

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

**TEAMSTERS LOCAL 728 (BFI WASTE  
SERVICES, LLC d/b/a ALLIED WASTE  
SERVICES OF ATLANTA/REPUBLIC  
SERVICES OF GEORGIA)**

and

Case: 10-CB-335036

**ANTHONY WILLIAMS**, an Individual

*Tory Valenti and Philip Tapley, Esqs.*  
for the General Counsel

*Michael B. Schoenfeld, Esq.*  
for the Respondent

*Kyllan Kershaw, Esq.*  
for the Employer

**DECISION**

Statement of the Case

MICHAEL P. SILVERSTEIN, Administrative Law Judge. In September 2023, Teamsters Local 728 and Republic Services of Georgia were locked in tense negotiations for a successor collective bargaining agreement. Union members had just voted down the Employer's last, best, and final offer, where the Employer proposed changing drivers' pay from a piecemeal or day rate to an hourly wage rate. This case involves a September 25, 2023, verbal confrontation between Union steward Jeffrey Rolland and nonmember Anthony (Ray) Williams concerning the quality of the Union's representation. The General Counsel alleges that the Union violated Section 8(b)(1)(A) of the Act when Rolland threatened to beat up Williams and when Rolland threatened to withhold a bonus payment from Williams after Williams questioned the Union's negotiating tactics. As will be explained below, I find merit to the alleged threat of violence, but I find that the General Counsel has failed to establish a violation of the Act regarding the bonus allegation.

Anthony (Ray) Williams filed the charge in this case on February 2, 2024, and the charge was subsequently amended on August 1 and September 10. The Complaint and Notice of Hearing issued on October 3, 2024, and Respondent filed its Answer to the Complaint on October 11.

The hearing in this case took place in Atlanta, Georgia on December 5, 2024. At trial, all parties were afforded the right to call, examine, and cross-examine witnesses, to present any relevant documentary evidence, and to argue their respective legal positions orally.<sup>1</sup> Counsel for the General Counsel and Respondent filed post-hearing briefs.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following:

## **FINDINGS OF FACT**

### **JURISDICTION**

At all material times, BFI Waste Services, LLC d/b/a Allied Waste Services of Atlanta/Republic Services of Georgia (the Employer) has been engaged in the business of solid waste collection, disposal, and hauling from its Bankhead facility located at 3045 Donald Lee Hollowell Parkway, Atlanta, Georgia. During the 12-month period ending on October 3, 2024, a representative period, the Employer purchased and received at its Atlanta (Bankhead) facility goods valued in excess of \$50,000 directly from points outside the State of Georgia. I find that the Employer is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act. Respondent also admits, and I find, that Teamsters Local 728 (the Union or Respondent) is a labor organization within the meaning of Section 2(5) of the Act.

### **ALLEGED UNFAIR LABOR PRACTICES**

The Employer provides rubbish removal services throughout the Atlanta metropolitan area. For the past 18 years, the Union has represented the Employer's full-time and regular part-time drivers, helpers, mechanics, tire men, laborers, and dispatchers at the Employer's Bankhead facility in Northwest Atlanta.<sup>2</sup> (Joint Ex. 1(b); Tr. 44, 171). There are roughly 180 employees in this bargaining unit. (Tr. 146). Gator Hodges is the Employer's general manager at the Bankhead facility. (Tr. 24). Cecily Passley serves as the Bankhead facility's HR manager. (Tr. 125).

The Employer's industrial (or roll-off) drivers pick up containers from construction sites and grocery stores and transport them to landfills and transfer stations, dump the contents, and then return the containers to their previous locations. (Tr. 60, 169). Residential drivers pick up garbage from residential trash cans. (Tr. 60, 137). At the beginning of their shifts, drivers report to the dispatch office to clock in, pick up their vehicle keys, tablet, and radio. Drivers return to the dispatch office at the end of the shift to turn in these items and to clock out for the day. (Tr. 87).

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<sup>1</sup> The General Counsel called three witnesses – Anthony Williams, Ritchie Smith, and Cecily Passley – while the Respondent called two witnesses – Eric Massaro and Jeffrey Rolland.

<sup>2</sup> The Union also represents a separate bargaining unit of employees at the Employer's hauling station in Austell, which is about 50 minutes away from the Bankhead facility. (Tr. 126).

The parties' most recent collective bargaining agreement ran from July 31, 2018 through July 31, 2023. (Joint Ex. 1(b)). Under this CBA, lead and swing drivers were paid a day rate, regardless of how many hours they worked. Other drivers were paid a box rate based on how many containers or boxes they delivered each shift. (Tr. 59-60, 138). Prior to the start of the 2023 contract negotiations, Employer representatives informed the Union that it wished to change the calculation of drivers' pay from the incentive wage scale (day and box rates) to an hourly wage rate. (Tr. 136).<sup>3</sup>

Bargaining for a successor contract began in early 2023. (Tr. 135). Union principal officer Matt Higdon and International Union waste division representative Larry Dougherty served as the Union's lead negotiators. Union business agent Eric Massaro also attended contract negotiations along with four rank-and-file members of the bargaining unit – shop stewards Jeffrey Rolland, Marcus Retting, Rafael Castalone, and Antavious Roach. (Tr. 133-134).<sup>4</sup>

On September 20, 2023, the Employer presented the Union with its "Best Financial Offer." (Joint Ex. 1(c); Tr. 134-135). This "Best Financial Offer" laid out the proposed hourly wage scale and a mechanism to compensate drivers in the first year of the proposed agreement whose new hourly wage rate would constitute a loss in pay from the previous incentive pay scale. The "Best Financial Offer" also contained a \$500 ratification bonus for all employees. (Joint Ex. 1(c)).

After receiving the Employer's Best Financial Offer, Massaro set out to distribute copies of the proposal to bargaining unit employees, explain the contents and answer employees' questions in preparation for a ratification vote on September 23. (Tr. 138-139). At the ratification vote, Union officials read through the proposed contract line-by-line and then opened the floor for questions. At this point, employees expressed their extreme displeasure with the proposed agreement and those who negotiated it. Massaro testified that the vote was "nearly a riot," and the employees voted down the agreement. (Tr. 139-140, 145-146).

### **Altercation Between Jeffrey Rolland and Anthony Williams on September 25**

*Anthony Williams*

Anthony Williams is a lead swing driver for the Employer who primarily drives a route at the Atlanta (Hartsfield-Young International) Airport. This is one of the most lucrative routes the Employer offers, placing Williams at the top of the incentive pay scale. (Tr. 22, 57). He has worked for the Employer for about 10 years and has not been a member of the Union during this time. (Tr. 22-23). Williams did not participate in the 2018 strike that took place during the negotiations for the parties' previous contract. (Tr. 23).

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<sup>3</sup> Union business agent Eric Massaro testified that the Employer was making this change across the country. At the Employer's non-union facilities, the Employer implemented the hourly wage change whenever it wished. At the Employer's union facilities, this change was introduced when existing CBAs expired and was bargained into the successor CBAs. (Tr. 136).

<sup>4</sup> Bargaining took place offsite at the Marriott Atlanta Airport Hotel. (Tr. 158).

*Jeffrey Rolland*

5 Jeffrey Rolland is a lead roll-off driver for the Employer. He has worked for the Employer for the last 38 years, all at the Bankhead facility. (Tr. 168-169). Although Rolland is more senior to Williams, Williams earned a higher day rate due to the airport swing route. (Tr. 177). Rolland has served as a Union shop steward for the past 15 years. (Tr. 171).

*Ritchie Smith*

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Ritchie Smith has worked as a dispatcher at the Employer's Bankhead facility for the past six years. (Tr. 87). Smith testified that he interacts with Rolland the same way he interacts with Williams – checking out their job tools at the beginning of their shifts and logging these items back in at the end of their shifts. (Tr. 87, 90). Smith testified that Rolland and Williams are two normally loud individuals, it is not unusual for drivers to argue in the dispatch office, and Smith had not seen Williams and Rolland argue prior to September 25. (Tr. 95, 106). Smith also testified that he was aware that contract negotiations were ongoing around September 2023 and that Rolland attended these off-site negotiations.<sup>5</sup> (Tr. 90).

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*Williams' Version of Events*

Williams testified that he was aware that the parties were engaged in contract negotiations in September 2023, but he had no specific knowledge of any particular contract proposals. (Tr. 24). Williams also specifically testified that he did not ask Rolland or any other shop steward about the status of negotiations. (Tr. 53-54).

On September 23, general manager Gator Hodges brought Williams to the conference room and showed him a piece of paper summarizing Williams' wage rate under the Employer's final offer. Hodges told Williams that he didn't think he was going to make less money under the proposed contract terms. (Tr. 58). Additionally, Hodges told Williams that he would receive four quarterly payments of \$1,600 to compensate for the conversion from his day rate to the hourly pay scale.<sup>6</sup> (Tr. 24-26). Williams testified that he didn't blame the Union for the change from a day rate to hourly pay because everybody knew this move was coming. (Tr. 61).

35 By Williams' account, his interactions with Rolland were limited over the years. To this end, Williams recalled Rolland walking over to him shortly after he started working for the Employer and saying, "I heard you were an asshole." (Tr. 66). But outside of saying good morning to each other through the years, Williams could not recall the last time he spoke to Rolland before September 25, 2023. (Tr. 75).

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On the afternoon of September 25, Williams and Rolland were in the dispatch office prior to the end of their shifts. Rolland asked Williams if he had received the paper that the Union was passing out to all employees. Williams said that he didn't get the paper, but Gator Hodges had pulled him aside, showed him the paper, and explained what it meant.<sup>7</sup> (Tr. 31-32). Williams

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<sup>5</sup> Smith testified that he did not know Rolland's specific role in negotiations. (Tr. 90).

<sup>6</sup> Hodges explained that a number of similarly situated drivers would also receive these quarterly payments to ensure that their salaries did not go down in the first year of the new contract. (Tr. 25).

<sup>7</sup> The paper Hodges showed Williams contained a breakdown of Williams' wage rate under the Employer's Best Financial Offer. (Tr. 32).

asked why nobody knew what was going on during negotiations and how come nobody had any information to share. Williams also mentioned that some employees were unhappy with the offer and said that he believed that the Union could have gotten employees a better deal.<sup>8</sup> (Tr. 32).

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At this point, the conversation got heated. Williams testified that Rolland became visibly agitated and raised his voice to say that “it’s because of people like you that we don’t or can’t get a better deal.” (Tr. 33). Williams replied that it was “because the Union was weak.”<sup>9</sup> (Tr. 33-34, 76). Rolland was standing next to Williams pointing his finger and saying, “we are in there fighting for you guys, this motherfucker right here be stabbing you in the back.” (Tr. 34). At this point, both Rolland and Williams’s voices were raised. (Tr. 78). Rolland then told Williams that the next time the Employer tries to “slide you a bonus, I’m going to put a stop to it.” (Tr. 35). Rolland started walking towards the door, but turned around and walked towards Williams while saying, “I’m that motherfucker that would take you outside and whoop your ass, Ray Williams.” (Tr. 39). Williams told Rolland to go home and at this point, dispatcher Ritchie Smith and driver Sadarian Adams stepped in between Williams and Rolland. Rolland then turned around and walked out of the dispatch office. (Tr. 39-40). After hearing the commotion, supervisor Darnell Milton walked down the hall to the dispatch office to ask what was going on and if everything was all right. Williams then left the dispatch office and had no further interaction with Rolland that day. (Tr. 40).

Williams testified that at first, he was not sure what Rolland was referring to when Rolland said he would put a stop to Williams’ bonus. (Tr. 51). Williams then testified that he believed Rolland could be referring to the quarterly payouts Hodges showed him as part of the Employer’s Best Financial Offer. (Tr. 35). But Williams confirmed that Hodges did not refer to the quarterly payments as bonuses. Instead, Hodges called them “payouts.” (Tr. 54). Williams also hypothesized that Rolland was referring to the job bid Williams received for the lucrative Atlanta airport route.<sup>10</sup> (Tr. 35). But Williams also confirmed that Rolland did not specifically reference his airport bid in their September 25<sup>th</sup> conversation. (Tr. 63). Regarding job bids, Williams testified that any time there is an internal job posting, the shop steward in the same line of business as the posting can raise an objection before the bid is posted. (Tr. 37-38). Williams testified that he believed that Rolland could prevent such a bid from being posted, but he had a very difficult time explaining the basis for this belief. (Tr. 63-64).

On cross-examination, Williams confirmed that his NLRB affidavit differed in several respects from his trial testimony. First, Williams confirmed that there was no reference to “motherfucker” or “whoop your ass” in his affidavit. (Tr. 49). Instead, the affidavit noted that Rolland said something like, “he was the type who would beat me up in the parking lot.” (Tr. 47). Next, Williams confirmed that he did not reference his theory about Rolland’s bonus remark being connected to his airport bid in any of his statements to the NLRB. (Tr. 50). But Williams’ affidavit stated that he believed that Rolland was threatening to withhold the quarterly

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<sup>8</sup> Williams testified that he thinks that the Union could have gotten a better deal for the drivers closer to the bottom of the pay scale as opposed to drivers like Williams, who were at the top of the pay scale. (Tr. 62-63).

<sup>9</sup> Williams testified that he believed the Union was “weak” based on discussions with other drivers who said that they would be making as much as \$10/hour less under the terms of the Employer’s Best Financial Offer. (Tr. 77).

<sup>10</sup> The only bonus referenced in the parties’ CBA is a \$500 safety bonus. (Joint Ex. 1(b)). Williams testified that Rolland cannot withhold safety bonuses from eligible employees. (Tr. 49).

payments he and other employees would receive to compensate for their reduction in pay in the first year of the new contract. (Tr. 49).

*Jeffrey Rolland's Version of Events*

5 Rolland testified that he was in the dispatch office on September 25<sup>th</sup> speaking with employees about the status of contract negotiations. (Tr. 173-174, 189). Then from out of nowhere, Anthony Williams joined the conversation and started accusing Rolland of personally having his pay cut. Rolland and Williams raised their voices and Rolland told Williams to go  
10 speak with management because the only thing the Union did was try to help him get more money. In response, Williams said, “you all got weak.” Rolland told Williams to hold up – that he wasn’t the one that cut his pay – and said that Williams needed to go.<sup>11</sup> Rolland told Williams that “if you thought I was after you, I could have did something about that bogus bid sheet that they gave you, that they put up.”<sup>12</sup> Williams kept accusing Rolland of failing his co-workers,  
15 they were loud and in each other’s face when Smith and Adams came over to separate the men. Rolland said, “I’m going to go outside, man” and Williams replied, “that’s what you’re going to do then.” At this point, Milton came out and said that both men were loud, and he wanted to know what was going on. Rolland said that he didn’t have a problem and then left dispatch, but Williams stayed behind.<sup>13</sup> (Tr. 173-176, 194).

20 Rolland testified that he did not tell Williams to go outside and fight him, and did not threaten to beat up Williams. Rolland also testified that he did not threaten to withhold a bonus from Williams, and he did not have the power to withhold a bonus from him. Additionally, Rolland testified that he did not threaten to cut Williams’ pay, and he did not tell Williams that  
25 he was stabbing his co-workers in the back. (Tr. 175-176, 182).

*Ritchie Smith's Version of Events*

30 Ritchie Smith testified that he was present for the entire discussion between Williams and Rolland. (Tr. 91). Smith testified that he was facing the two men from the other side of the dispatch counter and that Sadarian Adams was also present in the dispatch office. (Tr. 91-92). According to Smith, Williams asked Rolland about the status of contract negotiations and why employees could not get a direct answer as to what was going on at the bargaining table. Rolland gave a vague response – indicating that negotiations were ongoing<sup>14</sup> – but wanted to  
35 know why Williams was so interested since he was not even a member of the Union. (Tr. 92).

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<sup>11</sup> Rolland testified that Williams’ comment got him really mad because he (Rolland) had worked hard for the employees to get what he believed to be a good contract – focusing on the extra paid holiday, one extra personal day, an extra week of vacation for certain employees, etc. (Joint Ex. 1(d); Tr. 174, 189).

<sup>12</sup> Rolland clarified that he believed that about a year prior, the Employer essentially rigged the Atlanta airport route bid in Williams’ favor by requiring interested employees to be willing to work weekends (which Rolland did not do) and by requiring employees to have an airport clearance pass (which only a few bargaining unit employees, including Rolland, had). (Tr. 176, 178-179). Rolland confirmed that he did not file a grievance over the posting of this bid route. (Tr. 177, 185).

<sup>13</sup> Rolland testified that he did not go outside with the intention of bringing Williams outside with him. Rolland explained that it had been a long day, and he just went outside to go to the parking lot, get in his car, and go home. Nobody walked outside with Rolland. (Tr. 193).

<sup>14</sup> Smith testified that during the August/September 2023 timeframe, a lot of drivers came into dispatch and asked Rolland what was going on in negotiations. Rolland would say something to the effect of they were still meeting and as soon as he knew something, he would let them know. The drivers

At this point, the two men started to get loud, and Rolland commented about Williams not receiving a bonus. Smith testified that Rolland said something to the effect of, "I'll make sure to block you getting anything else going forward or you won't get another bonus like you did last time," but Smith did not understand what Rolland was talking about. (Tr. 98). Williams then asked Rolland why he was mentioning his personal business, and the two men were facing each other and yelling. Smith recalled Rolland saying, "we can take this outside if you want to." (Tr. 93-95). Rolland "took his stance<sup>15</sup>" and said we can go outside – come on if you want to do it. (Tr. 95). Smith testified that Williams just sort of brushed off the remark, but Smith came around the dispatch table to get in front of Williams and Adams did the same thing to step in front of Rolland. Smith and Adams told them to calm down and take a breath. Rolland said, "whatever," and left the dispatch office. Williams stayed behind to finish checking in his materials and then exited the dispatch office. (Tr. 95-96).

On cross-examination, Smith stated that Rolland was upset because Williams was criticizing the Union. (Tr. 102). They both were getting heated, but Williams was on defense because Rolland was looking like he wanted to attack Williams verbally and physically. (Tr. 102). Furthermore, Smith did not recall Rolland saying that he was going to whip Williams' ass, but he believed that both Rolland and Williams may have used the word motherfucker, and he may have heard Rolland tell Williams that Williams was stabbing other employees in the back. (Tr. 101-102).

### **The Employer's Investigation of the Williams/Rolland Incident**

Cicely Passley, the Employer's HR manager at the Bankhead facility, testified that she first heard about the incident with Rolland and Williams via an email from operations supervisor Darnell Milton. (Tr. 111). In this email, Milton wrote:

"On today September 25<sup>th</sup> at 4:30pm I heard some loud yelling between 2 drivers Jeff Rowland and Ray Williams in dispatch. When I got out of my office and walked toward the yelling I witnessed Jeff Rowland walking toward Ray telling him lets take it outside. I asked the guys what's going on and then Jeff walked outside to go to his car and go home. I asked Ray was everything ok and he said if he goes to the parking lot and Jeff approaches him, he will defend himself. I walked Ray outside and he got in his car and went home." (GC Ex. 2).

On the evening of September 26<sup>th</sup>, Williams came to Passley's office to speak to her. (Tr. 112, 114).<sup>16</sup> Passley's contemporaneous notes were entered into the record as GC Ex. 3. The notes read:

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did not like the vague answers, but Rolland and Massaro both testified that bargaining committee members were instructed not to say too much to drivers because things changed quickly in negotiations, and the Union did not want to get people's hopes up. (Tr. 107, 166, 187).

<sup>15</sup> Smith testified that Rolland did not ball up his fists, but he turned to face Williams and said we can go outside. (Tr. 95). Smith also testified that he did not think the men would come to blows, reasoning that they were both professional drivers and they were not going to throw away their years of service over this dispute. (Tr. 100-105).

<sup>16</sup> Williams testified that he spoke to Passley over the telephone and Passley testified that this conversation took place in person in Passley's office. (Tr. 40-41, 112). Passley's notes do not indicate whether the conversation took place in person or over the phone. Regardless, there is no dispute that

“Ray Williams, 9/26/2023, 6:16pm. Got into dispatch. Been here 10 years. See Jeff Rolland. Hey, brother Ray, looking for you on Friday. Did you get paperwork from the union? Hey, Ray, see me before you clock out, per Gator. Gator presented where he would get paid. He went on to say 12 that fell below the threshold. He explained again, Gator said. Jeff said, you know, you are taking a loss. Yes, I know. He started asking questions. Jeff started deflecting. They went back and forth. Then Jeff got irate, started referring to him out of his name. He said, hold up, you aren’t going to talk to me this way. What was the purpose of you being in negotiations? What set him off was Jeff, if you all had voted on the strike, then why are we here – pointing on the glass at him with aggression. Then they are nose-to-nose. Take you outside and whip your ass. You need to walk away. Ritchie came and got between them. Sadarian came and jumped in between them too. The next time the company tries to slide you a bonus under the table, then I am going to put a stop to it. Aired that out in public, threatened bodily harm, cannot put out disparagingly information about him because he isn’t in the Union.” (GC Ex. 3).

Williams told Passley that the entire incident was recorded on the dispatch office’s cameras, and she could see for herself what happened.<sup>17</sup> Passley said that she would look into the matter and asked Williams what he would like to see happen. Williams said that he didn’t want Rolland to lose his job, but he wanted this incident documented in case Rolland instigated another confrontation with him. (Tr. 41). Williams asserts that nobody from the Employer followed up with him regarding this investigation. (Tr. 42).

In early October 2023, Passley spoke with Rolland in the conference room of the Employer’s operations building. (Tr. 117). According to Passley, Rolland admitted that there was a heated exchange between him and Williams, but Rolland did not recall saying that he was going to take Williams outside or anything similar. (Tr. 117-118). Passley then told Rolland that she was going to put the following letter in Rolland’s file regarding this incident:

“This letter shall serve as a formal notice to file and to confirm in writing the discussion that was held in a meeting conducted on Monday, October 9, 2023, with Roll Off Driver Jeffrey Rolland concerning allegations of unacceptable behavior as it relates to communication with Lead Driver, Anthony Ray Williams.

It was reported that you conducted yourself in an unprofessional manner and made threatening remarks to Mr. Williams stating “you all could take it outside” as you all were having a discussion that became heated concerning pay wages. It was disclosed to you that a member of management witnessed the exchange.

The expectation is that ALL employees must be treated with courtesy and respect. It was explained that unprofessional comments, threatening or intimidating language would not be tolerated and goes against our Code of Ethics policy. Mr. Rolland was reminded of the importance of being Human Centered – We respect the dignity and unique potential of every person.

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Passley and Williams spoke the day after the incident with Rolland.

<sup>17</sup> Passley testified that there was no video footage of the Rolland/Williams incident. (Tr. 129). The record, however, was not clear as to when Passley first inquired about the footage or why there was no footage.



The expectation is that Mr. Rolland is to always conduct himself in a professional manner as an employee of Republic Services. Mr. Rolland must communicate with his peers with the highest level of integrity and respect. Additionally, Mr. Rolland recognizes that any substantiated claims of unprofessional conduct may be grounds for disciplinary action up to and including termination of employment.” (GC Ex. 4).

Passley testified that this note to file did not constitute discipline under the parties’ CBA and the note to file was not grievable because it did not rise to the level of a coaching.<sup>18</sup> (Tr. 121). Passley added that she concluded her investigation at this point because she did not see anything substantiating Williams’ violence accusation – Passley labeled the situation as “he said/he said.”<sup>19</sup> (Tr. 120).

Rolland testified about his conversation with Passley in early October. Rolland asserts that he told her that he was talking with some employees about contract negotiations and why he believed this was a good contract. Rolland told Passley that Williams came out of nowhere and said that the Union was weak. Then Williams repeated that Rolland cut Williams’ pay. Rolland told Williams that some employees had their pay cut, but he had nothing to do with that. (Tr. 181). Passley asked Rolland whether he said anything about a bonus. Rolland said he didn’t mention a bonus – it was a bogus bid sheet. Rolland then told Passley that he did not threaten to beat up Williams. (Tr. 181).

Passley’s notes from her conversation with Rolland were not offered into evidence, but Passley entered the following summary into the Employer’s HR Aware database in early April 2024:

“On October 9, 2023, HRM Cicely Passley had a discussion with Lead Driver, Jeffrey Rolland concerning the allegations. Jeffrey Rolland went on to say yes things did get heated, he didn’t recall saying he was going to kick his ass. He did admit to being very upset and felt as if Mr. Williams was blaming him for the pay rate negotiations. He went on to say that Mr. Williams doesn’t know how to talk to people and a lot of guys say the same.<sup>20</sup> He did acknowledge that Ritchie and Sadarion got in between them. He also acknowledged that Darnell came out as well trying to diffuse the problem.” (Resp. Ex. 1)

### **The Parties Reach Agreement on a New CBA and the Employer Reopens Its Investigation of the Rolland/Williams Incident**

After the membership overwhelmingly voted down the Employer’s Best Financial Offer, the Employer offered a revised proposal featuring a sweetened ratification bonus for drivers with more than 20 years of service (\$2,222 in the revised proposal vs. \$500 in the Employer’s Best Financial Offer). (Joint Ex. 1(d); Tr. 148). The membership approved this Modified Best Financial Offer on October 28, 2023. (Tr. 149).

<sup>18</sup> Massaro testified that the Employer never informed him about the incident between Williams and Rolland. (Tr. 154).

<sup>19</sup> Passley did not explain why she did not speak with Smith or Adams, two eyewitnesses to the skirmish, during her initial investigation.

<sup>20</sup> Williams testified that some employees think he has a brash personality. (Tr. 68).

In early February 2024, Williams spoke with Melissa Glover, the Employer's HR Director (and Passley's boss). (Tr. 80). Williams told Glover that he was dissatisfied with the Employer's lack of a full investigation regarding his complaint against Rolland, and the Employer's failure to follow up with him regarding the status of this investigation. Glover said  
 5 that she would talk to Passley about this matter. (Tr. 81).

Passley confirmed in her testimony that Glover asked her to reopen her investigation, and on February 8, 2024, Passley told Williams that there would be a full investigation of his complaint against Rolland. (Tr. 79). As part of Passley's additional investigation, she spoke with  
 10 Ritchie Smith in about early April 2024. (Tr. 128). Passley's notes of her conversation with Smith read as follows:

"...Per Mr. Smith, the two started off joking. Jeff took offense and said something about Ray's pay. Ray then gets upset. They both started exchanging words. Mr. Ritchie Smith then jumps up and gets in between them. Mr. Smith doesn't recall any threats made."  
 15 (Resp. Ex. 1; Tr. 129).

Passley's case notes indicate that she closed her investigation on April 10, 2024. (Resp. Ex. 1). No discipline was issued to Rolland, and Williams testified that he never heard back  
 20 from Passley regarding the results of her reopened investigation. (Tr. 80).

### Analysis

Section 8(b)(1)(A) of the National Labor Relations Act states, in relevant part: "It shall  
 25 be an unfair labor practice for a labor organization or its agents – to restrain or coerce employees in the exercise of the rights guaranteed in section 7..." Section 7 of the Act provides employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to  
 30 refrain from any or all such activities..." 29 U.S.C. § 157. Section 7 guarantees to employees the right to question the wisdom of their bargaining representative or to take steps to align their union with their position, and a union violates Section 8(b)(1)(A) when it restrains or coerces employees in the exercise of that right. *Teamsters Local 823 (Roadway Express, Inc.)*, 108 NLRB 874 (1954), enf. sub nom. *NLRB v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 823*, 227 F.2d 439 (10<sup>th</sup> Cir. 1955); *International Union of Operating Engineers, Local 400 (Hilde Construction Co.)*, 225 NLRB 596 (1976).  
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### **Jeffrey Rolland was Engaged in His Shop Steward Activities During His Altercation with Anthony Williams and Rolland's Conduct is Imputed to the Respondent**

A shop steward is "the first union representative the members look to, and the man from whom they take their cues insofar as union policy is concerned." *Teamsters Local 886*, 229 NLRB 832, fn. 5 (1977), enf. 586 F.2d 835 (3<sup>rd</sup> Cir. 1978), quoting *Carpenters Local 2067*, 166 NLRB 532, 540 (1967). That the Union did not specifically authorize the issuance of threats  
 45 does not preclude the existence of the Union's responsibility. "Responsibility attaches, if, applying the 'ordinary law of agency,' it is made to appear the union agent was acting in his capacity as such." *Boilermakers Local 5*, 249 NLRB 840, 848 (1980). These findings are consistent with Congress' intent in passing the 1947 amendments to the Act, whereby Senator Taft stated, "...union business agents or stewards, acting in their capacity of union officers, may

make their union guilty of an unfair labor practice when they engage in conduct made an unfair labor practice in the bill, even though no formal action has been taken by the union to authorize or approve such conduct.” 93 Daily Cong. Rec. 7001 (June 12, 1947). In *Teamsters Local 705 (Pennsylvania Truck Lines)*, 314 NLRB 95, 95 at fn. 1 (1994), the Board found that a steward  
 5 was the union’s agent where the steward informed new employees about union dues and fees, obtained dues checkoff and initiation forms from new employees, and settled disputes before the grievance stage.

In our case, all participants in the September 25<sup>th</sup> altercation agree that Rolland was  
 10 engaged in shop steward activities in the dispatch office prior to his verbal tussle with Williams. To this end, Rolland asserts that he was in the dispatch office discussing contract negotiations with employees when Williams interjected and criticized the Union’s bargaining acumen and its direct impact on Rolland’s pay. In Smith’s version, Williams and Rolland were discussing contract negotiations when Williams asked Rolland why he couldn’t get a straight answer  
 15 regarding the status of bargaining. And in Williams’ version, Rolland initiated the conversation by asking Williams if he received the paper outlining his pay under the proposed CBA. Thus, all witnesses concur that Rolland was actively engaged in his representational capacity just prior to his flare up with Williams. And under prevailing Board law, the Union’s lack of approval of (and plain ignorance of) Rolland’s misconduct cannot insulate the Respondent from culpability  
 20 under Section 8(b)(1)(A) of the Act.

**Jeffrey Rolland Threatened Anthony Williams with Violence in Violation of Section 8(b)(1)(A) of the Act**

The test used to establish whether a union representative’s statement violates Section 8(b)(1)(A) of the Act is objective – whether the statement can reasonably be interpreted by employees as a threat based upon engaging in protected concerted activity. What the union agent  
 25 subjectively intended by the comment and the subjective state of mind of any employee who heard or read the statement is not determinative. Moreover, the statement itself cannot be  
 30 viewed in a vacuum, but must be viewed in context to determine if under all the circumstances it would have a tendency to restrain and coerce employees within the meaning of Section 8(b)(1)(A). *International Brotherhood of Teamsters, Local 70 (United Parcel Service)*, 372 NLRB No. 19, slip op. at 1 (2022), quoting *Branch 4779, National Assn. of Letter Carriers (United States Postal Service)*, 364 NLRB 655 (2016).

Section 7 of the Act permits employees to engage in protected, concerted activities such as collective bargaining, and to refrain from such activities. Section 7 also allows employees to question the wisdom of their designated bargaining officials whether they are members of a union or choose to remain nonmembers. Thus, Section 7 protected Anthony Williams as he  
 40 questioned Jeffrey Rolland about the status of negotiations, the quality of the bargain struck, and even as he labeled the Union’s bargaining acumen as “weak.” In response to Williams’ protected activity, Rolland threatened him with violence in violation of the Act.

Rolland and Williams’ September 25<sup>th</sup> altercation occurred in a workplace rife with  
 45 tension over the status of contract negotiations. In this regard, Union membership had just overwhelmingly voted down the Employer’s Best Financial Offer at a meeting that Eric Massaro described as “nearly a riot.” Employees wanted to know the Union’s Plan B and Jeffrey Rolland – having served as a shop steward for 15 years – sought to extol the virtues of the gains the Union made in negotiations. But Williams did not share Rolland’s optimism. He wanted to

know why some drivers would see their pay cut and why the Union couldn't negotiate a better deal.

Credibility determinations consider the witness' testimony in context, including, among other things, their demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole. *Double D Construction Group, Inc.*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001). In making credibility resolutions, the trier of fact may believe some, but not all, of a witness's testimony. *Daikichi Sushi*, 335 NLRB at 622; *NLRB v. Universal Camera Corp.*, 179 F.2d 749 (2d Cir. 1950). Having observed the witnesses at the hearing, and reviewed all record evidence, I conclude that Rolland's comments to Williams about taking this matter outside can reasonably be interpreted by employees as a threat with the tendency to restrain and coerce employees under Section 8(b)(1)(A) of the Act.

To start, I will walk through which portions of the testimony I credit and why. Both Williams and Rolland agree that Williams told Rolland that the Union was weak in the context of Williams' dissatisfaction with the negotiated deal. As for Rolland's alleged comment calling Williams a motherfucker who was stabbing employees in the back, I credit Williams and Smith's testimony on this point. As a neutral witness, I found Smith to be candid and forthright. He admitted that his recall was not 100% and Smith never tried to exaggerate or embellish his testimony. Although Smith's direct testimony did not cover this point, Smith easily agreed on cross-examination when asked whether he heard Rolland refer to Williams as a backstabber and a motherfucker. This corroboration leads me to credit Williams' account on this specific piece of his testimony.<sup>21</sup> Rolland was not asked about calling Williams a motherfucker in his trial testimony, leading me to believe that if he was asked, he would have admitted using this verbiage. Rolland denied accusing Williams of stabbing employees in the back when asked on direct, but Smith's testimony on this subject is more persuasive given that Smith is a bargaining unit employee and strong Union supporter with no incentive to testify contrary to the Union's interests.

I also credit Williams and Smith's testimony accusing Rolland of challenging Williams to go outside with him. In this regard, Smith testified that Williams and Rolland were yelling at each other and "Rolland took his stance and said we can go outside – come on if you want to do it." In his version, Williams accused Rolland of walking towards him and saying he would take Williams outside and "whoop your ass." Adding an additional layer of corroboration is the email that Darnell Milton sent to Cecily Passley shortly after the incident took place. In his email, Milton noted that he heard loud yelling from his office and as he approached dispatch, he saw Rolland walk towards Williams and tell him to "let's take it outside." Although Milton did not testify, and the email is hearsay, the Board has ruled hearsay testimony is admissible when it is probative and corroborated by other evidence. See *RJR Communications*, 248 NLRB 920, 921 (1980), *Dauman Pallet, Inc.*, 314 NLRB 185, 186 (1994), and *Teamsters Local 705 (Pennsylvania Truck Lines)*, 314 NLRB 95, 98 (1994). Since Milton's email summary was corroborated by Smith and Williams, and the record reveals no reason to find Milton's account unreliable, I find this evidence probative of Rolland's unlawful conduct. Furthermore, I find that Passley's notes from her conversation with Williams bolster Williams' testimony that Rolland said that he wanted to take the matter outside and whip Williams' ass. In this regard, Williams'

<sup>21</sup> While Williams did not mention the backstabber comment to Passley when she spoke to him, and he did not mention these comments in his Board affidavit, I find that Smith's corroborative testimony on this subject makes it more likely than not that Rolland uttered this phrase.

conversation with Passley took place the day after the September 25<sup>th</sup> altercation. Therefore, Williams' inclusion of the "whip your ass" comment in his summary of the prior day's events is stronger evidence that this comment was in fact made despite Williams' failure to include this piece of evidence in either his Board questionnaire or his affidavit submitted more than four months after the skirmish with Rolland.

In contrast, I find Rolland's characterization of this portion of his testimony unworthy of credit. To this end, Rolland testified that he and Williams were in each other's faces, and Rolland was steamed at Williams' accusation that the Union was responsible for his pay cut. Yet according to Rolland, the conversation ended with a whimper – with Rolland simply saying, "I'm going to go outside." By purposely downplaying the import of his "outside" comments, Rolland cut against two eyewitnesses' testimony and Milton's written summary of events. Thus, I find Rolland's account untrustworthy relative to Smith and Williams' testimony regarding the threat to resolve this matter outside.

Having identified certain credited portions of the trial testimony, I now explain why this testimony establishes a violation of the Act. In the wake of the unit employees' explosive denunciation of the Employer's Best Financial Offer, employees queried Union steward Jeffrey Rolland about the Union's next steps. Nonmember Anthony Williams questioned why his pay was being cut and accused the Union of being weak. In response, Rolland cursed at Williams and accused him of stabbing his co-workers in the back, ostensibly because Williams exercised his legally protected right to refrain from joining the Union. And in response to Williams' pointed questions about the Union's bargaining strategy, Rolland got in his face and demanded that they settle their differences outside. Thus, Rolland's statements to Williams, made in the presence of at least two other bargaining unit employees, would reasonably tend to convey to unit employees a union steward's willingness to retaliate against a nonmember employee for exercising their Section 7 rights, thus, restraining and coercing employees in violation of Section 8(b)(1)(A) of the Act.<sup>22</sup> See *Branch 3126, National Association of Letter Carriers (NALC) (United States Postal Service)*, 330 NLRB 587, 588 (2000); *Letter Carriers Branch 47 (United States Postal Service)*, 327 NLRB 529 (1999).

**Counsel for the General Counsel Has Failed to Establish That Jeffrey Rolland Unlawfully Threatened to Withhold a Bonus**

Even if I fully credit Williams' account that Rolland said he was going to stop the Employer the next time it tried to slide Williams a bonus, this statement does not rise to the level of a Section 8(b)(1)(A) violation. In this regard, Williams himself was not sure what Rolland was talking about, first positing that Rolland was referring to the quarterly payouts. When Williams confirmed that Hodges called the \$1,600/quarter sweeteners "payouts," and never referred to these payments as bonuses, Williams offered another theory. Williams mentioned the monthly safety bonuses referenced in the parties' CBA, but Williams noted that there were objective criteria spelling out eligibility for these bonuses and Rolland could not impact the

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<sup>22</sup> Although Ritchie Smith testified that he didn't think Williams and Rolland would come to blows due to their lengthy employment history, their professional nature, and their unwillingness to throw their careers away over this disagreement, Smith confirmed that Williams was put on defense because Rolland looked like he wanted to attack him verbally and physically. (Tr. 102). And the test I must analyze is not whether Ritchie Smith thought Rolland truly intended to beat up Williams, but whether Rolland's statements and actions can reasonably be interpreted by employees as a threat based upon engaging in protected concerted activities. As I described above, I believe the answer to this objective test is yes.

eligibility for these bonuses. Williams next posited that Rolland was referring to his job bid at the Atlanta airport. But this bid took place over a year ago, the Union did not file a grievance over the selection process, and “bonuses” and “bids” are hardly synonyms.<sup>23</sup> In most cases, a witness offering a revolving door of theories to contextualize an alleged unlawful statement would lead me to discredit the witnesses’ testimony as lacking candor. But I do not find Williams to be untruthful here – I simply believe he had no idea what Rolland was talking about and his grasping at theories reinforces my belief that no reasonable employee would interpret Rolland’s comments as a threat in violation of Section 8(b)(1)(A).

Furthermore, Smith recalled Rolland saying something to Williams about not receiving some type of bonus, but Smith said that he didn’t understand what Rolland was talking about and did not know anything about an issue with a bonus. Given that context matters in my analysis, since the parties were only talking about the proposed Best Financial Offer on September 25, and nobody specifically raised Williams’ airport route bid in this conversation, no objective reasonable employee would deduce that Rolland’s remark about bonuses related to a job bid from one year earlier. Moreover, all witnesses confirmed that Rolland had no authority over the disposition of contractual bonuses, or the payouts agreed to by the Union and the Employer covering the dozen or so drivers at the top of the Employer’s pay scale. In summation, the General Counsel’s principal witness and its most solid neutral witness struggled to identify just what Rolland was talking about regarding the withholding of bonuses. Therefore, assuming Rolland said what Williams attributed to him, the General Counsel has failed to establish that this statement could reasonably be interpreted by employees as a threat and no violation of the Act has been established here.

## CONCLUSIONS OF LAW

1. BFI Waste Services, LLC d/b/a Allied Waste Services of Atlanta/Republic Services of Georgia is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.
2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent violated Section 8(b)(1)(A) of the Act when its shop steward Jeffrey Rolland threatened Anthony Williams with violence after Williams questioned Rolland about the Union’s bargaining strategy.
4. The unfair labor practice stated in Conclusion of Law 3, above, affects commerce within the meaning of Sections 2(6) and (7) of the Act.

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<sup>23</sup> On page 12 of its post-hearing brief, Respondent asserts that Rolland’s accent makes it reasonable to conclude that Rolland said “bogus,” but listeners misheard it as “bonus” regarding the airport bid. I disagree. I had no problem understanding Rolland’s testimony sitting right next to him. Plus, a “bonus airport bid” makes no sense in the context of the issues relating to this case.

**ORDER**

The National Labor Relations Board orders that the Respondent, Teamsters Local 728, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening employees with physical harm if they question the Union's bargaining strategy or engage in any other protected concerted activities.

(b) In any like or related manner 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.

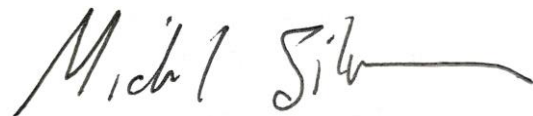
(a) Post at its Bankhead facility in Atlanta, Georgia copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees and members 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 members 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.

(b) Within 14 days after service by the Region, deliver to the Regional Director for Region 10 signed copies of the Respondent's notice to employees and members for posting by BFI Waste Services, LLC d/b/a Allied Waste Services of Atlanta/Republic Services of Georgia at its Bankhead, Atlanta, Georgia facility, if it wishes, in all places where notices to employees are customarily posted.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 10 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. February 4, 2025



Michael P. Silverstein  
Administrative Law Judge

## APPENDIX

### NOTICE TO EMPLOYEES AND MEMBERS

### 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 threaten you with physical harm if you question our collective bargaining strategy or if you engage in any other protected concerted activities.

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

\_\_\_\_\_  
Teamsters Local 728

(Respondent)

Dated: \_\_\_\_\_ By: \_\_\_\_\_

(Representative)

(Title)

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



National Labor Relations Board Region 10  
401 W. Peachtree Street, NW, Suite 2201  
Atlanta, Georgia 30308  
Hours of Operation: 8:00 a.m. to 4:30 p.m.  
404-331-2896

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/10-CB-335036](http://www.nlr.gov/case/10-CB-335036) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (470) 343-7498.