UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

THE SAN FRANCISCO CHRONICLE, A DIVISION OF HEARST COMMUNICATIONS

Case 20-CA-353723

and

PACIFIC MEDIA WORKERS GUILD TNG-CWA LOCAL 39521

GENERAL COUNSEL'S POST-HEARING BRIEF TO THE BOARD

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I. INTRODUCTION

This case comes before the National Labor Relations Board (the Board) upon it granting the joint motion of the parties to waive a hearing and decision by an administrative law judge and to transfer the proceedings to the Board for a decision based on a stipulated record. It is about Respondent's failure to bargain in good faith, as required by Section 8(a)(5) and (d) of the National Labor Relations Act (the Act), with the Union that represents approximately 120 of Respondent's editorial employees (the Unit) by unilaterally announcing and implementing changes to the Unit's terms and conditions of employment without notifying the Union and by unreasonably delaying before providing the Union with necessary and relevant information related to the change that it requested.

As described below, the unilateral change relates to Respondent's October 2024 announcement and January 2025 implementation of its decision to end its decades-long, continuous practice of providing each bargaining unit photographer working for its San Francisco Chronicle publication (Chronicle photographers), upon their hire and throughout their employment, with around-the-clock possession of a leased vehicle for their business and limited personal use (the Leased Vehicle Arrangement). After failing to notify the Union about this change and refusing the Union's requests to bargain before unilaterally ceasing the Leased Vehicle Arrangement, Respondent unreasonably delayed nearly 7 months before providing the Union with related information it requested, baselessly asserting until May 2025 that the information was not relevant to the Union's duties as the bargaining representative of the Unit.

As discussed below, there can be no doubt that the Leased Vehicle Arrangement, although never memorialized into a collective-bargaining agreement and not provided to other Unit employees, had, by the parties' longstanding past practice, become a well-established term

and condition of the Chronicle photographers' employment and a mandatory subject of bargaining. Nor can there be any doubt that Respondent's unilateral cessation of it had a material, substantial, and significant effect on the Unit employees who had been enjoying its benefits, thereby triggering Respondent's obligation to first notify and give the Union an opportunity to bargain before implementing the change. Nor can there be any doubt that information requested by the Union about the Leased Vehicle Arrangement was relevant and necessary for the Union to meet its duty to bargain over the change on behalf of the impacted Unit employees, or that Respondent's only justification for the delay, its stated belief that the information was not relevant, is neither an adequate nor legitimate defense for the delay.

Respondent's unilateral cessation of the Leased Vehicle Arrangement and its unreasonable and unjustified delay in providing the Union with the related information it had requested amounted to bad faith bargaining in violation of Section 8(a)(5) and (1) of the Act. To remedy Respondent's unlawful conduct, the Board must order it to bargain in good faith with the Union as the exclusive bargaining representative of the Unit, to re-implement the Leased Vehicle Arrangement upon the Union's request and return to the status quo ante, to make all affected unit members whole, to cease-and-desist from making unilateral changes without notifying the Union, from failing to timely provide the Union with requested information that is necessary and relevant to its role as the Unit's exclusive bargaining representative, and from engaging in similar unlawful conduct, to notify its employees of their Section 7 rights and that, going forward, it will meet its obligations to bargain in good faith with the Union, and to make Unit employees whole for any losses they have suffered as a result of the unfair labor practices at issue here.

II. STATEMENT OF FACTS[1]

A. San Francisco Chronicle Operations and Collective Bargaining Relationship with Union

The San Francisco Chronicle, a division of Hearst Communications, Inc. (Respondent, the Employer, or the Chronicle), is a news publisher based in San Francisco, California, that employs a unit of approximately 120 reporters, photographers, and other editorial employees involved in the creation of The San Francisco Chronicle, its daily print and online newspaper, or SFGATE, its online newspaper (the Unit). Stip. 11-15. Emilio Garcia-Ruiz is its Editor-in-Chief, Sean Kurysh is its Vice President, Human Resources, and Nicole Fruge is its Director of Visuals. Stip. 13.

For decades, NewsGuild-CWA, Local 39521 (the Union or Charging Party) has served as the exclusive representative of these Unit employees for purposes of bargaining over their terms and conditions of employment and has negotiated successive collective-bargaining agreements covering the Unit's work, the most recent of which is effective from August 9, 2023, through August 8, 2027 (the CBA). Stip. 14-21; Jt. Exs.2-4. Respondent's SFGATE employees were added to the Unit through bargaining around 2018. Stip. 17, 18, 44. As of October 2, 2025, the Unit included approximately 9 photographers working on Respondent's The San Francisco Chronicle publication (Chronicle photographers), and approximately one photographer working on Respondent's SFGATE publication (SFGATE photographers), although there had been up to three in years past. Stip. 19, 44 (clarifying one SFGATE photographer at time).

[1] References to the stipulations found in the parties' Joint Motion to Transfer Proceedings to the Board and Joint Stipulation of Facts are noted as "Stip." followed by the relevant paragraph number. References to Joint Exhibits are noted as "Jt. Ex." followed by the exhibit number.

B. The Leased-Vehicle Arrangement

Since at least the late 1990s, and continuously until January 2025, Respondent leased or rented vehicles that it provided at no cost to each Chronicle photographer, upon their hire and throughout their employment (absent occasional gaps due to vehicle theft, damage, etc.), to maintain in their personal possession for travel to and from work assignments and limited personal use. Stip. 22-24. Respondent equipped the vehicles with a lockable box in the trunk, enabling the photographers to safely and securely store the company-provided photographic equipment in the vehicle at all times. Stip. 23; Jt. Ex. 2 Art. XXII (b) ("Photographic equipment required by the Employer to be used by photographers shall be supplied by the Employer."). Respondent also provided company credit cards to the Chronicle photographers to cover the costs of gasoline and maintenance of their personal company vehicle without the need to pay first and request reimbursement later. Stip. 22. The Chronicle photographers would testify that this "Leased-Vehicle Arrangement" (also referred to in the Stipulations as the "Leased Photo Cars Arrangement") was a valuable benefit to them. Stip. 22.

Components of the Leased Vehicle Arrangement, consistent with the parties' stipulations, appear in an undated welcome letter to an unidentified Chronicle Video Journalist submitted by the parties, which references a car as one item of gear that the employee will be responsible for, and describes the following rules for its use:

> Technically, cars should only be driven for work, but news happens. So feel free to drive the car for errands, etc, within the city in order to have it handy for breaking news.
>
> - Do not drive the car out of the Bay Area without checking with Michael first
> - Do not smoke in the car
> - Do not let anyone else drive the car or drive non-chronicle personnel in the car without permission from Michael
> - Don't drink and drive
> - If there is a check engine light or other car issues, notify Michael immediately. We do not want you to break down in a situation where it could be dangerous to you.
> - Notify Michael immediately if there are any accidents or other incidents involving the car.

Stip. 25, Jt. Ex. 6 p. 1 (the letter describes a "Michael Malone" as the contact person for questions pertaining to gear and cars). The Leased Vehicle Arrangement is not mentioned in 6 offer letters dated from 2014-2021 issued to photographers and 1 offer letter from 1999 to a photography intern. Stip. 26; Jt. Ex. 6.

The parties' collective-bargaining agreements (CBAs) make no reference the Leased-Vehicle Arrangement, but they do state that "Company vehicles supplied by the Employer shall be equipped with approved seat belts for all passengers as required by law." *See* Jt. Exs. 2 and 3 and Art. XXII (e); Jt. Exhibit 4 and Art. XXIII (e). The CBAs also provide for company reimbursement for employees who use their personal vehicles for company business, so long as the expenses are pre-approved and the employee submits a proper expense reimbursement form. *See* Jt. Exs. 2 and 3 at Art. XXII "Expenses and Equipment;" Jt. Exhibit 4 at Art. XXIII "Expenses and Equipment." These CBA provisions also require employees who are required to use personal vehicles for company business to provide proof of minimal insurance through a company satisfactory to Respondent, and limit Respondent's liability for damage to the lesser of $250 or the cost of the damage. *Id.*

The Leased-Vehicle Arrangement was only provided to the Chronicle photographers, never to the SFGATE photographers (or any other Unit employees), and the Union has never requested nor asserted that the Leased Vehicle Arrangement be provided to the SFGATE photographers, who, like all Unit employees, are eligible under the CBA for reimbursement when they use personal vehicles for company business. Stip. 27, 45; Jt. Exs. 2-4. There is a

general management rights clause that makes no reference to the Leased Vehicle Arrangement or to any right to unilaterally change employee benefits. Jt. Ex. 2, Art. XXIII.

C. October 3, 2024: Respondent Announces to Unit Employees That It Is Ending the Leased Vehicle Arrangement Effective January 1, 2025

In a meeting on October 3, 2024, Editor-in-Chief Emilio Garcia-Ruiz and Director of Visuals Nicole Fruge informed Chronicle photographers that, effective January 1, 2025, the Chronicle was ending the Leased Vehicle Arrangement and would no longer provide them with a company vehicle. Stip. 28. The managers explained that the Chronicle photographers would be eligible[2] to use their own automobiles for travel to assignments and would be compensated at the IRS rate for mileage reimbursement as set forth in the CBA, the same as the SFGATE photographers and other bargaining unit employees. Stip. 28, 35; Jt. Ex. 2. Unsurprisingly, the Chronicle photographers objected and had numerous questions about the change. Stip. 28. The managers also stated that Respondent would provide each of them with a one-time payment of $2,500, which it did on October 18, 2024.[3] Stip. 28, 30.

On January 9, 2025, Respondent finally ended the Leased Vehicle Arrangement, returned the vehicles to the leasing or rental agencies. Stip. 32. Since then, it has required Chronicle Photographers to use a personal vehicle for company business and seek reimbursement in

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[2] Stipulation 28 states that the manager told the Chronicle photographers that they would "continue to be" eligible to use their personal vehicles and seek reimbursement under the CBA, for which they certainly had been technically eligible, but there is no evidence in the Stipulated Record that any Chronicle photographer had previously chosen to use their personal vehicles for company business and sought reimbursement rather than the completely free vehicles provided them by Respondent, so the "continue to be" comment has zero evidentiary value.

[3] Stipulation 31 adds that the Union reached an agreement in the course of contract negotiations with Bay Area News Group (BANG), an unrelated news outlet in the San Francisco area that had ceased providing vehicles to its photographers that BANG would give the photographers the option to keep the car or receive a one-time payment of $1,200. Stip. 31. It is impossible to discern any evidentiary or probative value to what the Union may have negotiated with another employer under different circumstances that may or may not be similar to those at issue here, which involves Respondent's refusal to negotiate with the Union.

compliance with the CBA, just like other Unit employees. Stip. 33, 35. Unlike under the Leased Vehicle Arrangement, there was no assurance that the employee would be able to lock and secure company photography equipment and store it in the vehicle, and there is no evidence that any Chronicle photographer procured a vehicle with such security. Stip. 33. For calendar year 2025, each of the Chronicle photographers was required to personally pay for all company business-related transportation related costs up front and request reimbursement under the CBA. Stip. 34. If a hearing was held, the Respondent would present evidence that during calendar year 2025, the nine Chronicle photographers received $53,245.50 in mileage reimbursements, with annual reimbursement payments ranging from $3,142.30 to $7,596.40. Stip. 34.

D. The Union Learns of Change, Requests Bargaining and Information About Respondent's Cessation of the Leased Vehicle Arrangement

At no point prior to the announcement to employees on October 3, 2024 (all subsequent dates are from calendar year 2024, unless otherwise noted) did Respondent notify the Union of its plan to end the Leased Vehicle Arrangement. Stip. 29. On October 11, the Union submitted a letter to Respondent informing it that the Union had learned about the October 3 meeting in which it informed Chronicle photographers that they would no longer be provided with company vehicles, pointed out that the vehicles had been provided to the Chronicle photographers for many years, were understood as a part of their compensation, were crucial to the employees and their ability to do their jobs, and demanded to negotiate over the decision to end the Leased Vehicle Arrangement and all impacts its cessation would have on Unit employees. Stip. 36; Jt. Ex. 7 at 1.

In the October 11 letter, the Union also requested that Respondent answer a number of questions and provide a number of documents related to the Leased Vehicle Arrangement and its

cessation. Jt. Ex. 7 at 1-3, 17 at Exhibit A. A limited sample and summary of the Union's information categories and specific requests include:

- "INFORMATION REGARDING COMPANY-PROVIDED VEHICLES" such as: a list and description of each vehicle; lease agreements provided to Unit employees; timelines showing the lease periods for each vehicle and any deadlines for their return; maintenance records; the cost to the company of each vehicle for its lease, insurance, maintenance, etc.; the projected cost savings to the company of ending the Leased Vehicle Arrangement, along with any data or analysis used to project that savings; what alternatives were considered and why they were rejected; what options the company had with the leasing companies; when the decision to end the Leased Vehicle Arrangement and by whom in the company; and details about any other vehicles available for employee use.

- "EMPLOYEE INFORMATION / BENEFITS" such as: offer letters, agreements, or other documents describing the Leased Vehicle Arrangement; its use and cost of rental cars under the Leased Vehicle Arrangement; the terms of the stipend offered to employees during the October 3 meeting; the level of auto insurance coverage Chronicle photographers were expected to maintain on their personal vehicles; and the amount of fuel costs paid over the last three years under the Leased Vehicle Arrangement.

- "DOCUMENTATION / POLICIES," such as notes from the October 3 meeting and copies of all company policies related to the use of company-provided or personal vehicles.

- "QUESTIONS REGARDING IMPACTS," such as whether Respondent would be providing security measures to protect equipment in personal vehicles, who would be responsible for insuring the equipment and replacing stolen equipment, and an inventory of such equipment currently held by each Chronicle photographer; who will cover costs of damage to personal vehicles when on company business; whether it has any instructions to employees for use of fleet cars and if they will be subject to discipline for delay in getting to an assignment as a result of not having full-time use of a company-provided vehicle; and whether there will be impact on employees' coverage assignments or mileage restrictions caused by the use of personal vehicles as opposed to full-time access to a company-provided vehicle.

E. Respondent Refuses to Bargain Over the Change; Parties Engage in Effects Bargaining; Respondent Refuses to Provide Requested Information for Nearly Seven Months

On October 25, Respondent's Vice President, Human Resources Sean Kurysh, responded to the Union's request by letter to Union Representative Hunter Paniagua. Stip. 37; Jt. Ex. 8. In

it, he asserts that requested information is overbroad and irrelevant, and that the Union can find all relevant information by simply referencing the CBA. Jt. Ex. 8. Among other things, Kurysh asserts that the Leased Vehicle Arrangement is not and has never been part of Chronicle photographer's compensation, that it was never provided to SFGATE photographers, that the CBA does not reference the Leased Vehicle Arrangement or require Respondent to supply company cars, but rather specifically authorizes Respondent to require photographers to use personal vehicles. Jt. Ex. 8. He says the decision was Respondent's, it was communicated to staff on October 3 that "effective January 1st, [Respondent] will no longer be leasing/renting and/or providing photographers company vehicles." Jt. Ex. 8. Kurysh further states it provided Chronicle photographers with a "$2,500 taxable, one-time payment" to assist them in securing another mode of transportation beginning January 2025, and it felt that it was being quite generous. Jt. Ex. 8. He concludes by asserting that Respondent considered this response to the Union's information request as complete. Jt. Ex. 8.

Union Representative Paniagua and VP Kurysh continued discussing the matter through a series of email exchanges through November 22. Stip. 38; Jt. Ex. 9. On October 30, Union Representative Paniagua described the cessation of the Leased Vehicle Arrangement as a unilateral change to the Chronicle photographer's longstanding terms and conditions of employment made by illegally bypassing the Union, that they rely on the vehicles and that the change shifts costs from the Chronicle to the employees that will impose a real hardship on them. Jt. Ex. 9 at 1-2. He describes the one-time payment of $2,500 as insulting and demands that Respondent rescind the change and sit down and negotiate with the Union. Jt. Ex. 9 at 2. He objects to Respondent's refusal to answer the Union's information requests, noting that it failed to explain how the requests are overbroad or irrelevant when they are clearly relevant and

narrowly tailored, providing examples of how the requests are relevant to enable the Union to understand the benefits and costs under the Leased Vehicle Arrangement so that it can formulate proposals in response to its announced cessation, and reiterates its demand for the requested information. Jt. Ex. 9 at 2.

On November 8, VP Kurysh responded reiterating that the decision was consistent with its rights under the CBA, that Respondent was open to bargaining over the effects of the decision, challenged the relevance of information about the leased vehicles, and that it was not considering other company provided vehicle options or changing any policies. Jt. Ex. 9 at 1. On November 22 Paniagua responded that the Union was not conceding its demand for decisional bargaining, and it planned to send a proposal on effects bargaining. Jt. Ex. 9 at 1. On December 6, Paniagua followed up with a letter continuing its objection to the change and requesting that it delay implementation for six months to enable the parties to negotiate, consider alternatives, and address the impacts of the change, and if the Employer did so, the Union would drop all related Board charges. Stip. 39; Jt. Ex. 10.

Through emails and letters exchanged between Union Representative Paniagua and VP Kurysh dated December 20, 2024, through January 24, 2025, the parties bargained over the effects of the elimination of the Leased Vehicle Arrangement. Stip. 40 and 41; Jt. Exs. 11 and 12. They agreed that the $2,500 payment would be the after tax amount, but it does not appear that they reached final agreement over the effects of the cessation of the Leased Vehicle Agreement. Stip. 40 and 41; Jt. Exs. 11 and 12.

On May 9, 2025, Respondent finally satisfied the Union's information request, nearly seven months after the original request on October 11, 2024. Stip. 43.

III. LEGAL ARGUMENT AND ANALYSIS

As set forth below, the evidence clearly shows that Respondent breached its obligation to bargain in good faith with the Union, in violation of Section 8(a)(5) and (1) of the Act, by unilaterally implementing its decision to cease the Leased Vehicle Arrangement without notice to the Union, by refusing the Union's requests to bargain over that decision, and by unreasonably delaying nearly seven months before providing the Union with requested information relevant to that decision.

A. Respondent Unilaterally Changed the Vehicle Lease Agreement in Violation of Section 8(a)(5)

1. Legal Standards

Section 8(a)(5) makes it an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees," which Section 8(d) defines as "the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment." 29 U.S.C. Sec. 158(a)(5), (d). Mandatory subjects of bargaining include those delineated in Section 8(d) as "wages, hours, and other terms or conditions of employment," but exclude "managerial decisions at the core of entrepreneurial control." *Ford Motor Co. v. NLRB*, 441 U.S. 488, 496 (1979); *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203, 224 (1964); *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 686-88 (1981).

An employer may not change the terms and conditions of employment of represented employees without providing their representative with prior notice and an opportunity to bargain over such changes, absent a valid defense. *See United Food & Com. Workers Loc. 7 (UFCW Local 7)*, 375 NLRB No. 55 (Sept. 30, 2026); citing *NLRB v. Katz*, 369 U.S. 736,

747 (1962); *Litton Financial Printing Division v. NLRB*, 501 U.S. 190, 198 (1991). An unlawful unilateral change "frustrates the objectives of Section 8(a)(5)" because such a change "minimizes the influence of organized bargaining and emphasizes to the employees that there is no necessity for a collective bargaining agent." *Katz*, *supra* at 744; *May Dep't Stores Co. v. NLRB*, 326 U.S. 376, 385 (1945).

To establish a unilateral change violation, the General Counsel must establish what the terms and conditions of employment were before the alleged change, establish what the terms and conditions of employment were after the change, and compare the two. *Golden Stevedoring Co*., 335 NLRB 410, 435 (2001). Terms and conditions of employment can be established by contract or by past practice:

> It is well established that an employer's regular and longstanding practices, even if those practices are not required by a collective-bargaining agreement, become terms and conditions of employment that an employer may not alter without providing a union with notice and opportunity to bargain.

HTH Corp., Pacific Beach, 361 NLRB No. 65 (2014), citing *Turtle Bay Resorts,* 355 NLRB 706 (2010); *Lafayette Grinding Corp*., 337 NLRB 832 (2002); *Exxon Shipping Co.* 291 NLRB 489, 493 (1988)(conduct must be "satisfactorily established by practice or custom;" an "established practice;" an "established condition of employment")(internal citations omitted).

As the Board has held:

> [A] past practice is generally noncontractual and becomes a term or condition of employment through continued adherence over time *apart from and even in contradiction to the parties' contract*.

Asociacion De Empleados Del Estado Libre Asociado De Puerto Rico, 370 NLRB No. 71 (Jan. 14, 2021), slip op. at 4 (*Asociacion de Empleados*), citing *Intermountain Rural Electric Assn.*, 305 NLRB 783, 787-788 (1991)(finding employer's past practice for determining

eligibility for overtime premium pay, which contradicted the contractual eligibility formula, was "an implied term and condition of employment by mutual consent of the parties"), enfd. 984 F.2d 1562 (10th Cir. 1993)(emphasis added); *Riverside Cement Co.*, 296 NLRB 840 (1989)("It is well settled that a practice not included in a written contract can become an implied term and condition of employment by mutual consent of the parties. Once an implied term is established, a unilateral change in that term by either an employer or a union is unlawful.").

To defend against a unilateral change under extant law, an employer must show that the union clearly and unmistakably waived its right to bargain over the change. *Endurance Environmental Solutions, LLC*, 373 NLRB No. 141 (2024)(*Endurance*). This differs from the contract coverage defense that the Board relied on from 2019 when it decided *MV Transportation* until 2024 when the *Endurance* Board decided to overrule it and return to the clear and unmistakable waiver standard. *See UFCW Local 10,* 375 NLRB No. 55, *supra* at n. 10(internal citations omitted). As discussed below, Respondent cannot make out a defense under either the clear, unmistakable waiver standard, or under the contract coverage standard.[4]

2. Application

a. The Leased Vehicle Arrangement Was a Mandatory Subject of Bargaining and a Well-Established Past Practice

An employer's provision of company-provided vehicles or reimbursement for use of personal vehicles are terms and conditions of employment and mandatory subjects of bargaining. *UFCW Local 10*, 375 NLRB No. 55, *supra* (union as employer violated Section

[4] The General Counsel believes the Board should overturn *Endurance* and return to the contract-coverage standard articulated in *MV Transportation, Inc.* when assessing whether unilateral changes are privileged by a collective-bargaining agreement. She intends to present supporting argument to the Board later in the litigation of this case or in another.

8(a)(5) by unilaterally reducing the amount of allowance it paid employees for use of their personal vehicle for employer business from $868 to $809). Here, through the Leased Vehicle Arrangement, Respondent has for decades provided all Chronicle photographers, upon their hire and throughout their employment, with a leased vehicle assigned to them for their full-time possession and use for company business and limited personal business along with a company credit card for fuel and maintenance, at no personal cost to the Unit employees. This longstanding, clearly established, and up-until-now uninterrupted practice is a clear term and condition of employment and mandatory subject of bargaining. *HTH Corp., Pacific Beach*, 361 NLRB No. 65 (2014), citing *Turtle Bay Resorts,* 355 NLRB 706 (2010); *Lafayette Grinding Corp*., 337 NLRB 832 (2002); *Exxon Shipping Co.* 291 NLRB 489, 493 (1988). It is an even greater benefit than the vehicle allowance at issue in *UFCW Local 10. See* 375 NLRB No. 55, *supra*.

As with all terms and conditions established by past practice, it matters not that the Leased Vehicle Arrangement has not also been incorporated into a CBA or that the CBA contains additional provisions for financial reimbursement for employees who use personal vehicles for company business. *See Asociacion De Empleados*, 370 NLRB No. 71, *supra* and *Intermountain Rural Electric Assn.*, 305 NLRB at 787-788. The CBA does not forbid the Leased Vehicle Arrangement and even contemplates Respondent providing employees with company vehicles.[5] Moreover, the CBA provisions for reimbursement for using a personal vehicle can easily co-exist with the Leased Vehicle Arrangement without conflict or

[5] "Company vehicles supplied by the Employer shall be equipped with approved seat belts for all passengers as required by law." *See* Jt. Exs. 2 and 3 and Art. XXII (e); Jt. Exhibit 4 and Art. XXIII (e).

contradiction, and even if they were in conflict, the well-established past practice would trump the contradictory contract language under Board law. *Id.*

b. The Cessation of the Leased Vehicle Arrangement Was Material, Substantial, and Significant

There can be no doubt that the cessation of the Leased Vehicle Arrangement had a material, substantial, and significant impact on the Chronicle photographers' terms and conditions of employment. **"**The NLRB has consistently adhered to the principle that unilateral changes in conditions of employment that are mandatory subjects of bargaining do not constitute a breach of the bargaining obligation unless the unilateral change amounts to a material, substantial, and significant one." *Peerless Food Products*, 236 NLRB 161 (1978); *Flambeau Airmold Corp.*, 334 NLRB 165 (2001) (changes not unlawful unless "material, substantial and significant."). "There is a continuum of employer actions, after all, ranging from those that obviously have material, substantial, and significant effects on terms and conditions of employment to those that obviously do not. '[A]nd in the middle of the continuum, any classification is bound to be somewhat arbitrary.'" *In re Mitchellace, Inc.*, 321 NLRB 191, 193 (1996), quoting *Illinois Power Co. v. Commissioner of Internal Revenue*, 792 F.2d 683, 685 (7th Cir. 1986). As discussed below, the cessation of the Leased Vehicle Arrangement falls into the "obviously have material, substantial, and significant effects on terms and conditions of employment" category.

While the Chronicle photographers are still eligible under the CBA for reimbursement when they use their personal vehicle for company business and have taken advantage of it since Respondent ended the Leased Vehicle Arrangement, and Respondent provided them with a one-time payment of $2,500 to assist them in procuring a vehicle, the differences are material, substantial, and significant. Under the Leased Vehicle Arrangement, the Chronicle

photographers had no need to procure or insure a vehicle for company business, had no need to pay up front and seek reimbursement later for fuel and maintenance cost, had the ability to safely and securely store company-provided photography equipment in the lockable trunk box, and had the benefit of using the company-provided vehicle for limited personal use, all at no cost to the employee.

By contrast, since the Employer ceased the Lease Vehicle Arrangement, the Chronicle photographers are now required to procure and insure a vehicle for company business and pay any difference between the $2,500 payment and the cost of the vehicle, required to pay all fuel and maintenance costs up front themselves and go through the time and effort to seek reimbursement, limited to the Internal Revenue Service mileage rate, though the CBA reimbursement process, have lost the benefit of being able to safely secure and store company photographic equipment in the lockable trunks at no cost to them, and have lost the benefit of being able to use a company vehicle for limited personal use at no-cost to them. These differences have inherently required the employees to incur additional costs of money, time, and effort, and they have eliminated obvious benefits both inside and outside of the performance of their work. The resulting changes are beyond *de minimus* and are at least as material, substantial, and significant as other changes found unlawful by the Board. *Cf. UFCW Local 10*, 375 NLRB No. 55, *supra* (reducing personal vehicle allowance for employer business from $868 to $809); see *Mercy Hospital of Buffalo*, 311 NLRB 869 (1993) (employer discontinued cafeteria service between 2 and 4 a.m., instead providing vending machines and other snack facilities); *Rangaire Co.*, 309 NLRB 1043 (1992) (employer discontinued past practice of providing an extra 15 minutes of paid lunchbreak once per year, on Thanksgiving).

c. Respondent Ceased the Leased Vehicle Arrangement Without Giving the Union Notice or a Meaningful Opportunity to Bargain

Here, Respondent admits that it announced to employees that it had decided to end the Leased Vehicle Arrangement, effective January 2025, on October 3, 2024, without having first informed the Union of that decision. The specificity of the announcement and implementation date indicate the decision was a *fait accompli*, conveying an irrevocable decision and demonstrating that bargaining would be futile. *See, e.g., UAW-Daimler Chrysler National Training Center*, 341 NLRB 431, 433 (2004)(finding a fait accompli when the employer told the union that a layoff was a "done deal"). If there were any doubt that Respondent had no intent to bargain in good faith over the Leased Vehicle Arrangement, the Union repeatedly requested that Respondent bargain before implementing the change, even requesting a six-month delay to allow bargaining before implementation, and Respondent refused all such requests, incorrectly asserting it had the right to make the change. Respondent then ceased the Leased Vehicle Arrangement in January 2025, as it foretold. Clearly, Respondent gave the Union no notice and no meaningful opportunity to bargain over its decision to cease the Leased Vehicle Arrangement.

d. Respondent Has No Clear and Unmistakable Waiver or Contract Coverage Defense

As set forth below, Respondent cannot make out a defense under the extant "unmistakable waiver" standard, nor under the "contract coverage" standard.

i. No Clear and Unmistakable Waiver Defense

Under extant law, an employer may defend a charge that it has unilaterally changed its employees' terms and conditions of employment by showing that the union representing those employees "clearly and unmistakably" waived its right to bargain over the change at issue. *Endurance Environmental Solutions, LLC*, 373 NLRB No. 141 (2024) (*Endurance*)

(overruling *MV Transportation* and the "contract coverage" defense and returning to the "unmistakable waiver" standard). Under this standard, contractual waivers of statutory rights, including the fundamental right of employees "to bargain collectively through representatives of their own choosing," will not be lightly inferred and must be "clear and unmistakable." *Id.,* citing *Metropolitan Edison*, 460 U.S. 693, 708 (1983); *C & C Plywood,* 385 U.S. 421, 430 (1967); *Provena*, 350 NLRB 808, 812 (2007). Waiver can be established through provisions in the parties' collective-bargaining agreement, by the conduct of the parties (including past practice, bargaining history, and action or inaction), or by a combination of the two. *American Diamond Tool*, 306 NLRB 570 (1992).

Waiver is an affirmative defense, and "[a] party therefore may not establish waiver through ambiguous evidence" or evidence that is equivocal. *UFCW Local 7,* 375 NLRB No. 55, *supra* slip op. at 3. The *UFCW Local 7* Board reversed the ALJ to find that the staff union had not clearly and unmistakably waived its right to bargain over the union-as-employer's unilateral decision to reduce the allowance it paid employees for using their personal vehicle for in-town employer business from $868 to $809 (it simultaneously increased the out-of-town allowance, which was not an issue in the case). *Id.* The parties had a contract that provided that employees on a car allowance would receive an in-town allowance of $780, an out-of-town allowance of $1,025, and that "[e]very twelve (12) months from the date of ratification the Parties will review average cost of Union cars."

In *UFCW Local 7,* the evidence showed that for years, the employer had conducted an annual review of the allowance, and the union had never requested bargaining when the employer either announced that it would raise the allowance or leave it unchanged. *Id.* However, the employer had never before sought to decrease the allowance, as it did in this

case, so "even assuming [the union] had waived its right to bargain over whether to *increase* the car allowance, and if so by how much, the record on past practice is not sufficient to find a clear and unmistakable waiver of its right to bargain over decisions to *decrease* the rate. *Id.,* citing *NBCUniversal Media, LLC*, 371 NLRB No. 5, slip op. at 1 fn. 1 (2021) (finding that waiver of right to bargain over annual merit-based raises did not waive right to bargain over recission of raises), enfd. 2022 WL 2387524 (D.C. Cir. 2022).

Similarly, the *UFCW Local 7* Board found the evidence regarding the parties' bargaining history that the provision was added to "bargaining over *it* every single year" was too ambiguous to establish a waiver, because "["it"] could refer to the amount of the *allowance* (i.e., whether it will go up, down, or remain the same) or the amount of the *increase* (i.e., whether it will go up and, if so, by how much). Only the former would tend to support finding waiver over decisions to reduce the allowance." *Id.*, citing *Johnson-Bateman Co.*, 295 NLRB 180, 185 (1989) ("Waiver of a statutory right may be evidenced by bargaining history, but the Board requires the matter at issue to have been fully discussed and consciously explored during negotiations and the union to have consciously yielded or clearly and unmistakably waived its interest in the matter.").

Here, Respondent cannot show that the Union clearly and unmistakably waived its right to bargain over the cessation of the Leased Vehicle Arrangement. There is no evidence that Respondent had previously sought to change the practice in any meaningful way. Although the CBA does include provisions for financial reimbursement when Unit employees use a personal vehicle for company business and states that when company vehicles are provided, they will have seatbelts in conformity with the law, there are no provisions related to the Leased Vehicle Arrangement or its components, let alone any

provision prohibiting the Leased Vehicle Arrangement or providing the Respondent the discretion to cease the Leased Vehicle Arrangement. The inclusion of the provision regarding reimbursement for the use of a personal vehicle for company business does not foreclose Respondent's extra-contractual practice of providing the Leased Vehicle Arrangement to Chronicle photographers, and it certainly does not establish waiver of the right to bargain over its cessation.

Moreover, the fact that the Union never sought the Leased Vehicle Arrangement for the SFGATE photographers also fails to establish any waiver—when the SFGATE photographers were added to the Unit in 2018, Respondent's decades-long Leased Vehicle Arrangement practice had never applied to them. While the Union certainly could have requested that Respondent bargain over extending the Leased Vehicle Arrangement to the SFGATE photographers, its failure to do so does nothing to establish a waiver of Respondent's unrelated decision to take the benefit away from the only Unit employees that had benefited from the Leased Vehicle Arrangement. As in *UFCW Local 7*, the Union's failure to bargain over the years that the Leased Vehicle Arrangement was in place does not establish a waiver over the decision to eliminate it. The fact that the Leased Vehicle Arrangement was not provided to all unit employees, or that the Union never sought to have the practice extended to additional photographers or other Unit employees, does not establish that the Union waived its right to bargain over the cessation of the practice.

ii. No Contract Coverage Defense

Similarly, if the Board decides to apply the contract coverage defense, Respondent cannot rely on it here. Under the contract coverage standard:

> [T]he Board will examine the plain language of the collective-bargaining agreement to determine whether the action taken by an employer was within the compass or scope of

> contractual language granting the employer the right to act unilaterally." *MV Transportation, Inc.*, 368 NLRB No. 66, slip op. at 2 (2019). If "the agreement does not cover the employer's disputed act, and that act has materially, substantially, and significantly changed a term or condition of employment constituting a mandatory subject of bargaining, the employer will have violated Sec[.] 8(a)(5) and (1) unless it demonstrates that the union clearly and unmistakably waived its right to bargain over the change or that its unilateral action was privileged for some other reason." Id. (internal footnotes omitted).

UFCW Local 10, 375 NLRB No. 55, *supra* at n. 10.

As noted previously, terms and conditions of employment can be established not only by contract, but also by past practice, as is the case here, even if they contradict language in the parties' contract. *See Asociacion De Empleados*, 370 NLRB No. 71, *supra* and *Intermountain Rural Electric Assn.*, 305 NLRB at 787-788. Here, the Leased Vehicle Arrangement is not a creature of contract, but rather past practice. The CBA does not reference the Leased Vehicle Arrangement, let alone contradict or forbid it—in fact, the CBA contemplates that Respondent may provide Unit employees with company vehicles.[6] Thus, there is no contractual language at all on which Respondent can rely.

The Chronicle photographers have at all material times been entitled under the CBA to use their personal vehicles and seek reimbursement under the contract, including during the decades that they enjoyed the extra-contractual benefit of the Leased Vehicle Arrangement. Any attempt by Respondent to suddenly assert that the long co-existing CBA provisions for reimbursement for use of a personal vehicle for company business provides an arguable basis for canceling the longstanding past practice of the Leased Vehicle Arrangement is disingenuous at best and should be flatly rejected. Even beyond the fact that

[6] "Company vehicles supplied by the Employer shall be equipped with approved seat belts for all passengers as required by law." *See* Jt. Exs. 2 and 3 and Art. XXII (e); Jt. Exhibit 4 and Art. XXIII (e).

one has no bearing on the other, the longstanding co-existence of the two should be used against any argument that Respondent was privileged to rely on the contractual provision at the expense of the longstanding past practice.

B. Respondent Unreasonably Delayed in Providing Information to the Union in Violation of Section 8(a)(5)

1. Legal Standards

Section 8(a) (5) of the Act requires an employer to provide a union with relevant information that is necessary for the proper performance of its duties as the exclusive bargaining representative. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152 (1956); *NLRB v. Acme Industrial Co*., 385 U.S. 432, 435-436 (1967); *Detroit Edison Co. v. NLRB,* 440 U.S. 301 (1979). Information concerning employees in the bargaining unit and their terms and conditions of employment is deemed "so intrinsic to the core of the employer-employee relationship" to be presumptively relevant. *Disneyland Park*, 350 NLRB 1256, 1257 (2007); *Sands Hotel & Casino*, 324 NLRB 1101, 1109 (1997). When requested information is presumptively relevant or has been demonstrated to be relevant, the burden shifts to the respondent to establish that the information is not relevant, does not exist, or for some other valid and acceptable reason cannot be furnished to the requesting party. *Samaritan Medical Center*, 319 NLRB 392, 398 (1995), citing *Sommerville Mills*, 308 NLRB (1992); *Postal Service*, 276 NLRB 1282 (1985).

"An unreasonable delay in furnishing [requested relevant] information is as much of a violation of Section 8(a)(5) of the Act as a refusal to furnish the information at all." *Woodland Clinic*, 331 NLRB 735, 736 (2000). The duty to furnish information "require[s] a reasonable, good-faith effort to respond to the request as promptly as circumstances allow." *Good Life Beverage Co.*, 312 NLRB 1060, 1062 fn. 9 (1993). As the Board stated in *Columbia University*:

> [A]n employer must respond to a union's request for relevant information within a reasonable time, either by complying with it or by stating its reason for noncompliance within a reasonable period of time. Failure to make either response in a reasonable time is, by itself, a violation of Section 8(a)(5) and (1) of the Act.

Columbia University, 298 NLRB 941, 945 (1990), citing *Ellsworth Sheet Metal*, 232 NLRB 109 (1977); *see also L.I.F. Industries a/k/a Long Island Fire Proof,* 366 NLRB No. 4 (2018); *Regency Service Corp*., 345 NLRB 671 (2005). A delay in advising a Union that information it requested does not exist violates the Act. *Graymont PA, Inc*., 364 NLRB No. 37, slip op. at 10 (2016). *See also Endo Painting Service, Inc*., 360 NLRB 485, 486 (2014) (duty to bargain includes the duty "to timely disclose that requested information does not exist."). Similarly, an outright failure to inform a union that the information it requested does not exist violates the Act. *Ascension Borgess Hosp. & Michigan Nurses Ass'n*, 372 NLRB No. 86 (May 9, 2023).

"To determine whether requested information has been provided in a timely manner, the Board considers a variety of factors, including the nature of the information sought, the difficulty in obtaining it, the amount of time the employer takes to provide it, the reasons for the delay, and whether the party contemporaneously communicates these reasons to the requesting party." *TDY Industries, LLC d/b/a ATI Specialty Alloys & Components, Millersburg Operations*, 369 NLRB No. 128, slip op. at 2 (2020), citing *Safeway, Inc.*, 369 NLRB No. 30, slip op. at 7 (2020). Although the Board looks at the totality of the circumstances and does not use a bright line test, even short delays can be unreasonable when the information requested is easily and readily accessible from an employer's files. *Postal Service,* 308 NLRB 547, 551 (1992) (four-week delay unreasonable); *Postal Service,* 359 NLRB 56, 58 (2012)(one-month delay unreasonable); *International Credit Service,* 240 NLRB 715, 718-719 (1979), enfd. in relevant part 651 F.2d 1172 (6th Cir. 1981) (six-week delay unreasonable); *Monmouth Care Center,* 354 NLRB 11, 52

(2009), enfd. 672 F.3d 1085 (D.C. Cir. 2012) (six-week delay unreasonable); *Bundy Corp*., 292 NLRB 671, 672 (1989)(6 week delay unlawful); *Postal Service*, 365 NLRB No. 51 (2017)(2 ½ month delay unlawful).

2. Application

The analysis here is not difficult: the Union requested presumptively relevant information that expressly related to the Leased Vehicle Arrangement, a decades-long practice benefiting the Chronicle photographers in the Unit, mere days after learning that Respondent had announced to them that it was ending the Leased Vehicle Arrangement. The only justification Respondent provided to the Union for the delay was its belief that the information was not relevant and overbroad, even after the Union explained that it needed the information to formulate bargaining proposals to accompany its requests that Respondent refrain from implementing the cessation of the Leased Vehicle Arrangement and its need to bargain over the effects.

There can be no doubt that the information requested was relevant and necessary for the Union in its role as exclusive representative of the employees to bargain and potentially prevent or find alternatives to the cessation of the Leased Vehicle Arrangement, and if not successful there, to bargain over the effects of that decision. Each request focused on the cost, mechanics, or other aspects of the Leased Vehicle Arrangement, and any alternatives that Respondent considered. Respondent cannot show that the narrowly-tailored requests were overbroad.

There are no other facts in the Stipulated Record that would otherwise justify the delay, nor any evidence that, if there were, Respondent met its good-faith obligation to contemporaneously communicate those facts to the Union. *See, e.g., TDY Industries, LLC*, 369 NLRB No. 128, slip op. at 2, *supra*, and cases cited therein.

IV. RESPONDENT'S CONSTITUTIONAL DEFENSES LACK MERIET

Respondent's Answer raises a litany of constitutional and other arguments that lack merit. *See* Joint Exhibit 18. If these arguments are not developed in Respondent's post-hearing brief, they have been forfeited and should be summarily rejected on that basis. A respondent "fail[s] to meet its burden" to establish affirmative defenses—including those "based on alleged violations of its rights under the U.S. Constitution"—if it neglects to "present evidence or argument regarding those defenses" at the hearing or in its post-hearing brief. *Starbucks Corp.*, Case 18-CA-299560, JD-23-23 slip op. at 2 n.2 (Apr. 6, 2023); *accord Greenhouse Group, LLC*, Case 13-CA-304261, JD-46-25 slip op. at 2 n.2 (May 22, 2025); *Trader Joe's East Inc.*, Case 01-CA-296847, JD-70-24 slip op. at 65 n.160 (Nov. 8, 2024); *Starbucks Corp.*, Case 29-CA-309779, JD(NY)-21-24 slip op. at n.3 (Sept. 18, 2024); *Starbucks Corp.*, Case 13-CA-316407, JD-37-24 slip op. at 2 n.2 (June 14, 2024); *Starbucks Corp.*, Case 14-CA-306625, JD-24-24 slip op. at 18 n.7 (Apr. 25, 2024); *Starbucks Corp.*, Case 27-CA-294617, JD(SF)-04-24 slip op. at 2 n.1 (Feb. 6, 2024); *Starbucks Corp.*, Case 19-CA-295708, JD-02-24 slip op. at 26 n.33 (Jan. 4, 2024); *Starbucks Corp.*, Case 19-CA-296765, JD(SF)-37-23 slip op. at 43 (Nov. 27, 2023); *Starbucks Corp.*, Case 20-CA-298282, JD(SF)-18-23 slip op. at 2 n.2 (July 31, 2023); *Starbucks Corp.*, Case 22-CA-305726, JD(NY)-14-23 slip op. at 15 n.6 (July 14, 2023).

And even if the arguments are adequately raised and preserved, they lack merit, as outlined below.

A. The Act's Removal Protections for the Board and Administrative Law Judges are Constitutional

Respondent's fourth and fifth affirmative defenses claim that the removal protections Congress granted to Board members and administrative law judges are unconstitutional. This affirmative defense fails because "there is no evidence that the Respondent suffered any harm

from the Board members' and administrative law judges' removal protections." *Commonwealth Flats Dev. Corp.*, 373 NLRB No. 142, slip op. at 1 n.1 (2024); *SJT Holdings, Inc.*, 372 NLRB No. 82, slip op. at 1 n.4 (2023) (citing *Collins v. Yellen*, 141 S. Ct. 1761, 1787 (2021), and *Calcutt v. FDIC*, 37 F.4th 293, 316 (6th Cir. 2022), *rev'd per curiam on other grounds*, 598 U.S. 623 (2023)); *YAPP USA Auto. Sys., Inc. v. NLRB*, 748 F. Supp. 3d 497, 509-11 (E.D. Mich. 2024) (applying causal-harm standard to reject constitutional challenge to removal protections enjoyed by Board members and administrative law judges), *injunction pending appeal denied*, No. 24-1754, 2024 WL 4489598 (6th Cir. Oct. 13, 2024), *emergency application for writ of injunction denied*, No. 24A348, 2024 WL 4508993 (U.S. Oct. 15, 2024) (Kavanaugh, J.).

Because Respondent cannot make—and indeed, has not even tried to make—the required showing of harm here, Respondent's removal-restrictions arguments should be rejected solely on lack-of-harm grounds. *Cortes v. NLRB*, No. 1:23-cv-02954, 2024 WL 1555877, at *7 (D.D.C. Apr. 10, 2024) (declining to address the constitutionality of Board members' removal protections because "the Court could 'dispose of the case' on the harm requirement" (quoting *Bond v. United States*, 572 U.S. 844, 855 (2014))), *affirmed on other grounds*, 145 F.4th 57 (D.C. Cir. 2025). Although a Board majority addressed the merits of Board members' removal protections in *SJT Holdings*, above, at 1, contested questions concerning the scope of the President's constitutional powers should be left to the courts to decide, as then-Member Kaplan correctly urged in that case. *Id.* at 2 n.5.

B. The Act Does Not Unlawfully Combine Executive Power and Removal Protection

Equally unavailing is Respondent's sixth affirmative defense, which alleges that the NLRB unconstitutionally exercises legislative, executive and judicial powers in the same administrative proceedings. But this argument ignores that by congressional design "[t]he NLRA

creates a stark division of labor between the General Counsel and the Board," *Exela Enter. Sols. v. NLRB*, 32 F.4th 436, 444 (5th Cir. 2022), that runs "along a prosecutorial versus adjudicatory line," *NLRB v. United Food & Com. Workers Union, Loc. 23*, 484 U.S. 112, 124 (1987). The General Counsel carries out the functions assigned to that position under Section 3(d) of the Act "independent of the Board's supervision and review," *id.* at 118, so Respondent's structural challenge is inapt. *See NLRB v. FLRA*, 613 F.3d 275, 281 n.* (D.C. Cir. 2010) (observing that "the statutory separation mandated by § 3(d) is unique" among federal agencies). Thus, the Board has rejected the argument that "the agency wields a structurally unconstitutional combination of prosecutorial and adjudicatory functions." *Jones Lang Lasalle Americas, Inc.*, 373 NLRB No. 37, slip op. at 1 n.1 (2024) (citing *Illumina, Inc. v. FTC*, 88 F.4th 1036, 1047 (5th Cir. 2023)), *enforced*, 128 F.4th 1288 (D.C. Cir. 2025); *accord Amazon.com Services LLC*, Case 29-CA-261755, slip op. at 1 n.2 (2024) (not reported in Board volumes).

C. The Act Does Not Violate the Seventh Amendment Trial Right

Respondent's seventh affirmative defense claims that any hearing in this matter would violate its rights under the Seventh Amendment. But "the Supreme Court has considered, and rejected, the Respondent's Seventh Amendment claim." *Troutbrook Co.*, 373 NLRB No. 125, slip op. at 2 (2024) (citing *NLRB v. Jones & Laughlin Steel Co.*, 301 U.S. 1, 48–49 (1937)). Recent decisions by courts and administrative law judges are in accord. *See Operating Engineers Local 39 v. NLRB*, 155 F.4th 1023, 1049 (9th Cir. 2025) ("We therefore conclude that the Board's invocation of *Thryv*'s make-whole relief framework in this case vindicates a public right."), *cert. denied sub nom. Macy's Inc. v. NLRB*, No. 25-627, 2026 WL 1717973 (U.S. June 15, 2026); *YAPP USA Auto. Sys.*, 748 F. Supp. 3d at 515 (holding that a Seventh Amendment challenge to an unfair-labor-practice proceeding "would likely fail based on the public-rights

exception"); *CP Anchorage Hotel 2, LLC*, Cases 19-CA-218585 et al., JD(SF)28-24, slip op. at 19 (2024) ("The Board may resolve any doubts about the Board's make-whole remedy based solely on the public-rights exception to the Seventh Amendment."); Order Denying Respondent's Motion to Dismiss Compliance Specification, *Oak Harbor Freight Lines, Inc.*, Case 19-CA-031797 (Div. of Judges Sept. 16, 2024) ("Another reason why the Seventh Amendment does not apply is because this Board proceeding comes within the 'public rights' exception to the Seventh Amendment."); Order Denying Respondent's Demand and Motion for Jury Trial, *Advanced Marine Concepts LLC*, Case 14-CA-326677 (Div. of Judges July 23, 2024).[7]

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[7] Because Congress has "significant latitude to assign adjudication of public rights to entities other than Article III courts," Oil States Energy Sers., LLC v. Greene's Energy Grp., LLC, 584 U.S. 325, 334 (2018), the public-rights doctrine also suffices to defeat Respondents' argument that violations of the NLRA must be adjudicated by an Article III court. As the Supreme Court has repeatedly recognized, "[t]he Board asserts a public right vested in it as a public body, charged in the public interest with the duty of preventing unfair labor practices." *Nat'l Licorice Co. v. NLRB*, 309 U.S. 350, 364 (1940). Its orders "vindicate public, not private rights." *Va. Elec. & Power Co. v. NLRB*, 319 U.S. 533, 543 (1943).

V. CONCLUSION

Based on the foregoing, the General Counsel respectfully requests that Your Honor find that Respondent has violated Section 8(a)(5) and (1) as alleged in the Complaint and issue a Decision and Order granting all appropriate relief.

DATED AT San Francisco, California, this 27th day of October, 2026.

/s/ Matthew Peterson

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