Wyman Gordon Pennsylvania, LLC *and* United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL–CIO–CLC. Cases 04–CA–182126, 04–CA–186281, 04–CA–188990

December 16, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN AND EMANUEL

On July 13, 2018, Administrative Law Judge Arthur J. Amchan issued the attached decision. Wyman Gordon Pennsylvania, LLC (the Respondent) filed exceptions and a brief in support, the General Counsel and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers Union, AFL–CIO–CLC (the Union) each filed answering briefs, and the Respondent filed a reply brief. Additionally, the General Counsel filed exceptions and a brief in support, the Respondent filed an answering brief, and the General Counsel filed a reply brief. Finally, the Union filed cross-exceptions and a brief in support, the Respondent filed an answering brief, and the Union filed a reply brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order.[2]

For the reasons discussed below, we reverse the judge's findings that the Respondent violated Section 8(a)(5) and (1) by insisting on resolving noneconomic subjects of bargaining before discussing economic subjects and by failing to comprehensively respond to the Union's September 17, 2015 complete contract proposal. We affirm the judge's findings that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to provide the Union with relevant information requested in paragraphs 4 and 5 of the Union's August 12, 2016 information request and in paragraphs 1, 2, and 4 of the Union's September 6, 2016 information request; we reverse, however, the judge's finding that the Respondent unlawfully failed to provide the Union with the information requested in paragraph 5 of the Union's September 6, 2016 information request. Finally, we affirm the judge's finding that the Respondent violated Section 8(a)(5) and (1) by withdrawing recognition from the Union because the Respondent failed to establish that the Union had, in fact, lost majority support at the time that it withdrew recognition.[3]

I. INSISTENCE ON BARGAINING NONECONOMIC SUBJECTS BEFORE ECONOMIC SUBJECTS

A. Relevant Facts

On April 14, 2015, the Board certified the Union as the exclusive collective-bargaining representative of a unit of production and maintenance employees at the Respondent's facility in Plains, Pennsylvania, where it manufactures components for aircraft engines. On May 1, 2015, the Union wrote to the Respondent requesting information to prepare for bargaining. On June 26, 2015, the Respondent provided the requested information and listed a number of dates in August and early September

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

No party has excepted to the judge's findings that the Respondent violated Sec. 8(a)(1) by maintaining the confidentiality statement in its employee handbook and violated Sec. 8(a)(5) and (1) by failing to grant union employees an annually recurring wage increase in August 2016 (the annual August wage increase) and by discontinuing its practice of providing light-duty work to employees on workers' compensation without giving the Union notice and an opportunity to bargain. Additionally, no party has excepted to the judge's dismissal of the allegations that the Respondent violated Sec. 8(a)(5) and (1) by arriving late to scheduled bargaining sessions and by failing to provide in a timely manner the information requested by the Union in paragraph 2 of its August 12, 2016 information request.

The Respondent has excepted to the judge's finding that it violated Sec. 8(a)(5) and (1) by failing and refusing to provide the Union with relevant information requested in paragraphs 3 and 8 of the Union's August 31, 2016 information request. However, the Respondent does not state in either its exceptions or brief in support any grounds on which the judge's purportedly erroneous finding should be reversed. Therefore, we shall disregard this bare, unsupported exception pursuant to Sec. 102.46(a)(1)(ii) of the Board's Rules and Regulations (formerly Sec. 102.46(b)(2)). See *New Concept Solutions, LLC*, 349 NLRB 1136, 1136 fn. 2 (2007) (citing *Holsum de Puerto Rico, Inc.*, 344 NLRB 694, 694 fn. 1 (2005), enfd. 456 F.3d 265 (1st Cir. 2006)).

[2] We shall amend the judge's remedy and modify the judge's recommended Order to conform to our findings herein and the Board's standard remedial language. We shall also substitute a new notice to conform to the Order as modified.

[3] Because we find that the Respondent failed to establish that the Union had lost majority support at the time that it withdrew recognition, we find it unnecessary to pass on whether the Respondent's unfair labor practices tainted any loss of majority support. For that reason, we also find it unnecessary to pass on the General Counsel's and the Union's motions to strike portions of the Respondent's answering briefs that address the taint issue.

2015 on which it was available for the parties' first bargaining session. Because Joseph Pozza, the Union's Sub-District Director and lead negotiator, was not available on any of those dates, the parties scheduled their first bargaining session for September 17, 2015.

At the first bargaining session, the Union presented the Respondent with a complete contract proposal. The proposal combined elements of a collective-bargaining agreement between the Union and the Respondent at the Respondent's Mountain Top, Pennsylvania facility and the Respondent's employee handbook at its Plains facility. While the parties did not discuss the Union's proposal in great detail during the first bargaining session, the Respondent clearly communicated in subsequent bargaining sessions that it did not want to simply duplicate the Mountain Top contract as it had proven to be difficult to administer because of its vague and imprecise language. The parties primarily discussed ground rules during the first session. In ground rule 5, they agreed that "[l]anguage [(i.e., noneconomic)] proposals will be discussed prior to the discussion of economic proposals." Thus, when the Respondent reviewed the Union's initial proposal during the second bargaining session, it said that it would table all economic provisions.

From September 17, 2015, to August 12, 2016, the parties held 14 bargaining sessions. During that period, they reached tentative agreements on non-discrimination, purpose and intent, bereavement leave, and jury duty. Additionally, the parties discussed and exchanged proposals on dues checkoff, union security, no strike/no lockout, management rights, plant regulations, and absenteeism and tardiness.[4] However, they were unable to reach tentative agreements on those provisions; in fact, during the August 12, 2016 bargaining session, they agreed that they were at impasse on dues checkoff, union security, no strike/no lockout, and absenteeism and tardiness. The parties also began to bargain over the annual August wage increase during the August 12 session.[5]

At the parties' next bargaining session, on August 26, 2016, Nathan Kilbert, the Union's attorney, was present for the first time. Kilbert pointed out that the Respondent had not responded to many of the provisions in the Union's initial proposal and asked the Respondent to respond to all outstanding provisions. Kilbert specifically inquired whether the Respondent would provide economic proposals, but the Respondent, citing ground rule 5, replied that the parties had agreed to resolve all noneconomic subjects before discussing economics. The Union followed up with a letter dated August 31, 2016, which stated:

> The Union wishes to reiterate its statement at the table last Friday that we wish to know the Company's positions on all issues contained in our September 2015 proposal to which the Company has not yet provided a response. These issues include Grievances, Arbitration, Seniority, Job Posting, Federal & State Laws, New Classifications/Rates, Rights and Assigns, Termination, Payday, Timekeeping, Safety and Health, and the non-economic components of Vacation and Holidays. In particular, we would like to prioritize discussions of Seniority and Job Postings. You have had our proposals for nearly a year, so it is not too much to ask for you to provide a response on all such open items.[6]

From August 26 to October 12, 2016, the parties held six bargaining sessions, and the Respondent made initial counterproposals regarding recognition, grievance procedure, arbitration, Federal and State laws, job posting and bids, and seniority. The parties reached tentative agreements on grievance procedure and Federal and State laws. They discussed and exchanged proposals regarding recognition, arbitration, job posting and bids, and seniority, but they did not reach tentative agreements on those subjects during this period. The parties also continued to bargain over the annual August wage increase.

On October 17, 2016, Pozza sent a letter to the Respondent, which stated:

> I write also to request that the Company come to our sessions on October 26 and 27 prepared to discuss the Union's economic proposals. As I wrote to you on August 12, I believe that the Company has withdrawn from our ground rules agreement regarding discussion of economics.[7] In any event, this agreement has out-

[4] The Respondent also made a counterproposal on shoe allowance, but the Union requested to table that provision until the parties discussed economic subjects.

[5] In May 2016, the parties bargained over the annual health insurance renewal scheduled for June 1, 2016—more specifically, they bargained over what percentages of premiums unit employees would pay for the health insurance plans offered by the Respondent—but they did not bargain over the health insurance benefits that would be part of the collective-bargaining agreement. Because the parties did not reach an agreement before June 1, the Respondent simply maintained the same percentages of premiums that unit employees had been paying for each plan. The Respondent offered to continue to bargain over the annual health insurance renewal, but the Union repeatedly stated that it had accepted what the Respondent had implemented.

[6] Kilbert testified that the Union emphasized outstanding noneconomic provisions because the Respondent had indicated at the August 26 bargaining session that it would not respond to economic provisions. He also testified that he requested responses to all outstanding provisions in the Union's initial proposal at every subsequent bargaining session that he attended.

[7] Pozza's August 12 letter consisted primarily of an information request. However, in that letter, Pozza also claimed, somewhat puzzling-

> lived its usefulness. I entered into the agreement with the belief that the non-economics could be resolved relatively quickly in view of the successful model we have in the Mountain[T]op CBA. The Company has had other ideas and has dragged out the process for over a year. We would therefore like to discuss our economic proposals and to hear your proposals. Further, we demand that the Company provide responses to all of those other items in our September 2015 proposal to which it has not provided responses to date.

In a reply letter dated October 26, 2016, Rick Grimaldi, the Respondent's attorney and lead negotiator, wrote:

> [I]t is somewhat surprising that now, after almost a year of bargaining, the Union decides it does not like the ground rules that it negotiated and voluntarily, without coercion, agreed to implement. The Company has not withdrawn from the ground rules. The Company continues to bargain over the language of the contract as was agreed upon. The Parties have exchanged many proposals. If the Union is unhappy with the proposals that the Company has provided, it may counter. The Company believes that in a first contract, the language must be resolved adequately as both parties must live with and abide by that language going forward. The light duty issue, that you raised, is yet another example of why it is so important. The Company has come to the table at every session armed with proposals and counter proposals—ready to bargain. Can the Union say the same?

At the October 26, 2016 bargaining session, the Respondent requested that the Union send a list of the provisions in Union's initial proposal to which it had not yet responded. That same day, Kilbert emailed the requested list to the Respondent and stated that it included economic provisions "because the Union wishes to understand the Employer's vision for a completed contract and to discuss all issues that are outstanding." In an email sent later that day, Grimaldi replied, "I believe some of these, at least as they relate to language, should be easy agreements. We will start putting together proposals. Many of them are, of course, tied to overall economics." During an October 27, 2016 bargaining session, the Respondent reiterated that it did not want to repudiate ground rule 5.

From October 26 to November 17, 2016, the parties held five more bargaining sessions. While the Respondent did not discuss or make any counterproposals regarding the outstanding economic provisions in the Union's initial proposal, it did make proposals regarding military leave, employee assistance program, pay day, and flu shots, and the parties reached tentative agreements for those provisions. The Respondent also made proposals on a new lead position and layoffs, and the parties discussed and exchanged proposals regarding those provisions. Further, the parties continued to discuss and exchange proposals regarding arbitration, job posting and bids, seniority, plant regulations, and the annual August wage increase. However, the parties did not reach any other tentative agreements before the Respondent withdrew recognition on November 29, 2016.

ly, that the Respondent's failure to grant an annual August wage increase represented a "repudiation" of ground rule 5.

B. Analysis

Citing *John Wanamaker Philadelphia*, 279 NLRB 1034 (1986), *Detroit Newspapers*, 326 NLRB 700, 704 & fn. 11 (1998), revd. on other grounds sub nom. *Detroit Typographical Union No. 18 v. NLRB*, 216 F.3d 109 (D.C. Cir. 2000), and *Adrian Daily Telegram*, 214 NLRB 1103, 1110–1112 (1974), the judge found that the "Respondent violated Section 8(a)(5) and (1) in refusing indefinitely to bargain about economic matters until all non-economic matters were resolved." Initially, we acknowledge that in the above-cited decisions, the Board found that employers violated Section 8(a)(5) of the Act by insisting indefinitely on the resolution of all noneconomic issues before negotiating economic issues. See, e.g., *Detroit Newspapers*, supra at 704 (citing cases). However, the present case is factually distinguishable, and we find, in the circumstances here, that the Respondent did not violate the Act by insisting indefinitely, after August 26, 2016, on continuing to negotiate noneconomic subjects before discussing economic subjects.[8]

In *John Wanamaker*, supra, the employer refused for more than 6 months to discuss economic matters unless the union agreed to no-strike and binding arbitration provisions. Id. at 1035. The Board found that the employer's refusal to discuss economic subjects violated Section 8(a)(5) and (1) because it "unreasonably fragmented the negotiations and drastically reduced the parties' bargaining flexibility." Ibid. In *Adrian Daily Telegram*, supra, for at least four months following requests by the union and a Federal mediator that the employer make a full economic counterproposal, the employer refused to make such a counterproposal, or to even discuss economics, until the parties resolved all noneconomic subjects. Id. at 1111–1112. Additionally, the union dropped "broad hints" at the bargaining table that it was flexible on every issue, including a particularly contentious issue regarding

[8] Because they find this case distinguishable from *John Wanamaker* and the other cases on which the judge relied, Chairman Ring and Member Emanuel find it unnecessary to consider here whether those cases were correctly decided, but they would be willing to do so in a future appropriate case.

a guild shop clause, and that economic proposals from the employer could help to eliminate some of the issues preventing the parties from reaching agreement. Ibid. The Board found that in those circumstances, the employer "was not dealing with the [u]nion 'in a serious attempt to resolve [their] differences and reach a common ground,'" and therefore violated Section 8(a)(5) and (1). Id. at 1112 (quoting *NLRB v. Insurance Agents' International Union*, 361 U.S. 477, 486 (1960)).[9]

Here, the Union did not take issue with the Respondent's failure to respond to certain provisions in its September 17, 2015 initial contract proposal until almost a year later, at the August 26, 2016 bargaining session. Prior to that session, the parties primarily focused on noneconomic subjects of bargaining, consistent with ground rule 5. In fact, when the Respondent made a counterproposal regarding shoe allowance, the Union asked that the parties table that provision until they discussed economic subjects. While we acknowledge that the parties did not make considerable progress in bargaining prior to August 26, 2016, the General Counsel does not allege that this lack of progress was a result of unlawful conduct by the Respondent.[10]

Although the Union requested, during the August 26, 2016 bargaining session, that the Respondent address the issues in its initial proposal to which it had not yet responded, the Union followed up on August 31, 2016, with a letter that listed a number of noneconomic subjects on which it desired proposals from the Respondent. Over the next few bargaining sessions, the Respondent provided counterproposals regarding grievance procedure, arbitration, Federal and State laws, job posting and bids, and seniority, which were all specifically listed in the Union's August 31 letter. The parties discussed and exchanged proposals regarding those issues, and they quickly reached tentative agreements on grievance procedure and Federal and State laws. Thus, the Respondent engaged with the Union on issues raised in the August 31 letter, and its responsiveness allowed the parties to make progress toward reaching agreement on noneconomic subjects of bargaining.

The Union first emphasized that it wanted to discuss economic subjects in its letter dated October 17, 2016. The Respondent continued to insist that the parties focus on resolving noneconomic subjects before discussing economic subjects and made proposals regarding other outstanding noneconomic issues. The parties reached tentative agreements on military leave, employee assistance program, pay day, and flu shots. Further, they discussed and exchanged proposals regarding arbitration, job posting and bids, seniority, a new lead position, layoffs, and plant regulations—which they had not discussed since early 2016—and neither party claimed that bargaining had reached impasse on any of those subjects. Thus, the parties continued to make progress on noneconomic subjects and had additional room to move on those subjects until the Respondent withdrew recognition on November 29, 2016.

In sum, unlike in *John Wanamaker* and *Adrian Daily Telegram*, the Respondent's insistence on resolving noneconomic subjects of bargaining before discussing economic subjects did not unreasonably fragment bargaining or frustrate the parties' ability to reach agreement.[11] For one thing, the Respondent continued to insist on resolving noneconomic subjects in the face of the Union's requests to discuss economic subjects for a considerably shorter period of time than the employers in *John Wanamaker* and *Adrian Daily Telegram*. Further, the Respondent did not demand that the Union agree to any of its specific proposals for noneconomic subjects before it would proceed to discuss economic subjects, nor did the Respondent refuse to discuss economic subjects in circumstances where the parties' negotiations over none-

[9] *Detroit Newspapers*, supra, also cited by the judge, did not involve an allegation that the employer unlawfully insisted indefinitely on the resolution of all noneconomic issues before negotiating economic issues. Instead, it involved an allegation that the employer unlawfully repudiated the parties' agreement to a two-stage bargaining procedure, under which the employer would initially bargain individually with six unions that represented six separate units but would save certain economic issues for a second stage of joint bargaining with all six unions. See id. at 701. Because the parties struggled to make progress during the first stage of bargaining, the Board found that the employer's repudiation of the two-stage bargaining agreement did not violate the Act, as it "represented a good-faith attempt to accelerate, not delay, the bargaining process and to achieve, not frustrate, the completion of collective-bargaining agreements." Id. at 704.

[10] While the parties reached tentative agreements on a few provisions, they seem to have been hung up on dues checkoff, union security, no strike/no lockout, and absenteeism and tardiness. The parties exchanged numerous proposals concerning those noneconomic subjects over the course of many months but were unable to reach agreement on any of them. The parties also devoted several bargaining sessions to negotiating over the annual health insurance renewal.

Grimaldi, the Respondent's attorney, believed that Pozza, the Union's lead negotiator, was to blame for the lack of progress prior to August 26, 2016. Grimaldi described Pozza as "disorganized," "unfocused," and "unresponsive to questions," and he testified, consistent with the Respondent's bargaining notes, that Pozza abruptly ended bargaining sessions even when the Respondent offered to continue to bargain. Pozza did not testify at the hearing. In any case, it is not necessary to determine which party, if any, was to blame for the lack of progress before August 26, 2016.

[11] We disagree with the judge's conclusion that the Respondent was not privileged to "demand adherence to the ground rules after almost a year of bargaining." The Board's inquiry turns, not on how long the parties had been negotiating under the ground rules, but on whether insisting on adhering to the ground rules has unreasonably fragmented or frustrated bargaining.

conomic subjects had reached a stalemate. Instead, following the August 26 bargaining session, the Respondent made a number of initial counterproposals regarding outstanding noneconomic issues specifically listed in the Union's August 31 letter, and the parties discussed and exchanged proposals regarding those issues. At the time the Union specified that it desired to discuss economic subjects, the parties had not yet exhausted their prospects for reaching agreement on the outstanding noneconomic issues, as evidenced by their continued discussion and exchange of proposals regarding those subjects after the Union sent its October 17 letter. Thus, at the time bargaining ceased, the Respondent had not fragmented bargaining or frustrated the parties' ability to reach agreement by continuing to insist on resolving noneconomic subjects before discussing economic subjects because the parties were still making progress toward agreement on noneconomic subjects of bargaining.

Under these circumstances, and in light of the parties' explicit agreement in ground rule 5 to discuss noneconomic proposals before economic proposals, we do not believe that it is the Board's place to pass judgment on what subjects the parties should have prioritized during bargaining.[12] Therefore, we reverse the judge's decision in relevant part and dismiss the allegation that the Respondent violated Section 8(a)(5) and (1) by insisting on resolving noneconomic subjects of bargaining before discussing economic subjects.[13]

II. AUGUST 12, 2016 INFORMATION REQUEST

A. Relevant Facts

On August 12, 2016, the Union requested that the Respondent provide the following information:

> 2) For each employee working in the bargaining unit at the time, please provide the date and amount of any bonuses, monetary awards, lump sums, or other payments that are not made every payroll period between January 1, 2013, and present.
>
> . . .
>
> 4) Describe the mechanisms by which the payments in (2) were calculated and a description of the information relied upon in determining their amount.
>
> 5) Provide any written descriptions of the Company's practices with respect to pay rate increases, bonuses, monetary awards, or other payments.

Quarterly cash bonuses (QCBs), which the Respondent pays to unit employees pursuant to its Quarterly Bonus Program, are "bonuses . . . or other payments that are not made every payroll period." The Respondent uses a formula to calculate

[12] Our dissenting colleague is correct that ground rule 5 did not privilege the Respondent to insist on resolving all noneconomic subjects before discussing economics "to the point of frustrating the possibility of reaching agreement." However, we disagree with her, for the reasons discussed above, that the Respondent persistently insisted on resolving noneconomic subjects to the point of frustrating the possibility of the parties reaching agreement here.

Additionally, we recognize that the Board has found that bad faith on the part of an employer is not a prerequisite to finding that the employer unlawfully insisted on resolving noneconomic subjects before discussing economic subjects. See, e.g., *Nansemond Convalescent Center, Inc.*, 255 NLRB 563, 567 & fn. 16 (1981); *Pillowtex Corp.*, 241 NLRB 40, 46–47 (1979), enfd. mem. 615 F.2d 917 (5th Cir. 1980); *Cal-Pacific Furniture Mfg. Co.*, 228 NLRB 1337, 1341–1342 (1977), enf. denied on other grounds sub nom. *NLRB v. Yama Woodcraft, Inc.*, 580 F.2d 942 (9th Cir. 1978). However, those cases are distinguishable from the present case. In *Nansemond*, supra, the employer attempted to use its position on wages to force the union to comply with its procedural wishes and continued to insist on resolving all noneconomic subjects before discussing economic subjects to the point that the parties broke off negotiations. See id. at 565–567. In *Pillowtex*, supra, the employer insisted that the union cease demanding a dues-checkoff provision and agree to its noneconomic proposals before it would discuss economics. See id. at 46–47 ("[I]f one of the parties insists that noneconomic issues be completely resolved on terms favorable to it before it will discuss economic issues, impasse is virtually guaranteed. Such a 'procedural strai[t]jacket' is uncompatible [sic] with the statutory duty to negotiate in a manner which facilitates agreement" (internal footnote omitted).). In *Cal-Pacific Furniture*, supra, the employer refused to bargain over noneconomics unless the union accepted its economic proposal. See id. at 1340–1342 ("If in these circumstances the union, as it did here, asks the employer to turn to noneconomic issues, but the employer, as it did here, refuses to talk about them until all of the economic issues have been settled on terms favorable to the employer, impasse is virtually guaranteed."). Here, the Respondent never insisted that the Union accept its noneconomic proposals before it would discuss economics, and the parties were making progress toward agreement on noneconomic subjects throughout the entire period that the Respondent continued to adhere to ground rule 5. Thus, the Respondent did not create a "procedural straitjacket" that frustrated the possibility of the parties reaching agreement. We acknowledge, as demonstrated by the cases discussed above and the additional cases cited in the dissent, that an employer's insistence on resolving noneconomic subjects before negotiating economic subjects may violate the Act (or support a finding of overall bad faith) in certain circumstances. However, our dissenting colleague, the judge, and the parties have not cited—and we have not found—any case in which the Board has found a violation when the employer's insistence did not fragment or frustrate bargaining. We simply do not agree with our dissenting colleague that an employer's insistence on resolving noneconomic subjects before negotiating economics "inherently fragments the bargaining process and limits the possibility of reaching agreement" where, as here, the record evidence does not support such a conclusion, but instead shows that the parties were making progress toward an agreement by bargaining over, and reaching tentative agreements on, noneconomic subjects.

[13] We also dismiss the related allegation that the Respondent violated Sec. 8(a)(5) and (1) by failing to comprehensively respond to the Union's initial proposal. The Respondent's failure to respond to certain provisions in that proposal was part and parcel of its lawful adherence to the ground rules for bargaining upon which the parties had agreed.

the QCBs, but in general they are based on plant operating profits.

In regard to the QCBs, the Respondent provided the Union with information responsive to paragraph 2 of the August 12 information request and a description of its Quarterly Bonus Program found in its employee handbook. When, during the October 27, 2016 bargaining session, the Union began asking questions about how the QCBs are calculated, the Respondent's bargaining team admitted that they did not understand how the QCBs are calculated but stated that they would either provide a more detailed description of how the QCB formula works or have someone who is more knowledgeable explain it to the Union. At that same bargaining session, the Union specified that it was also requesting the actual information that the Respondent has used to calculate QCBs in the past. The Respondent refused to provide that information.[14] In an October 27, 2016 email, the Union reiterated its request for a more detailed description of the QCB formula and the calculation information. The Respondent's attorney Grimaldi responded that he would forward "a more accurate description" of the QCB formula when he received it, but he did not comment on the calculation information. The Respondent has not provided the Union with either a more detailed description of how the QCB formula works or the calculation information (collectively, the QCB information).

B. Analysis

An employer, as part of its duty to bargain, must provide requested information to a union if that information is relevant to the union's duties as the employees' collective-bargaining representative, including information relevant to contract negotiations. See generally *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152–154 (1956). Information that relates to unit employees' terms and conditions of employment is presumptively relevant. See *Centura Health St. Mary-Corwin Medical Center*, 360 NLRB 689, 689 (2014). An employer must provide a union with requested presumptively relevant information unless it rebuts the presumption of relevance or establishes an affirmative defense. Ibid. "The Board uses a broad, discovery-type standard in determining relevance in information requests, . . . and potential or probable relevance is sufficient to give rise to an employer's obligation to provide information." *Shoppers Food Warehouse*, 315 NLRB 258, 259 (1994). Thus, to rebut the presumption of relevance, an employer must show that the requested information is "irrelevant to any legitimate union collective-bargaining need." *Coca-Cola Bottling Co.*, 311 NLRB 424, 425 (1993).

Because the QCB information relates to the unit employees' compensation, it is presumptively relevant. The Respondent attempts to rebut that presumption by arguing that the QCB information is no longer relevant because the Regional Director dismissed the Union's charge alleging that the Respondent violated the Act by paying QCBs to unit employees without giving the Union notice and an opportunity to bargain. However, the Union did not request the QCB information in connection with that charge[15] or to bargain in the interim over the amounts of the QCBs. Instead, the Union requested the QCB information to assist it in bargaining for an initial collective-bargaining agreement, and the QCB information was clearly relevant to that purpose. First, the Union needed the QCB information to understand the unit employees' current overall compensation and to effectively bargain over, and draft proposals concerning, wages and other forms of compensation. Second, to specifically bargain over the QCBs and perhaps propose a new formula, the Union needed the QCB information to understand how the QCB formula works, to verify that the Respondent has actually applied it, and to gauge how changes to the formula would affect the dollar amounts of the QCBs.[16] Therefore, we agree with the judge that the Respondent violated Section 8(a)(5) and (1) by failing to provide the Union with relevant information requested in paragraphs 4 and 5 of the Union's August 12, 2016 information request—more specifically, a description of how the QCB formula works and the underlying information that the Respondent has used to calculate the QCBs.

III. SEPTEMBER 6, 2016 INFORMATION REQUEST

A. Relevant Facts

In its September 6, 2016 information request, the Union stated:

[14] During that bargaining session, the Respondent claimed that the information used to calculate the QCBs is confidential. However, the Respondent has not raised a confidentiality defense on exceptions.

[15] The Board will not require an employer to provide information to a union when "the union's information request 'was akin to a discovery device pertinent to its pursuit of the unfair labor practice charge rather than to its duties as collective-bargaining representative.'" *Fremont Medical Center*, 357 NLRB 1899, 1906 (2011) (quoting *WXON-TV*, 289 NLRB 615, 617–618 (1988), enfd. mem. per curiam 876 F.2d 105 (6th Cir. 1989)). But that was not what happened here.

[16] The Respondent claims that the Union can only bargain over *whether* the unit employees will continue to receive QCBs. To the contrary, bonuses are a mandatory subject of bargaining, and the Respondent cannot dictate the scope of the Union's proposals concerning a mandatory subject. The Union is therefore free to propose adjustments to the QCB formula or a completely new formula, although the Respondent is not required to agree to any such changes. See generally Sec. 8(d) of the Act.

> You referred to the Company's need to be competitive on price at the negotiating table on August 26 in justifying the Company's position on wage increases. You specifically referenced customers' lack of understanding of price increases as a reason for the Company's position with respect to wages. In order to better understand the Company's positions on compensation and the relationship between employee compensation, competitiveness, prices, and customer sensitivity to price increases, the Union wishes to request the following information:
>
> 1) The current prices for the five items produced by the facility that realize the greatest revenue;
>
> 2) All changes to the prices of the items listed in (1) between January 1, 2014, and the present;
>
> . . .
>
> 4) The labor cost at the facility as a percentage of the price of each of the items listed in (1) as of the current date and as of January 1 of 2016, 2015, and 2014[;]
>
> 5) The identities of the Company's primary competitors for each of the items listed in (1) and the current prices of their most equivalent products.

Union attorney Kilbert testified that the September 6 information request was in response to Grimaldi's statements at the August 26, 2016 bargaining session during a discussion of the Union's proposals for the annual August wage increase. Specifically, Kilbert testified that Grimaldi said that the Respondent's "customers would not understand a 15 percent price increase" and that the Respondent "had to remain competitive."

By letter dated September 12, 2016, Grimaldi wrote:

> I would like to respond to the newest requests in your September 6, letter. As an initial matter, you mischaracterized the statements made at the bargaining table. Specifically, the Company never said anything about "the need to be competitive on price" as a justification for the Company's position on wages [sic] increases. The Company did make a generic reference to customers not wanting to absorb a business's cost increases. The reference was to American business in general and certainly there was no specific reference to the Company's customers.

At the hearing, Grimaldi admitted stating during the August 26 bargaining session that the Respondent did not want to pass along increases to customers but denied stating that the Respondent needed to remain competitive.

In a September 21, 2016 follow-up letter to the Union's September 6 information request, Pozza, the Union's lead negotiator, wrote to the Respondent:

> I further wish to state unequivocally that the account of the facts in your September 12 letter is incorrect. In justifying the Company's economic proposal on August 26, you specifically stated that "customers would not understand a 15 percent price increase." You did not state this in reference to American business in general but as a reason for the Company's proposal. Shortly after, when Mr. Kilbert summarized the Company's position as being opposed to a large wage increase because the Company was seeing a large increase in health insurance costs and the Company does not want to pass along the increase in costs to its customers, you indicated that this was correct and that the Company needs to "remain competitive." The information requested, which is calculated to permit the Union to understand the Company's competitive position and the impact of labor costs on its competitiveness, is relevant. The Company's refusal to provide it is therefore unlawful.

In a September 30, 2016 reply letter, the Respondent admitted that it "stated at the table that no customer would understand a 15% price increase," but continued to refuse to provide the requested information. Thus, the Respondent has not provided the Union with the information requested in paragraphs 1, 2, 4, and 5 of the Union's September 6 information request.[17]

B. Analysis

The Respondent correctly points out that it did not claim an inability to pay the amounts that the Union proposed for the annual August wage increase. Indeed, the General Counsel does not allege, and the judge did not find, that it did so. However, "[a]lthough an employer need not 'open its books' to a union in the absence of a claimed inability to pay, a union may still seek specific financial data, and the employer must provide such information upon a showing of relevancy." *Management & Training Corp.*, 366 NLRB No. 134, slip op. at 2 (2018). To comply with its duty to provide requested information that is relevant to, and necessary for, a union's performance of its representational duties, an employer must provide information needed by the union "to assess claims made by the employer relevant to contract negotiations." *Caldwell Mfg. Co.*, 346 NLRB 1159, 1159 (2006); see also *Audio Visual Services Group, Inc. d/b/a PSAV Presentation Services*, 367 NLRB No. 103, slip op. at 5 (2019); *National Extrusion & Mfg. Co.*, 357 NLRB 127, 128–129 (2011), enfd. sub nom. *KLB Industries, Inc. v. NLRB*, 700 F.3d 551 (D.C. Cir. 2012). "In-

[17] The Respondent claimed during bargaining that this information is confidential, but it has not raised a confidentiality defense on exceptions.

formation is relevant under *Caldwell* only if the union is seeking 'specific information to evaluate the accuracy of the Respondent's specific claims and to respond appropriately with counterproposals.'" *Arlington Metals Corp.*, 368 NLRB No. 74, slip op. at 3 (2019) (quoting *Caldwell*, supra at 1160).

The judge correctly found that the information requested in paragraphs 1, 2, and 4 of the Union's September 6 information request is relevant because the Union needs this information to verify the Respondent's claim—implicit in its statement that "it did not want its customers to be faced with a 15% increase in its prices"[18]—that agreeing to the Union's wage proposal would compel the Respondent to raise its prices 15 percent. That information will allow the Union to determine whether its proposals would actually result in a 15-percent increase in the Respondent's prices, whether such an increase would be significantly higher than previous price increases, and what effect labor costs have on the prices the Respondent charges. However, we reverse the judge's finding that the Union is entitled to the information requested in paragraph 5 of its September 6 information request. Information concerning the Respondent's competitors' prices is not relevant to the Union's ability to determine if its annual August wage increase proposals would lead to a 15-percent increase in the Respondent's prices.[19] Therefore, we affirm the judge's finding that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to provide the information requested by the Union in paragraphs 1, 2, and 4 of its September 6, 2016 information request, but we reverse the judge's finding that the Respondent unlawfully failed to provide the information requested in paragraph 5.

[18] Contrary to the Respondent's contention in its brief in support of exceptions, the record is not "utterly devoid of Respondent making any such statement at any time." As discussed above, Kilbert testified, consistent with the Union's September 21 letter, that during the August 26 bargaining session, the Respondent stated that its "customers would not understand a 15 percent price increase," and the Respondent confirmed in its September 30 letter that it "stated at the table that no customer would understand a 15% price increase."

[19] Although Kilbert testified that the Respondent stated in bargaining that it "had to remain competitive," the Respondent denied making any such statement. The judge did not make a credibility resolution as to this conflicting testimony. Therefore, even assuming that such a statement, if made, would give rise to a duty to furnish information under the rule of *Caldwell*—an issue we do not decide—we find the record insufficient to support a finding that the information requested in paragraph 5 is relevant.

IV. WITHDRAWAL OF RECOGNITION

A. Relevant Facts

The Respondent withdrew recognition from the Union on November 29, 2016, at which time the bargaining unit consisted of 43 employees. The judge found that in withdrawing recognition, the Respondent relied solely on a petition that it received from the National Right to Work Legal Defense Foundation on behalf of employee William Berlew.[20] The petition consists of five unnumbered pages that were scanned into a single electronic document. The first and last pages of the petition contain signature lines, a statement that the "undersigned employees of [the Respondent] do not want to be represented by [the Union]," and a request that the Respondent withdraw recognition from the Union immediately if "the undersigned employees make up 50% or more of the bargaining unit." The middle three pages of the petition contain signature lines but no statement of the petition's purpose or request that the Respondent take any action based on the petition. Nine employees signed the first and the last pages of the petition, while 14 employees signed the middle three pages.

B. Analysis

"A union usually is entitled to a conclusive presumption of majority status for one year following Board certification." *Auciello Iron Works, Inc. v. NLRB*, 517 U.S. 781, 786 (1996) (internal quotations omitted). If the parties fail to agree to a collective-bargaining agreement during the certification year, the union's presumption of majority support becomes rebuttable at the end of the certification year. See ibid. The Board has held that "an employer may unilaterally withdraw recognition from an incumbent union only where the union has actually lost the support of the majority of the bargaining unit employees." *Levitz Furniture Co. of the Pacific*, 333 NLRB 717, 717 (2001). Thus, if the union contests an employer's withdrawal of recognition, the employer has the burden of proving that the union had, in fact, lost majority support at the time that it withdrew recognition. Id. at 725. If an employer withdraws recognition based on a petition, the language of the petition need not be, as the judge suggests, unambiguous, but the more reasonable

[20] The judge's finding is supported by the Respondent's November 29, 2016 letter to the Union, which stated that its withdrawal of recognition was based on a petition signed by a majority of unit employees, and the testimony of Timothy Brink, the Respondent's Area Manager. The judge discredited the testimony of the Respondent's attorney Grimaldi that the Respondent relied on other factors in addition to the petition to support its withdrawal of recognition because his testimony was inconsistent with the evidence described above and the Respondent's answer to the complaint. As previously stated, we find no basis for reversing the judge's credibility resolutions.

interpretation of the language must be that the signatory employees desired to remove the union as their representative. See *Wurtland Nursing & Rehabilitation Center*, 351 NLRB 817, 818 (2007).

Here, the Respondent failed to establish through the petition that the Union had lost the support of the majority of the unit employees at the time that it withdrew recognition. The first and last pages of the petition clearly indicate that the employees whose signatures appear on those pages no longer wanted the Union to represent them; however, only nine employees signed those pages, which is well short of 50 percent of the 43-employee bargaining unit. The middle three pages of the petition, which 14 employees signed, lack any statement of the signatory employees' intent in signing the petition, let alone their desires concerning union representation. The Board recently found that an employer failed to establish that a union had lost majority support where "the document the [employer] relied on in withdrawing recognition contained no statement of the employees' desires concerning union representation." *Liberty Bakery Kitchen, Inc.*, 366 NLRB No. 19, slip op. at 1 fn. 1 (2018); see also *Anderson Lumber Co.*, 360 NLRB 538, 538 fn. 1 (2014) (finding that the employer failed to establish that a union had lost majority support where the statements submitted by a determinative number of employees "did not show that they no longer wanted the [u]nion to represent them for the purposes of collective bargaining"), enfd. sub nom. *Pacific Coast Supply, LLC v. NLRB*, 801 F.3d 321 (D.C. Cir. 2015). Because the middle three pages of the petition do not state the petition's purpose or request that the Respondent take any action based on the petition—or state anything at all, for that matter—the Respondent could not properly rely on the 14 signatures on those pages to support its withdrawal of recognition. Thus, the Respondent failed to establish that the Union had lost majority support at the time that it withdrew recognition. We therefore affirm the judge's finding that the Respondent violated Section 8(a)(5) and (1) by withdrawing recognition from the Union.[21]

[21] We find it unnecessary to pass on the judge's analysis of whether the Respondent established that the Union had lost majority support at the time that it withdrew recognition based on evidence adduced at the hearing, of which the Respondent was not aware at the time that it withdrew recognition. See *Highlands Regional Medical Center*, 347 NLRB 1404, 1407 fn. 17 (2006), enfd. sub nom. *Highlands Hospital Corp. v. NLRB*, 508 F.3d 28 (D.C. Cir. 2007). Additionally, because the petition does not represent objective evidence that the Union had lost majority support at the time that the Respondent withdrew recognition, we find it unnecessary to pass on the judge's analysis of whether the Respondent properly authenticated a sufficient number of signatures on the petition.

CONCLUSIONS OF LAW

1. The Respondent, Wyman Gordon Pennsylvania, LLC, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers Union, AFL–CIO–CLC, is a labor organization within the meaning of Section 2(5) of the Act that serves as the exclusive collective-bargaining representative of the following appropriate unit of employees within the meaning of Section 9(a) of the Act:

> All full-time and regular part-time production and maintenance employees employed by the Employer at its 1141 Highway 315, Plains, PA facility, excluding all other employees, office clerical employees, audit inspectors, guards, and supervisors (including group leaders) as defined in the Act.

3. The Respondent violated Section 8(a)(1) of the Act by maintaining the confidentiality statement in its employee handbook.

4. The Respondent violated Section 8(a)(5) and (1) of the Act by engaging in the following conduct:

(a) Failing and refusing to provide the Union with relevant information requested in paragraphs 4 and 5 of the Union's August 12, 2016 information request.

(b) Failing and refusing to provide the Union with relevant information requested in paragraphs 3 and 8 of the Union's August 31, 2016 information request.

(c) Failing and refusing to provide the Union with relevant information requested in paragraphs 1, 2, and 4 of the Union's September 6, 2016 information request.

(d) Unilaterally changing its status quo past practice of increasing unit employees' wages in August of each year by failing to grant unit employees a wage increase in August 2016 without giving the Union notice and an opportunity to bargain.

(e) Discontinuing its practice of providing light-duty work to employees on workers' compensation without giving the Union notice and an opportunity to bargain.

(f) Withdrawing recognition from the Union and subsequently failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of the unit employees.

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

AMENDED REMEDY

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

Specifically, having found that the Respondent violated Section 8(a)(1) by maintaining the confidentiality statement in its employee handbook, we shall order the Respondent to rescind or revise that unlawful provision and advise its employees in writing that it has done so in accordance with *Guardsmark, LLC*, 344 NLRB 809, 812 & fn. 8 (2005), enfd. in relevant part 475 F.3d 369 (D.C. Cir. 2007).

Having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to provide the Union with the information requested in paragraphs 4 and 5 of its August 12, 2016 information request, in paragraphs 3 and 8 of its August 31, 2016 information request, and in paragraphs 1, 2, and 4 of its September 6, 2016 information request, we shall order the Respondent to provide that information to the Union.

Having found that the Respondent violated Section 8(a)(5) and (1) by failing to grant unit employees an annually recurring wage increase in August 2016 and discontinuing its practice of providing light-duty work to employees on workers' compensation without giving the Union notice and an opportunity to bargain, we shall order the Respondent to rescind those unlawful unilateral changes and to make affected unit employees whole for any loss of earnings and other benefits attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). The Respondent shall be required to compensate the affected unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and to file with the Regional Director for Region 15, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee. *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

Finally, having found that the Respondent violated Section 8(a)(5) and (1) by withdrawing recognition from the Union, we agree with the judge that an affirmative bargaining order is warranted on the facts of this case. The Board has previously held that an affirmative bargaining order is "the traditional, appropriate remedy for an 8(a)(5) refusal to bargain with the lawful collective-bargaining representative of an appropriate unit of employees." *Caterair International*, 322 NLRB 64, 68 (1996). In several cases, however, the United States Court of Appeals for the District of Columbia Circuit has required that the Board justify, on the facts of each case, the imposition of such an order. See, e.g., *Vincent Industrial Plastics, Inc. v. NLRB*, 209 F.3d 727, 738–739 (D.C. Cir. 2000); *Lee Lumber & Building Material Corp.*, 117 F.3d 1454, 1461–1462 (D.C. Cir. 1997); *Exxel/Atmos, Inc.*, 28 F.3d 1243, 1248–1249 (D.C. Cir. 1994). In *Vincent*, supra, the court summarized its requirement that an affirmative bargaining order "must be justified by a reasoned analysis that includes an explicit balancing of three considerations: (1) the employees' [Section] 7 rights; (2) whether other purposes of the Act override the rights of employees to choose their bargaining representatives; and (3) whether alternative remedies are adequate to remedy the violations of the Act." Id. at 738. Although we adhere to *Caterair*, supra, we have examined the particular facts of this case as the court requires and find that a balancing of the three factors warrants an affirmative bargaining order.[22]

(1) An affirmative bargaining order in this case vindicates the Section 7 rights of the unit employees who were denied the benefits of collective bargaining through their designated representative by the Respondent's withdrawal of recognition and resultant refusal to bargain with the Union for an initial collective-bargaining agreement. At all relevant times, the Union was actively representing the unit employees and was bargaining for an initial collective-bargaining agreement to advance the employees' interests with respect to their employment terms. After the end of the certification year, the Respondent withdrew recognition without showing that the Union had actually lost majority support. Although the Union's presumption of majority status was rebuttable following the end of the certification year, the Respondent was still obligated to recognize and bargain with its employees' chosen representative absent objective evidence that the Union had lost majority support. The Respondent's unlawful conduct demonstrated disregard for the employees' Section 7 right to choose union representation and tended to undermine unit employees' continuing support for the Union.

At the same time, an affirmative bargaining order, with its attendant bar to raising a question concerning the Union's continuing majority status for a reasonable period of time, will not unduly prejudice the Section 7 rights of employees who may oppose continued union representa-

[22] Chairman Ring and Member Emanuel would adopt the D.C. Circuit's view that the Board should determine, on the facts of each case, whether an affirmative bargaining order with its attendant decertification bar is appropriate by balancing the three considerations set forth in *Vincent*, supra. They agree that the conditional three-factor analysis set forth here in affirming the need for an affirmative bargaining order is consistent with extant precedent, but in light of adverse judicial rulings they believe that this precedent warrants full Board review in a future case.

tion. The bar does not continue indefinitely, but rather only for a reasonable period of time to allow the good-faith bargaining that the Respondent's unlawful withdrawal of recognition cut short. Since the Union was unfairly deprived of an opportunity to reach an initial collective-bargaining agreement with the Respondent, it is only by restoring the status quo ante and requiring the Respondent to bargain with the Union for a reasonable period of time that the employees' Section 7 right to representation will be vindicated and that the employees will be able to fairly assess the Union's effectiveness as a bargaining representative in an atmosphere free of the Respondent's unlawful conduct. The employees can then determine whether continued representation by the Union is in their best interest.

(2) An affirmative bargaining order serves the purposes and policies of the Act by fostering meaningful collective bargaining and industrial peace, and by removing the Respondent's incentive to delay bargaining in the hope of discouraging support for the Union. Such an order also ensures that the Union will not be pressured by the possibility of a decertification petition or by the prospect of an imminent withdrawal of recognition to achieve immediate results at the bargaining table following the Board's resolution of its unfair labor practice charges and the issuance of a cease-and-desist order.

(3) A cease-and-desist order alone would be inadequate to remedy the Respondent's withdrawal of recognition because such an order would not provide the Union with a reasonable period of time to bargain and would allow another challenge to the Union's majority status before the taint of the Respondent's unlawful conduct has dissipated and before the unit employees have had a reasonable time to regroup and bargain through their chosen representative in an effort to reach an initial collective-bargaining agreement. Such a result would be particularly unjust here because litigation of the Union's charges has taken 3 years, and, as a result, the Union needs to reestablish its representative status with the unit employees. Further, the Respondent's withdrawal of recognition would likely have a continuing effect, thereby tainting any employee disaffection from the Union arising during that period or immediately thereafter. In these circumstances, permitting a decertification petition to be filed immediately might very well allow the Respondent to profit from its own unlawful conduct. We find that these circumstances outweigh the temporary impact that the affirmative bargaining order will have on the rights of employees who oppose continued union representation.

For all of the foregoing reasons, we find that an affirmative bargaining order with its temporary decertification bar is necessary to fully remedy the Respondent's unfair labor practices in this case.[23]

ORDER

The National Labor Relations Board orders that the Respondent, Wyman Gordon Pennsylvania, LLC, Plains, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unlawfully withdrawing recognition from United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers Union, AFL–CIO–CLC (the Union) and failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of the unit employees.

(b) Refusing to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

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[23] In arguing that an affirmative bargaining order is not justified, the Respondent relies on *Scomas of Sausalito, LLC v. NLRB*, 849 F.3d 1147 (D.C. Cir. 2017), where the D.C. Circuit denied enforcement of the Board's affirmative bargaining order. *Scomas*, however, is easily distinguishable from the present case. In *Scomas*, the employer received a petition signed by a majority of the unit employees, which requested that the employer withdraw recognition from the union. See id. at 1152. At the time that the employer received the petition, the union had failed to request bargaining for a successor collective-bargaining agreement for more than a year following the expiration of the previous agreement and had not even communicated with unit employees for years. See ibid. Prior to the employer withdrawing recognition based on the petition, the union convinced six unit employees to sign forms revoking their signatures from the petition—reducing the number of valid signatures on the petition to less than 50 percent of the unit—but it did not inform the employer. See id. at 1153. The court concluded that an affirmative bargaining order was not justified where the employer "acted in good faith on a facially valid decertification petition," the employees' disaffection did not result from the employer's actions but instead resulted from the union's neglect, and 42 percent of the unit employees still supported an election even after the revocations. See id. at 1157–1158. Here, the Respondent did not rely on a facially valid decertification petition, as the petition established that only 9 of the 43 employees in the unit (21 percent) no longer desired to be represented by the Union. Indeed, the petition did not even establish that 30 percent of the unit employees supported a decertification election, which is the showing of interest required for such an election. See NLRB Casehandling Manual (Part Two) Representation Sec. 11023.1. Finally, at all material times, the Union was actively representing the unit employees, as it frequently communicated with them and bargained on their behalf with the Respondent for an initial collective-bargaining agreement. Thus, *Scomas* does not dissuade us from finding that an affirmative bargaining order is justified on the particular facts of this case.

The General Counsel and the Union additionally request both a notice-reading remedy and a bargaining-schedule remedy. Because we find that the remedies discussed above, including an affirmative bargaining order, are sufficient to effectuate the policies of the Act, we deny their requests.

(c) Changing the terms and conditions of employment of its unit employees without first notifying the Union and giving it an opportunity to bargain.

(d) Maintaining the confidentiality statement in its employee handbook.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time production and maintenance employees employed by the Employer at its 1141 Highway 315, Plains, PA facility, excluding all other employees, office clerical employees, audit inspectors, guards, and supervisors (including group leaders) as defined in the Act.

(b) Furnish to the Union in a timely manner the information requested by the Union in paragraphs 4 and 5 of its August 12, 2016 information request, in paragraphs 3 and 8 of its August 31, 2016 information request, and in paragraphs 1, 2, and 4 of its September 6, 2016 information request.

(c) On request by the Union, rescind any changes in its unit employees' terms and conditions of employment that were unilaterally implemented since June 1, 2016.

(d) Make unit employees whole for any loss of earnings and other benefits suffered as a result of the failure to grant them an annually recurring wage increase in August 2016 and the discontinuance of its practice of providing light-duty work to employees on workers' compensation in the manner set forth in the amended remedy section of this decision.

(e) Compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 4, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(f) Rescind the confidentiality statement in its employee handbook.

(g) Furnish employees with an insert for the current employee handbook that (1) advises that the unlawful provision has been rescinded, or (2) provides a lawfully worded provision on adhesive backing that will cover the unlawful provision; or publish and distribute to employees revised employee handbooks that (1) do not contain the unlawful provision, or (2) provide a lawfully worded provision.

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

(i) Within 14 days after service by the Region, post at its Plains, Pennsylvania facility copies of the attached notice marked "Appendix."[24] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 1, 2016.

(j) Within 21 days after service by the Region, file with the Regional Director for Region 4 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. December 16, 2019

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John F. Ring, Chairman

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

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER MCFERRAN, dissenting in part.

As the Board and courts have long recognized, good-faith collective bargaining requires parties to discuss all mandatory subjects, so that they can engage in the give-and-take that is needed to reach a collective-bargaining agreement.[1] Here, the Respondent persistently refused to discuss economic subjects until all noneconomic subjects were resolved, and failed and refused to comprehensively respond to the Union's initial contract proposal and requests to bargain. The judge was right that this conduct disrupted the collective bargaining process, frustrated the possibility of reaching agreement, and thus (under well-established precedent) violated Section 8(a)(5) of the National Labor Relations Act. The majority now excuses the Respondent's conduct based on a rationale that has no solid foundation in applicable precedent or in the pro-bargaining policies of the Act.[2]

I.

After the Union's certification, the parties began bargaining. At the first bargaining session in September 2015, the Union presented a complete contract proposal. The parties also agreed on ground rules, including a provision stating in relevant part that "[l]anguage proposals [(i.e. noneconomic proposals)] will be discussed prior to the discussion of economic proposals." By its clear terms, of course, this ground rule did not require *agreement or impasse* on noneconomic proposals before there could be discussion of economic proposals. It required only that noneconomic proposals be *discussed first*. Some weeks later, the Respondent tabled discussion of the economic provisions in the Union's proposal and refused to state a position on any of those provisions.

Predictably, the parties made very little progress during the next *11 months* of negotiations. In time, the Union naturally realized that bargaining was not progressing. Starting in August 2016, the Union repeatedly asked the Respondent to state its position on the Union's complete contract proposal, including economic provisions, made at the very first bargaining session. But the Respondent persistently refused, citing the parties' ground rules—despite having negotiated certain economic subjects (i.e. interim health insurance contributions and an annual wage increase) when it suited its own purposes. Although the Respondent provided counterproposals to some provisions in the Union's contract proposal, the Respondent never provided *any* response regarding numerous provisions including: reporting pay, call-in pay, insurance benefits and employee contributions during the term of the contract, hours, vacation, holidays, wage increases during the term of the contract, new classifications and rates, 401(k) plan, rights and assigns, termination and reopening of the contract, timekeeping, flexible spending accounts, and COBRA.

Meanwhile, from August through November 2016, the Respondent engaged in a course of unlawful conduct (as the Board finds) that inevitably tended to erode employee support for the Union. The Respondent: (1) failed to provide an annual wage increase, without giving the Union prior notice and an opportunity to bargain; (2) failed and refused to provide requested information that was relevant to the Union's ability to engage in meaningful bargaining; and (3) unilaterally changed its light-duty policy. Finally, on November 29, 2016, the Respondent unlawfully withdrew recognition from the Union without objective evidence demonstrating that the Union had lost majority support.[3]

II.

My colleagues and I agree, then, that the Respondent committed several unfair labor practices while the parties were bargaining for an initial collective-bargaining agreement, culminating with the unlawful withdrawal of recognition from the Union.[4] Our most important disa-

[1] See, e.g., *Patent Trader, Inc.*, 167 NLRB 842, 853 (1967) ("Good-faith bargaining entails exchange of views on all mandatory bargaining subjects. . . . Experience shows that even intransigence in one area will frequently thaw in the face of concessions in another."), enfd. in relevant part 415 F.2d 190 (2d Cir. 1969), modified on other grounds, 426 F.2d 791 (1970) (en banc). See also *Endo Laboratories, Inc.*, 239 NLRB 1074, 1075 (1978) (recognizing "the kind of 'horse trading' or 'give-and-take' that characterizes good-faith bargaining").

[2] Sec. 1 of the Act provides that "[i]t is … the policy of the United States to . . . encourag[e] the practice and procedure of collective bargaining." 29 U.S.C. §151.

[3] The Respondent relied on a petition demonstrating that just 9 of 43 bargaining unit employees (i.e., 20 percent) no longer supported the Union.

[4] There are no exceptions to the judge's findings that the Respondent violated Sec. 8(a)(5) by failing to provide unit employees an annual wage increase without giving the Union prior notice and an opportunity to bargain and by unilaterally changing its light-duty policy, as well as violating Sec. 8(a)(1) by maintaining the confidentiality statement in its employee handbook.

I join my colleagues in affirming the judge's well-reasoned findings that the Respondent violated Sec. 8(a)(5) and (1) by withdrawing recognition from the Union without objective evidence demonstrating the Union's loss of majority support and by failing and refusing to provide the Union with requested information.

However, contrary to the majority, I would affirm the judge's finding that the Respondent's withdrawal of recognition was also unlawful because any loss of majority support was tainted by the Respondent's unfair labor practices. As found by the judge, the Respondent's unlaw-

greement here is whether the judge correctly found that the Respondent also violated Section 8(a)(5) by refusing to discuss economic subjects until all noneconomic subjects were resolved and by refusing to respond to the Union's contract proposal and requests to bargain. As explained below, the judge's findings are fully supported by established precedent, which the Board should follow here.

Section 8(a)(5) of the Act makes it an unfair labor practice for an employer "to refuse to bargain collectively with the representative of his employees." Collective bargaining is defined in Section 8(d) as "the mutual obligation . . . to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment." As the Supreme Court has explained, *good-faith* bargaining "presupposes a desire to reach ultimate agreement, to enter into a collective bargaining contract," and though "the parties need not contract on any specific terms . . . they are bound to deal with each other in a serious attempt to resolve differences and reach a common ground."[5] To that end, "[g]ood-faith bargaining entails exchange of views on all mandatory bargaining subjects."[6] Indeed, all mandatory subjects of bargaining must be on the table because "[t]he very nature of collective bargaining presumes that while movement may be slow on some issues, a full discussion of other issues . . . may result in agreement on the stalled issues. 'Bargaining does not take place in isolation and a proposal on one point serves as leverage for positions in other areas.'"[7]

Based on these principles, the Board and courts have long held that an employer violates Section 8(a)(5) and (1) by insisting indefinitely on the resolution of all noneconomic subjects before negotiating economic subjects.[8] As the Board has explained:

> [I]t is clear that [the employer's] insistence on refusing to discuss and submit counterproposals on economic matters until all noneconomic items were resolved, constitutes persuasive evidence of intent not to reach agreement. . . . By postponing or removing from the area of bargaining – to the very end of negotiations – most fundamental terms and conditions of employment (wages, hours of work, overtime, severance pay, reporting pay, holidays, vacations, sick leave, welfare and pensions, etc.), [the employer] reduced the flexibility of collective bargaining, narrowed the range of possible compromises, and cut off the infinite opportunities for bargaining.[9]

ful failure and refusal to discuss economic subjects and to respond to the Union's contract proposal prolonged bargaining and prevented the parties from reaching agreement, which reasonably tended to undermine employees' support for the Union. Further, I would also find (although the judge did not) that the Respondent's unlawful failure to provide a wage increase, its unilateral change to its light-duty policy, and its failure to provide requested information also tainted any loss of union support. These violations occurred within a few months of the withdrawal of recognition, and the Board has previously found that similar violations tainted unions' loss of majority support. See, e.g., *Denton County Electric Cooperative d/b/a CoServ Electric*, 366 NLRB No. 103, slip op. at 3 (2018) (failure to provide wage increase); *Bridgestone/Firestone, Inc.*, 332 NLRB 575, 577 (2000) (information request), enfd. in relevant part sub nom. mem. *Teamsters Local 481 v. NLRB*, 47 Fed. Appx. 449 (9th Cir. 2002); *Vincent Industrial Plastics, Inc.*, 328 NLRB 300, 302 (1999) (unilateral change), enfd. in relevant part 209 F.3d 727 (D.C. Cir. 2000).

Additionally, contrary to the majority, I would affirm the judge's finding that the Respondent violated Sec. 8(a)(5) and (1) by failing and refusing to provide the Union with the information requested in paragraph 5 of its September 6, 2016 request, namely information concerning the Respondent's competitors' prices. As the majority acknowledges, during negotiations over wages, the Respondent stated that it did not want its customers to be faced with a 15-percent increase in its prices. The requested information was relevant to help the Union determine whether the Respondent's customers would not accept an increase in its prices and to help the Union draft counterproposals and bargain over the wage increase. See, e.g., *Management & Training Corp.*, 366 NLRB No. 134, slip op. at 2 (2018).

Contrary to the majority, I would order a bargaining-schedule remedy because the parties have bargained for over a year with little progress as a result of the Respondent's unfair labor practices. See, e.g., *UPS Supply Chain Solutions, Inc.*, 366 NLRB No. 111, slip op. at 4 (2018). I would also order a notice-reading remedy based on the severity and number of unfair labor practices. See, e.g., *CoServ*, 366 NLRB No. 103, slip op. at 1 fn. 3.

[5] *NLRB v. Insurance Agents' International Union*, 361 U.S. 477, 485–486 (1960). Accord: *NLRB v. Katz*, 369 U.S. 736, 747 (1962).

[6] *Patent Trader*, 167 NLRB at 853.

[7] *Cal-Pacific Furniture Mfg. Co.*, 228 NLRB 1337, 1341 (1977) (quoting *Korn Industries, Inc. v. NLRB*, 389 F.2d 117, 121 (4th Cir. 1967)), enf. denied on other grounds 580 F.2d 942 (9th Cir. 1978). See also *Rhodes-Holland Chevrolet Co.*, 146 NLRB 1304, 1316 (1964) ("[T]here is often an interrelation, as a practical matter, between clauses which, on their face, deal with entirely different subjects and agreement is often reached because one party gives something in one area and the other is therefore willing to modify or withdraw its demand with respect to an apparently unrelated subject.").

[8] See, e.g., *Detroit Newspapers,* 326 NLRB 700, 704 (1998) (collecting cases), revd. on other grounds sub nom. *Detroit Typographical Union No. 18 v. NLRB*, 216 F.3d 109 (D.C. Cir. 2000). See also *Teamsters Local 122*, 334 NLRB 1190, 1254 (2001); *Crispus Attucks Children's Center*, 299 NLRB 815, 837 (1990); *United Technologies Corp.*, 296 NLRB 571, 571–572 (1989); *Trumball Memorial Hospital*, 288 NLRB 1429, 1446–1449 (1988); *John Wanamaker Philadelphia*, 279 NLRB 1034, 1034–1035 (1986); *Nansemond Convalescent Center*, 255 NLRB 563, 567 (1981); *Eastern Maine Medical Center*, 253 NLRB 224, 245 (1980), enfd. 658 F.2d 1 (1st Cir. 1981); *South Shore Hospital*, 245 NLRB 848, 857–860 (1979), enfd. 630 F.2d 40 (1st Cir. 1980), cert. denied 450 U.S. 965 (1981); *Adrian Daily Telegram*, 214 NLRB 1103, 1110–1112 (1974); *Pillowtex Corp.*, 241 NLRB 40, 47 (1979), enfd. 615 F.2d 917 (5th Cir. 1980); *Preterm, Inc.*, 240 NLRB 654, 654, 672 (1979); *Cal-Pacific Furniture*, 228 NLRB at 1341; *Federal Mogul Corp.*, 212 NLRB 950, 950–951 (1974), enfd. 524 F.2d 37 (6th Cir. 1975); *Patent Trader*, 167 NLRB at 853; *Vanderbilt Products, Inc.*, 129 NLRB 1323, 1329–1330 (1961), enfd. 297 F.2d 833 (2d Cir. 1961).

[9] *Patent Trader*, 167 NLRB at 853 (internal quotations and citations omitted).

Such conduct is "squarely at odds with the type of bargaining contemplated by the Act."[10]

Applied here, those principles compel a finding that the Respondent's conduct unlawfully fragmented bargaining and frustrated the parties' ability to reach agreement. Despite bargaining for 14 months, the parties made very little progress toward reaching an initial agreement largely because the Respondent refused to discuss such fundamental terms and conditions of employment as wages, hours, and benefits. By refusing to discuss those subjects and to respond to the Union's contract proposal, the Respondent limited the possibilities for "the kind of 'horse trading' or 'give-and-take' that characterizes good-faith bargaining."[11] The net effect was that the Respondent's conduct "reduced the flexibility of collective bargaining, narrowed the range of possible compromises, and cut off the infinite opportunities for bargaining."[12]

Well-established precedent also fully supports the judge's finding that the Respondent violated Section 8(a)(5) by failing and refusing to comprehensively respond to the Union's initial contract proposal and requests to bargain.[13]

III.

In an effort to distinguish this case from applicable precedent, the majority points out that the parties agreed, in their ground-rules agreement, to discuss noneconomic subjects before economic ones, that the Union did not challenge the Respondent's failure to bargain economic subjects for a year, that the Respondent did not insist that the Union agree to any provisions, and that the parties were making progress on noneconomic subjects when the Respondent unlawfully withdrew recognition. The majority also notes that the Respondent refused to negotiate economic subjects for less time than employers in other Board cases. None of these reasons support the majority's failure to find a violation of Section 8(a)(5) here.

To begin, as the majority seems to acknowledge, the parties' ground rules agreement, in and of itself, cannot shield the Respondent's refusal to discuss economic subjects. The Respondent and the Union only agreed to *discuss* noneconomic subjects first, not to *resolve* them.[14] And, in any case, the Respondent discussed certain economic subjects when doing so suited its own purposes.[15] More broadly, ground rules agreements do not relieve parties of their statutory duty to bargain in good faith regarding all mandatory subjects of bargaining.[16] To the contrary, such agreements are only intended to help the parties manage the bargaining process and to *facilitate* discussion and agreement on all subjects.[17] Ground rules agreements are thus meant to benefit the parties and cannot be used as a shield to defend what would otherwise be bad-faith conduct. The ground rules agreement did not privilege the Respondent's persistent refusal to discuss economic subjects to the point of frustrating the

[10] *John Wanamaker*, 279 NLRB at 1035.

[11] *Endo Laboratories*, 239 NLRB at 1075.

[12] *Patent Trader*, 167 NLRB at 853.

[13] See, e.g., *UPS Supply Chain Solutions*, 366 NLRB No. 111, slip op. at 3 (finding violation where employer failed to submit a counterproposal in response to the union's contract proposal). See also *Oberthur Technologies of America Corp.*, 368 NLRB No. 5, slip op. at 3 (2019) ("[T]he Act places on unionized employers a duty to bargain in good faith regarding any and all mandatory subjects of bargaining when requested by the union to do so."); *Raytheon Network Centric Systems*, 365 NLRB No. 161, slip op. at 4 & fn. 10 (2017) (same); *Fallbrook Hospital*, 360 NLRB 644, 652 (2014) ("[T]he Respondent's conduct of steadfastly refusing to submit any proposals or counterproposals violated Sec[.] 8(a)(1) and (5)."), enfd. 785 F.3d 729 (D.C. Cir. 2015); *Viking Connectors Co.*, 297 NLRB 95, 106 (1989) ("[T]he Employer's delay in making its wage proposals despite the Union's ongoing efforts to obtain such a proposal is an independent violation of Sec[.] 8(a)(5)."); *Whisper Soft Mills, Inc.*, 267 NLRB 813, 814–815 (1983) (employer unlawfully refused to respond to the union's economic proposal for 5 months), vacated on other grounds 754 F.2d 1381 (9th Cir. 1984); *Case Concrete Co.*, 220 NLRB 1306, 1309 (1975) ("Collective bargaining, particularly for a first contract, is a difficult procedure in most cases. It can be especially impeded by the failure or the refusal of the parties to respond to demands, or take positions on contract proposals.").

[14] See, e.g., *Crispus Attucks*, 299 NLRB at 837 (finding violation where "parties agreed only to 'discuss' noneconomic matters first not to 'resolve' them"). See also *Teamsters Local 122*, 334 NLRB at 1254 (finding violation because "[w]hile the parties may have initially agreed to discuss noneconomic items first, there was certainly no agreement that they be done to conclusion before economic discussions commenced"); *John Wanamaker*, 279 NLRB at 1035 (finding violation where parties merely "agreed to *attempt* to settle noneconomic matters first"); *Nansemond*, 255 NLRB at 565 (finding violation because "while the parties may have agreed that noneconomic issues would be discussed first, there was no agreement requiring even a preliminary resolution of such issues as a condition precedent to the discussion of economic issues"); *Pillowtex*, 241 NLRB at 47 (finding violation where evidence "fails to show that the parties reached agreement requiring the resolution of all noneconomic issues before economic issues could be discussed" and instead shows they agreed to "negotiate and attempt to resolve all noneconomic issues before going on to economic items"); *Adrian Daily*, 214 NLRB at 1111 (finding violation where "the parties had agreed during the earlier stages of bargaining that they would discuss noneconomic issues first").

Thus, I find it unnecessary to pass on the judge's speculation that the Respondent's failure and refusal to negotiate economic subjects would also have been unlawful if the parties had agreed to resolve all noneconomic subjects first.

[15] See *Crispus Attucks*, 299 NLRB at 837 (finding that the employer was not privileged to refuse to discuss economic subjects, especially where it had discussed economic matters earlier in bargaining).

[16] See *Quality Roofing Supply Co.*, 357 NLRB 789, 789, 797 fn. 13 (2011); *Raytheon*, 365 NLRB No. 161, slip op. at 4.

[17] See *Detroit Newspapers*, 326 NLRB at 704 fn. 11.

possibility of reaching agreement.[18] Nor is it a defense that the Union adhered to the ground rules agreement until it realized that negotiations were going nowhere. The Union's conduct hardly waived its right to bargain.

It is irrelevant, meanwhile, that the Respondent did not insist that the Union agree to any provisions. An employer's insistence that a union agree to certain provisions is just one way that an employer can hinder collective bargaining. Here, the question is whether the Respondent's persistent refusal to discuss all mandatory subjects of bargaining hindered the parties' progress toward an agreement—and it manifestly did.

That the parties were still negotiating and even making progress on noneconomic subjects when the Respondent unlawfully withdrew recognition is not a relevant consideration. Obviously, an overall collective-bargaining agreement cannot be consummated without discussion and agreement on economic terms, so the Respondent's willingness to continue discussing noneconomic terms is beside the point as both a factual and legal matter.[19] As explained above, a party's refusal to discuss some mandatory terms, but not others, inherently fragments the bargaining process and limits the possibility of reaching agreement, "as it preclude[s] trading economic proposals for noneconomic proposals which is a customary avenue of compromise.'"[20]

Last, there is no merit to the majority's argument that this case is distinguishable from certain prior decisions, which in the majority's view involved more egregious employer refusals to discuss economic subjects before resolving noneconomic ones.[21] Those cases did not establish a floor for finding a violation in this context, and in any event, the majority's effort to distinguish those cases rests on distinctions that, as just discussed, make no substantive difference.

IV.

For over 50 years, the Board and courts have held that an employer violates Section 8(a)(5) of the Act by insisting indefinitely on the resolution of all noneconomic subjects before negotiating economic subjects and by failing and refusing to respond to a union's contract proposal or request to bargain. We should affirm the judge's application of this well-established precedent. Accordingly, I dissent.

Dated, Washington, D.C. December 16, 2019

Lauren McFerran, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT unlawfully withdraw recognition from United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers Union, AFL–CIO–CLC (the Union) and fail and refuse to bargain with the Union as the exclusive collective-bargaining representative of our unit employees.

[18] See *Quality Roofing*, 357 NLRB at 797 fn. 13; *Cal-Pacific Furniture*, 228 NLRB at 1342; *Adrian Daily*, 214 NLRB at 1111–1112. See also Fred Hustad, *Use and Abuse of Ground Rules in Labor Negotiations*, 15 A.F.L. Rev. 102, 105–106 (1973):

> True free collective bargaining is put under insurmountable obstacles when it is so restricted. Unshackled collective bargaining solves problems instead of creating them, but this type of bargaining requires a flexibility and freedom of response from both parties. It is imperative that the parties have the freedom to discuss related issues together and have the flexibility to resolve some potential impasse problems by the ability to "trade off." Many problems which at first seemed insurmountable at the bargaining table disappear with the reflection of time and the lack of a need for either party to be boxed into a rigid position. When it initially appears that the parties are headed for a deadlock on a particular item, that item should be deferred to a time when the bargaining atmosphere is more conducive to its solution.

[19] See *Cal-Pacific Furniture*, 228 NLRB at 1341 ("[A] party's refusal to discuss some mandatory subject of bargaining may constitute a violation of Sec[.] 8(a)(5) regardless of his good-faith bargaining on other matters."). See also *NLRB v. Katz*, 369 U.S. at 743 (Sec. 8(a)(5) "may be violated without a general failure of subjective good faith").

[20] *Teamsters Local 122*, 334 NLRB at 1254 (quoting *Preterm*, 240 NLRB at 672).

[21] *Detroit Newspapers*, 326 NLRB at 704; *John Wanamaker*, 279 NLRB at 1035; *Nansemond*, 255 NLRB at 567; *Pillowtex*, 241 NLRB at 46; *Adrian Daily*, 214 NLRB at 1111.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT change your terms and conditions of employment without first notifying the Union and giving it an opportunity to bargain.

WE WILL NOT maintain the confidentiality statement in our employee handbook.

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

WE WILL recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time production and maintenance employees employed by the Employer at its 1141 Highway 315, Plains, PA facility, excluding all other employees, office clerical employees, audit inspectors, guards, and supervisors (including group leaders) as defined in the Act.

WE WILL furnish to the Union in a timely manner the information requested by the Union in paragraphs 4 and 5 of its August 12, 2016 information request, in paragraphs 3 and 8 of its August 31, 2016 information request, and in paragraphs 1, 2, and 4 of its September 6, 2016 information request.

WE WILL, on request by the Union, rescind the changes in the terms and conditions of employment for our unit employees that were unilaterally implemented since June 1, 2016.

WE WILL make you whole, with interest, for any loss of earnings and other benefits suffered as a result of our unlawful failure to grant you an annually recurring wage increase in August 2016 and our unlawful discontinuance of the practice of providing light-duty work to employees on workers' compensation.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 4, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

WE WILL rescind the unlawful confidentiality statement in our employee handbook.

WE WILL furnish you with an insert for the current employee handbook that (1) advises that the unlawful provision has been rescinded, or (2) provides a lawfully worded provision on adhesive backing that will cover the unlawful provision; or WE WILL publish and distribute revised employee handbooks that (1) do not contain the unlawful provision, or (2) provide a lawfully worded provision.

WYMAN GORDON PENNSYLVANIA, LLC

The Board's decision can be found at www.nlrb.gov/case/04-CA-182126 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

Rebecca A. Leaf and *Mark Kaltenbach, Esqs.,* for the General Counsel.

Lori Armstrong Halber, Samantha Sherwood Bononno, and Rick Grimaldi, Esqs. (Fisher & Phillips, LLP), of Radnor, Pennsylvania, for the Respondent.

Nathan Kilbert and *Antonia Domingo, Esqs. (United Steelworkers),* of Pittsburgh, Pennsylvania, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania on March 19 and 20 and April 23-25, 2018. The United Steelworkers filed the initial charge in case 04-CA-182126 on August 15, 2016; the initial charge in 04-CA-186281 on October 17, 2016 and the initial charge in 04-CA-188990 on December 1, 2016. The most recent version of the complaint was issued on March 8, 2018.

On the entire record,[1] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondent, the Charging Party Union and the National Right to Work Legal Defense Foundation,[2] I make the following

[1] Tr. 682, line 3 should read, "there's really not a lot of competitors."

[2] I granted the Foundation limited intervention to file a post-trial brief on behalf of William Berlew. I also gave its lawyers permission to object if their clients were asked questions that could violate the attorney-client privilege. There were no such objections.

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation, manufactures components for aircraft engines at its facility in Plains, Pennsylvania, where it annually sells and ships goods valued in excess of $50,000 directly to points outside of Pennsylvania. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, the United Steelworkers of America, is a labor organization within the meaning of Section 2(5) of the Act.

Respondent, which a subsidiary of Precision Castparts Corporation (PCC), operates a facility in Plains, Pennsylvania near Wilkes-Barre. This facility, commonly referred to as the Tru-Form plant, manufactures components for aircraft engines. After a representation election in 2014[3] and a hearing on Respondent's objections, the Board certified the Steelworkers as the collective bargaining representative of the production, maintenance and shipping employees at the Tru-Form plant on April 14, 2015. In the election, 24 employees voted in favor of representation; 22 voted against representation.

The parties had 25 collective bargaining sessions between September 17, 2015 and November 17, 2016. 12 of these sessions were conducted during the last 3 and 1/2 months (August-November) prior to Respondent withdrawing recognition of the Union on November 29, 2016. 13 were held between September 2015 and July 2016. Prior to September 2015, the parties met in May 2015 to discuss Respondent's health insurance policies. The lead negotiator for Respondent throughout contract negotiations was attorney Rick Grimaldi from the Fisher & Phillips law firm. The lead negotiator for the Union was business agent Joseph Pozza until August 26, 2016. Pozza continued to attend and serve as the Union's chief negotiator at some negotiating sessions after August 26, but the Union's principal negotiator at the August 26, September 1, September 12, October 26, October 27 and November 17 sessions was Steelworkers' attorney Nathan Kilbert.

II. ALLEGED UNFAIR LABOR PRACTICES

Withdrawal of recognition/The decertification petition (complaint paragraph 14)[4]

Sometime prior to October 11, 2016, Tru-Form employee William Berlew asked Respondent's Area Manager Tim Brink about initiating a decertification petition. Brink referred Berlew to the National Right to Work Legal Defense Foundation (NRTWF). Berlew, a day shift employee, and Michael Shovlin, a third shift employee, began gathering names on a document between October 12 and 20. A 22nd name was added on November 8 and a 23rd on November 14. There is no explanation in this record for the timing of this activity. The Union's certification year expired in April 2016 at which point the dissatisfied employees were free to seek decertification. Things that had changed between April and October 2016 were the alleged commission of unfair labor practices. Among these were that employees had not granted a wage increase on August 1, as in past years without bargaining with the Union about the increase. Another thing that had changed was that negotiations between the Union and Respondent had dragged on for another 6 months. A third change was an increased frequency in negotiating sessions and tentative agreements between the Union and Respondent.

Tim Brink testified that a lot of the employees who signed the decertification petition had been vocal in their opposition to the Union ever since the representation election. Brink further testified that, "so normal course of the day, several employees would stop and ask me where we were, how we were doing, is this behind us, how long till it's over things of that nature," Tr. 526.

It is unclear over what period Brink fielded these inquiries or what he said to the employees in response. However, Brink never told any of these employees that Respondent had an obligation to bargain in good faith with the Union and execute a collective bargaining agreement with it if an overall agreement was reached.

On November 23, 2016, Aaron Solem, an attorney with the National Right to Work Legal Defense Foundation sent a letter to Rick Grimaldi, Respondent's chief negotiator. Solem advised Grimaldi that he represented William Berlew, an employee at the Tru-Form plant. The letter also advised Grimaldi that Berlew had proof in the form of a petition signed by 23 of the 43 bargaining unit members that a majority of unit members no longer wished to be represented by the Charging Party Union. Solem stated that Respondent could not continue negotiations with the Union and requested the Respondent withdraw recognition from the Charging Party, Er. Exh. 67.

Attached to Solem's letter was a 5 page document without page numbers, Er. Exh. – 2. As they appear in the record, the first and 5th pages of the document state that the undersigned employees do not want to be represented by the United Steelworkers. The first page contains 8 signatures. The fifth page contains one signature. The second, third and fourth pages of the document are blank pages with 11 signature lines. There are 9 signatures on page 2, 4 signatures on page 3, 1 on page 4. There is no evidence that anyone from Respondent, including Grimaldi or Tim Brink, Respondent's area manager, made any inquiry as to why pages 2, 3 and 4 had nothing but signatures lines and signatures, or why there were 2 empty signature lines on page 2; 7 on page 3 and 10 on page 4. Without such an inquiry, Respondent could reasonably conclude only that 9 of the 43 unit employees wished to terminate union representation.

Grimaldi sent the decertification petition to Tim Brink. Brink, without being specific about any one signature, testified that he recognized the signatures from seeing them on weekly tool-box sign-in sheets between 2012 and the summer of 2014.

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[3] Tr. 775-776, 784. There was an earlier election, possibly in April 2013, Tr. 775-76.

[4] Whether or not the petition demonstrated that the Union lost majority support was clearly fairly and fully litigated. Respondent did not object that the validity of the petition was outside the scope of the complaint, elicited testimony regarding the validity from its own witnesses and addressed the issue at pages 17-21 of its post hearing brief, *Yellow Ambulance Service,* 342 NLRB 804, 824 (2004). Moreover, the validity of the petition on which withdrawal was based is an affirmative defense which must be raised, and it in fact was raised by the Respondent. The General Counsel is not required to plead the invalidity of the petition.

I discredit Brink's self-serving testimony insofar has he contends that he was able to verify the signature of every employee on the petition as a result of seeing them on toolbox sign-in sheets two years before the petition was submitted to him. There is, for example, no evidence that every employee whose name appears on the petition was employed at Tru-Form at the time Brink reviewed these sheets. Respondent hired approximately 8 employees in unit positions since the summer of 2014. Thus, Brink would have had no way of knowing whether or not the signatures of these employees were authentic.[5] I do not credit his testimony that he recognized the signatures of new hires from documents he may have seen when these employees were hired or afterwards, Tr. 523-526, 533-34.

On November 29, 2016, Respondent withdrew recognition on the basis of number of names on the 5 sheets of paper it received by the NRTWF petition, Respondent's Answer, G.C. Exh. 1 (l) and 1 (i).[6]

Respondent failed to meet its burden of establishing that the Union lost majority support

The Board in *Levitz Furniture Co. of the Pacific,* 333 NLRB 717, 725 (2001) held that an employer withdraws recognition from an incumbent union at its peril. If the Union contests the withdrawal, the employer must prove that at the time it withdrew recognition the union had, in fact, lost majority support, *Veritas Health Services, Inc., d/b/a Chino Valley Medical Center v. NLRB,* No. 16-1058, slip opinion at 12 (D.C. Cir July 10, 2018). It must also show that it had objective evidence of that fact **when it withdrew recognition**, *Highlands Regional Medical Center,* 347 NLRB 1404, 1407 fn. 17, 1413 (2006) and *Pacific Coast Supply, LLC v. NLRB,* 801 F. 3d 321, 331-34 (D.C. Cir. 2015). Respondent failed to establish that the Union had lost majority status as of November 29, 2016 and it failed to prove that it had objective evidence of a loss of majority status on November 29, 2016. Even under the pre-*Levitz* standard, Respondent did not have a reasonable basis for concluding that the Union had lost majority status at the time it withdrew recognition.

The document on which an employer relies in withdrawing recognition must unambiguously state that the signers, constituting a majority of the bargaining unit, do not wish to be represented by the Union, *Highlands Regional Medical Center,* 347 NLRB 1404, 1406 (2006); *Liberty Bakery Kitchen, Inc.,* 366 NLRB No. 19 slip opinion page 1, n. 1 (2018), *Anderson Lumber Co.,* 360 NLRB 538 (2014); *DaNite Sign Co.,* 356 NLRB 975, (2011).[7]

First of all, in the absence of additional evidence, a 5-page document in which 3 of the pages are blank containing 14 of the 23 signatures does not satisfy Respondent's burden to establish the Union had lost majority support, or even that it had a good faith belief that such was the case. Thus, when it withdrew recognition, Respondent had objective evidence only that 9 of the 43 unit employees no longer wanted union representation

Furthermore, the evidence adduced by Respondent in this hearing (assuming for the sake of argument that Respondent can rely on such evidence) does not establish that 8 of these 14 employees knowingly signed a petition eschewing union representation. On the basis of the testimony of Russell Finch and Donald Crispell, I conclude that Respondent has established after the fact that the 7 employees who signed the petition on October 14 on page 2, at Mike Shovlin's truck saw page 1 of the petition and knew what they were signing.[8] Thus, Respondent over a year after it withdrew recognition, Respondent has established only that 15 employees, the 8 on page 1 and 7 of the signatories on page 2 expressed a desire that the Union no longer represented them.

Anti-Union employee William Berlew testified to the circumstances under which the following employees signed the document submitted to Respondent via the National Right to Work Legal Defense Foundation. He testified that he obtained the signatures of Steve Bukowski, Stan Cegelka, Ronald Garry, Adam Mewhort, Brian Mikolosko, Steven Brotzman and Robert Wallace. Berlew testified that the all five pages of the document were kept in a manila envelope and were presented to each of these employees as he watched them sign. Berlew signed the petition first.

Steven Brotzman testified that when he signed the petition on October 19, Berlew only presented him with one blank sheet with signatures and signature lines on it. He testified that he did not see any document with the verbiage on pages 1 and 5 indicating that the signatories did not want to be represented by the Union. Further, he stated that he understood that the signatories were asking for another election.

Respondent attacked Brotzman's credibility on the grounds that he was not entirely forthcoming as to the reasons it fired him in January 2018. However, I credit his testimony and discredit that of Berlew. First of all, Brotzman admitted on direct

[5] Employee Donald Crispell, who signed the petition and testified at the instant hearing, was hired in July 2015. Employee witness Michael Shovlin also appears to have been hired after 2014. There is no evidence as to when most of the employees whose names appear on the petition were hired.

[6] I discredit other reasons given by Rick Grimaldi, such as that the Union prevailed by only 2 votes in 2014, the support of some employees in Respondent's objections to the election and turnover in the unit, Tr. 698-99. Respondent's withdrawal letter to the Union relied only on the NRTWF document; the Answer gives that as the only reason for withdrawal, G.C. Exh. 1(a), and plant manager Tim Brink testified that he relied solely on this document in deciding to withdraw recognition, *see RTP Co*., 334 NLRB 466, 469 (2001) enfd. 315 F. 3d 951 (8th Cir. 2003). Moreover, none of the additional reasons cited by Grimaldi would be sufficient to justify withdrawal of recognition as a legal matter, e.g., *Liberty Bakery Kitchen, Inc.,* 366 NLRB No. 19 slip opinion page 11, n. 25 (2018) regarding closeness of the representation election; *Barclay Caterers,* 308 NLRB 1025 fn. 2 (1992) regarding employee turnover.

[7] When an employer has objective evidence tending to show the union's loss of majority status, it assumes the risk that the evidence on which it relies will be determined later not to show an actual loss of majority status, *Highlands Regional Medical Center,* 347 NLRB 1404, 1406-1407, n. 15 (2006).

[8] I will ignore the fact that the testimony of Respondent's witnesses Crispell and Shovlin are not consistent regarding the circumstances in which employees signed the petition on October 14. Crispell testified employees got in the truck; Shovlin testified he wouldn't let anyone inside his truck, Tr. 800-802, 808.

examination that he was terminated. Brotzman testified the reason was poor quality, while Tim Brink credibly testified that Brotzman was terminated for falsifying inspection reports. Since neither reason reflects well on Brotzman, I see no reason to discredit his testimony about what he signed. I also credit Brotzman on account of the mysterious and unexplained peculiarities with regard to signatures on pages 3, 4 and 5 of the document which are explained below.

The circumstances surrounding pages 3, 4 and 5 give credence to Brotzman's testimony and led me to discredit that of Berlew. Berlew was directed to the National Right to Work Legal Defense Foundation by plant manager Tim Brink. He testified that he downloaded the documents which constituted the petition from the foundation's website. At some point he gave the petition to Aaron Solem at the NRTWF, who transmitted the documents to Respondent. One would expect someone at NRTWF to review the document to determine whether it would satisfy the Board's long-standing requirements for decertification petitions. An obviously cleaner petition would have expressly stated on each page that the employees no longer wanted to be represented by the Union. It should have been relatively easy for the NRTWF to send Berlew back to have the 14 employees sign such a petition if they did not want union representation—particularly since there seems to have been no rush.[9]

Mike Shovlin also testified to the circumstances under which he and a number of other employees signed the petition. He testified that on a break on the third shift on October 14, Brian Kubasik, Ken Harrison, Don Crispell, Kerry Lauer, Russell Finch, Andrew Stout and Brian Turner lined out outside his truck in Respondent's parking lot and signed the document on the cab of his truck; Shovlin testified that all five pages of the document were in a manila envelope and available to those who signed. Since this testimony is corroborated by Crispell and Finch, I find that these employees knew they were signing a petition to end their representation by the Union.

Shovlin also testified to the circumstances under which Joseph Petorak on October 19 and Bryan Filipkoski and Gary Cox on October 20, signed the document on page 3. After getting the signatures on October 14, 19 and 20, he testified that he returned the document in the manila envelope to Berlew, Tr. 806. If this is so, it leaves unexplained how Berlew had all 5 pages to present to Brotzman on October 19. If Shovlin had returned the 5-page document to Berlew after obtaining the signatures on October 14, there is no evidence to support a finding that he presented Petorak, Filipkoski and Cook anything other than a blank sheet of paper. The fact that Berlew testified that he obtained Brian Mikolosko's signature on October 14, Brotzman's on October 19 and Bob Wallace's on October 20, strongly suggests that Shovlin was not in possession of the entire petition on October 19 and 20.

Shovlin testified that Petorak told him that he was interested in signing the petition. Shovlin testified that he got "the paper in the envelope" and had Petorak, Filipkoski and Cook sign He testified that Petorak signed at a Dunkin Donuts; Filipkoski and Cook signed in a locker room while on break. Shovlin did not testify as to when Berlew returned the petition to him. According to Berlew, he had the petition on October 19 when he had Steve Brotzman sign it.

Berlew testified to getting the petition back in the manila envelope from Shovlin after the employees signed on October 14, Tr. 177. He did not testify that he ever gave the packet back to Shovlin. Thus, I discredit Shovlin's testimony that he presented the entire packet to Petorak, Filipkoski and Cook, none of whom testified in this proceeding. For this petition to be valid there would have to be evidence that Berlew presented the entire packet to Brotzman on October 19 and then gave it back to Shovlin to obtain the signatures of Petorak, Filipkoski and Cook and got it back on October 20 to obtain the signature of Bob Wallace, who signed page 3 on the same day as Filipkoski and Cook.

Sholvin offered no convincing explanation as to why Petorak, Filipkoski and Cook signed on page 3, when there were 2 empty signature lines on page 2; Tr. 817-20. On this basis I find that Respondent has not established that Petorak, Filipkoski and Cook signed anything other than a blank piece of paper. Since I credit Brotzman, as opposed to Berlew, I conclude that Respondent has not established that Bob Wallace signed anything other than a blank sheet of paper. Berlew offered no explanation as to why Wallace did not in the blank signature lines on page 2.

There is also absolutely no credible evidence confirming that the signatures of Timothy Ancherani or Kevin Foster are authentic, who obtained these signatures, or the circumstances under which their signatures appear on pages 4 and 5 of the document respectively.[10]

Even assuming that Ancherani's signature is authentic, I can only conclude that he signed a blank document. William Berlew testified that Shovlin obtained Foster's signature, Tr. 174. However, Shovlin did not mention Foster when he discussed the signatures he obtained. The NRTWF brief filed on behalf of Berlew states that Josh Antosh obtained Kevin Foster's signature, Br. at 7 and n. 4. I find this has not been established. First it is inconsistent with Berlew's claim that Shovlin obtained Foster's signature. Moreover, I give no credence to the argument made that although Antosh did not mention Foster's name, the record establishes that Antosh obtained Foster's signature, Tr. 774. Antosh was able to name other employees he solicited to sign the petition, but not Foster. The unnamed individual to whom Antosh spoke could be any employee who signed after him. Moreover, there is nothing in Antosh's testi-

[9] Berlew testified that he instructed Kevin Foster (p. 5 of Er. 2) to go online and download the petition and "just make sure that it had that header on the top," Tr. 174. Thus, he understood how important it was to have this verbiage on each page of the document. It would have been easy for Berlew to instruct Shovlin to do the same thing when he approached Petorak, Filipkoski and Cook. Either one or the other had page 1 of the document on October 19 and 20, but not both.

[10] Similarly, there is no evidence authenticating the signature of Jonathan Buselli or the circumstances under which he signed the petition. Mike Shovlin and Josh Antosh testified that they received the petition from Buselli, Tr. 773, 805, but neither testified that they saw Buselli sign the petition, nor did anyone else. On the other hand, Berlew testified that he gave the petition to directly to Antosh, Tr. 176. Buselli did not testify in this proceeding. Thus, at a minimum, Respondent's evidence for the proposition that Buselli signed the petition is inconsistent.

mony explaining why Foster's signature appears on a sheet separate from all others or why if he had Foster sign the petition it does not appear on page 2 or 3 or 4 in the blank signature lines.

There is no evidence as to when Ancherani or Foster began working at the Tru-Form plant; thus there is no basis for concluding that Tim Brink could have determined that their signatures were authentic. Without establishing the validity of these 2 signatures, Respondent has not established that a majority of the bargaining unit wanted Respondent to withdraw recognition. Without these 2 names, the number of valid names is reduced to 21 of 43 unit employees. Without establishing that Brotzman, Ancherani, Foster, Petorak, Filipkoski and Cook knowingly signed a petition asking for withdrawal of recognition, Respondent has only established that 17 of the 43 names can be counted as desiring withdrawal.[11]

It is noteworthy that the names of Ancherani and Foster appear on the last two pages of the document. With regard to Ancherani, Respondent has offered no explanation as to why his name does not appear in the blank spaces on pages 2 and 3. This confirms my conclusion that Respondent has not shown that Ancherani, even if he signed the document, knew what he was signing.

Josh Antosh testified about Ancherani as follows:

> Q. Did you ever talk to Tim Ancherani about the petition?
> A. I talked to—the only time I talked to Tim about it was after I asked if Billy [Berlew] got ahold of him, and he said Billy finally got ahold of him.
> MR. KALTENBACH: I object on hearsay grounds.
> JUDGE AMCHAN: Overruled.
> THE WITNESS: But it was after Billy had already—I asked him if Billy got—if Billy asked him to sign the paper, and he said, yes, he finally got ahold of him, that he was—actually get aggravated that nobody asked him to sign the paper earlier.
> Q. BY MS. HALBER: I'm sorry, who was aggravated?
> A. Timothy, Timothy Ancherani.
>
> Tr. 774–775.

Berlew, however, testified as to the signatures he obtained and did not mention Ancherani. Thus, I do not credit Antosh's testimony above. Stan Cegelka's hearsay testimony at Tr. 826-27, cited by the NRTWF brief at page 10 also fails to establish that Ancherani (and Bob Wallace) knowingly signed a document indicating that they no longer wished to be represented by the Union. Indeed, Cegelka's testimony that both Ancherani and Wallace were "up in the air" about the petition when he spoke to them about it, makes it more important that when they signed, they understood exactly what the document meant (assuming that Ancherani's signature is genuine).

I find that Respondent failed to establish that the Union had lost majority support and therefore violated Section 8(a)(5)and (1) of the Act in withdrawing recognition from the Union and refusing to bargain with it after November 29, 2016. *Ambassador Services,* 358 NLRB 1172 fn.1, 1182 (2012); 361 NLRB 939 (2014), enfd. 622 F. Appx. 891 (llth Cir. 2015); *Latino Express, Inc.,* 360 NLRB 911, 925 (2014), *Flying Foods Group,* 345 NLRB 101, 103-04 (2005) enfd. 471 F. 3d 178 (D.C. Cir. 2006). Also see, *Pacific Coast Supply,* 360 NLRB 538 (2014) enfd. 801 F. 3d 321 (D.C. Cir. 2015).[12]Respondent failed to establish that it had objective evidence that the Union lost majority support at the time it withdrew recognition and even a year and a half later has failed to establish that the Union had lost majority support as of November 29, 2016.

I reach this conclusion because Respondent failed to establish that 7 of the 23 document signers signed anything other than a blank sheet of paper and that Respondent did not establish the authenticity of the signatures of Timothy Ancherani and Kevin Foster. Even assuming that the some of the employees on page 2 knew what they were signing, Respondent failed to establish that Brian Mikolosko, Steve Brotzman, Timothy Ancherani (assuming his signature is authentic), Joseph Petorak, Bryan Filipkoski, Greg Cook and Bob Wallace signed anything other than a blank document or that they knew that they were signing a petition to decertify (or get rid of) the Union.

The NRTWF notes at page 11-12 of its brief that every employee who testified said he signed the petition with the first page present and that every employee who testified reaffirmed that they did not want USW representation. However, it is also true that none of the signatories whose intentions are most questionable testified.

Alleged tainting of the decertification petition by Respondent's alleged unremedied unfair labor practices.

The General Counsel and the Charging Party Union contend that Respondent illegally withdrew recognition. First, they contend that the decertification petition does not establish that the Union lost majority support as of November 29, 2016. Secondly, they contend that the petition was tainted by a number of unremedied unfair labor practices: an illegal confidentiality policy; showing up late to a number of bargaining sessions; failing to give the Union an opportunity to negotiate over the amount of an annual wage increase; sending several employees, who were on light-duty, home for several days; refusal to bargain over economic issues; refusal to provide a response

[11] Actually, only 16 if you subtract Buselli. Respondent called a number of witnesses to testify as to the circumstances under which they signed on pages 1 and 2 of the petition: Berlew, Cegelka, Antosh, Shovlin, Crispell, and Finch. The General Counsel called Adam Mewhort and Steven Brotzman. None of the employees whose names appear on pages 3, 4 and 5 of Er. Exh. 2 testified.

[12] Since *Levitz,* an employer may not withdraw recognition from an incumbent union on the basis of an incorrect, but good faith belief that the Union has lost majority status. Even under the pre-*Levitz* standard, Respondent would have violated the Act in this case. All the evidence about how careful Berlew and Shovlin were in presenting employees with all 5 pages of the petition was not known to Respondent when it withdrew recognition. Respondent withdrew recognition on the basis of a 5 page document, 3 of which were blank and contained 14 of the 23 names collected. Thus, Respondent could not have known, for example, if these employees no longer wanted to be represented or simply no longer wanted to be union members, or wanted another election, or had no idea what they were signing, *Pacific Coast Supply,* 360 NLRB 538 (2014) enfd. 801 F. 3d 321 (D.C. Cir. 2015).

to a number of Union contract proposals; failure to provide or delay in providing to the Union information it requested concerning wage rate increases, bonuses, monetary awards or other payments; failure to provide the Union information it requested regarding Respondent's health insurance plans; and refusal to provide the Union with information regarding its prices, labor costs and primary competitors.

Complaint paragraph 6: Maintenance of Wyman-Gordon Confidentiality Statement

Respondent has maintained the following confidentiality statement in its employee handbook since at least 2012:

> The impression that customers have of our corporation will be based, in part, on the way we handle their records and information. As professionals, we must respect the customer information with which we are entrusted and ensure that it is handled with care and remains in the control of Wyman-Gordon at all times. If we are careless with their information, the customer may conclude that we have the same attitude towards our technical work.
>
> As an employee of Wyman-Gordon, you understand that all customer, supplier and staff information is confidential and may not be disclosed to anyone, except where required for a business purpose. Also, copying, removing, allowing unauthorized access to any Company, customer or supplier documents, paper files, computer files or mailing lists, Company or customer proprietary information and processes or any form of distribution of customer, supplier or company information is not allowed. Personal employee information, such as address, phone numbers, social security numbers, etc., is not to be discussed, copied, released or provided to any other employee within the Company.
> All employees are required to acknowledge the Intellectual Property Agreement of Wyman-Gordon. Any employee who breaches the confidentiality requirement will be subject to discipline, up to and including discharge.
>
> Each new employee had to sign for and acknowledge receipt of the handbook.

Applying the Board's recent decision in *The Boeing Company,* 365 NLRB No. 154 (2017), I find this rule unlawful insofar as it prohibits employees from exchanging or providing to other employees, the addresses, phone numbers, email addresses or other methods of communication. Under Boeing, I consider this a "Category 3" rule in that it obviously inhibits employees from communicating with each other about wages, hours and other terms and conditions of employment. Although, as Respondent points out, it is a defense contractor with various security clearances, its legitimate interests do not need such a broad prohibition. First of all, one can assume that if some maintenance and production employees are required to have security clearances, they all are. Thus, sharing of means of communication with others with the same security clearance cannot compromise Respondent's legitimate interests.

Secondly, the fact that Respondent has apparently never enforced the rule to prohibit such inter-employee communication, indicates that has no legitimate interest in maintaining the rule in this regard, as does the fact that Respondent provided to the Union employees' names, addresses and telephone numbers in response to the Union's information requests, Er. Exh. 5. It thus is quite evident that Respondent's legitimate interests can be protected by a narrower rule that does not prohibit employees from exchanging contact information.

Other the other hand, there is no basis for concluding the maintenance of this rule had any tendency to cause employees to become disaffected from the Union.

Complaint paragraph 7: Refusal to meet at reasonable times, i.e., repeatedly showing up late

The General Counsel introduced evidence that Respondent was repeatedly late to bargaining sessions starting with the session on July 12, 2016. Respondent also introduced evidence on this issue. I find that the record establishes the following:[13]

At the first bargaining session on September 17, 2015, the parties negotiated ground rules for the negotiations, G.C. Exh.–8, which specified that bargaining sessions would last up to four hours, unless otherwise mutually agreed upon and that each party had the right to caucus at any time for a reasonable period. The party requesting a caucus was required to inform the other party of the anticipated length of the caucus.

July 12: Scheduled start 10:00; Respondent arrives 10:18. Respondent caucused for 3 hours and the parties left the session at 1:35. p.m. at the Union's initiative. Prior to the withdrawal of recognition, the Union did not complain about Respondent's caucuses.

August 12; At the Union's request, negotiations were rescheduled from 10:00 to 11:00 a.m. Negotiations started at 11:02.

August 26: Scheduled 10:04; Respondent arrives 11:04. Rick Grimaldi testified that he initially picked up the wrong binder to bring to negotiations and had to return to his office to obtain the correct one. The Union Chief Negotiator was Nathan Kilbert. This was the first session he attended. The parties negotiated for 3 ½ hours. Respondent initiated the end of the session.

September 1: Start 10:00; Respondent arrives 10:26. The Union Chief Negotiator was Nathan Kilbert. The session ended at about 3 p.m. at the suggestion of the Union. The Union caucused for about an hour and then the parties took about an hour lunch break.

September 12: Start 10:00; Respondent arrives 10:51. The Union caucused at 11:15; negotiations resumed after lunch at 1:17. Negotiations ended at 4:34. Rick Grimaldi was late due to being caught in an accident-related traffic jam. The Union Chief Negotiator was Nathan Kilbert.

September 22: Negotiations started at 10:07. The Union negotiators left without notifying Respondent between 2:00 and 2:11. The Union Chief Negotiator was Joseph Pozza.

October 11: Start 10:00; Negotiations begin at 10:57. The Union Chief Negotiator was Joseph Pozza. Negotiations ended

[13] The complaint mentions 9 of the 13 negotiating sessions between July 12 and November 17. It omits the August 12, September 22, October 12 and November 10 sessions.

at 3:38, although Respondent offered to stay later.

October 12: Negotiations start at 9:04. The Union Chief Negotiator was Joseph Pozza.

October 26: Start 10:00; Respondent arrives 10:54. The parties continued bargaining until 11:22 p.m. The Union claims that only 3 hours and 11 minutes were spent bargaining; Respondent denies this. Both parties caucused during the session. The Union Chief Negotiator was Nathan Kilbert.

October 27: Start 09:00; Negotiations start at 09:16. Respondent arrives at 9:02. Management representatives told the Union that lead negotiator Rick Grimaldi was printing a counter-offer. The session ended at about 4:00 p.m. During negotiations, Respondent presented the Union with a counter-offer on seniority. The Union Chief Negotiator was Nathan Kilbert.

Saturday November 5: Start 08:30; Respondent arrives 08:49. The Union Chief Negotiator was Joseph Pozza, who suggested ending the session at 11:42 a.m.

November 10: Start 09:00; Respondent arrives 09:42. The Union Chief Negotiator was Joseph Pozza.

November 17 (the last bargaining session): Respondent at 9:43. The Union Chief Negotiator was Joseph Pozza. Respondent ended the session at about 4:00 p.m.

I am unable to conclude that Respondent's failure to start negotiations on time on various occasions materially impeded negotiations. Therefore, I dismiss complaint paragraph 7(b).

Complaint paragraph 8: failure to negotiate over the amount of an annual wage increase

Respondent had a practice of giving unit employees a wage increase on or about August 1 of every year. Typically, this increase ranged from about 40 cents to 70 cents per hour. In 2012 the increase was 65 cents per hour; in 2013, 70 cents plus a 5 cent increase in the shift differential; in 2014, 57 cents; in 2015, 50 cents. In 2016, unit employees did not get a wage increase on or about August 1. The first they learned of this was in early August when they did not see such an increase in the paychecks.

On August 12, Respondent informed the Union that it would give a wage increase retroactive to August 1, but had not determined the amount. The parties discussed the wage increase again on August 26.

In January 2017, employees received a 15 cent per hour increase retroactive to August 1, 2016. In November 2017, they received a 70 cent increase.

Respondent was generally required to maintain the status quo while bargaining with the Union for an initial contract. When a term or condition of employment, such as an annual wage increase, is scheduled to occur during bargaining, an employer may (assuming the amount of the increase is discretionary) decline to implement the increase so long as it provides the union notice that it will not be raising wages and provides an opportunity to bargain over the change, *Stone Container Corp.,* 313 NLRB 336 (1993).

In the instant case Respondent failed to make the wage adjustment or notify the Union before the scheduled date of the recurring increase occurred. I find that it violated Section 8(a)(5) and (1) as a result. However, I do not conclude that this violation would have tainted a valid decertification petition. Respondent and the Union began bargaining about the increase on August 12 and employees were informed that any increase agreed upon would be retroactive to August 1, 2016. Had Respondent complied with its obligation of advance notice, the effect on employee morale would have been no different. Employees would have been waiting for months to find out the amount of their annual increase.

Complaint paragraph 9: sending light duty employees home without notifying and bargaining with the Union

In October 2016, 5 of Respondent's employees were on light duty. On October 14, without notifying the Union and offering to bargain, Elizabeth Griffiths, Respondent's environmental, health and safety manager, sent these 5 employees home. She did this in a telephone call with plant manager Tim Brink and Human Resources Administrator Leah Leikheim on the line, Tr. 233-35. The 5 employees were recalled to work after missing 3 days of work. At least 3 of these employees were paid for the days off. 1 or 2 may not have been paid for 1 of the days off. Union Local President Brian Collura had been on light duty since January 2016 and was never sent home prior to October 14.

Respondent had an established past practice of providing light duty work to employees on workers compensation. Thus, it was not privileged to discontinue this practice regardless of what its written policies stated. It is not a defense to an illegal unilateral change that it was the result of miscommunication between different agents of Respondent. Moreover, G.C. Exh. 3 establishes that, contrary to Respondent's assertion, this unilateral change was not merely an error on the part of Elizabeth Griffiths, Respondent's environmental, health and safety manager. This change was ratified by Brad Georgetti, Respondent's human resources director. It was only corrected after the Union filed an unfair labor practice charge about the change on October 17 (04-CA-1862821).

While Respondent almost immediately remedied this violation, it did not adequately repudiate it, per *Passavant Memorial Area Hospital,* 237 NLRB 138 (1978). If the decertification were valid, this violation did not taint it. As Respondent points out, in communications with approximately 30 unit members, the Union took credit for making Respondent return the employees to light duty almost immediately, Tr. 77, G.C. Exh. 6, Union bargaining update of October 26, 2016.

Complaint paragraph 10: (a) and (b) refusal to bargain over economic issues; *Complaint paragraph 10 (c)-(f) failure and refusal to provide a response to the Union's September 15, 2015 bargaining proposal.*

Respondent insisted throughout negotiations that pursuant to the ground rules that the parties negotiated for bargaining on September 17, 2015, it was not required to and would not bargain about economic matters until all non-economic matters were resolved, G.C. Exhs. 9 and 29, Er. Exh. 3, bargaining notes of August 26, 2016. The ground rules, G.C. Exh-8, provide in this regard:

> #5 All proposals and counter-proposals will be made in writing. Sufficient copies should be

> made available for the other party. Language proposals will be discussed prior to the discussion of economic proposals. Handwritten proposals will be acceptable.

The parties, however, did make exceptions, such as bargaining over employee health insurance contributions while negotiations were ongoing. Respondent's health insurance contract came up for renewal on June 1 of each year.

On October 17, 2016, the Union sent Respondent a letter in which it asked Respondent to be prepared to discuss the Union's economic proposals at the session scheduled for October 26 and 27. The letter, signed by Business Representative Joseph Pozza, stated that the Union believed that the Company had withdrawn from the ground rules agreement regarding discussion of economics. Further, it stated, "this agreement has outlived its usefulness." The Union also asked for more bargaining dates as soon as possible and multiple day sessions

I conclude that Respondent violated Section 8(a)(5) and (1) in refusing indefinitely to bargain about economic matters until non-economic matters were resolved. *John Wanamaker Philadelphia,* 279 NLRB 1034 (1986); *Detroit Newspapers,* 326 NLRB 700, 704 and fn. 11 (1998); *Adrian Daily Telegram,* 214 NLRB 1103, 1110–1112 (1974). First of all, the ground rules, by their terms do not require resolution of all non-economic items prior to bargaining about economics. Secondly, even if they did, Respondent was not privileged to demand adherence to the ground rules after almost a year of bargaining with little progress.

At the parties first bargaining session, September 17, 2105, the Union presented Respondent with a complete contract proposal. This proposal was modeled after the Union's contract with another Wyman-Gordon facility in Pennsylvania, known as "Mountain Top."

On August 26, 2016, at the bargaining table, the Union demanded a comprehensive response. It reiterated this demand in a letter to Rick Grimaldi dated August 31, 2016, G.C. Exh. 27. Respondent never gave the Union a comprehensive response.

Prior to August 26, 2016, Respondent had provided a response or counter proposal to 7 of the 29 articles in the Union's 2015 proposal; Dues check off, union shop, management rights, strikes and lockouts, death in the family (bereavement), jury duty and shoe allowances. Between August 26 and the last bargaining session on November 17, Respondent provided proposals or counter-offers to the Union's proposal on recognition, grievances, arbitration, seniority and reduction in force, job postings federal and state laws and the payday.

It is uncontroverted that Respondent never provided a written response to the 2015 union proposals on reporting pay, call-in pay,[14] insurance benefits and employee contributions during the term of the contract,[15] hours, vacation, holidays, wage increases during the term of the contract, new classifications and rates, 401(k) plan, rights and assigns, termination and reopening of the contract, timekeeping, flexible spending accounts and COBRA.

I conclude that Respondent violated Section 8(a)(5) and (1) in its failure to make responsive proposals—particularly after August 26, *Fallbrook Hospital,* 360 NLRB 644, 652 (2014).[16] The continued lack of progress in negotiations due this failure was likely to cause dissatisfaction with the Union as evidenced from the timing of the decertification petition. Thus, even if there otherwise would have been a valid petition, I conclude that it would have tainted by Respondent's refusal to negotiate economic matters until all non-economic matters were resolved and its failure and refusal, over the course of 14 months, to make a comprehensive response to the Union's September 2015 proposal, *United Technologies,* 296 NLRB 571 (1989).

The Board's decision in *Master Slack,* 271 NLRB 78 (1984) describes 4 factors in determining whether or not an employer's unfair labor practices (ULPs) taint an otherwise valid decertification petition: (1) the length of time between the ULP and the withdrawal of recognition; (2) the nature of the illegal acts, including the possibility of their detrimental or lasting effect on employees; (3) any possible tendency to cause employee disaffection from the union and (4) the effect of the unlawful conduct on employee morale, organizational activities and membership in the Union.[17]

In the instant case, Respondent's refusal to negotiate on economic matters and its failure to make a comprehensive response to the Union's comprehensive proposal was ongoing at the time Respondent withdrew recognition. The continued dragging out of negotiations 14 months after they started and 2 ½ years after employees voted for union representation was likely to cause unit employees, other than those previously opposed to union representation, to support a decertification petition circulated by anti-union employees out of a sense that continued representation was a futile exercise. I thus find that assuming the decertification was valid, it was tainted by these violations and thus Respondent could not legally rely on such a petition to withdraw recognition.

Complaint paragraph 11: alleged delay or failure to respond to the Union's August 12, 2016 information request

On August 12, 2016, the Union requested the following information from Respondent for which the General Counsel alleges an unfair labor practice Er. Exh. 7 requests 2, 4 and 5:

> (1) The date and amount of any bonuses, monetary awards, lump sum or other payments, not made every payroll period between January 1, 2013 to the present.
> (2) The mechanisms by which the payments not made every payroll period were calculated and a description of the information relied upon in determining the amount.
> (3) Any written description of Respondent's practices with re-

[14] This is not addressed in the employer's proposal, Er. Exh. 52. However, Respondent contends that its absenteeism and tardiness proposal is responsive.

[15] Tr. 360-63,589-90, Er. Exh. 53.

[16] The fact that the Regional Director dismissed a charge alleging bad faith bargaining in general does not preclude a finding that Respondent violated the Act in failing to make a comprehensive counter proposal or refusing to negotiate about economic matters, *Whisper Soft Mills, Inc.* 267 NLRB 813, 814–815 (1983).

[17] Consideration of these factors is unnecessary when an employer simply refuses to bargain with an incumbent union.

spect to pay rate increases, bonuses, monetary awards, or other payments.

The complaint alleges that with respect to #1 above, Respondent violated the Act by providing the information late, i.e., not until November 1, 2018. With regard to items 2 and 3, the complaint alleges that Respondent violated the Act in not providing this information at all. In its brief, General Counsel appears to have abandoned its position with a failure to provide the information requested in items 2 and 3. He only presses his position on the delay in providing these items. The Union continues to contend that Respondent violated the Act in it failing to provide the formula by which Respondent calculated bonuses.

I find that the record is unclear as to when the information in item # 1 was provided, but that it clearly was provided prior to October 27. For this reason I find that the General Counsel has not proved that Respondent unreasonably delayed providing this information.

On October 26, 2016, Rick Grimaldi informed the Union that it was not entitled to sales figures, a factor by which Quarterly Cash Bonuses were determined. He refused to negotiate over a confidentiality agreement for this information, Er. Exh. 3. By refusing to negotiate a confidentiality agreement Respondent waived its claim of confidentiality, *Delaware County Memorial Hospital,* 366 NLRB No. 28, slip. op. 8 (2018); *Postal Service,* 364 NLRB No. 27 (2016). It thus violated the Act by not providing the Union the sales figures.

Complaint paragraph 12: alleged failure to fully comply with the Union's August 31, 2016 information request.

The Union requested the following information from Respondent on August 31, 2016:

> (1) All health insurance plans for 2013 to 2016 and summary plan descriptions for January 1, 2013 to May 31, 2013;
>
> (2) Copies of written communications to unit employees announcing or explaining health insurance plans, benefits or contributions between January 1, 2013 and December 31, 2014.

The General Counsel alleges that Respondent violated Section 8(a)(5) and (1) by failing and refusing to provide this information to the Union. Respondent provided the Union the summary of its health insurance plans, but not the more comprehensive plan document, Tr. 597-99. The Union was entitled to the plan document, regardless of whether the company provided the summary. Respondent violated the Act in not providing it

While Respondent provided copies of written communications to unit employees announcing or explaining health insurance plans, benefits or contributions for 2015 and 2016, it never provided this information for the period between January 1, 2013 and December 31, 2014, Tr. 389, G.C. Exh. 35. It violated the Act in this respect.

Complaint paragraph 13: alleged refusal to provide information requested by the Union on September 6, 2016.

On September 6, 2016 and several times thereafter the Union requested the following information from Respondent:

> (1) The current prices for the five items produced by the facility that produce the greatest revenue;
> (2) All changes to the prices of these items between January 1, 2014 and the present;
> (3) the labor cost as a percentage of the price of each of these items as of the present and January 1, 2014, 2015 and 2016;
> (4) the identity of the Respondent's primary competitors for each of the five items and the current prices of their most equivalent products.

Respondent refused to produce any of this information to the Union. Respondent contends that because it did not claim an inability to pay the wage increases proposed by the Union, that the Union was not entitled to this information. However, the Union proposed wage increases in line with those the company had given for the past several years. Respondent told the Union it would not do so in 2016 because it did not want its customers to be faced with a 15% increase in its prices. I find the Union was entitled to the information request in order to determine whether the wage increases it was seeking would in fact result in a 15% increase in Respondent's prices, *Caldwell Mfg. Co.,* 346 NLRB 1159, 1159–1160 (2006); *National Extrusion & Mfg. Co.,* 357 NLRB 127 (2011). Thus, I find that Respondent violated Section 8(a)(5) and (1) in refusing to provide this information to the Union. However, I see no relationship between this violation and the alleged loss (albeit unestablished) of the Union's majority status.

REMEDY

I recommend that Respondent be ordered to recognize and on request bargain with the Union as the exclusive collective-bargaining representative of Respondent's production, maintenance and shipping employees at its Tru-Form plant in Plains, Pennsylvania for a period of not less than 6 months. If an understanding is reached, Respondent must sign an agreement concerning the terms and conditions of employment. I recommend a bargaining order because it is necessary to fully remedy the violations in this case for the following reasons:

> (1) To vindicate the Section 7 rights of a majority of unit employees who have been denied the benefits of collective bargaining since November 29, 2016. It is only by restoring the status quo and requiring the Respondent to bargain with the Union for a reasonable period of time that the employees will be able to fairly assess the effectiveness of the Union in an atmosphere free of the Respondent's unlawful conduct.
>
> (2) An affirmative bargain order also serves the policies of the Act by fostering meaningful collective bargaining and industrial peace. It removes the Respondent's incentives to delay bargaining in the hope of further discouraging support for the Union. It also ensures that the Union will not be pressured by

the possibility of a decertification petition or by the prospect of imminent withdrawal of recognition to achieve immediate results at the bargaining table following the Board's resolution of its unfair labor practice charges and the issuance of a bargaining order.

(3) A cease and desist order without a temporary decertification bar would be inadequate to remedy Respondent's withdrawal of recognition and refusal to bargain. It would permit another challenge to the Union's majority status before the taint of Respondent's previous unlawful withdrawal of recognition has dissipated. Allowing another challenge to the Union's majority status without a reasonable period for bargaining would be unjust also because the Union needs to reestablish its relationship with unit employees, who have already been without the benefits of union representation for over a year and half. Permitting another decertification petition may likely allow Respondent to profit from its unlawful conduct.

These aforesaid circumstances outweigh the temporary impact the affirmative bargaining order will have on the rights of unit employees who continue to oppose union representation.

ORDER

Respondent, Wyman Gordon Pennsylvania, LLC, Plains, Pennsylvania, is hereby ordered to

1. Cease and desist from:

(a) Withdrawing recognition from the United Steel Workers and failing and refusing to bargain with the Union as the collective bargaining representative of it production, maintenance and shipping unit employees.

(b) Refusing to bargain collectively with the Union by failing and refusing to furnish it with requested information that it relevant and necessary to the Union's performance of its function as the representative of Respondent's unit employees.

(c) Changing wages, benefits or other terms and conditions of employment without first notifying the Union and giving it an opportunity to bargain.

(d) Refusing to negotiate economic terms and conditions of employment until all non-economic terms and conditions are agreed upon.

(e) Failing and Refusing to present to the Union a comprehensive response to the Union's September 2015 contract proposal.

(f) Maintaining a confidentiality policy that prohibits employees from exchanging contact information.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of its production, maintenance and shipping employees at the Tru-Form plant in Plains, Pennsylvania concerning terms and conditions of employment for a period of not less than 6 months, and, if an understanding is reached, embody the understanding in a signed agreement.

(b) On request by the Union, rescind any changes in its unit employees' terms and conditions of employment that were unilaterally implemented since June 1, 2016.

(c) Furnish to the Union in a timely manner the information previously requested by the Union and unlawfully withheld as found in this decision.

(d) Rescind its confidentiality policy insofar as it prohibits employees from exchanging contact information.

(e) Within 14 days after service by the Region, post at its Plains Pennsylvania copies of the attached notice marked "Appendix."[18] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 29, 2016.

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

Dated, Washington, D.C. July 13, 2018

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

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

WE WILL NOT withdraw recognition from, and fail and refuse to recognize and bargain with the United Steelworkers Union as the exclusive collective bargaining representative of our production, maintenance and shipping employees.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's functions as the collective bargaining representative of our unit employees.

WE WILL NOT refuse to bargain with the Union about economic issues until all non-economic issues have been resolved.

WE WILL NOT fail to give the Union a comprehensive response to its proposals for a collective bargaining agreement.

WE WILL NOT change your wages, benefits, or other terms and conditions of employment without first notifying the Union and giving it an opportunity to bargain.

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

WE WILL recognize and, on request, bargain for a period of not less than 6 months with the United Steelworkers Union as the exclusive collective bargaining representative of our production, maintenance and shipping employees, and if an understanding is reached, embody the understanding in a signed agreement.

WE WILL, upon the Union's request, rescind the changes in the terms and conditions of employment that were unilaterally implemented since June 2016.

WE WILL upon request provide the Union with comprehensive responses to its proposals for a collective bargaining agreement.

WE WILL furnish to the Union in a timely manner the information previously requested prior to November 29, 2016, and unlawfully withheld.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/04-CA-182126 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.