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File Name: 26a0254p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

VNS FEDERAL SERVICES, LLC,
Respondent,

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 18,
Intervenor.

No. 25-1233

On Application for Enforcement of an Order of the National Labor Relations Board.
Nos. 09-CA-262035; 09-CB-262047.

Argued: July 30, 2026

Decided and Filed: September 3, 2026

Before: CLAY, GIBBONS, and BLOOMEKATZ, Circuit Judges.

COUNSEL

ARGUED: Gregoire Sauter, NATIONAL LABOR RELATIONS BOARD, Washington, D.C., for Petitioner. Catherine F. Burgett, FBT GIBBONS LLP, Columbus, Ohio, for Respondent. **ON BRIEF:** Gregoire Sauter, Usha Dheenan, Ruth E. Burdick, NATIONAL LABOR RELATIONS BOARD, Washington, D.C., for Petitioner. Catherine F. Burgett, Brice C. Smallwood, FROST BROWN TODD LLP and FBT GIBBONS LLP, Columbus, Ohio, Jason P. Renzelmann, FROST BOWN TODD LLP and FBT GIBBONS LLP, Louisville, Kentucky, for Respondent. Timothy R. Fadel, Nicholas A. Boggs, FADEL & BEYER, LLC, Rocky River, Ohio, for Intervenor.

OPINION

BLOOMEKATZ, Circuit Judge. The National Labor Relations Board found that VNS Federal Services, LLC, violated Sections 8(a)(3) and (1) of the National Labor Relations Act by terminating Israel Bo Sword's employment in retaliation for his complaint that the company had violated the terms of its collective bargaining agreement with Sword's union. Under the *Interboro* doctrine, an employee's "honest and reasonable" invocation of a right under the collective bargaining agreement constitutes protected "concerted activity," even if the employee is mistaken about the right invoked. *See NLRB v. City Disposal Sys.*, *Inc.*, 465 U.S. 822, 840 (1984). The Board found that VNS laid off Sword for engaging in such activity, and it now petitions for enforcement of its order holding VNS liable for violating the NLRA.

VNS opposes the petition for enforcement, arguing that the record does not support the Board's finding that Sword invoked the collective bargaining agreement or that it terminated him for engaging in concerted activity. VNS further contends that, even if the Board's liability finding was correct, it abused its discretion by imposing an overbroad remedial order that included reinstatement and backpay for Sword.

Because the record provides substantial evidence to support the Board's finding that VNS violated the NLRA, we grant the Board's petition for enforcement. As to the remedial order, VNS's arguments should first be made to the Board in compliance proceedings, so we decline to address them at this juncture.

BACKGROUND

We review the factual findings of the Board for substantial evidence. *Charter Commc'ns, Inc. v. NLRB*, 939 F.3d 798, 809 (6th Cir. 2019). So we begin by recounting the facts as found by the Board and later, where relevant, we discuss VNS's disputes as to these findings.

Starting in 2008, Israel Bo Sword worked as a heavy equipment operator at the Portsmouth Gaseous Diffusion Plant (A-Plant), a former uranium-enrichment facility, in Pike County, Ohio. The Department of Energy had contracted with Fluor-BWXT Portsmouth to decontaminate and decommission the site. Fluor, in turn, subcontracted with VNS Federal Services, LLC, and other companies to complete various projects at the A-Plant.

Sword and his fellow heavy equipment operators at the A-Plant were represented by the International Union of Operating Engineers, Local 18, which had bargained with VNS and the other contractors to set the terms and conditions of their employment. The governing collective-bargaining agreement between VNS and the Union is the General Presidents' Project Maintenance Agreement (GPPMA). Under the GPPMA, VNS must hire operators from the Union's hiring hall, but it enjoys broad latitude to lay operators off, so long as it complies with non-discrimination and fair-employment laws. VNS generally ends its employment relationship with an operator by issuing a "clean layoff" that allows the employee to draw unemployment benefits. VNS also uses clean layoffs when it stops work for periods of poor weather or at the end of a project. VNS can alternatively discharge an operator for cause and may additionally issue a "no recall" letter telling the Union it does not want the operator to return. Unlike with clean layoffs, operators discharged for cause may not draw unemployment benefits.

A. February 10–13, 2020: Sword's Complaint and Layoff

This case stems from a complaint Sword made in February 2020. At the time, Sword was working as a heavy equipment operator for VNS on the On-Site Waste Disposal Facility (OSWDF) Project under Superintendent Mike Harris. He worked on a nine-person team that included Greg Dillow and Gene Massie, who were also operators. Dillow was the only licensed crane operator on the team. Superintendent Terry Brown had recruited Dillow from another company by offering him higher hourly wages and guaranteeing him 40 hours of work per week.

During the OSWDF daily team meeting on Monday, February 10, 2020, Harris announced that work would be suspended for the week due to inclement weather. At the employees' request, Harris agreed to lay them off for that week so they could collect unemployment. All except Dillow. As Harris explained to the crew, VNS guaranteed Dillow 40 hours of work per week.

Sword was upset about Dillow's 40-hour deal because "[t]he whole crew" "was already lacking on hours." Sword Hr'g Tr., App'x 87. He stood up and complained to Harris that "there's not any guaranteed 40-hour men that work under this contract. The contract don't support a 40-hour man, and you're not allowed -- for an operating engineer is not allowed to make side agreements with a company that has to do with wages, conditions or hours." *Id.* at 90. Harris responded that he knew the rules, but Brown had made the deal with Dillow. Sword then threatened to find another job because the agreement was "taking hours from all the other men that's been struggling to get 20 some hours a week." *Id.* at 91. Harris told Sword he had a week to think about it.

Later that day, Harris called Sword to check how he was feeling after the meeting. After Sword said he was fine, Harris told him, "I don't really appreciate you calling me out in front of everybody like that . . . but I understand." *Id.* at 94. Sword again expressed his opposition to Dillow's side agreement with VNS, and Harris again expressed that he was not responsible for it. Harris asked if Sword would return to work the following Monday, and Sword confirmed he would. Harris ended the call by saying he would see Sword on Monday.

The next day, Project Manager Vernon Phillips emailed VNS's office manager explaining that the company had laid off eight employees due to inclement weather. He noted that all eight employees, including Sword, would return to work the following week.

One day later, on February 12, Sword met with his union representative, Garold Baker, to express his concerns about VNS's 40-hour guarantee to Dillow. When Baker said the agreement was permissible, Sword pointed to a provision in the Union's bylaws which prohibited private agreements between members and employers. Baker said, "I guess it looks like you're right" and promised to investigate the violation. Sword Hr'g Tr., App'x 581. Baker then drove to the A-Plant and met with Brown, who admitted to making an agreement with Dillow but denied guaranteeing him 40 hours. Brown also told Baker that VNS "was just going to keep some people off until they seen what the weather done. The workload was a little light, as well. They'd call people back as they needed them probably." Baker Hr'g Tr., App'x 229.

Later that same day, Harris called Sword and reported that after Baker's meeting with VNS management, Phillips was "madder than fire at Terry Brown for making that agreement with Dillow." Sword Hr'g Tr., App'x 582. Harris then told Sword, "[A]nd with that being said, you are permanently laid off. Don't come back Monday." *Id.* When Sword protested and questioned the decision, Harris said, "I can't tell you anything else . . . but just don't come back Monday." *Id.*

The next day, February 13, Sword met again with his union representative, Baker. In their discussion, Baker relayed what he learned in his meeting with Brown, and Sword said he had been laid off and contended that there was plenty of work on the OSWDF project. When Baker said he was going to the A-Plant, Sword requested Baker get him his job back or obtain a layoff slip, reflecting the permanent layoff, for him. At the A-Plant, Baker again spoke to Brown who directed him to Phillips. Phillips told Baker that VNS would not bring Sword back at that time and that the company might issue further layoffs depending on weather and workload. Phillips then gave Baker Sword's layoff check and layoff slip with "lack of work" as the reason for the layoff. Layoff Slip, App'x 320.

B. Post-Termination Events

On February 17, VNS's office manager emailed Phillips to ask if all laid-off employees had returned to work. Phillips confirmed that all had returned except Sword, stating, "We laid Israel Sword off and decided not to bring him back to work, due to some other issues we experienced with [him]." Phillips Email, App'x 353.

Two weeks later, Sword filed a complaint with the Department of Energy alleging that VNS retaliated against him for challenging Dillow's side agreement with VNS. When the Department contacted VNS to investigate the complaint, Phillips responded that the company considered layoffs during the weather stoppage because of the inclement weather and low production. Phillips reported that VNS and Fluor "had some issues with [] Sword in the past" because of his "negativity and constant complaining." Phillips Resp., App'x 356. He then explained that Harris "had problems with" Sword just before the layoff because he was "very vocal" in complaining about Dillow's hours. *Id.* Phillips concluded, "This made Mike Harris's decision of whom he should layoff much easier, but it was not the only criteria the decision was made off of." *Id.*

For the first two weeks after Sword's layoff, VNS did not hire any new operators, but Dillow and Massie together worked sixteen hours of overtime. On March 2, VNS requested operator William Bame for the OSWDF Project from the Union hiring hall by name. During the week of March 15, Bame and Massie worked four hours of overtime each. The following week, Dillow, Massie, and Bame worked four hours of overtime each. The three operators worked on the OSWDF Project at least until the week that the A-Plant closed toward the end of March 2020. Until the A-Plant's closure, VNS also hired operators for other projects. While the A-Plant was closed due to COVID-19, VNS continued to pay operators who had worked immediately before the shutdown.

The Board did not make any factual findings on VNS's or the Union's outreach to Sword after his February 12, 2020, layoff. But the Union contends that it attempted to refer Sword to various job opportunities through the hiring hall, including with VNS. In total, the Union argues that it offered Sword jobs for VNS (or its partner, Beaver Excavating) on ten separate occasions, and that it offered Sword thirty-five jobs in total through the hiring hall. Sword did not work for VNS again before it ended its operations at the A-Plant, but VNS contends he was eligible for recall during the entire period.

II. Procedural History

On June 22, 2020, Sword filed unfair labor practice charges against VNS. Based on those charges, the Board's General Counsel issued a complaint against VNS, alleging that it violated Sections 8(a)(3) and (1) of the National Labor Relations Act by discharging Sword because of his protected concerted activity. 29 U.S.C. § 158(a)(3) and (1). After a hearing, an administrative law judge found that VNS violated Sections 8(a)(3) and (1) of the NLRA by discharging Sword for engaging in protected concerted activity. VNS filed timely exceptions to the decision.

The Board's decision and order affirmed the ALJ's ruling, findings, and conclusions that VNS violated Sections 8(a)(3) and (1). The Board declined to address VNS's arguments against imposing reinstatement and backpay, holding that it would follow its traditional practice of adjudicating the dispute over remedies at the subsequent compliance stage.

The Board petitioned for enforcement of the order against VNS in full.[1]

ANALYSIS

In this enforcement proceeding, VNS challenges the Board's decision on two grounds. *First*, VNS argues that substantial evidence does not support the Board's finding that VNS violated Sections 8(a)(3) and (1) of the NLRA by discharging Sword for engaging in protected concerted activity. *Second*, VNS argues that the Board abused its discretion by imposing an overbroad remedial order that included reinstatement and backpay. We analyze each challenge in turn.

I. NLRA Violations

Section 7 of the NLRA guarantees employees the right "to engage in [] concerted activities for the purpose of collective bargaining or other mutual aid or protection." 29 U.S.C. § 157. To protect those statutory rights, Section 8(a)(1) of the Act makes it an unfair labor practice (i.e., unlawful) for an employer "to interfere with, restrain, or coerce employees in the exercise of the[se] rights." *Id.* § 158(a)(1). Section 8(a)(3) of the Act further specifies that an employer may not "discriminat[e] in regard to hire or tenure of employment" to discourage union membership. *Id.* § 158(a)(3). "A violation of Section 8(a)(3) produces a derivative violation of Section 8(a)(1)," *Temp-Masters, Inc. v. NLRB*, 460 F.3d 684, 689 (6th Cir. 2006) (citing *Metro. Edison Co. v. NLRB*, 460 U.S. 693, 698 n.4 (1983)), because refusing to hire or terminating an employee to deter concerted activity necessarily interferes with the exercise of statutory rights.

[1]Sword also filed unfair labor practice charges against the Union. The General Counsel issued a complaint against the Union for breaching its fiduciary duty, in violation of Section 8(b)(1)(A) of the NLRA. 29 U.S.C. § 158(b)(1)(A). The ALJ found that the Union violated Section 8(b)(1)(A) by improperly responding to Sword's attempt to file a grievance. The Union filed timely exceptions, and the Board affirmed the ALJ's decision but amended the remedy to remove the Union's joint and several liability for Sword's termination. The Board did not petition for enforcement of the order against the Union. The Union moved to intervene as a respondent in this petition to enforce the order against VNS. We granted the Union's motion.

We review the discriminatory discharge claim in this case "under the burden-shifting framework articulated in *Wright Line* . . . and adopted by the Supreme Court in *NLRB v. Transportation Management Corp.*" *Airgas USA, LLC v. NLRB*, 916 F.3d 555, 560 (6th Cir. 2019). Under the *Wright Line* test, the Board's General Counsel bears the initial burden of establishing a prima facie case of discrimination by showing that (1) Sword engaged in protected activity, (2) VNS knew of Sword's protected activity, and (3) VNS discharged Sword based on animus against his protected activity. *Id.* at 561. Once the General Counsel establishes a prima facie case, the burden shifts to VNS "to prove by a preponderance of the evidence" that it would have discharged Sword for permissible reasons even if he had not engaged in protected concerted activity under the NLRA. *Id.* (quoting *NLRB v. Overseas Motor, Inc.*, 721 F.2d 570, 571 (6th Cir. 1983)). If the Board determines that VNS's proffered justification is pretextual, however, it "is not obligated to consider whether the employer would have taken the same decision regardless of the employee's union activity." *Id.* (quoting *Ctr. Constr. Co. v. NLRB*, 482 F.3d 425, 435–36 (6th Cir. 2007)).

VNS challenges the Board's findings that the General Counsel established a prima facie case of discriminatory discharge and that VNS's proffered justification was pretextual. Our review of Board decisions "is quite limited." *Caterpillar Logistics, Inc. v. NLRB*, 835 F.3d 536, 542 (6th Cir. 2016) (quoting *Torbitt & Castleman, Inc. v. NLRB*, 123 F.3d 899, 905 (6th Cir. 1997)). While we review the Board's legal conclusions de novo, *Rieth-Riley Constr. Co. v. NLRB*, 173 F.4th 269, 274 (6th Cir. 2026) (citing *NLRB v. Starbucks Corp.*, 159 F.4th 455, 468 (6th Cir. 2025)), we review the Board's factual findings for substantial evidence, and we uphold them "if they are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if we may have reached a different conclusion had the matter been before us de novo," *Charter Commc'ns*, 939 F.3d at 809 (quoting *Airgas*, 916 F.3d at 560).

A. Prima Facie Case

VNS argues that the Board's finding of a prima facie case of unlawful discharge is not supported by substantial evidence. The Board found that Sword engaged in protected concerted activity when he (1) complained to Harris that Dillow's 40-hour guarantee violated the GPPMA and (2) sought assistance from his union representative to speak to management on his behalf. Because we affirm the Board's decision that the General Counsel made a prima facie case of unlawful discharge based on Sword's complaint, we need not reach the Board's second basis for finding that Sword engaged in concerted activity.[2] Instead, we focus on the Board's analysis of Sword's complaint and reject VNS's contention that the General Counsel failed to establish a prima facie case of discriminatory discharge.

1. Whether Sword engaged in protected concerted activity

VNS first contests whether Sword engaged in protected concerted activity when he complained to Harris at the February 10 meeting about Dillow's 40-hour guarantee. Not all complaints count as protected concerted activity; instead, as VNS argues, some are just "individual gripe[s]." *Miller Plastic Prods. Inc v. NLRB*, 141 F.4th 492, 509 (3d Cir. 2025). We evaluate whether an individual complaint under the collective bargaining agreement amounts to concerted activity under the *Interboro* doctrine. So we explain that doctrine first, before addressing whether the record in this case contains substantial evidence that Sword engaged in concerted activity.

Interboro Doctrine. Under the *Interboro* doctrine, an employee's "honest and reasonable invocation of a collectively bargained right constitutes concerted activity, regardless of whether the employee turns out to have been correct in his belief that his right was violated." *NLRB v. City Disposal Sys., Inc.*, 465 U.S. 822, 840 (1984) (adopting rule from *Interboro Contractors, Inc.*, 157 NLRB 1295 (1966)). In *NLRB v. City Disposal Services*, the Supreme Court adopted the Board's *Interboro* doctrine in a case involving a truck driver who was discharged for invoking his right under the collective bargaining agreement to refuse to drive an unsafe truck.

[2]Although we do not engage in a lengthy analysis, we agree with the Board that the General Counsel made a prima facie case of unlawful discharge based on Sword's request for the Union's assistance in speaking to management. Sword engaged in protected concerted activity when he sought assistance from his union representative in speaking to management on his behalf. *See NLRB v. J. Weingarten, Inc.*, 420 U.S. 251, 260 (1975). But VNS contends that it did not know of that protected activity when it made the decision to terminate Sword and that it did not exhibit any animus toward his protected activity. Though VNS disputes the timeline of the termination decision, substantial evidence supports the Board's finding that VNS terminated Sword after his union representative, Baker, spoke to management on his behalf. For example, Baker testified that Brown did not tell him that Sword was permanently laid off at their meeting, and Sword testified that Harris told him he was permanently laid off after the Baker-Brown meeting. And, as described in this section, there is also substantial evidence in the record that animus toward Sword's protected activity motivated VNS's layoff decision.

The Court agreed with the Board that by "honestly and reasonably" invoking a right under the collective bargaining agreement, the truck driver had engaged in "concerted activity" under Section 7 of the NLRA. *Id.* at 824–26. As the Court explained, "when an employee invokes a right grounded in the collective-bargaining agreement, he does not stand alone." *Id.* at 832. Instead, the employee's complaint is "unquestionably an integral part" of the collective action process. *Id.* at 831. "That process," as the Court described—"beginning with the organization of a union, continuing into the negotiation of a collective-bargaining agreement, and extending through the enforcement of the agreement—is a single, collective activity." *Id.* at 831–32. Connecting this process with an employee's complaint, the Court observed that "[o]bviously, an employee could not invoke a right grounded in a collective-bargaining agreement" without the "prior negotiating activities of his fellow employees." *Id.* at 832. And by protecting employees who invoke their rights, the Court recognized that the *Interboro* doctrine also "preserves the integrity of the entire collective-bargaining process." *Id.* at 835. Accordingly, the Court held that even a "lone employee's invocation of a right grounded in his collective-bargaining agreement" counts as "concerted activity" under the NLRA. *Id*. at 832.

Critically, the Court explained that its holding was not dependent on whether the employee accurately invoked his collective bargaining agreement, as long as he "honest[ly] and reasonabl[y]" believed the employer violated it. *Id.* at 840. In *City Disposal*, the employer argued that the union's collective bargaining agreement did not allow the driver to refuse to drive the assigned truck. But whether the employer's "interpretation of the agreement" was correct did not affect the Court's view that the employee's complaint constituted concerted activity. *Id.* Even if the employer's insistence that the employee drive the truck did not in fact violate the agreement, the Court reasoned that by invoking the agreement the employee had engaged in an "integral part of the process by which the collective-bargaining agreement is enforced." *Id.* And if employees—who are "likely to be unsophisticated in collective-bargaining matters"—could be discharged for inaccurately invoking the collective bargaining agreement, the agreement was "likely to serve as nothing more than a trap for the unwary," and employees could be chilled from asserting their duly bargained-for rights. *Id.* Instead of a strict test, then, the Court held that the key consideration is reasonableness. If an employee's complaint refers to a "reasonably perceived violation of the collective-bargaining agreement," it should count as an attempt to enforce that agreement, even if the reasonable perception was inaccurate. *Id.* Following this logic, the Board applies the *Interboro* doctrine when an employee honestly and reasonably invokes a right under the collective bargaining agreement, even if the employee is mistaken about the right invoked. *See King Soopers, Inc.*, 364 NLRB 1153, 1154–55 (2016), *enforced in relevant part*, 859 F.3d 23, 34–35 (D.C. Cir. 2017).

To illustrate its reasoning, *City Disposal* compared complaining about a violation of the collective bargaining agreement with filing a formal grievance. The Court explained that an employee may voice his concerns to the employer informally as a "natural prelude to" or perhaps "an efficient substitute for" filing the formal grievance. *City Disposal*, 465 U.S. at 836–37. "No one doubts" that an employee's filing of a grievance is concerted activity, and "[n]o one would suggest" that filing that grievance is "concerted only if the grievance turns out to be meritorious." *Id.* at 836, 840. So by analogy, the Court held that raising a complaint based on the collective bargaining agreement is likewise concerted activity regardless of whether it is meritorious. Instead, as for grievances, when the complaint "is based on an honest and reasonable belief that a right has been violated," it constitutes "concerted activity" under Section 7. *Id.* at 840.

Application. Having explained the *Interboro* doctrine, we now analyze the parties' arguments about how it applies in this case. All agree that Sword complained about VNS's side agreement with Dillow for a 40-hour week during the February 10 meeting. And all agree that the GPPMA did not prevent this side agreement, even if the Union's bylaws did. The Board determined that, because Sword had an honest and reasonable belief that the GPPMA prohibited Dillow's deal, his complaint constitutes concerted activity under the *Interboro* doctrine. D&O, App'x 1 n.2. (citing *King Soopers*, 364 NLRB at 1154–55). VNS, however, contends that in his complaint about Dillow's 40-hour guarantee, Sword did not invoke a collectively bargained right, and if he did, the invocation was not honest and reasonable. Reviewing the record, we conclude that substantial evidence supports the Board's factual finding that Sword honestly and reasonably invoked a collectively bargained right.

Consider first whether Sword invoked a right under the collective bargaining agreement. There is substantial evidence that he did when he complained to Harris at the February 10 meeting. Sword testified that he complained that "there's not any guaranteed 40-hour men that work under this contract. The contract don't support a 40-hour man, and you're not allowed -- for an operating engineer is not allowed to make side agreements with a company that has to do with wages, conditions or hours." Sword Hr'g Tr., App'x 90. A "reasonable mind" could interpret Sword's repeated mention of the contract as a reference to the GPPMA, the applicable collective bargaining agreement. *Charter Commc'ns*, 939 F.3d at 809 (quoting *Airgas*, 916 F.3d at 560). Indeed, it is not apparent to us what other "contract" Sword could be referencing. And, as described above, even if the GPPMA did not prohibit this agreement, Sword's honest and reasonable invocation of the GPPMA is still concerted activity under the *Interboro* doctrine. *See City Disposal*, 465 U.S. at 840.

We are not persuaded to disturb the Board's credibility determination that Sword invoked the contract at the meeting. "Our review of fact-finding is even more deferential for credibility determinations" than for other factual findings. *Caterpillar*, 835 F.3d at 542. We overturn a credibility determination only if the determination "overstep[s] the bounds of reason," *id.* (quoting *Kusan Mfg. Co. v. NLRB*, 749 F.2d 362, 366 (6th Cir. 1984) (per curiam)), or is "inherently unreasonable or self-contradictory," *id.* (quoting *Tel Data Corp. v. NLRB*, 90 F.3d 1195, 1199 (6th Cir. 1996)). But VNS does not meet this standard. As the Board explained, "Sword was candid and made no apparent effort to understate his conduct," gave a detailed account of the February 10 meeting, and testified consistently on cross-examination. D&O, App'x 8. And no other witness's testimony contradicted Sword's account of the meeting. Harris testified that he recalled Sword complaining about Dillow's 40 hours but that he did not remember anything "specific" because he "didn't pay much attention to it," and "had a lot more going on." *Id.* (quoting Harris Hr'g Tr., App'x 159). Therefore, it was not inherently unreasonable for the Board to credit Sword's account of the meeting and conclude that he invoked "the contract."[3]

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[3]VNS also contests the Board's decision to credit Dillow's testimony that Brown guaranteed him 40 hours of work a week, pointing to Brown's testimony that he only promised to try to get Dillow 40 hours per week. It was reasonable for the Board to credit Dillow's account because his testimony was "considerably more detailed" than Brown's and more credible because he was testifying adversely to his pecuniary interests by contradicting his supervisor's account. D&O, App'x 8 (collecting cases). But, more relevant here, VNS fails to show that this credibility determination affects the merits. The relevant credibility issue on appeal is whether we credit Sword's

Faced with Sword's account, VNS next attempts to reframe it. It says that Sword invoked the Union's bylaws, not the GPPMA, as prohibiting the side agreement. Even if Sword said "the contract" does not guarantee any employee 40-hours, VNS contends that Sword was invoking the bylaws when he said that operators are "not allowed to make side agreements." Reply Br. at 6. For support, it notes that Sword later told Baker that VNS's side agreement with Dillow violated the bylaws and that Sword also stated that Dillow's agreement violated the bylaws in his complaint to the Department of Energy.

Again, we are not persuaded. While we agree that the record shows that Sword, after the meeting, pointed to the Union's bylaws, that fact does not undermine the Board's finding that Sword invoked the GPPMA at the meeting and did not mention the bylaws then. Sword's subsequent invocation of the bylaws cannot undermine his initial invocation of "the contract," referring to the collective bargaining agreement, when complaining to Harris. Nor did Sword's written DOE complaint reference only the bylaws. Instead, he alleged that he "kn[ew] the contract and the Bylaws had been broken." DOE Compl., App'x 323. The Board's determination that Sword invoked his rights under the collective bargaining agreement is therefore supported by substantial evidence in the record and is not negated by Sword's later references to the bylaws.

Invoking the collective bargaining agreement, however, is not alone enough to satisfy the *Interboro* doctrine. As explained, the employee must "honest[ly] and reasonabl[y]" invoke a right under the agreement, "regardless of whether the employee turns out to have been correct in his belief that his right was violated." *City Disposal*, 465 U.S. at 840. Here, substantial evidence also supports the Board's finding that Sword's invocation of a right under the GPPMA was honest and reasonable, even though Dillow's side agreement did not in fact violate the GPPMA. The Board credited Sword's testimony that he believed VNS's agreement with Dillow violated the contract because Baker had previously told him that the contract did not guarantee 40 hours to any employee and did not permit such guarantees. There was also no evidence in the record that anyone contradicted Sword's interpretation of the contract when he invoked it at the

account that Harris mentioned Dillow's 40-hour guarantee at the February 10 meeting rather than whether the guarantee existed. And, as described above, there is substantial evidence supporting the Board's decision to credit Sword's testimony as to what transpired at the February 10 meeting.

February team meeting. And when Sword later raised his concern about the side agreement to his union representative, Baker conceded that Sword appeared to be right about the violation and immediately went to investigate his claim, which he is unlikely to have done if it was an unreasonable and meritless complaint.

VNS's only counter is that the "long-standing past practice at the A-Plant . . . was that Operators were entitled to make arrangements for more than what was provided in the applicable collective bargaining agreement." Respondent Br. at 38 (citing Sword Hr'g Tr., App'x 99; Hughes Hr'g Tr., App'x 248.5). VNS says that it "strains credulity that Mr. Sword was the only Operator who did not know this fact." *Id.* But VNS points to no evidence establishing that the practice was so widespread that Sword must have been aware of it, so the existence of a longstanding practice does not alone prove that his belief was dishonest or unreasonable.

Accordingly, we conclude that under the *Interboro* doctrine the Board's determination that Sword engaged in concerted activity by complaining about Dillow's side deal at the February 10 meeting is supported by substantial evidence.

2. Whether VNS discharged Sword for his protected concerted activity

Since VNS does not challenge the Board's finding that VNS was aware of Sword's protected concerted activity of complaining to management, we turn to the third and final prong of the prima facie case: whether Sword's "protected conduct was a substantial or motivating factor in the adverse action." *NLRB v. Transp. Mgmt. Corp.*, 462 U.S. 393, 401 (1983). VNS challenges the Board's factual finding that its decision to lay off Sword was based on animus toward his protected activity, and again we review the finding for substantial evidence. *Ishikawa Gasket Am., Inc. v. NLRB*, 354 F.3d 534, 537 (6th Cir. 2004). Animus against protected activity may be "inferred from circumstantial as well as direct evidence." *W.F. Bolin Co. v. NLRB*, 70 F.3d 863, 871 (6th Cir. 1995).

Our review of the record reveals substantial evidence—both direct and circumstantial—that supports the Board's conclusion that Sword's protected conduct was a substantial or motivating factor in VNS's termination decision. Consider the various pieces of evidence that tie VNS's termination decision to Sword's choice to invoke a collective bargaining right and enlist his union representative to investigate the alleged violation. *First*, Sword testified that Harris phoned him after the February 10 meeting to say "I don't really appreciate you calling me out in front of everybody like that," Sword Hr'g Tr., App'x 94, referencing Sword's complaint that Dillow's side agreement violated "the contract." *Second*, Sword testified that Harris phoned him immediately after Baker left his meeting with VNS management to investigate the alleged contractual violation, and Harris told him that Phillips was angry after the meeting and "with that being said," VNS was laying Sword off permanently. *Id.* at 582. *Third*, VNS terminated Sword only two days after his complaint to Harris and on the same day Baker met with VNS management to discuss his complaint. *See Starbucks*, 159 F.4th at 464–65 (explaining that a two-week gap between protected activity and discharge supports finding of anti-union animus). *Fourth*, in discharging Sword immediately after Baker's meeting with VNS management, VNS abruptly reversed its stated plan to recall all OSWDF employees, a plan which it announced on February 10 to the crew and reiterated in Phillips's February 11 email to the office manager. That the reversal happened so quickly after Sword engaged in protected activity is strong evidence of causation. *Id.* *Fifth*, Phillips's February 17 email to the office manager stated that VNS did not return Sword to work with the other employees due to "other issues" VNS experienced with him. Phillips Email, App'x 353. While unexplained in the email, it is at least plausible that those "other issues" referred to Sword's protected activity; they at least referred to Sword's behavior, rather than unrelated factors like a lack of work or the weather. *Sixth*, Harris testified that he retained Massie over Sword because Massie did not complain as much. Harris Hr'g Tr., App'x 172. Given that Sword complained about VNS violating the GPPMA, that comment too supports the Board's conclusion. *Seventh* and last, Phillips responded to Department of Energy's inquiry into Sword's complaint by saying Harris "had problems" with Sword because of his "very vocal" complaint about Dillow working 40 hours, and that "[t]his made [] Harris's decision of whom he should layoff much easier." Phillips Email, App'x 356. This final piece of evidence is direct proof that VNS factored Sword's complaint about Dillow's side agreement—which was protected concerted activity—into its layoff decision.

VNS challenges the weight or proper interpretation of each piece of evidence, but these challenges do not prove the absence of substantial evidence. Under the substantial-evidence standard, "the Board's choice between two equally plausible and reasonable inferences from the facts cannot be overturned on appellate review, even though a contrary decision may have been reached through de novo review of the case." *Exum v. NLRB*, 546 F.3d 719, 724 (6th Cir. 2008) (citation modified). It is not enough for VNS to show that the "evidence supports an alternative story"; it must instead demonstrate that the "Board's story is unreasonable." *NLRB v. Galicks, Inc.*, 671 F.3d 602, 608 (6th Cir. 2012).

Yet VNS's alternative characterizations of the evidence do not undermine the reasonableness of the Board's decision. For example, VNS argues that Harris only called Sword on February 10 to check up on him. Even if that were the reason for the call, it does not rebut the evidence showing that Harris also expressed his displeasure with Sword's complaint during the call. Similarly, VNS argues that Phillips was angry with the VNS employee who made the agreement with Dillow, not with Sword. But the close timing between the expressed anger and the layoff makes it entirely reasonable for the Board to interpret the statement as evidence that Sword was terminated because his protected concerted activity upset management. VNS also argues that the "other issues" referenced in Phillips's email were Sword's negativity and complaints, but that is only one interpretation of the ambiguous email. Phillips Email, App'x 353. VNS's final arguments, that Massie was also a member of the Union and that the suspicious timing of the layoff was attributable to the weather delay, also fail to establish that the Board's story is unreasonable. At most, VNS presents an equally plausible reading of the evidence which does not justify overturning the Board's findings nor its determination that the General Counsel established a prima facie case of unlawful discharge.

B. Pretext

Moving past the prima facie case, we next ask whether substantial evidence supports the Board's finding that VNS's proffered justification for Sword's layoff—lack of work—is pretextual. *See Charter Commc'ns*, 939 F.3d at 818. If it is, the analysis ends because "the Board is not obligated to consider whether the employer would have taken the same decision regardless of the employee's union activity." *Airgas*, 916 F.3d at 561.

Substantial evidence supports the Board's finding of pretext. Upon review of the record, the Board concluded that VNS's contention that it decided to terminate Sword before the Baker-

Brown meeting due to insufficient work was "beyond the bounds of believability." D&O, App'x 13. Given the ample evidence undermining VNS's alternative account of the layoff decision, it was reasonable for the Board to reject it. After all, the record reflects that on February 10, Harris twice told Sword that he would be recalled the next week (in the meeting and later on the phone); on February 11, Phillips emailed the office manager to say that all laid-off employees would return the next week; and on February 12, Baker met with Brown, who referenced a light workload but did not say that VNS had already decided not to recall Sword. None of this indicates that Sword was terminated because of a dearth of work he was qualified to perform.

Documentary evidence further supports the Board's pretext finding. *First*, the Board pointed out that VNS "produced no documentation to support its claim that Sword's 'layoff' was a bona fide reduction in force based on a work slowdown, even though the General Counsel subpoenaed its records regarding its decision to lay [Sword] off." *Id.* Although VNS complains that it cannot prove a negative (lack of work) through documentation, there is record evidence that suggests VNS would have documentation reflecting a work slowdown or evidence of what VNS considered to determine that it did not need its full slate of operators to return. For example, Harris said he made the decision to lay off Sword by "look[ing] at what work was out there" and how much "work [was] ahead." Harris Hr'g Tr., App'x 156, 163. This testimony suggests there would be some evidence of his decision-making process. VNS also said that its workflow depended on Fluor's needs, but Harris testified that Fluor did not request any reduction in staffing before Sword's layoff. Likewise, Phillips claimed after the fact that some of VNS's work was "hung up" due to Fluor's budget constraints, Phillips Resp., App'x 356, but VNS presented no corroborating evidence of any budgetary issues.

Second, there is evidence that, after laying Sword off, VNS operators worked overtime on the OSWDF project, and VNS even hired a new operator for the project. In each of the first two weeks after Sword's layoff, Dillow and Massie together worked sixteen hours of overtime. And in the third week after Sword's layoff, VNS hired a new operator on the OSWDF project who worked four hours of overtime for each of the next two weeks before VNS suspended operations for COVID-19. Based on the evidence that VNS had its operators, including a newly hired operator, not just working regular time, but also working overtime, it was reasonable for the

Board to "wholly discredit Harris' assertion that [] Sword was terminated because of a need for less operators." D&O, App'x 11.

VNS's attempts to rebut this evidence are unavailing. It argues that operators on the OSWDF crew "worked fewer than 20 hours of overtime per week, **combined**." Respondent Br. at 45. But the total amount of overtime does not undermine the fact that VNS hired a new operator who worked overtime along with its existing operators. VNS also contends that the Board improperly focused on the company's hiring of operators overall rather than on Sword's specific project. But even if the Board discounted the evidence from other projects, there was enough evidence from the OSWDF project itself to support the Board's finding. And VNS's argument that it hired the additional operator for "short-call," *see* Harris Hr'g Tr., App'x 164–65, does not rebut the Board's finding that "lack of work" was a pretext for discrimination. Even short periods of work constitute work, and during the short-call period, VNS had the new operator working enough to earn overtime. Finally, Sword's testimony that he was upset about Dillow's 40-hour guarantee because "[t]he whole crew" "was already lacking on hours," Sword Hr'g Tr., App'x 87, shows only that there was a decline in workload, not that there was insufficient work for a third operator or that the Board's finding of pretext was unreasonable.

Because substantial evidence supports the Board's finding that VNS's proffered justification for the layoff was pretextual, we affirm the Board's determination that VNS violated Sections 8(a)(3) and (1) of the NLRA by discharging Sword in retaliation for concerted activity.

II. Remedial Order

Finally, VNS challenges the Board's remedial order. The Board ordered VNS to cease and desist from NLRA violations, offer Sword reinstatement, make him whole for loss of earnings and benefits, expunge any reference to the layoff from his personnel file, and post remedial notices. The Board generally has "broad discretion to devise remedies that effectuate the policies of the Act, subject only to limited judicial review." *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 898–99 (1984). The NLRA explicitly authorizes reinstatement and backpay as remedies for unfair labor practices, 29 U.S.C. § 160(c), and we will not hold that the Board abused its discretion in awarding those remedies "unless it can be shown that the order is a patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Act." *NLRB v. ADT Sec. Servs., Inc.*, 689 F.3d 628, 635 (6th Cir. 2012) (quoting *Va. Elec. & Power Co. v. NLRB*, 319 U.S. 533, 540 (1943)).

VNS argues that even if we uphold the Board's finding that it violated the NLRA, we should not enforce the Board's remedial order because VNS has already complied with parts of it and the other parts—reinstatement and backpay—are overbroad. Specifically, VNS contends that we should not require reinstatement and should limit backpay "because Sword allegedly did not accept employment opportunities from the hiring hall dispatcher." D&O, App'x 2. But these arguments are premature.

In exercising its discretion to grant reinstatement or backpay, the Board's "traditional practice" is to defer "any dispute about backpay or reinstatement" to the compliance process. D&O, App'x 2. The compliance process is a distinct stage that begins "[a]fter entry of a Board order directing remedial action, or the entry of a court judgment enforcing such order." 29 C.F.R. § 102.52. During the compliance process, the parties address "the amount of backpay due" and any other "remedial acts claimed to be necessary for compliance" in a hearing before an ALJ and on appeal to the General Counsel and the Board. *Id.* §§ 102.53–55. Citing its customary practice, the Board declined to address VNS's arguments about reinstatement and backpay and deferred them to compliance proceedings. That means the Board did not make any factual findings about whether Sword declined job offers from the hiring hall, the details of those offers, or any other information relevant to the appropriate scope of remedies. Even so, VNS asks us to adjudicate its challenges to the remedial order now.

We decline VNS's request to resolve its challenges to the Board's remedial order in this appeal. Our general practice at the liability stage is, if we grant a petition for enforcement, to also approve reinstatement and backpay remedies for the unlawful labor practices. Like the Board, we defer questions about the tailoring of the remedies to the compliance stage and any petitions for review from those proceedings. *See, e.g.*, *Quickway Transp., Inc. v. NLRB*, 117 F.4th 789, 817 (6th Cir. 2024); *Ky. Gen., Inc. v. NLRB*, 177 F.3d 430, 439 (6th Cir. 1999); *Compuware Corp. v. NLRB*, 134 F.3d 1285, 1291–92 (6th Cir. 1998). The Supreme Court has "generally approve[d]" the Board's procedure of "order[ing] the conventional remedy of reinstatement with backpay, leaving until the compliance proceedings more specific calculations as to the amounts of backpay, if any, due." *Sure-Tan*, 467 U.S. at 902. And it has approved the Board's "normal policy of modifying its general reinstatement and backpay remedy in subsequent compliance proceedings as a means of tailoring the remedy to suit the individual circumstances of each discriminatory discharge." *Id.*

VNS does not convince us that we should diverge from our practice of affirming the remedies at this stage.[4] Its arguments about why the remedial order is insufficiently tailored can and should be made in compliance proceedings where the Board will "tailor[] the remedy to suit the individual circumstances" of the case. *Id.* VNS will then be able to litigate the compliance officer's order before an ALJ, the Board, and our court, so it will not lose the opportunity to seek judicial review of the remedies. *See NLRB v. Bannum Place of Saginaw, LLC*, 97 F.4th 351, 356–57 (6th Cir. 2024).[5] And to the extent VNS argues that its substantial compliance with the remedial order makes the order unenforceable, the Supreme Court and this court have rejected that argument. *See NLRB v. Mexia Textile Mills*, 339 U.S. 563, 567 (1950); *NLRB v. Mich. Conf. of Teamsters Welfare Fund*, 13 F.3d 911, 919 (6th Cir. 1993).

As an alternative to modifying the remedial order, VNS asks the panel to "clarify" the facts that the Board should consider at the compliance phase. Respondent Br. at 49–50. But it is not our province to review the administrative record and discern the relevant facts in the first instance. *See generally Taylor v. City of Saginaw*, 11 F.4th 483, 489 (6th Cir. 2021); *cf. NLRB v. Pope Concrete Prods., Inc.*, 67 F.3d 300 (6th Cir. 1995) (unpublished table decision) (declining

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[4]VNS adopted the Union's arguments that the Board abused its discretion in ordering backpay. Although the Union's liability was not at issue in this enforcement action, the Union moved to intervene in this case. It asked to intervene because of "its interest in adequately representing its membership, in operating its Hiring Hall, and in the performance and interpretation of the GPPMA." Mot. to Intervene, R. 12 at 13. Based on this description, the Board did not oppose intervention. The Union devoted its brief to arguing against reinstatement and backpay remedies for its member.

[5]The cases the Union cites to argue that the panel should tailor the remedial order at the liability phase are inapposite. Most of the cases cited come from appeals of compliance orders, not from appeals of liability orders. *See McKenzie Eng'g Co. v. NLRB*, 373 F.3d 888 (8th Cir. 2004); *NLRB v. Mercy Peninsula Ambulance Serv., Inc.*, 589 F.2d 1014 (9th Cir. 1979); *NLRB v. Seligman & Assocs., Inc.*, 808 F.2d 1155 (6th Cir. 1986). In the Union's only other court of appeals case cited for that proposition, *NLRB v. G&T Terminal Packaging Co.*, the Second Circuit modified the Board's order for reinstatement at the liability phase because it was "unduly burdensome," 246 F.3d 103, 121 (2d Cir. 2001), but neither VNS nor the Union puts forward an argument that the Second Circuit's reasoning applies in this case or in the Sixth Circuit at all.

to consider argument that employer had complied with reinstatement order when agency had not had an opportunity to consider it). Instead, the compliance officer determines the relevant facts and makes the initial determinations subject to the review process described above.

Although we decline to alter the Board's remedial order at this stage, we recognize that there has been a lengthy delay in opening compliance proceedings in this case. The Board represented at oral argument that the delay was in part attributable to the pending enforcement proceedings. Now that the enforcement phase has been completed, we expect that compliance proceedings will begin expeditiously.

CONCLUSION

We grant the Board's petition for enforcement of its order in full.