

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

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 111

and

Cases 27-CA-301386  
27-CA-304620  
27-CA-309109

UNITED PROFESSIONALS INTERNATIONAL

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for the Respondent.

DECISION

STATEMENT OF THE CASE

**ROBERT A. RINGLER, Administrative Law Judge.** This hearing was held in Denver, Colorado in November 2024. The complaint alleged that the International Brotherhood of Electrical Workers, Local 111 (Local 111 or the Respondent) violated §8(a)(1), (3) and (5) of the National Labor Relations Act (the Act).<sup>1</sup> On the record, I make the following

FINDINGS OF FACT<sup>2</sup>

I. JURISDICTION

Local 111, a labor organization with a principal place of business in Denver, Colorado, collects and receives dues and initiation fees exceeding \$500,000 and, thereafter, remits dues exceeding \$50,000 to its Washington, DC headquarters. On this basis, it is an employer engaged in commerce under §2(2), (6) and (7) of the Act. The United Professionals International (the Union or UPI) is a §2(5) labor organization.

II. UNFAIR LABOR PRACTICES

A. BACKGROUND

Local 111 represents more than 4,400 members in Colorado and Wyoming within 40

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<sup>1</sup> This is the somewhat unique NLRB case, where a union has been charged with violating the Act as an employer.

<sup>2</sup> Unless otherwise stated, factual findings arise from joint exhibits, stipulations and undisputed evidence. Most of the relevant facts in this case are undisputed.

bargaining units. This case presents the somewhat ironic question of how a labor union, which ostensibly supports the rights of employees to join unions, might react when its own employees unionize? Sadly, the high road was not taken herein. This case begins, and ends with, assistant business manager Leendert de Blaeij, who organized Local 111's workforce.

## B. DE BLAEIJ'S TENURE AND ORGANIZING EFFORTS

Although de Blaeij has been employed by DirectTV since 2005,<sup>3</sup> he has taken periodic leaves of absence from this role to work full-time for Local 111.<sup>4</sup> He originally organized his DirectTV bargaining unit for Local 111, and then served as its steward and bargaining team member. In 2017, Local 111 hired him as a business agent and assigned him 7 DirectTV units.<sup>5</sup> In 2019, he was promoted to assistant business manager and traveled throughout Colorado and Wyoming. He mainly worked out of Local 111's Colorado Springs office. In February 2022,<sup>6</sup> de Blaeij formed UPI and successfully lobbied his colleagues to unionize. On June 13, then business manager Richard Meisinger voluntarily recognized UPI as the exclusive representative of the following workers (the UPI unit):

All full-time and regular part-time employees employed by Respondent including all Business Representatives, Assistant Business Managers, Senior Assistant Business Managers, Organizers, and Dispatchers performing all duties on the property of IBEW 111 within the state of Colorado and Wyoming, but excluding all supervisors, guards, confidential employees, and all other employees excluded by the Act.

(JT Exh. 1).

## C. UNILATERAL CHANGES<sup>7</sup>

### 1. Record Evidence

The Complaint alleges that Local 111 unilaterally changed the UPI's unit's vehicle usage and hours of work policies. The pre-UPI and post-UPI policies will now be reviewed.

#### a. Policies Before Changes

##### i. Vehicle Usage

Since 2014, and before the unilateral changes at issue, Local 111 maintained an *Automobile Policy*, which allowed personal usage of vehicle[s] and provided that, "drivers will report ... personal miles weekly." (GC Exh 2 at 15-16). UPI unit employees were issued Ford F-150s or

<sup>3</sup> At DirectTV, he was a premises technician, who installed products at consumers' residences.

<sup>4</sup> Local 111 has a provision in its collective bargaining agreements, which allows employees to take job-protected leaves from their positions to perform full-time union duties.

<sup>5</sup> His role involved filing grievances, enforcing contracts, attending meetings, organizing workers and bargaining.

<sup>6</sup> All dates that follow are in 2022, unless otherwise stated.

<sup>7</sup> This was alleged to be unlawful under complaint ¶¶9 and 14.

equivalent vehicles for business and personal usage, subject to the sole requirement that any personal miles were to be reported on weekly expense reports. De Blaeij testified that: he used his Local 111 vehicle for personal errands; he recorded his personal and business miles on a weekly expense report; and personal miles were classified as a benefit on biweekly paychecks. See also (GC Exhs. 6, 11). Business agent Austin Maier corroborated his account.<sup>8</sup> See also (GC Exh. 19).

## ii. Hours of Work

Local 111's offices were open from 7 a.m. to 4:30 p.m. Prior to the unilateral change at issue, UPI unit employees were allowed to work flexible schedules, which accommodated work outside of normal business hours (i.e., when duties required starting before 7 a.m. or ending after 4:30 p.m.).<sup>9</sup> De Blaeij and Maier corroborated that there was never any requirement to obtain the business manager's consent, if they arrived after 7 a.m. to offset their after-hours work, and that business agents only texted a short report of their daily activities.<sup>10</sup> They would, as a result, subject to their sole discretion, start after 7 a.m., when their workweeks demanded it. Maier added that a typical text would cursorily state, "out in the field, talking to crews."<sup>11</sup>

### b. July 8: Local 111's Leadership Changes

On July 8, following a surprising victory in a Local 111-conducted election,<sup>12</sup> Gutierrez was sworn in as the new business manager.<sup>13</sup> He claimed that he ran on a platform of change because he did not like the way that the prior regime ran things.

### c. Policies After Changes

#### i. Hours of Work

At an August staff meeting, Gutierrez announced a change in the UPI unit's hours of work. Specifically, he stated that there was now a firm 7 a.m. start time and that business agents needed his approval to change their hours. Maier stated that this caused an increase in his weekly hours, given that he could no longer offset overtime by arriving later in the day.<sup>14</sup> He added that Gutierrez declined to consent to a request to offset overtime in December, when he asked him if he could arrive at 8 a.m. because he intended to work after hours that day, and was told that he needed to take leave if he wished to arrive after 7 a.m. (GC Exh. 20). Local 111 never gave UPI notice or bargained before enacting this change.

<sup>8</sup> Maier, a member for the UPI unit, began in 2021.

<sup>9</sup> De Blaeij and Maier stated that their jobs often involved meeting with employees or traveling outside of normal work hours. They explained that they often drove 2.5 to 5 hours each way to service their assigned units, or met with employees before 7 a.m., after 5 p.m., or during weekends.

<sup>10</sup> UPI unit employees typically did not report start and end times in these texts.

<sup>11</sup> He said that he never stated his start time on the group chat, unless he was arriving after 10 a.m.

<sup>12</sup> The election count took place on June 10.

<sup>13</sup> Rich Meisinger was business manager from February 2019 to July 8, 2022, before losing to Gutierrez.

<sup>14</sup> It is unclear if UPI employees filed a DOL complaint, which claimed payment for their overtime under the FLSA.

## ii. Vehicle Usage

Gutierrez announced that the personal usage of Local 111's vehicles was now prohibited. (R. Exh. 11). On October 12, he issued a *Union Owned/Leased Automobiles* policy, which, in relevant part, stated, "Union ... automobiles are for ... Union business only .... personal use is prohibited." (GC Exh. 13). He later told business agents at a staff meeting that they now needed to photograph their odometers at the start and stop of each workday.<sup>15</sup> Local 111 never notified UPI or bargained before enacting this change.

## 2. Analysis

Local 111 violated §8(a)(5), when it unilaterally changed the UPI unit's hours of work and vehicle usage policies. These material changes were enacted without notice or bargaining.

### a. Precedent

Under §§8(a)(5) and 8(d), the duty to bargain requires an employer "to meet ... and confer in good faith with respect to wages, hours, and other terms and conditions of employment." *NLRB v. Katz*, 369 U.S. 736, 742–743 (1962). In order to trigger a bargaining obligation, a change must be material, substantial and significant. *Crittenton Hospital*, 342 NLRB 686 (2004). The GC can establish a prima facie unilateral change violation, if it shows that an employer made a material and substantial change in a term of employment without negotiating. The burden then shifts to the employer to show that the change was permissible (e.g., consistent with established past practice). See, e.g., *Fresno Bee*, 339 NLRB 1214 (2003). An employer's regular and longstanding practices that are neither random nor intermittent become terms and conditions of employment, even if those practices are not required by a collective-bargaining agreement. *Palm Beach Metro Transportation, LLC*, 357 NLRB 180, 183 (2011) (party asserting past practice has the burden of proof and must show that the practice occurred with such regularity and frequency that employees could reasonably expect it to continue or reoccur on a regular and consistent basis).

Where parties are negotiating a collective-bargaining agreement, an employer's obligation to refrain from making unilateral changes extends beyond the duty to provide notice and an opportunity to bargain. *RBE Electronics of S.D.*, 320 NLRB 80, 81 (1995); *Mike O'Connor Chevrolet*, 209 NLRB 701 (1974). During contract bargaining, an employer must refrain from enacting unilateral changes, absent overall impasse on bargaining for an entire agreement. *Id.* The Board recognizes limited exceptions to its general bar against piecemeal unilateral changes. In *Pleasantview Nursing Home*, 335 NLRB 961 (2001), enfd. 351 F.3d 747 (6th Cir. 2003), it held:

[There are] two exceptions to that general rule: [1] when a union engages in bargaining delay tactics and [2] when economic exigencies compel prompt action .... The Board has limited the economic considerations which would trigger the ... exception to "extraordinary events which are an unforeseen occurrence, having a major economic effect [requiring] the company to take immediate action." ....

<sup>15</sup> Despite concerns about misuse of Local 111's vehicles, Gutierrez still saw fit to purchase 2 brand new Dodge Chargers for his own use, after taking over (i.e., RT and GT versions for \$40,000 each). (Tr. 477).

Absent a dire financial emergency, economic events such as... operation at a competitive disadvantage...do not justify unilateral action ....

335 NLRB at 962 (citations omitted).

**b. Discussion**

Local 111 violated §8(a)(5), when it unilaterally changed the hours of work and vehicle policies. Regarding hours of work, it went from a longstanding policy of permitting business agents and organizers to, inter alia, work a 40-hour workweek with varying start times subject to their discretion to accommodate after hours work to newly requiring a constant 7 a.m. start time. This significantly increased the UPI unit's hours of work and deleted their sole discretion to change start times. Regarding vehicles, it went from allowing UPI unit employees to use their vehicles for personal reasons to barring such usage. Such changes were material and substantial, and implemented without notice, consent or bargaining.<sup>16</sup>

**D. BARGAINING DELAYS<sup>17</sup>**

**1. Record Evidence**

On June 16, UPI emailed then business manager Meisinger and asked to begin contract bargaining. (JT Exh. 2). On June 17, Meisinger replied that, "the next Business Manager should negotiate the ... Agreement .... [and that] Gutierrez ... begin[s] July 8." (Id.). On July 14 and 28, and August 5, de Blaeij again requested bargaining. (JT Exhs. 3-5). On August 10, Gutierrez offered multiple negotiating dates in September and October. (JT Exh. 6). On September 15, the parties met and UPI tendered a comprehensive first contract proposal to Local 111. (GC Exh. 12, 16, 17)). The parties negotiated again on September 29, and October 10 and 19.

**2. Analysis**

Local 111 did not unlawfully delay bargaining. Its actions were reasonable.

**a. Precedent**

§8(d) provides that parties have a "mutual obligation ... to meet at reasonable times." The Board examines the "totality of the circumstances" in gauging whether a party has refused to meet at reasonable times and is "not limited to an examination of the number of bargaining sessions held." *Garden Ridge Management, Inc.*, 347 NLRB 131, 132 (2006). The Board considers, inter alia: meeting frequency; meeting cancellations; union efforts to meet more often; and employer justifications. *People Care, Inc.*, 327 NLRB 814, 825–826 (1999).

**b. Discussion**

<sup>16</sup> These the changes also ran afoul of the Board's bar against piecemeal unilateral changes during contract bargaining. Local 111 failed to show that a permissible past practice or exigent economic circumstances justified its actions.

<sup>17</sup> This was alleged to be unlawful under complaint ¶¶11 and 14.

In June, UPI was told by Meisinger, the outgoing business manager, that it should bargain with Gutierrez, after he takes over in July. UPI renewed its bargaining request on July 14, and Gutierrez replied within a month and proposed multiple dates. The parties then met 4 times in September and October. Under these circumstances, which include Gutierrez taking over as a new business manager in mid-July, offering UPI several dates by mid-August, and then meeting 4 times in September and October, Local 111 met its duty to bargain at reasonable times.

## ***E. DISCHARGES AND THREATS***

### **1. Record Evidence**

#### ***a. Gene Baca's Discharge***

Baca, who currently works for Sturgeon Electric, was hired by Local 111 in September 2017 as an organizer. He was later promoted to assistant business manager. On August 12, without explanation, he was fired by Gutierrez. (JT Exh. 7). His termination was implemented without affording UPI notice or an opportunity to bargain.

#### ***b. De Blaeij's Discharge***

##### **i. GC's Case**

On August 15, without explanation, de Blaeij was fired by Gutierrez. (JT Exh. 11). During this exchange, de Blaeij asked for a steward, and Gutierrez replied that, "we don't have union representation for you here." (Tr. 130). He recalled Gutierrez saying, "I don't recognize your stewards." (Tr. 131). Gutierrez recalled de Blaeij telling him that he was forming Local 111 on roughly June 13. (Tr. 378). Gutierrez claimed that he decided to fire de Blaeij on August 8. (Tr. 379). His firing was enacted without notice or bargaining.

##### **ii. Local 111's Response**

In its August 30 position letter, Local 111's then counsel averred that de Blaeij was fired because of unsatisfactory performance and membership complaints.<sup>18</sup> (GC Exh. 26). Gutierrez testified that he thought that de Blaeij was a poor business agent and fired him on that basis. He cited a petition from 20 Xcel unit members, who sought his reassignment.<sup>19</sup> See (R. Exh. 2). Gutierrez averred that he ran on the principle of change, and fired de Blaeij in furtherance of this mandate.<sup>20</sup> See (R. Exh. 1). Gutierrez acknowledged that he had heard complaints about other business agents, but, took no disciplinary action against these agents ( e.g., Suzanne Kuhns).

<sup>18</sup> De Blaeij had never received discipline before his termination. He never received a performance evaluation. He was also never told about any bargaining unit complaints or ever given a chance to address such criticism.

<sup>19</sup> Beyond 20 out of a total membership of 4400, Local 111 provided no other evidence of complaints about de Blaeij.

<sup>20</sup> Gutierrez failed, however, to explain why he never took time to personally evaluate de Blaeij's work or reassign him from this isolated Xcel unit. Gutierrez agreed that he never previously knew or worked with de Blaeij. (Tr. 382). Jose Quintana, a member of the Xcel units and petition signed, testified that he wanted de Blaeij out. He commented that he thought that de Blaeij was a poor representative, who did not follow up.

(Tr. 449-450).

## 2. Analysis

### a. §8(a)(1) – Statements by Gutierrez<sup>21</sup>

Local 111 violated the Act, when Gutierrez told de Blaiej that, “we don’t have union representation for you here,” and “I don’t recognize your stewards.” A statement is an unlawful threat, when it coerces employees in the exercise of their §7 rights. 29 U.S.C. §158(a). The Board, “does not consider subjective reactions, but rather whether, under all the circumstances, a respondent’s remarks reasonably tended to restrain, coerce, or interfere with employees’ rights guaranteed under the Act.” *Sage Dining Service*, 312 NLRB 845, 846 (1993).<sup>22</sup> Gutierrez’ comments reasonably conveyed that he was unwilling to recognize UPI or its stewards. Given that these statements were made in tandem with de Blaiej’s unlawful firing, they were coercive. See *Research Management Corp.*, 302 NLRB 627 (1991)(“we will not allow union stewards to attend employee disciplinary meetings.”); *Major Cab Company*, 255 NLRB 1383, 1384 (1981)(“there would be no union at the company”).

### b. §8(a)(3) – Discharge of de Blaiej<sup>23</sup>

De Blaiej’s firing violated §8(a)(3). The framework for analyzing whether a discharge violates §8(a)(3) is set out in *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982), which requires the GC to show, by a preponderance of the evidence, that protected concerted activity was a motivating factor for the employment action. In *Security Walls, LLC*, 371 NLRB No. 74 (2022), the Board held:

Under *Wright Line*, the General Counsel bears the initial burden of establishing that an employee’s ... protected concerted activity was a motivating factor in the employer’s adverse employment action. The General Counsel meets this burden by proving that (1) the employee engaged in Section 7 activity, (2) the employer knew of that activity, and (3) the employer had animus against the Section 7 activity, which must be proven with evidence sufficient to establish a causal relationship between the discipline and the Section 7 activity. Once the General Counsel sustains her initial burden, the burden shifts to the employer to demonstrate that it would have taken the same action even in the absence of the protected activity.

*Id.* at 11. (footnotes omitted). “[W]here an employer’s purported reasons for taking an adverse action against an employee amount to a pretext—that is to say, they are false or not actually relied upon—the employer necessarily cannot meet its *Wright Line* rebuttal burden.” *CSC Holdings, LLC*, 368 NLRB No. 106, *slip op.* at 3 (2019).<sup>24</sup> On the other hand, further analysis is

<sup>21</sup> This was alleged to be unlawful under complaint ¶¶6 and 12.

<sup>22</sup> *Double D Construction Group*, 339 NLRB 303 (2003)(“test of whether a statement is unlawful is whether the words could reasonably be construed as coercive, whether or not that is the only reasonable construction.”).

<sup>23</sup> This was alleged to be unlawful under complaint ¶¶7 and 13.

<sup>24</sup> The employer cannot meet its burden, however, merely by showing that it had a legitimate reason for its action;

required if the defense is one of “dual motivation,” i.e., the employer avers that, even if an invalid reason played some part in its motivation, it would have still taken the same action for permissible reasons. *Palace Sports & Entertainment, Inc. v. NLRB*, 411 F.3d 212, 223 (D.C. Cir. 2005).

5 The GC adduced a strong prima facie case. De Blaiej engaged in significant union activity, when he singlehandedly organized the UPI unit. This was a momentous change in Local 111’s labor relations landscape. Gutierrez learned of his activities in June. There is substantial evidence of union animus in the form of Gutierrez’ threats that, “we don’t have union representation for you here,” and “I don’t recognize your stewards.” The close timing between de Blaiej’s UPI activity  
10 and his firing is further evidence of animus, i.e., Gutierrez fired him almost as soon as he took over.<sup>25</sup> *La Gloria Oil & Gas Co.*, 337 NLRB 1120 (2002), *enfd.* 71 Fed.Appx. 441 (5th Cir. 2003).

Local 111 failed to rebut the GC’s prima facie case and show that it would have fired de Blaiej in the absence of his protected activity. *First*, the reasons behind his firing are suspect.  
15 Gutierrez claimed that he was fired for poor performance. This conclusion was irrationally based upon a petition signed by only 20 of 4,400 members and limited word of mouth regarding someone whom he never previously worked with,<sup>26</sup> who had a high level of Local 111 seniority,<sup>27</sup> and who had never been given a prior performance appraisal and or was previously disciplined.<sup>28</sup> It is deeply ironic that an entity that endorses “just cause” would fire someone under these sketchy  
20 circumstances.<sup>29</sup> *Second*, de Blaiej’s firing smacks of disparate treatment; although Gutierrez received complaints about the competency of other business agents, he refrained from acting against them (e.g., Suzanne Kuhns). The fact that these others, who lacked known UPI activity, were held harmless, while de Blaiej, who had the highest levels of known UPI activity, was fired almost on the spot undercuts Local 111’s claim of evenhanded treatment. *Third*, as discussed, the  
25 close timing between de Blaiej’s UPI activity and firing, and Gutierrez’ takeover, further supports the finding of an unlawful motive. *La Gloria Oil & Gas Co.*, *supra*; *Lucky Cab Co.*, 360 NLRB 271, 274 (2014) (“timing of adverse action shortly after an employee has engaged in protected activity . . . may raise an inference of animus and unlawful motive.”), *enfd. mem. per curiam* 621

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rather, it must show that it would have taken the same action in the absence of the protected conduct. *Bruce Packing Co.*, 357 NLRB 1084, 1086–1087 (2011). If the employer’s proffered reasons are pretextual (i.e., either false or not actually relied on), it fails, by definition, to show that it would have taken the same action for those reasons regardless of the protected conduct. *Metropolitan Transportation Services*, 351 NLRB 657, 659 (2007).

<sup>25</sup> There is also close timing between de Blaiej’s UPI bargaining requests and his firing.

<sup>26</sup> Firing a business agent from a 4,400 member local due to a 20-employee petition and a little “word of mouth” is akin to impeaching a politician with a 99% approval rating. Any business agent no matter how competent can find 20 detractors within a 4,400-person group. Disapproval could be unfairly based upon circumstances beyond one’s control, e.g., by delivering hard and truthful news during bargaining, properly advising a politically influential member about a grievance’s lack of merit, or for any number of other valid reasons. The fact that Gutierrez seized upon a petition from 0.4% of his membership to catapult a long-term employee appears to be a poorly camouflaged way to retaliate against the guy who organized his business agents and made him look bad.

<sup>27</sup> De Blaiej is sort of a business agent’s version of a Horatio Alger story. He rose from the ranks to organize his workplace and ultimately join Local 111’s staff. Absent invidious intent, his backstory and seniority should have been afforded some positive weight and simply did not warrant a “shoot first and ask questions later” approach.

<sup>28</sup> Gutierrez lacked a genuine opportunity to objectively evaluate de Blaiej during his first month, given the many competing obligations he faced (i.e., he described this period as “drinking through a fire hose”).

<sup>29</sup> Gutierrez could have reasonably chosen to: first observe de Blaiej over a reasonable period; place him on a performance improvement plan; or take other rational steps that would have yielded a fair decision. Sadly, his commando approach placed him on a moral high ground generally reserved for the most recalcitrant employers.



Fed. Appx. 9 (D.C. Cir. 2015). *Finally*, Local 111's shifting reasons also demonstrate discriminatory motivation. In its position letter and at the hearing, Local 111 focused on poor performance. In its post-hearing brief, however, it claimed that it could "make staffing decisions based upon political reasons" and that de Blaeij was fired on this newfound basis. (R. Brief at 30).  
 5 This shift suggests discriminatory motivation. *Naomi Knitting Plant*, 328 NLRB 1279, 1283 (1999) ("shifting reasons constitute evidence of discriminatory motivation."). In sum, Local 111 wholly failed to show that it would have fired de Blaeij in the absence of his protected activity.

*c. §8(a)(5) – Discharges of Baca and de Blaeij*<sup>30</sup>

10 Although Local 111 fired Baca and de Blaeij without pre-implementation notice or bargaining, these actions did not violate §8(a)(5). Upon commencement of a collective-bargaining relationship, employers do not have an obligation under §§8(d) and 8(a)(5) to bargain prior to disciplining unit employees in accordance with an established disciplinary policy. *Care One at*  
 15 *New Milford*, 369 NLRB No. 109, slip op. at 7 (2020), *enfd.* 848 Fed.Appx. 443 (D.C. Cir. 2021).

*F. INFORMATION REQUESTS*<sup>31</sup>

**1. Record Evidence**

20 On August 14, De Blaeij emailed this request to Local 111 regarding Baca's firing:

As we investigate the ... termination of Gene Baca, UPI ... requests ... :

- 25 1. ...[A]ll documents [of] ... Baca's work record ....
2. ... [T]he ... progressive discipline policies, procedures, and work rules.
3. ... [T]he Agent Handbook
4. ... [A]ll [employee] policies ... dated 7/7/2022 and earlier.
5. ... video recording from the security camera in Hall 1 of IBEW Local 111
- 30 located ... for ... August 9<sup>th</sup> from 5:00 pm until 9:00 pm.
6. ... [A]ll other termination notices ... in the past 10 years.
7. ... A copy of the letter from UPI stamped "received" on August 5<sup>th</sup> which
- demanded negotiation dates ....

35 Please provide this information to me no later than 8/24/2022.

(JT Exh. 10). De Blaeij explained that, because Baca, a UPI unit employee, was never given a rationale, he wanted this information to ascertain the fairness of his firing. On August 18, Local 111 replied that, "[w]e will make every effort to get you this information to you by ... September  
 40 2." (JT Exh. 12). On September 14, Local 111 changed its stance and stated, "we have no obligation to reply to this RFI under ... *Care One at New Milford*, 369 NLRB No. 109 (June 24, 2020)" (JT Exh. 13). On September 16, UPI re-requested the information and explained that it, "[has the] right to request information ... necessary to effectively represent the bargaining unit."

<sup>30</sup> This was alleged to be unlawful under complaint ¶¶8 and 14.

<sup>31</sup> This was alleged to be unlawful under complaint ¶¶10 and 14.

(JT Exh. 16). On September 27, Local 111 reiterated its rejection. (JT Exh. 17). On October 10, UPI supplemented its request and added, “documents ... which reflect upon ... de Blaeij’s work record including ... all counselings, warnings, or disciplinary actions taken against ... de Blaeij.” (JT Exh. 18).

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On October 28, Local 111 emailed this dispositive reply to UPI’s pending requests:

Requests	Response
1(a). [D]documents [of] ... Baca’s work record including ... all counselings, warnings, or disciplinary actions ....”	No response provided.
1(b). “[D]ocuments [of] ... de Blaeij’s work record including ... all counselings, warnings, or disciplinary actions ....”	Local 111 provided: de Blaeij’s “unit meeting minutes” from March 2018; and a petition from an Xcel unit asking to have de Blaeij reassigned.
2. “[T]he ... progressive discipline policies, procedures, and work rules.”	Local 111 responded that, “[t]here are no such responsive policies. IBEW 111 would note that Article XVI Sec. 2 of the IBEW constitution and by-laws states “L.U.’s requiring a local business representative or representatives, shall elect one person to be known as a business manager. He shall appoint any and all other representatives or assistants. These shall work directly under him and shall be subject to his authority. He may discharge them at any time.”
3. “[T]he Agent Handbook”	Local 111 provided the <i>Agent Training and Guidelines</i> .
4. “[A]ll [employee] policies ... dated 7/7/2022 and earlier.”	Local 111 provided: general office practices, policies and guidelines; a 2018 memo on office hours; a 2015 memo on dress code; 2015 automobile policies; 2015 lunch expense guidelines; 2014 receipt policy; 2012 voucher policy; 2015 conference room policy; 2018 grievance handling training; FLSA information; negotiating guidelines and procedures; NLRB information and guidelines; and other policies.
5. “video recording from the security camera in Hall 1 of IBEW Local 111 located ... for ... August 9 <sup>th</sup> from 5:00 pm until 9:00 pm.”	Local 111 replied that, it “fails to see how this request is relevant to the collective bargaining process .... [and asked the Union to] ... explain how this information request is relevant to UPI’s duties in bargaining this first contract.”
6. “[A]ll other termination notices ... in the past 10 years.”	Local 111 provided termination letters for: James Thorp (dated Nov. 3, 2015); and Nathaniel Gutierrez (dated Jan. 23, 2017).
7. “letter from UPI stamped ‘received’ on August 5 <sup>th</sup> which demanded negotiation dates ....”	Local 111 replied that, it “fails to see how this request relates to the purported reason for these RFIs [and that] there is no responsive document fitting this description.”

(JT Exhs. 10, 18, 20).

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## 2. Analysis

Local 111 unreasonably delayed replying to UPI’s requests. It sought relevant and accessible personnel information. A 9-week delay in replying was unreasonable.

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### a. Precedent

An employer must provide sufficient relevant information to a union representing its employees. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). In determining relevance, the Board uses a liberal discovery standard. The range of relevance is not limited to the boundaries of

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the bargaining unit. *Brooklyn Union Gas Co.*, 220 NLRB 189 (1975). Where requested information directly covers bargaining unit employees, however, such information is presumptively relevant and needs no further demonstration. *Calmat Co.*, 283 NLRB 1103 (1987). Absent justification, an unreasonable delay in furnishing relevant information is as much a violation as a staunch refusal to furnish. *Valley Inventory Services*, 395 NLRB 1163, 1166 (1989). In determining whether there was an unlawful delay, the Board considers: the nature of the information; the difficulty in obtaining it, including its volume and complexity; the length of the delay; the reasons for the delay; and whether the provider contemporaneously gave reasons for its delay. *Safeway, Inc.*, 369 NLRB No. 30, slip op. at 7 (2020).

#### **b. Discussion**

Local 111's 9-week delay was unreasonable. UPI's request related to the firings of UPI unit employees, which made the requests presumptively relevant. Local 111 failed to provide a persuasive rationale for its delay regarding very basic personnel data. Under the circumstances, its actions were unreasonable. *Postal Service*, 308 NLRB 547 (1992) (unreasonable 4-week delay); *Bundy Corp.*, supra (6-weeks); *Woodland Clinic*, 331 NLRB 735 (2002) (7-weeks).

#### **CONCLUSIONS OF LAW**

1. Local 111 is an employer engaged in commerce under §2(2), (6), and (7) of the Act.
2. UPI is a labor organization under §2(5) of the Act.
3. Local 111 violated §8(a)(1) by threatening employees.
4. Local 111 violated §8(a)(3) by discharging Leendert de Blaeij.
5. UPI is a §2(5) labor organization and the designated exclusive collective bargaining representative of employees in the following appropriate collective bargaining unit (the UPI unit):

All full-time and regular part-time employees employed by Respondent including all Business Representatives, Assistant Business Managers, Senior Assistant Business Managers, Organizers, and Dispatchers performing all duties on the property of IBEW 111 within the state of Colorado and Wyoming, but excluding all supervisors, guards, confidential employees, and all other employees excluded by the Act.

6. Local 111 violated §8(a)(5) by:
  - a. Unilaterally modifying employees' hours of work and scheduling practices.
  - b. Unilaterally modifying employees' vehicle usage policy.
  - c. Unreasonably delaying its provision of relevant requested information to UPI.

7. These unfair labor practices affect commerce within the meaning of §2(6) and (7).

### REMEDY

The appropriate remedy for the violations found herein is an order requiring Local 111 to cease and desist from its unlawful conduct and to take certain affirmative action. Having unlawfully fired de Blaeij, it shall reinstate him to his former job or, if his position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed. It shall make him whole for any loss of earnings and other benefits, and all other direct or foreseeable pecuniary harms, suffered because of his firing. *Thryv, Inc.*, 372 NLRB No. 22 (2022). The make whole remedy shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), 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). Under *King Soopers, Inc.*, 364 NLRB 1152 (2016), enfd. in relevant part 859 F.3d 23, 429 U.S. App. D.C. 270 (D.C. Cir. 2017), it shall compensate him for search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. Under *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014), it shall compensate him for the adverse tax consequences, if any, of receiving lump sum backpay awards, and, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016), it shall, within 21 days of the date the amount of backpay is fixed either by agreement or Board order, file with the Regional Director for Region 27 a report allocating backpay to the appropriate calendar year. The Regional Director will assume responsibility for transmission of the report to SSA. It shall remove from its files any reference to de Blaeij's firing and notify him in writing that this has been done and it will not be used against him in any way.

Having found that Local 111 unlawfully unilaterally changed the UPI unit's hours of work and vehicle policies, it is directed to reinstitute the terms and conditions of employment that existed before its unlawful changes, upon request by UPI. It shall make employees whole for any loss of earnings, leave and other benefits, and for any other direct or foreseeable pecuniary harms, if any, resulting from its unlawful unilateral changes as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), plus 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). In accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016), it shall compensate any affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 27, within 21 days of the date the amount of backpay is fixed, either by agreement or Board Order, a report allocating the backpay award to the appropriate calendar years for each employee.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended<sup>32</sup>

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<sup>32</sup> If no exceptions are filed as provided by §102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in §102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

**ORDER**

International Brotherhood of Electrical Workers, Local 111, Denver, Colorado, its officers, agents, successors, and assigns, shall

1. Cease and desist from

a. Threatening employees that they do not have union representation and their union stewards will not be recognized.

b. Firing or otherwise discriminating against employees because of their Union and other protected activities.

c. Refusing to bargain collectively with UPI by unilaterally modifying the hours of work and vehicle usage policies for the UPI unit.

d. Refusing to bargain collectively with UPI by unreasonably delaying providing the information sought in its August 14, 2022 request, which was relevant and necessary to its role as the UPI unit's exclusive collective-bargaining representative.

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

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

a. Within 14 days from the date of the Board's Order, offer full reinstatement to Leendert de Blaeij to his assistant business manager position or, if this job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

b. Make de Blaeij whole for any loss of earnings and other benefits, and all other direct or foreseeable pecuniary harms, suffered because of the discrimination against him, in the manner set forth in the Remedy section of this Decision.

c. Compensate de Blaeij for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 27, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

d. File with the Regional Director for Region 27, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of de Blaeij's corresponding W-2 form reflecting the backpay award.

e. 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.

5 f. Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharge of de Blaeij, and within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

10 g. Upon request by UPI, and to the extent it has not already done so, rescind the unilateral changes in the hours of work and vehicle usage policies applicable to the UPI unit and make affected employees whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms, suffered because of these unilateral changes.

15 h. Within 14 days after service by the Region, post at its Denver and Grand Junction offices the attached notice marked "Appendix."<sup>33</sup> Copies of the notice, on forms provided by the Regional Director for Region 27, after being signed by Local 111's authorized representative, shall be posted by Local 111 and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to the 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 August 5, 2022.

30 i. During this 60-day posting period, Respondent shall permit a duly appointed Board agent to enter its facilities at reasonable times and in a manner not to unduly interfere with its operations, for the limited purpose of determining whether it is following the notice posting, distribution, and mailing requirements.

35 j. Within 21 days after service by the Region, file with the Regional Director for Region 27 a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

Dated Washington, D.C. April 7, 2025



**Robert A. Ringler**  
Administrative Law Judge

<sup>33</sup> 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."

**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** threaten that you do not have union representation or that your union stewards will not be recognized.

**WE WILL NOT** fire or otherwise discriminate against you because of your Union and other protected activities.

**WE WILL NOT** refuse to bargain collectively with the Union Professionals International (UPI) as the exclusive collective bargaining representative of employees in the following appropriate collective bargaining unit by unilaterally modifying hours of work and vehicle usage policies applicable to the following bargaining unit (the UPI unit):

All full-time and regular part-time employees employed by Respondent including all Business Representatives, Assistant Business Managers, Senior Assistant Business Managers, Organizers, and Dispatchers performing all duties on the property of IBEW 111 within the state of Colorado and Wyoming, but excluding all supervisors, guards, confidential employees, and all other employees excluded by the Act.

**WE WILL NOT** refuse to bargain collectively with UPI by unreasonably delaying providing information sought by its August 14, 2022 request, which was relevant and necessary to its role as the UPI unit's exclusive collective-bargaining representative.

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

**WE WILL**, within 14 days from the date of the Board's Order, offer full reinstatement to Leendert de Blaeij to his assistant business manager position or, if this job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other privileges previously enjoyed.

**WE WILL** make de Blaeij whole for any loss of earnings and benefits, and all other direct or foreseeable pecuniary harms, resulting from his firing, less any net interim earnings, plus interest, and **WE WILL** also make him whole for reasonable search-for-work and interim employment expenses, plus interest.

**WE WILL** compensate de Blaeij for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and **WE WILL** file with the Regional Director for Region 27, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

**WE WILL** file with the Regional Director for Region 27, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of de Blaeij's corresponding W-2 forms reflecting the backpay award.

**WE WILL**, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful firing of de Blaeij, and **WE WILL**, within 3 days thereafter, notify him in writing that this has been done and that his firing will not be used against him in any way.

**WE WILL**, upon request by UPI, and to the extent we have not already done so, rescind the unilateral changes in the hours of work and vehicle policies applicable to the UPI unit and make any affected UPI unit employees whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms, suffered because of these unilateral changes.

**INTERNATIONAL BROTHERHOOD OF**  
**ELECTRICAL WORKERS, LOCAL 111**  
**(Employer)**

**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: .Byron Rogers Federal Office Building  
1961 Stout Street, Suite 13-103; Denver, CO 80294  
(303) 844-3551; Hours: 8:30 a.m.–4:45p.m.

The Administrative Law Judge's decision can be found at <https://www.nlr.gov/case/27-CA-301386> 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 (206) 220-6340.