Reardon was at the store on about September 30 and October 1. Her presence made employee Jenn Canto visibly uncomfortable, Tr. 653-656, G.C. 13, pp. 19, 20.

Farris, Lovelace and Hancock performed such tasks as stocking groceries. They also regularly made inquiries as to whether employees had any concerns related to their employment. No manager superior to a store manager, including the district manager, had ever worked alongside the employees previously in such a manner. By doing part of the store employees' work for them, the corporate officials made employees' work easier. Janie Farris became annoyed that the store employees began relying on the people from corporate to do their work for them, Tr.848-50.

[9] Chief People Officer Kathy Reardon also spent time at Auxvasse during the union campaign at that store, Tr. 897.

[10] Muhammed is referred to in this transcript as "Mo." His last name appears to be Ghalayini.or Ghalayani

[11] There may be other reasons for the deployment of a rapid response team, e.g., unusually high employee turnover.

[12] Reardon reports directly to Dolgen's CEO.

The close proximity of these corporate representatives made at least some employees very circumspect about what they could talk about at work. Shellie Parsons, who had signed a union authorization card, testified that she was "walking on eggshells," as to what she could talk about in the store, Tr. 160, 164, 197. Since employees were not allowed to leave company property on breaks, the presence of corporate officials essentially prohibited them from discussing the Union unless they did so after working hours.[13]

Lovelace made notes of the officials' observations focusing on how content employees were working for Dollar General and at least implicitly whether or not they favored union representation, Tr. 807-08. Beginning on about September 28, Lovelace classified employees by a red, yellow and green color-coding as to their likelihood of supporting the Union, G.C. 13, pp. 16, 18, 22, 24, 27.

Lovelace and Farris reported their findings to Leslie Allen, Dolgen's vice-president of human resources for retail operations, G.C. Exhs. 13 and 18. On his 7th day at the store (on or about September 28), Lovelace viewed Jacob Serafini and assistant store manager Muhammed as the most likely to vote for union representation, Sean Balducci as most likely to vote against union representation and Shellie Parsons, Jen Canto and Melissa as being on the fence, Tr. 534. He described Serafini as a "closed book," who "won't really budge yet," G.C, Exh. 17.

On the next day, Lovelace recorded Parsons and Balducci as most likely to vote against the Union, Jacob Serafini, Muhammed and Jen Canto as most likely to vote for the Union. G.C. Exh. 13, pp. 16, 18, 22, 27. By day 11, October 1 or 2, Lovelace deemed Serafini as the only employee likely to vote for the Union.

On Oct 3, 2021, Lovelace thought Sean and Melissa were likely to vote against union representation and that Jake Serafini was the only employee likely to vote in favor of union representation, G.C. Exh. 13, p. 24. 2 days later, he changed his mind about Jen Canto. He thought she and Jake were likely to vote in favor of the Union. G.C. Exh. 13, p. 27.

The Rapid Response Team participated in regular conference calls regarding the threat of unionization at Barkhamsted and other Connecticut stores. High level corporate officials who were not present in Connecticut sometimes participated in these calls. They included Franky Pipes, the supervisor of at least some regional directors, including John Hicks, whose region includes Barkhamsted, and Jennifer Moreau, vice-president for public relations, and Chief People Officer Kathy Reardon.

[13] There is no evidence that Respondent prohibited any type of oral communication between employees while they were at work. Indeed, the corporate employees routinely discussed non-work matters with Barkhamsted employees while they were on the clock. For example, on about September 23, Daniel Lovelace's notes state that he connected with Jenn and Jake "on a personal level-not work related," G.C. Exh. 13, p. 4. On Day 4 Daniel discussed employee Melissa's personal life with her, Id. at 8, On Day 6, Lovelace discussed a number of non-work topics with Sean Balducci, Id. at 12.

Termination of Jacob Serafini

Respondent hired Jacob Serafini on May 8, 2021. On or about September 24, 2021, Serafini told Daniel Lovelace that his mother was president of a teachers' union and that Serafini knew why Lovelace and other corporate representatives were at the Barkhamsted store, Tr. 487-88, 1078, G.C. Exh. 13, page 7. Respondent, or at least Daniel Lovelace, thought Serafini was influencing other employees to support the Union, Tr. 647-48, G.C. Exh.13, p. 18 ["Jake gave Jenn a ride home last night-dating?" followed by classifying Jenn as likely to vote for the Union-a change from a day earlier]. Respondent was also under the impression that union organizer Petronella had given Serafini a recording device to wear in the store, Tr. 673-75.

On October 8, 2021, Serafini arrived at work at about 8:00 a.m. and began stocking frozen foods. Prior to that date, Respondent had not issued Serafini any discipline. Employee Jenn Canto was also stocking items and working at the cash register. Employee Sean Balducci was working in close proximity to Serafini, going back and forth to put overstocked milk in a cooler in the stockroom.

At about 9:30 a.m. Justin Hancock, a subordinate of Janie Farris arrived at the store. He went to assist Serafini, who was still stocking frozen foods. Although the freezer was full, a truck had brought more frozen product, which would not fit in the freezer.

At some point Serafini became very frustrated and cursed. According to Serafini, he said, "look at this fucking bullshit." According to Hancock, Serafini became agitated and said, "I don't know why these fucking idiots keep sending all this fucking shit that won't fit on the fucking shelf," Tr. 1080, R. Exh 5. I find that Hancock's version is closer to what Serafini said then is Serafini's version.

Video footage does not show any customers in the area at this time. The store has dozens of cameras showing various parts of the store. The surveillance tape comes with a time stamp. Respondent received the unfair labor practice alleging that it violated Section 8(a)(3) and (1) in discharging Serafini on October 12, 2021, 4 days after it terminated him. Nevertheless, it made no attempt to preserve video footage that would have corroborated its assertion that a customer was in the store when Serafini cursed. Given the fact that on October 8, Serafini denied there was a customer present when speaking to store manager Soukarieh,[14] an employer seeking the truth would have looked for video corroboration of its assertion in this regard. I conclude that it did not do so because video footage taken when Serafini cursed would not have shown the presence of any customers in the store, or least none where they could have overheard him.[15]

However, Hancock testified that he noticed a customer to his right coming down the aisle with her shopping cart, Tr. 1081. In an email sent at 1:09 p.m. on October 8, Hancock wrote to Lovelace and Farris, "there was a customer present 2-3 aisles away," R. Exh. 5. The email does not mention that this customer indicated that she overheard Serafini. Hancock did not tell Serafini that his cursing was overheard by a customer, or mention that a customer had been in the

[14] Respondent's Answer admits that Soukarieh is a statutory supervisor and its agent.
[15] Respondent's video of the register area is worthless since it lacks time stamps.

store Tr. 303. He did not chastise him in any way, Tr. 352-53, 1081-83, 1139, R. Exh. 5. One would expect Hancock to tell Serafini to watch his language because a customer might overhear him. It is clear from this record that Serafini's frustration with the overstock was a legitimate issue, which was confirmed by Hancock.

Despite the fact that he did not mention this contemporaneously,[16] Hancock testified that he knows this customer heard Serafini curse because while he was checking her out, the customer said to Hancock, "your boy was hot," and that he apologized to the customer, Tr. 1081-82. According to Hancock, he called Janie Farris to tell her what transpired, Tr. 1082. He called Farris before he claims to have talked to the customer, Tr. 1084-85. Thus, even by his own account, Hancock did not know that a customer overheard Serafini before he reported Serafini's outburst to Farris. I find that Respondent's evidence that a customer overheard Serafini curse is completely fabricated.

After talking to human resources, Farris told Hancock to write a statement and obtain a statement from any employee who overheard Serafini, Tr. 1083.

Towards the end of his shift, Sean Balducci was called into the store office and was told that Serafini had cursed in front of a customer. As shown in G.C. Exh. 30, Justin Hancock asked Balducci to sign a statement. Balducci who was working in the next aisle when Serafini swore, told management that he did not hear Serafini swear.

Soon afterwards, Hancock asked Jenn Canto to write a statement while she was counting money from the cash register in the office. She did so after he sat next to her for about 12 minutes as shown in G.C. Exh. 30.[17] At one point Canto left the room, Hancock followed her out and back into the office again. Then he once again sat right next to her. Respondent moved to admit the Jenn Canto statement into evidence. The General Counsel did not object and I received it for the proposition that the statement R. Exh. 6 was one that Respondent obtained, Tr. 1089. That statement reads as follows:

> On oct. 8th around 9:30 a.m. I, Jennifer Canto witnessed Jake S use inappropriate language inside of the store.[18] He was frustrated due to overflow of the frozen area. Unfortunately, he was distracted and did not notice a nearby customer during the incident.

It is noteworthy that Canto's statement is very unspecific as to what Serafini said or whether she saw the customer or whether the customer could have heard him. At 1:10 p.m., after Hancock first emailed Farris and Lovelace, he sent them the Jenn Canto statement, R. Exh. 9, pp. 4-5.

[16] R. Exh 5 is the only contemporaneous report Hancock made of the incident, Tr. 1086,

[17] Hancock did not normally sit next to Canto while she was counting money in the drawer, Tr. 1121.

[18] Canto was not any more specific about what she heard Serafini say when being interviewed by Justin Hancock, Tr.1132.

I find that Justin Hancock coerced Jenn Canto into giving a false statement, Tr. 188-191. Shellie Parsons testified that Jenn Canto and Sean Balducci told her that there were no customers in the store when Serafini cursed, Tr. 180, 189. Parsons also testified from her affidavit that Jenn gave her a note on October 8:

> And as I recall that she did actually write something about what really happened. I was there when she was writing it. I saw her with a pen and a piece of paper. I can't recall if she did that in the office or outside. She showed it to me, and I recall that she wrote it in the statement what Justin—the statement that Justin had—what Justin had her write was false and there was no customer around and that she was working in another aisle and it wasn't loud enough to hear, but that she needed to write a statement that she heard and that there was a customer.
>
> I recall the statement also included the part about that, it wasn't going to get him in trouble and that it was just for the record. I think we were outside when I read her statement. I'm not positive where I was, but she showed it to me, and I definitely saw it. I think it was a lined yellow piece of paper.

Tr. 190-91.

Although the evidence supporting this finding is at least technically hearsay, I find it reliable for several reasons. First, it is admissible because Jenn Canto declined to appear and testify despite being subpoenaed by the General Counsel, Tr. 241, Federal Rule of Evidence (FRE) 804.[19] Also, I rely on FRE 807. Shellie Parsons' testimony about the circumstances of Hancock's interrogation has the equivalent guarantee of trustworthiness as testimony by Jenn Canto. The testimony is consistent with G.C. Exh. 30, the video of Hancock's interrogation of Canto.[20] Moreover, reliance on the cited testimony will best serve the interests of justice.[21]

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[19] I take the General Counsel's attorney at her word on this. However, it would have been preferable had she introduced the subpoena. There is no evidence that Respondent attempted to subpoena Canto.

[20] When cross-examined by Respondent's counsel, Parsons confirmed that Jenn Canto gave her a statement, Tr. 198-200. She did not contradict anything that was in her affidavit.

Respondent's counsel on cross-examination elicited from Parsons that the General Counsel's trial attorney wrote Parsons' affidavit and that Parsons did not review it and that she did not read it, Tr. 195. If Respondent is suggesting that the portions of Parsons' affidavit quoted above were fabricated by G.C. Howlett, that suggestion is preposterous. It is also contrary to Parsons' testimony on direct examination, Tr. 169. Also see fn. 8 herein.

[21] Most courts treat the pre-trial notice requirement in FRE 807 flexibly, so long as the opponent has a fair opportunity to contest the use of the hearsay evidence, *United States v. Panzardi-Lespier,* 918 F. 2d 313, 317 (1st Cir. 1990). *Keller Construction, Inc.,* 362 NLRB 1246, 1253 (2015). Such is the case here. This evidence came in as part of the General Counsel's case. Respondent had almost 2 months to subpoena Jenn Canto and so far as this record shows did not. Moreover, through Justin Hancock it attempted to prove that the statement was neither false nor coerced. I discredit his testimony in this regard, such as his testimony that for most of the 12 minutes he spent with Canto in the office, they were discussing her camping trip. I would also note the Federal Rules of Evidence are not binding on the Board and under appropriate circumstances the Board relies on hearsay evidence, *Alvin J. Bart,* 236 NLRB 242 (1978); *RJR Communications, Inc.,* 248 NLRB 920, 921 (1980).

While Hancock's interrogation of Canto is not alleged to be a violation in the complaint, I find that it was fully and fairly litigated. It is Respondent that introduced the Canto statement, Tr. 1087-91. It also

According to Serafini, Hancock did not comment on Serafini's use of profanity, However, Serafini apologized to Hancock, who told him not to worry about it. Hancock then showed Serafini and Jenn Canto how to use an inventory gun to solve the issue of overcrowded stock. Later, Hancock spoke to Daniel Lovelace, who advised him to contact Dolgen's human resources department about Serafini's use of profanity, Tr. 626-27.

Serafini finished his shift and left the store at 1:30 p.m. Later that day, store manager Basel Soukarieh called Serafini. He told Serafini that Hancock reported that Serafini had used swear words in front of a customer and that he had been told to fire Serafini immediately. Serafini told Soukarieh that there was no customer near him when he cursed. Soukarieh told Serafini that he had nothing to do with his termination and was simply following an order from District Manager Jason Ransom, R. Exh. 9.[22] I find this conversation took place after Hancock sent his 1:09 p.m. email to Lovelace and Farris.[23]

Dolgen does not have a hard and fast rule regarding the punishment for using profanity. District Manager Ransom testified that the use of the "F word" would or would not result in termination of an employee depending on the circumstances, Tr. 1276. The example Ransom

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elicited testimony from Justin Hancock as to the circumstances surrounding his obtaining the statement and relies upon the statement at page 6 of its post-trial brief.

[22] One of the many ways in which Serafini's discharge differs from the comparator evidence introduced by Respondent is that other discharges for the use of profanity were initiated by a store manager, immediate supervisor or customer.

None of the so-called comparatives has been shown to be a situation in which the employee used profanity which was not directed at a manager, supervisor or customer, see the chart at pages 32-33 of Respondent's brief. According to the chart, almost all these employees were terminated for something more than just cursing.

One employee swore at her store manager after being demoted, .G. C. Exh. 32. 3, p. 10. (G.C. Exh. 32 and R. Exh. 3 contain the same documents arranged in a different order)

Another cursed at his immediate supervisor, Id. p. 29.

A third, Melissa Manganella, was fired for using racial slurs in a confrontation with an unruly customer, Id. p. 38.

A fourth was fired after cursing at a customer, Id. 43.

Trevon Maynard's use of the F word occurred in a confrontation with his store manager, with customers present Id. at 179, 4 181.

Shareva Page was involved in an altercation with a customer, in which she used a homophobic slur, Id. at 172-75

Natasha Taylor was terminated for a direct confrontation with her supervisor, Id. at 132-33.

Jamie Groves, R. Exh. 3, Bates # 556-left work without telling the store manager, then screamed and cursed at the store manager.

Latosha Call had prior disciplines, left the register unattended, then argued in a manner overheard by customers, R. Exh. 3, Bates #452-53.

Glinda Stevenson apparently became involved in a personal dispute involving the store manager, made threats, used profanity, R. Exh. 3, Bates # 480-510.

[23] Soukarieh did not testify in this proceeding.

gave of use of the word justifying termination was one in which an employee tells a customer to F off. He did not testify that use of the F word in the circumstances it was used by Serafini would result in termination even under Hancock's version of the facts. Lovelace himself used the F word in a text exchange with Farris. Respondent did nothing when store employee Melissa used it, G.C. Exh. 20, p. 2, 5-6., Tr 747, 756-61.

After Serafini was terminated, Shellie Parsons gave an interview to a Washington Post reporter, and another to a local media outlet, Tr. 610, 620. Her attitude towards Dollar General has changed since then.

Captive Audience Meetings

Employees were required on work time to attend a lecture by a representative of Labor Relations Institute encouraging them to vote against union representation, Tr. 211-12, 283, 494.-95. LRI put on similar lectures at Dollar General stores in Connecticut as a result of the representation petition at Barkhamsted.

In these meetings the LRI representatives misrepresented or at least exaggerated the extent to which union representation inhibits employees' direct contact with their employer, G.C. Exh. 10 p. 14 states: "You can no longer represent yourself." "Once a collective bargaining representative has been designated or selected by its employees, it is illegal for an employer to bargain with individual employees, with a group of employees, or with another employee representative." In smaller lettering the LRI materials quote one of the following provisos in Section 9(a) of the Act:

Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect.

Provided further, That the bargaining representative has been given opportunity to be present at such adjustment.

In their conversations with employees, the corporate employees reinforced the message that unionization would prohibit direct contact with management.

Analysis

Termination of Jacob Serafini[24]

In order to establish a violation of Section 8(a)(3) and (1), the Board generally requires the General Counsel to make an initial showing sufficient to support an inference that the alleged discriminatee's protected conduct was a 'motivating factor' in the employer's decision. Then the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of protected conduct, *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 889 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.,* 462 U.S. 393, 399-403 (1983); *American Gardens Management Co.*, 338 NLRB 644 (2002). The General Counsel has met its burden; Respondent has not. Thus, I find that Serafini's discharge violated Section 8(a)(3) and (1).

There is no question that Respondent knew of Jacob Serafini's likely support for the Union as shown by its color coding and other notations of employee sentiments in G.C. Exh. 13. This evidence also establishes its animus towards the Union, unionization in general and Serafini's support for the Union. The relationship between Respondent's animus and Serafini's discharge is established by many things, such as its pretextual and fabricated explanation for it. Given this pretext, Respondent cannot meet its burden of proving a non-discriminatory reason for terminating Serafini.

Once the General Counsel has made an initial showing of discrimination, the Respondent must show not only that it could have taken disciplinary action for non-discriminatory reasons but that it did so, *Avondale Industries,* 329 NLRB 1064, 1066 (2003). Respondent has not established that it would have fired Jacob Serafini in the absence of his union activities.

Surveillance

The Board's test for determining whether an employer has created an unlawful impression of surveillance is whether, under all of the relevant circumstances, the employer's statements or conduct would lead reasonably to employees assuming that the employer has placed their union activities under surveillance, *Charter Communications, LLC,* 366 NLRB

[24] In addition to alleging that Jacob Serafini was discharged in violation of Section 8(a)(3) the General Counsel, in its brief, alleges that Serafini was discharged for engaging in protected concerted activity (PCA). In this regard, the General Counsel alleges that the outburst for which he was fired was protected and that his conduct was not such that he lost the protection of the Act. Since I conclude that Serafini was discharged in violation of Section 8(a)(3) and (1); it is not necessary to address the PCA theory. However, Respondent was aware that constantly unloading the trucks was more than a personal gripe of Serafini's. On about September 25, 2021, Janie Farris noted that Jenn Canto "was tired of being called on 24/7 because of the truck," G.C. Exh. 13, pp. 6-7. Moreover, given the circumstances of Serafini's use of profanity, i.e., not directed at anyone present, not overheard by any customers, I would find that he did not forfeit the protections of the Act, *Lion Elastomers,* 372 NLRB No. 83 (May 1, 2023). On the other hand, I find that Serafini's discharge was motivated by his union activity, not complaining about the overstock.

No.46 (2018) enfd. 939 F.3d 798 (9th Cir 2019).[25] Although an employer may observe open union activity on or near its property, it may not do something out of the ordinary to give employees the impression that it is engaging in surveillance of their protected activities, *Sprain Brook Manor Nursing Home,* 351 NLRB 1190, 1190-91 (2007); *NCRNC, LLC d/b/a Northeast Center for Rehabilitation,* 372 NLRB No. 35 (2022).

There is no question that it was out of the ordinary for Respondent to send a team of corporate officials to any of its stores to work side-by-side with employees for almost a month. There is also no question that these individuals came to Barkhamsted because of the representation petition and for no other reason.

The fact that these corporate employees may not have observed any union activity is irrelevant, *NCRNC,* slip op. at pp. 7-8.. One could argue that they did not engage in surveillance of union activity because there is no evidence they observed any. However, their presence and activities had a tendency to interfere with, restrain and coerced employees in the exercise of their Section 7 rights, regardless of how one wishes to characterize it. Respondent clearly violated Section 8(a)(1) in sending these individuals to Barkhamsted to observe union activity if it occurred or to inhibit employees from engaging in union activity. Moreover, while anti-discriminatory motive or the effect of employer statements or conduct are not elements of an 8(a)(1) violation, *American Freightways Co.,* 124 NLRB 146, 147 (1959), Respondent clearly intended to interfere with employees' Section 7 rights and did so.

Solicitation of Grievances and Granting of Benefits

There is also no question that between the filing of the representation petition and the election, Respondent solicited grievances and granted benefits in order to discourage employees from voting for union representation. The most obvious example is that its inquiries to employees led to the almost immediate transfer of District Manager Morgan. Respondent also dangled the prospect of being promoted to store manager to Mo and Shellie Parsons.

The solicitation of grievances in an organizing campaign raises an inference that the employer is promising to remedy them unless the employer has a past practice of soliciting grievances in the same manner and by the same methods, *Center Service System Division,* 345 NLRB 729, 729-30 (2005). Respondent has not established that it had such a past practice at Barkhamsted. Thus, it violated the Act.

Implied Threat of Store Closure

Having found that Janie Farris raised the closure of the Auxvasse store with Shellie Parsons, I conclude that Respondent violated Section 8(a)(1) in doing so. There is no reason for Farris to do this other than planting the seed in the minds of Barkhamsted employees that unionization might result in the closure of their store. Given Parsons' status as one of the more experienced employees at Barkhamsted, it is reasonable to conclude that Farris knew and expected that this concern would be communicated to other employees.

[25] Although Respondent in its brief acknowledges that this is an objective test, it relies almost entirely on selective subjective testimony, which is overwhelmingly belied by the record as a whole.

Coercive Interrogation of Jenn Canto

Justin Hancock's October 8 interview of Jenn Canto about the events leading to Jacob Serafini's termination was highly coercive and violated Section 8(a)1). Canto could only assume that support for the Union might lead her to suffer a fate similar to that of Serafini's and that Respondent would not stop at anything to get rid of her if it desired to do so. Although Canto did not testify, the video, G.C. 30 and Shellie Parsons' testimony are sufficient to establish the coercive nature of the interrogation. The interrogation took place in a small office and lasted about 12 minutes, with Hancock sitting next to Canto the entire time. The short statement elicited from Canto would not have taken 12 minutes to obtain if it were voluntary.

Respondent certainly has the right to seek statements from employees who may have knowledge about another employee's misconduct. However, as with pre-trial preparation, an employer has no right to coerce an employee to give it the response it desires, *Johnnie's Poultry Co.,* 146 NLRB 770, 774 (1964).

Remedy

The unfair labor practices herein involve individuals at the highest levels of Dolgen management. They were also committed pursuant to a corporate policy as to how to deal with organizing efforts by Dollar General employees. They also constitute blatant hallmark unfair labor practices. Therefore, I grant the General Counsel's request with regard to nation-wide electronic distribution of the Board's notice and physical posting at all Dolgen facilities that were canvassed in connection with the representation petition at Barkhamsted, including but not limited to those located in its districts 591, 824, 869, 919 and 991. Other remedies requested, that go beyond those traditionally imposed, involve policy decisions that should be left to the Board and the Federal Courts.

Respondent in its brief relies on my rulings limiting the evidence in this case to what transpired at Barkhamsted. I am not relying herein on what transpired at other stores except insofar as they were related to what happened at Barkhamsted, i.e., the canvassing of all Dollar General stores in Connecticut as a result of the representation petition at Barkhamsted, Tr. 423. 499-500. This evidence establishes a corporate-wide determination to interfere, coerce and restrain Dollar General employees in the exercise of their Section 7 rights—of which its activities at Barkhamsted were only a part.

The Respondent, having discriminatorily discharged Jacob Serafini, must offer him reinstatement and make him whole for any loss of earnings and other benefits. 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 No. 8 (2010). Respondent shall compensate Jacob Serafini for his search-for-work and interim employment expenses regardless of whether those expenses exceed his interim earnings, computed as described above.

Also, Respondent must compensate Jacob Serafini for all direct or foreseeable pecuniary harms that he suffered as a result of Respondent's unfair labor practices, regardless of whether these expenses exceed interim earnings, *Thryv, Inc.,* 372 NLRB No. 22 (2022), This shall be

calculated separately from taxable backpay with the rate of interest prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB No. 8 (2010), *Crushin' It LLC,* 372 NLRB 100 (June 29, 2023).

Respondent shall file a report with the Regional Director allocating backpay to the appropriate calendar quarters. Respondent shall also compensate Jacob Serafini for the adverse tax consequences, if any, of receiving one or more lump sum backpay awards covering periods longer than 1-year, *Latino Express, Inc.,* 359 NLRB No. 44 (2012).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[26]

ORDER

Respondent, Dolgen Corporation, Goodlettsville, Tennessee, its officers, agents, and representatives, shall

1. Cease and desist from

   (a) Discharging or otherwise discriminating against employees for engaging in union or other protected concerted activity.
   (b) Engaging in surveillance of employees' union or other protected activities, actual or suspected, by measures that are out of the ordinary, such as sending corporate officials to work side-by-side with employees for an extended period of time.
   (c) Impliedly threatening employees with the closure of their store if they choose a union to represent them.
   (d) Soliciting grievances, resolving grievances and granting benefits in order to discourage employees from selecting union representation.
   (e) Coercing employees to give false statements to justify taking disciplinary action against other employees.

   (f) In any manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.[27]

2. Respondent shall take the following affirmative action necessary to effectuate the policies of the Act.

   (a) Within 14 days from the date of the Board's Order, offer Jacob Serafini full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

[26] 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.

[27] I find Respondent's unfair labor practices in this case to be sufficiently numerous and blatant to merit a broad cease and desist order, *Fieldcrest Cannon, Inc.* 318 NLRB 470, 473 (1995).

(b) Respondent shall make Jacob Serafini whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms suffered as a result of his unlawful discharge, as provided in the remedy portion of this decision.

(c) Compensate Jacob Serafini for his search-for-work and interim employment expenses regardless of whether those expenses exceed their interim earnings.

(d) Compensate Jacob Serafini for the adverse tax consequences, if any, of receiving a lump sum backpay award and file with the Regional Director for Region 1, within 21 days of the date the amount of back pay is fixed, either by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a report allocating the backpay award to the appropriate calendar year and a copy of the backpay recipient's corresponding W-2 form reflecting the backpay award.

(e) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharge of Jacob Serafini.

(f) Within 3 days thereafter notify Jacob Serafini in writing that this has been done and that the discharge will not be used against him in any way.

(g) Within 14 days after service by the Region, post at all its facilities canvassed in conjunction with the representation petition at its Barkhamsted, Connecticut store copies of the attached notice marked "Appendix".[28] This includes but is not limited to Respondent's stores in its districts 591, 824, 869, 919 and 991. Copies of the notice, on forms provided by the Regional Director for Region 01, **after being signed by the Respondent's Chief People Officer**, 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, the notices shall be distributed electronically **to all its employees in the United States**, by email, or 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 hard copy notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed any of the stores canvassed in conjunction with the Barkhamsted representation petition, the Respondent shall duplicate and mail, at its own expense, a copy of

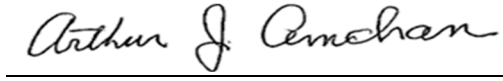
[28] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations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

the notice to all current employees and former employees employed by the Respondent at those stores at any time since November 22, 2021.

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

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

Dated, Washington, D.C. July 17, 2023



Arthur J. Amchan
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union.
Choose 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 discharge, discipline, coach or otherwise discriminate against any of you for engaging in union activity or other protected concerted activity, including engaging in a legal strike.

WE WILL NOT coerce you into giving a false statement to support our taking disciplinary action against another employee.

WE WILL NOT engage in surveillance of your suspected or actual union or other protected activities.

WE WILL NOT impliedly suggest to you that we will close your store if you choose union representation.

WE WILL NOT solicit grievances, resolve grievances and/or grant benefits to you in order to discourage you from selecting union representation.

WE WILL NOT in any manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

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

WE WILL make Jacob Serafini whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest compounded daily.

WE WILL make Jacob Serafini whole for any other direct or foreseeable harms incurred as a result of his unlawful discharge, if any, regardless of whether these expenses exceed interim earnings, plus interest compounded daily.

WE WILL compensate Jacob Serafini for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file a report with the Regional Director allocating the backpay award to the appropriate calendar quarters.

WE WILL compensate Jacob Serafini for his search-for-work and interim employment expenses regardless of whether those expenses exceed their interim earnings.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharge of Jacob Serafini.

WE WILL, within 3 days thereafter, notify Jacob Serafini in writing that this has been done and that the discharge will not be used against him in any way.

DOLGEN CORPORATION
(Employer)

Dated _____ By _____
(Representative) Chief People Officer

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov

10 Causeway Street, 10th floor, Boston, MA 02222-1001 (617) 565-6700 Hours: 8:30 a.m. to 5:00 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/0 -CA- or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OFPOSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (617) 565-6700