UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

REGION 32

CLEAN EARTH, INC. **and** **TEAMSTERS LOCAL 533**	**Cases 32-CA-363439** **32-CA-364137** **32-CA-376133** **32-CA-376872** **32-CA-379219**

GENERAL COUNSEL'S ANSWERING BRIEF TO RESPONDENT'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

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I. PRELIMINARY STATEMENT

In September 2024, Teamsters Local 533 (Union) was elected as the exclusive bargaining representative for a unit of six drivers at Respondent's Fernley, Nevada facility (Unit).[1] In February 2025, Respondent and Union bargained to reach an overall first collective-bargaining agreement (CBA) but Respondent refused to sign or implement the agreement. Instead, Respondent made a series of unilateral changes to Unit positions that ultimately reduced the Unit to a single employee. After engineering a Unit of one, Respondent promptly withdrew recognition of the Union and declined any further engagement, including declining to respond to a request for information regarding the unilateral changes to Unit positions. The Union filed unfair labor practice charges (ULPs) with Region 32 of the National Labor Relations Board (NLRB or Board) alleging Respondent's actions violated the Act.

On March 13, 2026, the Regional Director of Region 32 of the NLRB issued the Third Amended Complaint and Notice of Hearing (Complaint) based on the ULPs filed by the Union. On May 5, 2026, a hearing on the outstanding allegations from the Complaint was held in Reno, Nevada before Administrative Law Judge Christal J. Key (Judge Key). On August 27, 2026, based on the entire record, including personal observation of the demeanor of witnesses and the briefs filed by the parties, Judge Key issued a decision (ALJD) correctly finding Respondent failed and refused to bargain collectively with the Union in violation of Sections 8(a)(1) and (5) of the Act by 1) failing and refusing to execute the CBA which the parties agreed to in February 2025; 2) failing to give notice and bargain with the Union regarding the decision and effects of transferring a Somerton, Arizona driving route away from the Unit; 3) failing to give notice to

[1] On October 10, 2024, the Regional Director for Region 32 issued a Certification of Representative certifying the Union to represent the Unit.

and bargain with the Union regarding Respondent's decision to transfer Unit employee Steven Quinn to a non-Unit hostler position around August 11, 2025; 4) failing to give notice to and bargain with the Union regarding Respondent's decision to transfer Unit employee Armel Balmediano to a non-Unit hostler position around October 6, 2025; 5) failing to give notice to and bargain with the Union regarding the effects of Respondent's decision to transfer Unit employees Quinn and Balmediano from their Unit positions to a hostler position, eliminating their driving routes, and treating the newly created hostler position as non-Unit; 6) withdrawing recognition from the Union as the exclusive bargaining representative of the Unit on around November 19, 2025; and 7) failing and refusing to provide the Union with information necessary and relevant to its role as collective-bargaining representative of the Unit since about November 19, 2025.

Respondent filed Exceptions to the ALJD on October 23, 2026 (Respondent's Exceptions). Respondent's Exceptions are without merit and should be overruled, as the ALJD is wholly supported by appropriate findings of fact and conclusions of law. Pursuant to Section 102.46(d)(1) of the Board's Rules and Regulations, Series 8 as amended, Counsel for the General Counsel files this brief in answer to Respondent's Exceptions. For the reasons discussed below, Counsel for the General Counsel respectfully requests that the Board reject Respondent's arguments and adopt the ALJ's sound determinations in this matter.

II. RESPONDENT'S EXCEPTIONS SHOULD BE OVERRULED IN THEIR ENTIRETY[2]

Though cleverly couched within their arguments on the substance of the ALJD, nearly all of Respondent's exceptions stem from Judge Key's credibility findings. The Board's long-

[2] The following abbreviations are used herein: "Tr." for transcript; "Jt. Exh." for Joint exhibit; "GC Exh." for General Counsel exhibit; "R Exh." for Respondent exhibit; "GC Brf. to ALJ" for General Counsel's Post-hearing

established policy is not to overrule an ALJ's credibility resolutions unless the clear preponderance of all the relevant evidence establishes that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). Respondent's general disagreement with Judge Key's credibility findings does not establish that those findings are incorrect.

A. Judge Key Had Proper Authority to Decide This Matter

Respondent asserts that because the Fifth Circuit has ruled that the NLRB ALJ removal restrictions are unconstitutional, the instant proceedings violate its rights under Article II, Article III, the First and Seventh Amendments, and the Due Process Clause.[3]

Following the lead of many courts, the Board has applied the "causal-harm" principle to reject challenges to statutory removal restrictions where "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); *see 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)). The causal-harm requirement sets a very high bar: to obtain any relief, a removal-restriction challenger "must demonstrate that the unconstitutional removal provision actually affected the agency's decision or conduct against him." *Leachco, Inc. v. CPSC*, 103 F.4th 748, 756 (10th Cir. 2024), *cert. denied*, 145 1047 (2025); *see also Calcutt*, 37

Brief to the ALJ; "R Brf. to ALJ" for Respondent Post-hearing Brief to the ALJ; "ALJD" for Judge Key's August 27, 2026 Decision in case 32-CA-363439 et al.; "R Exc." for Respondent Exceptions to the Decision of Administrative Law Judge Christal J. Key; "R Exc. Brf." for Respondent's Brief In Support of Exceptions to the Decision of Administrative Law Judge Christal J. Key. Specific citations to the transcript and exhibits are included where appropriate to aid review and are not exclusive or exhaustive.

[3] Respondent cites to *Space Exploration Technologies Corp. v. NLRB*, 151 F.4th 761 (5th Cir. 2025) in support of its constitutional arguments.

F.4th at 318 (rejecting "vague assertions" and "generalized allegation[s]" about what officials might have done had challenged removal restrictions not been in place). Other circuits agree with this analytical framework. *See Bhatti v. FHFA*, 97 F.4th 556, 561 (8th Cir. 2024); *CFPB v. Nat'l Collegiate Master Student Loan Tr.*, 96 F.4th 599, 613-16 (3d Cir. 2024), *cert. denied*, 145 S. Ct. 984 (2024); *K & R Contractors, LLC v. Keene*, 86 F.4th 135, 149 (4th Cir. 2023); *CFPB v. L. Offs. of Crystal Moroney, P.C.*, 63 F.4th 174, 180 (2d Cir. 2023), *cert. denied*, 144 S. Ct. 2579 (2024); *CFPB v. CashCall, Inc.*, 35 F.4th 734, 742-43 (9th Cir. 2022). Because Respondent cannot make—and indeed, has not even tried to make—the required showing of harm here, the Board can reject Respondent's removal-restrictions arguments on lack-of-harm grounds without addressing the merits of these challenges. *Cf. 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).

The Board should not address the merits of Respondent's removability challenges, in any event. To be sure, in *SJT Holdings*, a Board majority rejected a challenge to Board members' removal protections based on its interpretation of "Supreme Court precedent recognizing that Congress may establish expert agencies like the Board, led by a group of principal officers and removable by the President only for good cause." *SJT Holdings*, above, at 1 (citing *Humphrey's Ex'r v. United States*, 295 U.S. 602 (1935)). Notably, then-Member Kaplan did not join the majority "in reaching the merits of the constitutional issue." *Id.* at 2 n.5. Rather, consistent with his and former Member Ring's earlier concurring opinion in *Aakash, Inc.*, 371 NLRB No. 46 (2021) (addressing the President's authority to remove the General Counsel), then-Member

Kaplan thought it was "for the courts, not the Board, to make the initial and final determinations on the issues presented here." *SJT Holdings*, above, at 2 n.5 (quoting *Aakash*, 371 NLRB No. 46, at 4-5). The Supreme Court's subsequent overruling of *Humphrey's Executor* in *Trump v. Slaughter*, No. 25-332, 2026 WL 1855612 (U.S June 29, 2026), as well as the President's removal of former Member Wilcox, which is now the subject of active litigation, *see Wilcox v. Trump*, 775 F. Supp. 3d 215 (D.D.C. 2025), *reversed sub nom. Harris v. Bessent*, 160 F.4th 1235 (D.C. Cir. 2025), *petition for cert. filed*, No. 26-5 (U.S. June 27, 2026), demonstrates the wisdom of then-Member Kaplan's approach. See *Trump v. Wilcox*, 145 S. Ct. 1415, 221 L. Ed. 2d 985 (2025). Accordingly, the General Counsel urges the Board to resolve these issues solely on causal-harm grounds.

Respondent's constitutional exceptions should be overruled.

B. Judge Key Correctly Found that Respondent Violated Sections 8(a)(1) and (5) of the Act by Failing and Refusing to Execute the Parties' Written Contract

Respondent does not deny that the parties reached a full agreement on the terms of a Tentative Agreement (TA) on February 25, 2025 (Jt. Exh. 1 at para. 6). Respondent further admits the Union ratified the TA on March 22, 2025. (GC Exh. 1(ll), 1(nn); Complaint and Answer paras. 9(f)). Respondent also admits that the Union informed Respondent of the TA ratification and thereafter submitted a formalized Collective Bargaining Agreement (CBA) to Respondent for signature (Jt. Exh. 1 at paras. 8, 9). Respondent further admits that it refused to sign the ratified CBA (Jt. Exh. 1 at paras. 10, 18). These facts alone substantiate Judge Key's finding that Respondent violated Sections 8(a)(1) and (5) of the Act by failing and refusing to execute the parties' written contract. *H.J. Heinz Co. v. NLRB*, 311 U.S. 514, 523-526 (1941).

Respondent's sole defense, which the ALJ correctly rejected, is that a pending unfair labor practice charge (ULP) filed by two employees related to the TA ratification process warranted Respondent's refusal to sign. As correctly analyzed by Judge Key, Respondent's defense is without merit. Because ratification is an internal union matter or procedure, an employer "may not lawfully refuse to sign a contract on the basis that the union's ratification procedures were not in accordance with the requirements of its constitution and bylaws [citations omitted], or that the ratification vote was tainted by procedural defects [citations omitted], or even that the union coerced its members into voting for ratification. . . ." *Teamsters Local 251 (McLaughlin & Moran)*, 299 NLRB 30, 32 (1990). Once the exclusive collective-bargaining representative tells the employer that a ratification vote has been conducted, even when there has been actual agreement to conduct a ratification election, the employer "may not raise questions concerning the Union's internal procedures in order to avoid its obligation to sign the agreed-upon contract." *Martin J. Barry Co.,* 241 NLRB 1011 (1979). An employer's awareness of "improprieties in ratification elections, failure of a majority of employees to vote in favor of ratification and, even, failure to conduct such a ratification election at all, do not suffice to justify refusals to execute contracts embodying agreements reached, once bargaining representatives give notice that ratification has occurred." *Teamsters Local 662 (W.S. Darley & Co.)*, 339 NLRB 893, 898 (2003); See *Newtown Corp.*, 280 NLRB 350, 351 (1986), enfd. per curiam 819 F.2d 677 (6th Cir. 1987).

In its exceptions, Respondent attempts to justify its refusal to execute the parties' CBA based on alleged ratification issues by asserting that it was not Respondent challenging the ratification but two other employees who filed ULP charges related to the ratification process and Respondent was merely giving deference to the Board to resolve those ULPs "out of respect for

the two employees' challenge to the Union process" (R Exc. Brf. 5-6). However, it is well settled that the pendency of ULP charges before the NLRB — including charges filed by employees challenging a union's TA ratification process — does not suspend or excuse Respondent's obligation to sign the CBA. See, e.g. *M & M Oldsmobile, Inc.*, 156 NLRB 903, 906 (1966), efd. *NLRB v. M & M Oldsmobile, Inc.*, 377 F.2d 712 (2d Cir. 1967) (an employee's challenge to ratification does not free an employer from its obligation to execute the agreement, where "[t]o hold otherwise would be to allow a dissident employee or group of employees […] to frustrate the expressed will of the majority").[4]

To the extent that Respondent seeks to portray itself as a champion of its workers' rights in refusing to execute the CBA out of "respect" for employees' ULP charges, the General Counsel notes the admonition of the United States Supreme Court in *Fall River* (482 U.S. at 50 n.16) later reiterated in *Auciello Iron Works, Inc. v. NLRB*, 517 U.S. 781, 790 (1996): "To allow employers to rely upon employees' rights in refusing to bargain with the formally designated union is not conducive to industrial peace, it is inimical to it" (citation omitted). Judge Key thus correctly dismissed this defense.

Counsel for the General Counsel accordingly urges the Board to adopt the ALJ's sound reasoning and conclude here that Respondent violated Sections 8(a)(1) and (5) of the Act by failing and refusing to execute the parties' written contract.

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[4] Judge Key correctly distinguished the facts of the instant case from Respondent's sole cited authority to support its defense, *International Paper Co.*, 309 NLRB 44 (1992). *International Paper Co.* involved charges filed by an employer against a union alleging the union violated Sections 8(b)(3) and 8(d) of the Act by engaging in bad-faith bargaining in its dealings with the employer. Conversely here, Respondent claims to be wholly uninvolved in the ULPs at issue. Respondent's reliance on *International Paper Co.* is therefore misplaced. Once a union representative manifests final assent to a particular agreement, a binding contract is created and the parties' obligation to execute under Section 8(d) arises without further ado. *Beatrice/hunt-Wesson, Inc.*, 302 NLRB 224 (1991). To hold otherwise would create the prospect of "protracted litigation regarding the union's compliance with its own procedures," thereby encouraging industrial instability. *Id.* at 225.

C. Judge Key Correctly Found that Respondent Violated Sections 8(a)(1) and (5) of the Act by Transferring the Second Somerton Route on March 31, 2025

1. Judge Key Made Appropriate Credibility Determinations Regarding Jennifer Anderson

The bulk of Respondent's exceptions to Judge Key's finding that Respondent violated Sections 8(a)(1) and (5) of the Act by unilaterally transferring a Somerton driving route on March 31, 2025, center on Respondent's disagreements with Judge Key's credibility findings (R Exc. Brf. 8-9). Specifically, Respondent challenges Judge Key's credibility determinations regarding Field Service Manager Jennifer Anderson.

However, Judge Key carefully supported her credibility findings and was correct to discredit Field Service Manager Jennifer Anderson's testimony that Respondent could not have allowed Irwin to continue running his Somerton route. Judge Key based her credibility determination in part on what she perceived as Anderson's "lack[] of candid and forthright demeanor," specifically finding Anderson was forthcoming on direct but refused to answer straight forward questions on cross examination and was argumentative [ALJD at 12].

Because the demeanor of a witness is a factor of consequence in resolving issues of credibility, and the ALJ, but not the Board, has the advantage of observing the witness while they testified, the Board attaches great weight to an ALJ's findings insofar as they are based on demeanor. *Standard Dry Wall Prods., Inc.*, 91 NLRB at 545 (1950). Respondent's general disagreement with Judge Key's assessment of Anderson's demeanor does not provide a basis for the Board to overrule Judge Key's credibility findings. For example, Respondent disagrees with Judge Key's assessment of Anderson's testimony as argumentative during cross examination (R Exc. Brf. 9). However, Respondent does not point to any discrepancy or error in Judge Key's citations to the transcript. Instead, Respondent merely disagrees with how Judge Key interpreted

Anderson's demeanor and responses during examination. Such subjective disagreement does not establish by a clear preponderance of all the relevant evidence that Judge Key's credibility assessment of Anderson's testimony is incorrect.

Where credibility resolutions are not based primarily on demeanor, the Board may make an independent evaluation of credibility based on the weight of evidence, established facts, inherent probabilities, and reasonable inferences drawn from the record as a whole. *Amentum Servs., Inc.*, 374 NLRB No. 16 (Dec. 16, 2024), citing *Capstone Logistics LLC and Associated Wholesale Grocers, Inc.*, 372 NLRB No. 124, slip op. at 1 fn. 4 (2023) (internal citations omitted). As noted above, Anderson's demeanor was clearly central to Judge Key's credibility determinations, such that an independent non-demeanor based evaluation of credibility is not necessary. Nevertheless, even a de novo review of the additional evidence and considerations regarding Anderson's testimony support Judge Key's credibility findings. Judge Key carefully and correctly considered Anderson's testimony in the context of other testimony and evidence and, where inconsistencies and contradictions arose, weighed those considerations as part of her credibility findings (ALJD 11-12).

Judge Key correctly noted non-exhaustive examples of the Somerton routes being performed by Fernley-based, Union drivers, which undercut Anderson's assertions that Respondent had already moved the route out of Fernley and was unable to maintain the route from Fernley. For example, Anderson previously assigned the route to Balmediano when Irwin was unavailable (Tr. 80-81, Jt. Exh. 19). Anderson and Granados also testified that Respondent hires third parties to run the Somerton routes when needed, which would be a viable option in any isolated events where Fernley-based drivers needed augmentation (Tr. 162, 181). Finally, Anderson testified and Respondent documents reflect that even after the Somerton route was

transferred to Somerton and even well into 2026, Fernley's drivers filled in on the route when Somerton drivers were unable to cover the route, again contradicting Anderson's assertion that Respondent was unable to maintain the route from Fernley (Tr. 178; Jt. Exh. 19 at 27; Jt. Exh. 20 at 11). Fernley drivers routinely covering when Somerton drivers were unavailable also makes clear that, instead of removing the Somerton route completely from Fernley-based drivers, Respondent could have maintained the route in Fernley with the option for coverage from Somerton-based drivers on an as-needed basis. Such evidence readily discredited Anderson's testimony causing Judge Key to find Anderon's testimony was "not logical" and was contradicted by other evidence including documents and testimony (ALJD at 12).

Respondent makes much ado about Judge Key's characterization of Anderson's testimony as "not logical" when assessed against the contradicting record evidence. Specifically, when weighing the credibility of Anderson's testimony that Respondent had no option but to seek applicants from outside Fernley to drive the Somerton route after the Union election, Judge Key noted that the record evidence established that Respondent already had ready and willing Union-represented drivers at Fernley available to perform the Somerton route. Thus, Anderson's testimony made little sense when viewed in light of the other established facts and the record as a whole, and especially given her overall demeanor. Judge Key passed no judgement on any underlying business decisions of Respondent—only on Anderson's credibility, where her testimony did not match other record evidence, making the plausibility of her testimony illogical or unlikely.

Judge Key clearly explained her decisions to discredit some of Anderson's testimony. In making her findings Judge Key heavily relied on demeanor as well as important contextual factors such as corroboration (or lack thereof), the overall record, and the presence of

inconsistencies in Anderson's testimony. The Board therefore should not overrule Judge Key's credibility resolutions, as a clear preponderance of relevant evidence cannot demonstrate her findings were incorrect.

2. Respondent's March 31, 2025 Transfer of the Somerton Route Was a Material and Substantial Change Requiring Bargaining

Respondent contends that it was not obligated to bargain over its March 2025 transfer of the Somerton route outside the Unit because in June 2024 (prior to the Union filing its petition), Respondent had considered making the same transfer. As Judge Key correctly found, even assuming arguendo Respondent had made a decision to transfer the Somerton route in June 2024, the record demonstrates that Respondent never imagined a date-certain for the change and never actually implemented the transfer at that time. Instead, when facing hiring difficulties in Somerton, Respondent changed course, opting to keep the Somerton route based out of Fernley by the time the Union filed its petition (Jt. Exh 18, 19). Thus, the status quo at the time of Union certification remained that the Somerton route was a Fernley-based route. Indeed, at the time of Union certification, there is no dispute that Fernley-based unit drivers were regularly assigned to the Somerton route (Jt. Exh. 18-19).

The privilege to implement a pre-election decision without bargaining is conditioned on the decision being fixed with reasonable certainty as to its timing. The timing of a decision to eliminate unit-member positions at a particular time is critical to determining if the employer was obligated to notify and bargain about the decision or its effects. *Consol. Printers, Inc.*, 305 NLRB 1061, 1067 (1992). Here, Judge Key correctly found that, even accepting Respondent had made a decision to move a Somerton route in June of 2024 from Fernley-based drivers to Somerton-based drivers, Respondent did not follow-through with that decision because

Respondent was unable to hire any Somerton-based drivers to take the route (Tr. 179, 183; Jt. Exh. 16 at 6). Accordingly, Respondent opted instead to keep the Somerton route operating with Fernley-based drivers, in keeping with Respondent's regular practice (Jt. Exh. 18-19). This decision meant that when Respondent's bargaining obligation attached in September 2024, Respondent was still assigning the Somerton route to Fernley-based drivers. Therefore, when Respondent decided again later to move the Somerton route in March 2025 away from a Fernley-based driver and to a Somerton-based driver, it was obligated to notify and bargain with the Union over the decision and effects. *NLRB v. Carbonex Coal Co.*, 679 F.2d 200 (10th Cir. 1982); *Lawrence Textile Shrinking Co.*, 235 NLRB 1178 (1978). Whether or not the March 2025 decision to change conditions was a wholly new decision or a resurrection of Respondent's earlier June 2024 decision that was not fixed with any reasonable certainty as to timing, Respondent was obligated to provide notice to the Union and an opportunity to bargain. As such, Respondent's March 2025 transfer of the Somerton route was a material and substantial change to Unit work that required notice and bargaining with the Union.[5]

3. Respondent's Argument that the Union Waived Its Right to Bargain Must Be Rejected

Respondent in its exceptions argues—for the first time in this case—that the Union waived any right to bargain by not requesting to bargain over the March 31 transfer of Unit work at the time the Union learned of the transfer. However, these arguments must be rejected because

[5]As discussed further below, even if the Board were to find that Respondent was not obligated to bargain over its March 31 decision to transfer Unit work, Respondent would still be obligated to bargain over the effects of the transfer because Respondent failed to show that there was no possibility of an alternative change in terms of employment. See *Fresno Bee*, 339 NLRB 1214 (2003), citing *Holly Farms Corp. v. NLRB*, 48 F.3d 1360, 1368 (4th Cir. 1995) (where Respondent establishes that a unilateral change was the inevitable consequences of a permissible preelection or managerial decision (and consequently not subject to notice and bargaining with the Union), the employer must show not only that the change resulted directly from that decision, but also that there was no possibility of an alternative change in terms of employment that would have warranted bargaining).

a contention that is raised for the first time on exceptions is ordinarily forfeited. *Littlejohn Electrical Solutions, LLC*, 368 NLRB No. 76, slip op. at 1 n.1 (2019). Respondent fails to explain why the Board should consider these new arguments, which do not appear in its answer and were not argued at the hearing or even in Respondent's post-hearing brief. That being the case, the Board should not now consider Respondent's newly-asserted waiver argument here.

Even so, as Judge Key correctly noted in her decision, where, as here, an employer gives employees notice of a change without providing a union prior notice, the decision is a *fait accompli* and there is no obligation for the union to request bargaining. *Atlantic Veal and Lamb LLC*, 373 NLRB No. 19 slip op. at 21 (2024), citing *Stamping Specialty Co*., 294 NLRB 703 (1989). The record is clear and Respondent does not deny that Respondent never gave notice to the Union about the transfer. Respondent told Unit employee Ben Irwin, who was not an agent for the Union, that he would no longer be running the Somerton route after the decision had already been made. The notice to Irwin was not made with any invitation to discuss, but as a directive in change of assignment (Tr. 64-66; GC Exh. 3).[6] Accordingly, the fait accompli excused the Union from any colorable obligation to formally request bargaining.

Even if Respondent had directly notified the Union rather than a bargaining unit employee, the fait accompli would remain the same. The notice only gave an instruction that Irwin would no longer be performing the Somerton route as of the date of the notice and that Respondent had already hired a Somerton-based driver to take over the route. The timing of notice, after the decision had already been made and implemented, and left no meaningful

[6] When an employer first presents a policy to employees without going through the union, the union's role as exclusive bargaining agent is undermined. See *Times Union, Capital Newspapers Division*, 356 NLRB 1339 (2011), and *S&I Transportation, Inc.*, 311 NLRB 1388 (1993). This is true here, where there is no shortage of Respondent's repeated pattern of disregarding its obligations to notify and bargain with the Union.

opportunity to bargain about the decision or effects. Statements conveying an irrevocable decision constitute significant evidence 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"). Waiver should not be found where the Respondent simply announced and implemented changes as if it had no obligation to bargain over the effects of the changes. *Comau, Inc.*, 364 NLRB 523, 525 (2016), citing *Naperville Jeep/Dodge*, 357 NLRB 2252, 2272 (2012), and cases cited therein, enfd. *Dodge of Naperville v. NLRB*, 796 F.3d 31 (D.C. Cir. 2015), cert. denied 136 S.Ct. 1457 (2016).

Finally, the Respondent's transfer of the route took place in the context of Respondent already unlawfully refusing to execute the collective-bargaining agreement that the parties had agreed to, making clear Respondent had no intention of bargaining in good faith with the Union. See *Pacific Maritime Assn.*, 367 NLRB No. 121, slip op. at 24-25 (2019) (internal citations omitted), enfd. 967 F.3d 878 (D.C. Cir. 2020) (the Board must "evaluate[] the timing of the employer's statements vis-a-vis the actual implementation of the change, the manner in which the change is presented, and other evidence pertinent to the existence of a 'fixed intent' to make the change at issue which obviates the possibility of meaningful bargaining"). The Union promptly filed an unfair labor practice charge against Respondent alleging that it violated Sections 8(a)(1) and (5) of the Act by transferring the route, further evidencing that the Union was by no means waiving its right to bargain even if it did not submit a formal request to bargain to Respondent (GC Exh. 1(i)). *Cascades Containerboard Packaging--Niagara*, 370 NLRB No. 76 (2021) ("[A]ny shortcomings in a union's response to a unilateral change do not constitute a waiver of bargaining where, as here, the employer presented the change as a fait accompli").

In light of Respondent's actions, the Union had no obligation to make what would surely have been a futile request for bargaining over a decision that was already implemented. The Union in no way waived its rights to bargain about the transfer, which is only further evidenced by the ULP charge promptly filed by the Union.

4. Even If the Transfer Resulted Directly from a Permissible, Preelection Decision, Respondent Was Still Required to Bargain Over the Effects of the Decision

Judge Key correctly found Respondent's bargaining obligations included both decisional and effects bargaining for the March 2025 transfer of the Somerton route. However, even if the Board were to find that the transfer was a privileged preelection decision, Respondent was still required to bargain over the *effects* of that decision that are not "'inexorably'" intertwined with, or the 'inevitable consequence' of the decision." *NLRB v. Litton Financial Printing*, 893 F.2d 1128, 1133 n. 3, 1134 (9th Cir. 1990) (quoting *First Nat'l Maintenance*, 452 U.S. at 666, 677, fn. 15 (1981), enfg. 286 NLRB 817 (1987), cert. denied in relevant part 498 U.S. 966 (1990); see also *Bridon Cordage*, 329 NLRB 258, 259 (1999). Thus, to privilege its postelection implementation of a preelection decision, an employer "must show not only that the change resulted directly from that decision, but also that there was no possibility of an alternative change in terms of employment that would have warranted bargaining." *Fresno Bee*, 339 NLRB 1214, 1214-15 (2003) (citing *Holly Farms Corp. v. NLRB*, 48 F.3d 1360, 1368 (4th Cir. 1995), affd. 517 U.S. 392 (1996)). Such notice and opportunity to bargain with the Union over the effects is required before implementation. See, e.g., *Berklee College of Music*, 362 NLRB 1517, 1528 (2015) ("The employer has a duty to give preimplementation notice to the union to allow for meaningful effects bargaining."). It is well settled that Section 8(a)(5) requires effects bargaining to be conducted "in a meaningful manner and at a meaningful time. . . ." *First National Maintenance Corp. v. NLRB*, 452 U.S. at 681-682. Effects bargaining must occur sufficiently

before actual implementation of the decision so that the union is not presented with a fait accompli. *Komatsu America Corp.*, 342 NLRB 649, 649 (2004).

Respondent failed to show that the impacts of the March 2025 transfer of the Somerton route did not warrant effects bargaining. Indeed, as Judge Key noted, the record made clear that Respondent had wide options in route assignments and other driver-related duties, such that the Union could have engaged in meaningful bargaining about assignment adjustments for Irwin following the Somerton route transfer. For example, Irwin could have been more regularly assigned to provide coverage for the Somerton-based drivers who took over the route, which the record reflects he in fact did after the transfer on occasion at Respondent's discretion (Jt. Exh. 19, 20). The still existing Rancho Cordova and Beaty/Vegas routes in addition to the hostler duties also could have been split in any number of ways between the Unit drivers such that the remaining work could have been more evenly divided to maintain a minimum number of driving assignments for the remaining Unit drivers. Whatever potential options there may have been, Respondent never gave the Union an opportunity to bargain the effects of its highly impactful decision. Accordingly, even assuming the March 2025 transfer of the Somerton route was a privileged preelection decision, Respondent was still obligated to notify and bargain with the Union regarding the effects of the transfer, which it did not.[7]

[7] Just as the Union was not obligated to request bargaining regarding the announced decision presented as a fait accompli, the Union similarly was not obligated to request bargaining regarding the effects of the decision presented as a fait accompli. See *Naperville Jeep/Dodge*, 357 NLRB 2252, 2272 (2012) (Waiver will not be found where the employer simply announces and implements changes as if it had no obligation to bargain over the effects of the changes.), enfd. 796 F.3d 31 (D.C. Cir. 2015), cert. denied 136 S.Ct. 1457 (2016).

D. Judge Key Correctly Found that Respondent Violated Sections 8(a)(1) and (5) of the Act Through Changes to the Job Duties of Steven Quinn and Armel Balmediano

1. Respondent Misstates Judge Key's Findings and Conclusions Regarding the Hostler (Plant Yard Driver) Position

Respondent either misunderstands or misstates Judge Key's findings regarding the hostler (yard driver or yard goat) work. The hostler assignment entails moving trailers wholly in and around the yard (Tr. 111). The hostler work alone is therefore not customer-facing. Because the hostler work does not involve moving trailers on any public street or highway, employers generally have discretion on whether or not to require a commercial drivers license for the work (Tr. 110). At all relevant times, from the Union filing a petition for representation through the Union certification as representative and Respondent's subsequent withdrawal of recognition of the Union, the hostler work at Respondent's Fernley facility was performed by drivers holding a commercial drivers license (Tr. 109-111; Jt. Exh. 4, 18, 19). At the time the Union was certified, Unit drivers performed the hostler work at the Fernley facility in addition to other customer-facing route assignments (Tr. 169-170; Jr. Exh. 18).

Respondent asserts that Judge Key's finding that Respondent made unlawful, unilateral changes to the work assignments of Unit members Quinn and Balmediano hinged on a finding that hostler work was Unit work. This is not the case. Judge Key expressly held that Respondent violated the Act by eliminating customer-facing driving assignments from Quinn, changing his job assignments, and transferring him to a newly created position that Respondent treated as non-Unit (ALJD 18-19). Likewise, Judge Key found that Respondent violated the Act by transferring Balmediano to a newly created position that Respondent treated as non-Unit (ALJD 19). Judge Key only referenced the hostler duties themselves as Unit work in the context of noting that *Respondent's* failed defense on the issue would require such a finding:

> Respondent contends that the transfer was not a material change because it asserts that Respondent only assigned Quinn to drive customer facing routes 'from time-to-time when the Company was shorthanded' and that after the transfer it continued assigning Quinn to perform the hostler duties. (R. Br. at 13.) Respondent's argument lacks merit. ***If one accepts Respondent's claim***, that prior to the August 11, 2025 transfer, Quinn's job was comprised of almost entirely hostler driving, then Respondent has conceded the hostler job is a bargaining unit position because it included Quinn's name on the voter eligibility list. Since Quinn continued to perform hostler driving after the August 11, 2025 transfer, he should have remained a member of the bargaining unit because he was performing unit work.

(ALJD 18, emphasis added).

Judge Key goes on to hold that, *contrary to Respondent's position*, Respondent regularly assigned Quinn to drive customer-facing routes, which is what squarely placed him in the Unit, and therefore elimination of those customer-facing work assignments and the move to a newly created, solely hostler work position constituted a material change. *Id*.

Judge Key made no specific finding on whether hostler assignments qualify as bargaining unit work, instead more-or-less aligning with Respondent to note that customer-facing commercial driving routes is what placed drivers in the bargaining unit. Respondent's attempts to confuse Judge Key's analysis on this issue should be rejected.

2. Respondent Unlawfully Changed the Job Duties, Department, and Hours of Bargaining Unit Employee Steven Quinn

Judge Key correctly found that prior to August 11, 2025, Respondent regularly assigned Quinn to drive customer-facing routes, such that there was no question by any party that Quinn remained squarely within the Unit. (Jt. Exh. 4, 18, 19). After August 11, 2025, Respondent stopped assigning customer-facing routes to Quinn, which Respondent asserts removed him from the Unit (Tr. 144-151, 170-171). In its exceptions, Respondent does not dispute that Respondent stopped assigning customer-facing routes to Quinn in August 2025, but asserts that the change was not material, substantial, or significant. Respondent wrongly fixates on the lack of testimony

from Quinn. Putting aside Respondent's attempt to diminish Judge Key's ability to reach well-warranted conclusions based on the entirety of evidence before her, the change in assignments had a substantial, material impact, even if solely because the change removed Quinn from the bargaining Unit. *Ruprecht Co.*, 366 NLRB No. 179 (2018).[8] Beyond the removal from the Unit, the record further establishes that the change had a material and substantial impact because the newly created plant yard hostler position had far fewer reliable hours than the assignments that combined customer-facing route assignments with hostler duties (Tr. 90, 160-161).

Judge Key therefore correctly determined that Respondent unlawfully changed the assignments and job duties of bargaining unit employee Quinn when, without bargaining with the Union, it stopped assigning customer-facing driving assignments to Quinn and transferred him to a newly created, non-Unit position in August of 2025.

3. Whether Or Not Balmediano Voluntarily Accepted a Plant Position Is Irrelevant

Respondent does not deny that around October 6, 2025, Respondent removed all commercial driving route assignments from Balmediano and reassigned him to a full-time hostler position (Tr. 158, 173). There is also no dispute that Respondent made this change without providing the Union notice or an opportunity to bargain regarding the change (Tr. 120-124, 129, 151, 158-159, 161). Respondent further contends that the October 2025 change took Balmediano out of the Unit (Tr. 157, 173). Judge Key correctly found that this October 6 change in assignment for Balmediano to full-time hostler, which Respondent deemed to have removed Balmediano from the Unit, without providing the Union notice or opportunity to bargain, was an

[8] Respondent's attempt to distinguish the present case from *Ruprecht Co.* and *St. George Warehouse, Inc.* again fails where Respondent is focused on whether or not the hostler position was or was not a Unit position. Judge Key's decision is not reliant on that position—instead, Judge Key notes that removal of customer-facing route assignments from Quinn is what removed Quinn from the bargaining unit.

unlawful unilateral change (ALJD 19). As Judge Key correctly noted, whether or not Balmediano voluntary accepted this change in work assignment is immaterial (ALJD 19, citing *Medo Photo Corp v. NLRB*, 321 U.S. 678, 684 (1944)). The triggering event for the employer's bargaining obligation is not the manner in which a unit position becomes vacant, but rather the employer's subsequent decision to eliminate the position rather than fill it. Those essential facts are all that is necessary to find a violation of the duty to bargain. See, e.g., *Finch, Pruyn & Co.*, 349 NLRB at 277 ("It is undisputed that the [employer] never bargained with [the union] over the elimination of the [unit] position. The [employer]'s unilateral action and failure to fulfill its bargaining obligation is thus plainly established on the record before us.").

Because Respondent treated Balmediano's new role as a hostler/warehouse worker as a non-Unit role, thereby reducing the Unit from two employees to one employee, Judge Key correctly found that the change was material and substantial. *Ruprecht Co.*, 366 NLRB No. 179 (2018); *St. George Warehouse, Inc.,* 341 NLRB 904, 924 (2004). As noted above, whether or not Balmediano voluntarily accepted the role or was forced to take the position is irrelevant. Even so, Judge Key's assessment that the move was involuntary is supported by the record evidence. Anderson testified that Balmediano proactively and expressly told her that he did not want the hostler position (Tr. 172). Knowing this, Anderson approached Balmediano again just weeks later with Granado also present and told Balmediano that they needed him to take the hostler position (Tr. 83-85, 172). While Anderson and Granado self-servingly testified that Balmediano was not required to accept the position, their testimony also demonstrates that they did not give any assurances to Balmediano to indicate he had a choice when recruiting him for the role just weeks after he emphatically indicated that he did not want the position (Tr. 83-85, 156-157, 172-

173). Indeed, when Respondent allegedly "offered" Balmediano the hostler position, Respondent had already removed him from the driving schedule (Tr. 82-83; Jt. Exh. 19-40).[9]

Respondent attributes significance to Judge Key noting that Balmediano's pay was ultimately reduced by $300-400 per pay period while also noting that Respondent records indicated Balmediano received a "promotion" to $34 per hour around the same time (ALJD 13, 19). As Respondent well knows, these two findings are not incongruous. Respondent's own records indicate that Balmediano received a promotion to $34 per hour on October 6, 2025 when he was moved into the hostler position (Jt. Exh. 21). Within a few weeks of the change, however, Respondent started sending Balmediano home as early as noon or 1:00 p.m. for lack of work since he was no longer assigned to any commercial driving routes (Tr. 90, 160-161). Accordingly, it was the reduction in hours from the change in position that ultimately reduced his pay, notwithstanding the hourly pay raise he was given on October 6.

The record makes clear, and Judge Key appropriately found, that Balmediano did not voluntarily accept the hostler position. Ultimately, however, whether Balmediano voluntarily or involuntarily moved to the hostler position in October 2025, Respondent was still required to notify and bargain with the Union regarding the change, which Respondent failed to do. Accordingly, Judge Law was correct to find Respondent's October 2025 move of Balmediano to a non-Unit, plant position constituted an unlawful unilateral change.

[9] Respondent had every opportunity to interrogate Balmediano's testimony about Anderson and Granado's two-on-one meeting in which Balmediano was told he would be moving to hostler/plant position, but made the conscious decision not to ask him any questions on cross-examination (Tr. 96-97).

4. Any Questioned Motive Regarding Quinn's Resignation was Appropriately Considered in the Context of Credibility Determinations

Despite Respondent's suggestions to the contrary, Judge Key made no finding about any unalleged 8(a)(3) discriminatory refusal to allow Quinn to rescind his resignation. Respondent's issue is instead again with Judge Key's credibility determinations. In assessing Anderson and Granados' testimony regarding Balmediano's transfer to a non-Unit position, Judge Key assessed the context of Anderson and Granados' testimony where they each suggested they recruited Balmediano for the hostler position because there was no one else to perform the role (Tr. 156, 158, 162, 172). Judge Key correctly scrutinized this testimony against other contradictions in the record, namely that Quinn had attempted to rescind his resignation from the hostler position but was not restored to the position (Tr. 171; Jt. Exh. 21). This record evidence tends to undermine Anderson and Granados' testimony and Judge Key rightly and fairly considered these contradictions in assessing the *credibility* of Anderson and Granados' testimony (ALJD 12).

Respondent's attempt to paint Judge Key's careful review of the record, including credibility assessments of key witnesses, as predetermination to find a violation of the Act is unfounded. Even if the Board were to take the extraordinary step of disagreeing with Judge Key's credibility determinations here and instead give full weight to Anderson and Granados' testimony in this regard, it would not change the overall relevant holding, since the ultimate unilateral change findings do not require a finding of antiunion motivation, and indeed Judge Key did not make such a finding. Rather, Judge Key's credibility findings here served specifically to better assess the testimony of Anderson and Granado regarding the context of Quinn's transfer and subsequent resignation. Ultimately, Judge Key correctly considered and scrutinized record incongruities in reaching her overall findings and Respondent's insistence that Judge Key made a material and gratuitous finding of fact that Respondent's changes to the job

duties of Quinn and Armel were motivated by antiunion animus is simply nowhere to be found in the ALJD.

E. Judge Key Correctly Found that Respondent Unlawfully Withdrew Recognition from the Union

Judge Key correctly found that Respondent reduced the Unit through a series of unlawful actions and therefore Respondent was precluded from withdrawing recognition. Specifically, Judge Key found that Respondent's transfer of the Somerton driving route out of the Unit and the move of Quinn and Balmediano out of the Unit without providing the Union notice or opportunity to bargain constituted unlawful unilateral changes.

Even accepting Respondent's position that Quinn and Balmediano voluntarily removed themselves from the Unit, which the record evidence does not support, Respondent would still be required to bargain over the decision and the effects of eliminating their former bargaining unit positions. The elimination of bargaining unit jobs is a matter within the statutory phrase "other terms and conditions of employment" and is a mandatory subject of bargaining within the meaning of Section 8(a)(5) that requires notice and an opportunity to bargain. *Finch, Pruyn & Co.*, 349 NLRB 270 (2007).[10] Accordingly, the fact that a position became vacant through an employee's voluntary resignation does not relieve the employer of its bargaining obligations. A bargaining unit position's vacancy through attrition does not transform it into something the employer may freely eliminate; the classification remains part of the bargaining unit until the

[10] Following a union's certification and before an initial contract is reached, an employer's obligation to refrain from unilateral changes is elevated beyond the mere duty to provide notice and an opportunity to bargain about a particular subject matter. *Bemis Co., Inc.*, 370 NLRB No. 7 (2020), enfd. 98 F.4th 896 (8th Cir. 2024), citing *FiveCap, Inc.*, 332 NLRB 943 (2000), and *Plymouth Locomotive Works*, 261 NLRB 595 (1982). It encompasses a duty to refrain from implementation at all, absent overall impasse on bargaining for the agreement as a whole. *Id*. Here, the parties reached an overall agreement, but Respondent declined to execute the agreement. Accordingly, even beyond an obligation to provide notice to the Union and an opportunity to bargain, the Board could find that Respondent was not privileged to make any changes until the CBA was signed.

employer gives notice and bargains appropriately on the mandatory aspects of the decision. Respondent did not even attempt to meet its obligations. Instead, Respondent unilaterally transferred the Somerton route to non-Unit drivers and moved Quinn to a non-Unit position, ultimately causing Quinn to quit. Respondent then recruited Balmediano, one of the last two Unit employees, to take the non-Unit position and as soon as Balmediano was removed from the Unit, Respondent declared the position previously held by Balmediano to be eliminated. Respondent's unilateral actions here were unlawful.

Because Respondent reduced the bargaining unit to a single employee by unlawfully and unilaterally eliminating two of three remaining bargaining unit positions, Respondent was not privileged to thereafter invoke one-man unit theories to justify withdrawing recognition from the Union.

In *Occidental Paper Co.*, 227 NLRB 719, 719 (1977), the Board found a Section 8(a)(5) violation where the employer transferred an employee out of the proposed unit to avoid having to recognize an appropriate unit of two employees. In that case, the union petitioned for a unit of two warehouse workers, obtained two signed authorization cards, and thereafter demanded recognition from the employer based on majority support. *Id*. at 721. Soon thereafter, as the parties prepared for a pre-election hearing before the Board, the employer transferred one of the two employees in the proposed unit to a different facility. *Id*. The Board held that the employer, "in order to avoid its bargaining obligation, in one fell swoop transferred 50 percent of the bargaining unit and thereby destroyed its appropriateness." *Id*. at 722. In imposing a bargaining order on the employer, the Board held that the employer's own conduct was designed to undermine the union's majority status. *Id*. at 719; see also *Fleming Industries, Inc.*, 282 NLRB

1030, 1035 (1987) (holding that an employer cannot "unilaterally destroy" a bargaining unit by assigning non-unit employees to perform unit work).

Here, Respondent flouted its duty to bargain over mandatory subjects of bargaining by unilaterally eliminating the Somerton route from the Unit, removing commercial truck driving duties from Unit member Quinn, removing commercial truck driving duties from Unit member Balmediano, and ultimately, transferring Balmediano out of the Unit altogether. See *Occidental Paper Co.*, above at 721. Just as in *Occidental Paper*, Respondent's unlawful conduct reduced the Unit to one single employee—Unit member Irwin. See *id*. at 722. As the *Occidental Paper* Board made clear, Respondent cannot now profit from the very situation that it engineered and cultivated through its unlawful conduct. See *id*. By withdrawing recognition of the Union, Respondent violated Section 8(a)(5) of the Act.

Even assuming arguendo and contrary to record evidence that Respondent's unlawful conduct was not the proximate cause of the Unit's reduction to a single employee, Respondent would nevertheless have the burden to prove that the purported single-employee unit is a stable one, not merely a temporary occurrence. *McDaniel Electric*, 313 NLRB 126, 127 (1993). Respondent does not meet that burden. The undisputed evidence shows that the work of the Unit still exists; it is simply being performed by non-Unit members. The Somerton route is still being performed between Fernley and Somerton and the hostler duties are still being performed at the Fernley yard (Tr. 181; Jt. Exh. 19, 20).

Consequently, Judge Key correctly found that Respondent could not lawfully withdraw recognition of the Union.

F. Judge Key Correctly Found that Respondent Unlawfully Refused to Provide Requested Information

Section 8(a) (5) of the Act mandates that an employer must 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, 153 (1956); *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979). Respondent made no argument about the irrelevance or confidentiality of the requested information, but instead argued solely that the Union was no longer the Unit's collective bargaining representative at the time the information request was made, such that Respondent was not obliged to respond. Because Judge Key correctly found that Respondent unlawfully withdrew recognition, Respondent's sole defense in declining to respond to the Union's information request inevitably falls with it. See *Valley Health Sys., LLC*, 369 NLRB No. 16 (2020) (holding that where an employer's withdrawal of recognition is found unlawful, the employer is precluded from reliance upon such to support its contention that it had no duty to provide requested information), citing *Renal Care of Buffalo Inc.* 347 NLRB 1284 (2006).

Accordingly, Judge Key correctly found that Respondent 's refusal to provide the requested information therefore violated Section 8(a)(5) of the Act.

G. Judge Key's Recommended Cease and Desist and Other Affirmative Remedies Are Proper Under Established Board Law

Judge Law's order requiring Respondent cease and desist from the unfair labor practices she found and take certain affirmative actions including executing and implementing the CBA are traditional remedies for unlawful refusal to recognize and unlawfully failing and refusing to execute a collective bargaining agreement under established Board Law and Respondent does not argue otherwise or dispute this in its Brief. See *Washington Stair & Iron Works*, 285 NLRB No. 70 (1987). Additionally, Respondent's objection to Judge Key's order that Respondent

execute the collective-bargaining agreement with retroactive effect is without merit. Respondent makes no argument and cites no cases finding such a remedy inappropriate. Respondent's sole support for its proposed rejection of this remedy is its bald assertion that its withdrawal of recognition was lawful. Having shown otherwise, the Board should accept this ordered remedy.

Judge Law's order requiring employer to Respondent to transfer its Somerton route back to Fernley is also a standard Board remedy where work has been unlawfully moved. See, e.g., *Glades Electric Cooperative, Inc.*, 366 NLRB No. 112 (2018). Respondent's objection premised entirely on alleged difficulty finding Fernley-based drivers is unconvincing, where the record showed Fernley-based drivers ready and willing to perform the Somerton route—namely Quinn, Balmediano, and Irwin. It was in Somerton where Respondent struggled to find drivers for the route, and where Respondent had to abandon a 2024 effort to move the route to Somerton. Further, Respondent made no showing that it attempted to recruit or hire *any* Fernley-based drivers after the Union's certification. Instead, Respondent systematically dismantled its driver positions. It is only appropriate, therefore, that part of the make whole remedy here be restoration of the Somerton route to Fernley and reinstitution of the Unit positions that were previously assigned that route.

Respondent further excepts to Judge Key's order of compensation to employees for "any other direct or foreseeable pecuniary harms" pursuant to *Thryv, Inc.*, 372 NLRB No. 22 (2022). For the reasons set forth below, the Board should reject the Judge's remedy of compensating affected employees for their foreseeable pecuniary harms.

1. The Board Should Overrule *Thryv* and Return to Its Historical Approach to Make-Whole Relief

In *Thryv, Inc.*, 372 NLRB No. 22 (2022), *vacated in part*, 102 F.4th 727 (5th Cir. 2024), the Board majority announced a novel expansion of the Board's make-whole remedial authority to encompass "all direct or foreseeable pecuniary harms" incurred as a result of unlawful conduct. *Id.*, slip op. at 1, 13 (emphasis added). In dissent, Members Kaplan and Ring correctly recognized that this unprecedented extension exceeds the Board's power under the Act. Circuit courts have been near-unanimous in reaching the same conclusion. Moreover, as the *Thryv* dissent further observed, the majority's newly imposed standard, even if permissible, would be practically unworkable and thwart the Act's effectuation. The Board should therefore overrule *Thryv* and return to its historical practice of ordering make-whole relief for monetary losses that were directly, or indirectly but clearly and proximately, caused by an unfair labor practice. This approach is consistent with nearly 90 years of court-approved Board precedent and falls well within the Board's remedial power to make whole victims of unfair labor practices.

a. The Board has Broad, But Not Limitless, Remedial Authority

Section 10(c) grants the Board broad authority to remedy the effects of unfair labor practices in furtherance of the Act's public purpose, and the Supreme Court has long affirmed the Board's significant discretion in fashioning make-whole relief. See, e.g., *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, 193-97 (1941) (the Board is entrusted with "wide discretionary [remedial] authority," and "[m]aking the workers whole for losses suffered on account of an unfair labor practice is part of the vindication of the public policy which the Board

enforces").[11] However, the Act's plain language and Supreme Court precedent also establish important limitations on the Board's remedial power. Thus, every remedial order must "effectuate the policies of [the] Act." 29 U.S.C. § 160(c). And the Supreme Court has interpreted this statutory limitation to "encompass[] the requirement that a . . . remedy be tailored to the unfair labor practice it is intended to redress." *Sure-Tan*, 467 U.S. at 900. Relatedly, the Court has held that monetary remedies may "expunge only the actual, and not merely speculative, consequences of [an] unfair labor practice[]." *Id.; accord Phelps Dodge*, 313 NLRB at 198 ("[O]nly actual losses should be made good[.]") The Board's broad remedial authority is channeled by these fixed bounds.[12]

b. *Thryv* Exceeds the Board's Authority and, in Any Event, is Impractical

i. *Thryv* Allows Some Remedies That Are Speculative and Insufficiently Tailored to the Violations They Are Intended to Redress

Despite assurances from the *Thryv* majority that the Board "will not issue remedial orders for harms which are . . . speculative," the majority's newly minted and unduly expansive make-whole relief standard does exactly that. See 372 NLRB No. 22, slip op. at 12. As the *Thryv* dissent explained, relief for "all direct or foreseeable pecuniary harms" permits recovery for "any losses indirectly caused by an unfair labor practice, regardless of how long the chain of causation may stretch from [violation] to loss," as long as the loss is

[11] See also *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 898-99 (1984) ("The Court has repeatedly interpreted [Section 10(c)] as vesting in the Board the primary responsibility and broad discretion to devise remedies that effectuate the policies of the Act, subject only to limited judicial review."); *NLRB v. Strong*, 393 U.S. 357, 359 (1969) ("This grant of remedial power is a broad one."); *Va. Elec. & Power Co. v. NLRB*, 319 U.S. 533, 539-43 (1943).

[12] Of course, the Board also cannot order punitive relief, "even though [it] be of the opinion that the policies of the Act might be effectuated by such an order." *Consolidated Edison Co. of New York v. NLRB*, 305 U.S. 197, 235-36 (1938); *accord Republic Steel Corp. v. NLRB*, 311 U.S. 7, 10-13 (1940). In *Sure-Tan*, the Supreme Court found it unnecessary to consider whether the monetary relief there at issue—which was impermissibly speculative and insufficiently tailored to the discharged employees' actual losses—also was improper on the asserted grounds that it was "punitive." 467 U.S. at 901, 904-05 & n.14.

"found to be foreseeable." *Id*., slip op. at 16 (Members Kaplan and Ring, concurring in part and dissenting in part). Foreseeability also raises potential Seventh Amendment concerns. See *id*., slip op. at 16, 18-19 (Members Kaplan and Ring, concurring in part and dissenting in part). *Thryv*'s expanded remedies could encompass "significant financial costs" that employees incur as part of their general living expenses after an unfair labor practice. 372 NLRB No. 22, slip op. at 9. No matter how distant or tangential the connection to unlawful conduct, such costs may include "interest and late fees on credit-card debt," "penalties incurred from making an early withdrawal from a retirement account," and even "loss of a car or home if the employee is unable to make loan, rent, or mortgage payments." *Id*., slip op. at 18 (Members Kaplan and Ring, concurring in part and dissenting in part).[13] "The Board has not previously included compensation for such losses in its make-whole remedy." *Id*., slip op. at 18 (Members Kaplan and Ring, concurring in part and dissenting in part).

As these examples starkly illustrate, *Thryv* imposes functionally boundless monetary relief and, thus, exceeds the limits on the Board's remedial authority set by the Supreme Court. *Thryv* would require payment for purported losses—such as equity in a home or vehicle—that are utterly speculative. Similarly, it violates the requirement that Board remedies be sufficiently tailored to the specific unfair labor practice at issue. Rather than "comport[ing] with the general reparative policies of the NLRA," Sure-Tan, Inc., 467 U.S. at 901, *Thryv* impermissibly dictates that victims often will be made "more than whole." Va. Elec., 319 U.S. at 544. Cf. 372 NLRB No. 22, slip op. at 19 (Members Kaplan and Ring, concurring in part and dissenting in part) (remedies contemplated under *Thryv* "go well

[13] *See also Voorhees Care & Rehabilitation Center*, 371 NLRB No. 22, slip op. at 4 n.14 (2021) (Chairman McFerran describing these same damages as an appropriate form of make-whole relief).

beyond tort law, which requires proof that the wrongful act was the 'proximate cause' of the injury").

ii. *Thryv* Remedies Have Proven Largely Unenforceable and Result In Skepticism and Heightened Scrutiny of the Board's Remedies in the Courts

Four circuit courts have directly addressed whether *Thryv* remedies are lawful. Three of the four have answered "no."[14] Notably, these three courts contrasted *Thryv* with the Board's historical remedial practice, describing the latter as generally permissible under the Act. In this regard, the Third Circuit noted that the Board's approach to remedying "a variety of monetary losses suffered as a result of an unfair labor practice" was sound, "at least until *Thryv*" issued. Starbucks Corporation, 125 F.4th at 96. Similarly, the Sixth Circuit held that the *Thryv* remedy constituted "a Carl Lewis–sized leap from the Board's practices of old." Starbucks Corporation, 159 F.4th at 479. The Fifth Circuit also observed that *Thryv* "broke new ground" from "the first ninety years of the NLRB's existence" Hiran Management, 157 F.4th at 727. The Ninth Circuit, meanwhile, although upholding *Thryv*'s framework in principle and enforcing the general make-whole order before it, raised serious concerns over what costs might be beyond the Board's power to order at the compliance phase.[15] Thus, *Thryv* has met outright rejection and, in just one instance, only significantly qualified support, in the circuit courts. *Thryv*'s general unenforceability underscores the need to abandon it. Returning to historical practices will restore judicial confidence in the Board's remedial approach and lift the heightened level of scrutiny brought on by *Thryv*. See

[14] *NLRB v. Starbucks Corporation*, 125 F.4th 78, 94 (3rd Cir. 2024); *Hiran Management, Inc. v. NLRB*, 157 F.4th 719, 728 (5th Cir. 2025); *NLRB v. Starbucks Corporation*, 159 F.4th 455, 468 (6th Cir. 2025).
[15] See *International Union of Operating Engineers v. NLRB*, 155 F.4th 1023, 1053-54 (2025).

Fibreboard Paper Products Corp. v. NLRB, 379 U.S. 203, 216 (1964) (Board possesses broad discretion in exercising its remedial powers, subject to "limited judicial review"). Finally, overruling *Thryv* will increase the likelihood of enforcement by curbing constitutional attacks on the Board's remedies, particularly those arising under the Seventh Amendment. See, e.g., Starbucks Corporation, 159 F.4th at 473-75.

iii. *Thryv* Remedies Present Practical Problems for Businesses, the Board, and Victims of Unfair Labor Practices

Wholly aside from exceeding the Board's power, *Thryv*'s novel remedial scheme has serious practical implications for all agency stakeholders. First, *Thryv* harms business operations. The expanded liability threatened by *Thryv* injects economic uncertainty into running a business, thereby making planning difficult. The risks presented may change how businesses throughout the economy allocate capital, potentially stifling innovation. *Thryv* also adversely impacts the effectiveness of the Board. As explained above, the new remedies authorized under *Thryv* have faced serious headwinds on enforcement. Continuing down this path wastes scarce agency resources. Similarly, as the *Thryv* dissent noted, more "protracted litigation over causation" will arise at compliance, including to "determin[e] whether and to what extent [an] employee's own financial decisions contributed to the [claimed] losses." See 372 NLRB No. 22, slip op. at 16 (Members Kaplan and Ring, concurring in part and dissenting in part). In heaping an additional class of complex litigable issues onto compliance proceedings, *Thryv* bogs down the Board's dockets, sucks up its limited resources, and generally impedes its efforts to implement the Act's provisions—including by delaying victims' receipt of make-whole payments to which they are indisputably entitled. See *id*. at 16, 19-20 (noting that make-whole relief assessment that varied from $435,000 to $13.3

million "strongly suggest[s] that the majority's foreseeable-loss standard will be difficult to apply and result in bitterly disputed awards").

2. The Board Should Adhere to its Historical Approach to Make-Whole Relief, Consistent with the *Thryv* Dissent

As dissenting Members Kaplan and Ring acknowledged in *Thryv*, the Board has long provided make-whole relief for monetary losses directly, or indirectly but clearly and proximately, caused by an unfair labor practice. *See* 372 NLRB No. 22, slip op. at 16-18. The Board should abandon *Thryv* and return to this historical standard. The make-whole relief the Board has traditionally ordered has been effective in restoring the *status quo ante* and remedying the effects of unfair labor practices while falling "well within" the Board's remedial authority.[16]

a. The Board's Historical Make-Whole Relief Cases Illustrate the Appropriate Approach

Since its earliest days, the Board has—with circuit court and Supreme Court approval—ordered monetary make-whole relief for a wide and diverse range of losses.[17] That relief has addressed how the backpay period is to be calculated in light of a specific unfair labor practice, as well as the financial implications of a violation. For example, the Board has ordered:

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[16] *See Strong*, 393 U.S. at 358 (Board's order requiring an employer to "pay to the appropriate source any fringe benefits provided for" in the contract at issue was "well within its powers"). [16] As the dissenting Members correctly pointed out in *Thryv*, the Supreme Court has made clear that monetary make-whole relief is not limited to the Act's illustrative example of backpay. *See* 372 NLRB No. 22, slip op. at 17 (citing *Phelps Dodge*, 313 U.S. at 189); *see also Va. Elec.*, 319 U.S. at 539-40; *Radio Officers' Union of Commercial Telegraphers Union v. NLRB*, 347 U.S. 17, 52-55 (1954).

[17] As the dissenting Members correctly pointed out in *Thryv*, the Supreme Court has made clear that monetary make-whole relief is not limited to the Act's illustrative example of backpay. See 372 NLRB No. 22, slip op. at 17 (citing *Phelps Dodge*, 313 U.S. at 189); see also *Va. Elec.*, 319 U.S. at 539-40; *Radio Officers' Union of Commercial Telegraphers Union v. NLRB*, 347 U.S. 17, 52-55 (1954).

- comprehensive lump-sum backpay awards;[18]
- compensation for fringe benefits lost as a result of an unfair labor practice;[19]
- compensation for expenses incurred due to the unlawful withdrawal or loss of an employer-sponsored benefit;[20]
- compensation for moneys paid by third parties that victims were not able to earn due to an unfair labor practice;[21]
- compensation for investment growth employees would have realized;[22]
- compensation for search-for-work and interim-employment expenses;[23]
- compensation for checked off dues paid to an employer-dominated union;[24]
- compensation for legal expenses incurred due to an unfair labor practice; [25]

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[18] See, e.g., *Graves Trucking, Inc.*, 246 NLRB 344, 344-45 (1979) (backpay period must include time when employee was disabled from working due to violent nature of unfair labor practice that led to injury), enforced as modified, 692 F.2d 470 (7th Cir. 1982) (limiting backpay period to two years); *Kentucky River Medical Center*, 356 NLRB 6, 8-9 (2010) (instituting policy of computing daily compound interest, rather than simple interest, on backpay awards to effectuate the Act's make-whole remedial objective); *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101, 102-03 (2014) (compensation for any increased state or federal income tax liability resulting from lump-sum backpay award); *Central Truck Lines*, 3 NLRB 317, 330 (1937) (backpay must include reasonably likely bonus compensation).

[19] See, e.g., *Strong*, 393 U.S. at 358-60 (Board properly ordered employer to pay to third parties costs due for fringe benefits owed under collective-bargaining agreement); *W. C. Nabors Co.*, 134 NLRB 1078, 1085-86 (1961) (compensation for exclusion from profit-sharing plan), enforced in relevant part, 323 F.2d 686 (5th Cir. 1963); *Central Illinois Public Service Co.*, 139 NLRB 1407 (1962) (compensation for lost discounts on natural gas purchases provided as an employee benefit), enforced, 324 F.2d 916 (7th Cir. 1963).

[20] See, e.g., *W.T. Carter & Brother*, 90 NLRB 2020, 2027 (1950) (compensation for increased rental costs for substitute housing, plus additional costs incurred as direct result of eviction from employer-owned "company town" housing); *Knickerbocker Plastic Co., Inc.*, 104 NLRB 514, 516 (1953) (compensation for costs incurred due to lack of medical benefits), enforced, 218 F.2d 917 (9th Cir. 1955); *M.D. Miller Trucking & Topsoil, Inc.*, 365 NLRB No. 57, slip op. at 1 (2017) (same), enforced mem., 728 Fed. Appx. 2 (D.C. Cir. 2018).

[21] See, e.g., *Club Troika, Inc.*, 2 NLRB 90, 94-96 (1936) (to make employees whole, backpay must include compensation for tips they would have earned from customers); *Hacienda Hotel & Casino*, 279 NLRB 601, 601 (1986) (same), enforced mem., 813 F.2d 1230 (9th Cir. 1987); *Taylor Mfg. Co. Inc.*, 83 NLRB 142, 144-45 (1949) (backpay must include payment of G.I. benefits employee would have earned from U.S. government).

[22] See, e.g., *Lou's Transport, Inc.*, 366 NLRB No. 140 (2018) (compensation for lost investment growth after unlawful discharge led to cessation of retirement contributions), enforced, 945 F.3d 1012 (6th Cir. 2019); *Alameda Center for Rehabilitation and Healthcare, Inc.*, 370 NLRB No. 25, slip op. at 1 (2020) (compensation for missed 401(k) contributions and lost investment growth).

[23] See, e.g., *Crossett Lumber Co.*, 8 NLRB 440, 497-98 (1938) (expenses such as transportation, room, and board for finding and maintaining a new job), enforced, 102 F.2d 1003 (8th Cir. 1938); *King Soopers*, 364 NLRB 1153, 1159 (2016) (holding that search-for-work and interim-employment expenses are to be reimbursed separate from backpay and no longer as an offset against interim earnings), enforced in relevant part, 859 F.3d 23 (D.C. Cir. 2017).

[24] See, e.g., *Va. Elec.*, 319 U.S. at 540-41; Lone Star Bag & Bagging Co., 8 NLRB 244, 261-62 (1938).

[25] See, e.g., *Bill Johnson's Restaurants v. NLRB*, 461 U.S. 731, 747 (1983) (Board may order an employer to reimburse employees for "attorneys' fees and other expenses" incurred in defending a civil suit that constitutes an unfair labor practice); *Baptist Memorial Hospital*, 229 NLRB 45, 45-47 (1977) (compensation for legal expenses

- compensation for medical expenses attributable to unlawful work assignments; [26]
- compensation for property damage caused by an unfair labor practice; [27]
- compensation for increased housing costs; [28]
- compensation for increased commuting costs;[29] and
- compensation for other miscellaneous economic losses that were either directly or indirectly but clearly and proximately, caused by an unfair labor practice.[30]

In each of these categories of make-whole orders, the Board observed the limits of Section 10(c) while still making the victims of unfair labor practices whole.

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and fees due to arrest and conviction resulting from employer's unlawful ejectment), enforced, 568 F.2d 1 (6th Cir. 1977); *Operating Engineers Local 150*, 313 NLRB 659, 659 n. 3, 671-72 (1994) (reimbursement "for all legal and other expenses" incurred challenging unlawful attempts at internal union discipline), enforced, 47 F.3d 218 (7th Cir. 1995).

[26] See, e.g., *Pilliod of Mississippi, Inc.*, 275 NLRB 799, 799 n.3, 801, 814-16, 819-20 (1985) (ordering general make-whole relief and leaving to compliance whether employee "incurred medical expenses attributable to" discriminatory refusal to transfer her out of physically onerous job); *Nortech Waste*, 336 NLRB 554, 554 n.2, 567, 573-74 (2001) (compensation for employee's medical expenses caused by unlawful reassignment that exacerbated existing injury).

[27] See, e.g., *BRC Injected Rubber Products*, 311 NLRB 66, 66 fn. 3 (1993) (reimbursement for clothes ruined by discriminatory "dirty" work assignment); *Napleton 1050, Inc. d/b/a Napleton Cadillac of Libertyville*, 367 NLRB No. 6, slip op. at 4 (2018) (repair costs for toolboxes employer placed outside in retaliation for strike activity that were damaged by rain, plus towing costs), enforced, 976 F.3d 30 (D.C. Cir. 2020).

[28] See, e.g., *Kohler Co.*, 128 NLRB 1062, 1111, 1114, 1186 (1960) (increased rental costs for substitute housing plus other losses incurred due to eviction from employer-owned property that was not provided or offered as employment benefit), enforced in relevant part, 300 F.2d 699 (D.C. Cir. 1962); *Interstate Bakeries Corp.*, 360 NLRB 112, 112 & n.2, 114-15 (2014) (compensation for increased mileage, commuting time, and moving expenses, including closing costs on house employee purchased after union and employer unlawfully set his seniority, causing his transfer to different facility).

[29] See, e.g., *CWI of Maryland, Inc.*, 321 NLRB 698, 698, 711 (1996) (compensation for increased commuting expenses due to unlawful assignment), enforced in relevant part, 127 F.3d 319 (4th Cir. 1997); *Interstate Bakeries Corp.*, 360 NLRB at 112 & n.2, 114-15.

[30] See, e.g., *Steelworkers (Warrior & Gulf)*, 280 NLRB 1401, 1402-03, 1406-07 (1986) (compensating employer for losses resulting from union's refusal to execute and effectuate collective-bargaining agreement allowing employer to pay reduced wage rates in operation of new route); *Laborers Local 836*, 307 NLRB 801, 801 & n.3 (1992) (reimbursement for lost wages, travel costs, and other expenses incurred in challenging unlawful union fines).

b. The Board Acts Well Within Its Authority When It Orders Monetary Make-Whole Relief For Losses That Were Directly Caused By, or That Were Indirectly but Clearly and Proximately Caused By, an Unfair Labor Practice

In *Thryv*, dissenting Members Kaplan and Ring correctly recognized that, although the majority improperly expanded the scope of available monetary remedies, the Board operates well within its authority when—consistent with its nine decades of court-approved pre-*Thryv* precedent—it orders make-whole relief for losses either directly, or indirectly but clearly and proximately, caused by an unfair labor practice. See 372 NLRB No. 22, slip op. at 18. In reinstating this historical standard and reaffirming its contours, the Board should be guided by its pre-*Thryv* precedent and the *Thryv* dissent.

As Members Kaplan and Ring explained, direct losses under the Board's historical make-whole standard may be defined as "those that are the first link in a chain of events beginning with the unfair labor practice."[31] Direct losses include circumstances where the violation immediately causes a physical injury or damage to property, an out-of-pocket legal expense, or loss of either employer-provided monetary benefits or moneys paid by third parties that the employee would have earned but for the unfair labor practice.[32]

An indirect monetary loss, meanwhile, is properly remedied where, although not directly resulting from a violation, "the causal link between the unfair labor practice and the loss[] [is] clear."[33] Such a loss must be "proximate" to the unlawful conduct rather than a merely foreseeable (if distant) result of that conduct down the causal chain. Thus, compensable indirect losses are those clearly and proximately caused by an unfair labor practice. They include

[31] See 372 NLRB No. 22, slip op. at 18 (Members Kaplan and Ring, concurring in part and dissenting in part) (citing *Nortech Waste*, 336 NLRB at 554 n.2; BRC Injected, 311 NLRB at 66 n.3; Baptist Memorial, 229 NLRB at 46).
[32] *See* nn.18, 20, 24-26, *supra*.
[33] 372 NLRB No. 22, slip op. at 18 (Members Kaplan and Ring, concurring in part and dissenting in part) (citing *Voorhees Care*, 371 NLRB No. 22, slip op. at 3-4; *Napleton 1050*, 367 NLRB No. 6, slip op. at 4).

circumstances where the victim incurs a medical expense that, but for the violation, would have been covered by insurance; where the withdrawal or removal of other employer-sponsored benefits results in additional costs; where property is damaged by an intervening cause, but the unfair labor practice put the property at risk; where an employee incurs search-for-work and interim-employment expenses; and where other economic losses flow clearly and proximately from an unfair labor practice.[34]

By contrast, other indirect losses—where the causal relationship to the unfair labor practice is more attenuated or unclear—are not properly remedied, even if "foreseeable." For example, in Interstate Bakeries, where the Board found that a driver unlawfully transferred to a different route in a new city was entitled to reimbursement for closing costs on the purchase of a house in that city, the Board nonetheless excluded compensation for prepaid mortgage interest and hazard insurance. See 360 NLRB 112, 112 n.2 (2014). As the Board explained, these expenses were not compensable as they amounted to ordinary "costs of homeownership" prepaid at the closing rather than costs "incurred because of [the employee's] relocation." *Id*. In other words, the Board found the causal link to the unfair labor practice insufficient to permit recovery, notwithstanding that the expenses foreseeably resulted from the violation. Similarly, where an employee is unlawfully discharged, the causal link would be insufficient to permit recovery of his "day-to-day living expenses that would have been incurred even absent the [violation]," or monetary losses flowing from his nonpayment of those expenses, such as late fees on credit card debt or loss of a home or vehicle due to a default on loan obligations. See *Thryv*, 372 NLRB No. 22, slip op. at 18-19 (Members Kaplan and Ring, concurring in part and dissenting in part).

[34] *See* nn.19, 22, 29, *supra*.

As explained, the Board should overrule *Thryv*, return to its historical make-whole relief standard, and reaffirm the contours of that standard consistent with the above. In doing so, the Board should also take care that it exercise its full authority to order such relief against employers and unions alike. It should also reaffirm that the General Counsel bears the burden of proving the requisite causation.[35] Thus, under the reinstated historical standard, the General Counsel must prove that a loss was directly, or indirectly but clearly and proximately, caused by an unfair labor practice.

III. CONCLUSION

For the reasons set forth above, it is respectfully requested that the Board reject Respondent's exceptions, adopt the ALJ's findings that Respondent violated Sections 8(a)(1) and (5) of the Act as alleged, and issue an order remedying those unfair labor practices, including for monetary losses that were directly, or indirectly but clearly and proximately, caused by Respondent's unfair labor practices.

DATED AT Oakland, California this 20th day of November 2026.

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[35] See *International Brotherhood of Teamsters Local 25*, 366 NLRB No. 99, slip op. at 1 (2018). In *Thryv*, dissenting Members Kaplan and Ring observed that the majority's decision could be read to improperly shift the General Counsel's causation burden to the respondent to prove the absence of causation. See 372 NLRB No. 22, slip op. at 20.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

CLEAN EARTH, INC. **and** **TEAMSTERS LOCAL 533**	**Cases 32-CA-363439** **32-CA-364137** **32-CA-376133** **32-CA-376872** **32-CA-379219** **Date: November 20, 2026**

AFFIDAVIT OF SERVICE OF GENERAL COUNSEL'S ANSWERING BRIEF TO RESPONDENT'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) upon the persons at the addresses and in the manner indicated below. Persons listed below under "E-Service" have voluntarily consented to receive service electronically, and such service has been effected on the same date indicated above.

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