UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

PG PUBLISHING CO, INC. D/B/A PITTSBURGH POST-GAZETTE

and **Case 06-CA-311136**

NEWSPAPER GUILD OF PITTSBURGH/CWA LOCAL 38061

and **Case 06-CA-326576**

PITTSBURGH MAILERS UNION NO, M-22, A/W THE PRINTING PUBLISHING AND MEDIA WORKERS SECTOR OF THE COMMUNICATION WORKERS OF AMERICA, AFL-CIO

and **Case 06-CA-326581**

PRINTING PACKAGING AND PRODUCTION WORKERS UNION OF NORTH AMERICA

and **Case 06-CA-326588**

COMMUNICATION WORKERS OF AMERICA (CWA) LOCAL 14827

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DECISION

STATEMENT OF THE CASE

PAUL BOGAS, Administrative Law Judge. I heard this case on February 10 and 11, 2025, in Pittsburgh, Pennsylvania. Newspaper Guild of Pittsburgh/CWA Local 38061 (the Guild, the Union, or the Charging Party) filed the charge in case 06-CA-311136 on January 27, 2023. The Regional Director for Region 6 of the National Labor Relations Board (the Board) issued the Complaint on May 16, 2024. The Complaint alleges, inter alia, that PG Publishing Co., Inc. d/b/a Pittsburgh Post-Gazette (the Respondent or the Employer) violated Section 8(a)(5) and (1) of the Act on various dates since October 18, 2022, by granting bonuses to certain members of the Guild bargaining unit without providing the Guild with notice or an opportunity to bargain. The Complaint also alleges that the Respondent violated Section 8(a)(3) and (1) of the Act by discriminatorily granting increased wage rates and bonuses to unit employees who did not participate in an unfair labor practices strike that began on October 18, 2022. The Respondent filed a timely answer in which it denied committing the violations alleged.[1]

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Respondent, and the Charging Party, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a corporation with offices in Clinton, Pennsylvania, and Pittsburgh, Pennsylvania, that publishes the Pittsburgh Post-Gazette, a print and electronic newspaper. In conducting its operations, the Respondent annually derives gross revenues in excess of $200,000, holds membership in and subscribes to various

[1] At the start of the hearing, I granted the Respondent's motion to dismiss the allegations set forth in Complaint paragraph 14 and the reference to paragraph 14 in Complaint paragraph 16. Transcript at Page(s) (Tr.) 14 to 18. As recognized by the parties in their post-hearing briefs, that dismissal leaves only allegations in Case 06-CA-311136 – those concerning the merit increases and bonuses granted to members of the Guild bargaining unit – for my further consideration. On July 10, 2025, the General Counsel made a motion requesting that I grant the charging parties' requests to withdraw and close cases 06-CA-326576, 06-CA-326581, and 06-CA-326588. Good cause being shown, I grant the General Counsel's motion, and hereby approve the request to withdraw and close cases 06-CA-326576, 06-CA-326581, and 06-CA-326588.

At the start of the hearing, I also granted the General Counsel's motion to withdraw Complaint paragraph 7(b), the portion of Complaint paragraph 7(c) that references "Part-time Mailers," and the portion of Complaint paragraph 12(a) that alleges an increase in "vacation allotments." Tr. 19 to 20.

interstate news services, publishes nationally syndicated features, advertises various nationally sold products, and purchases and receives at its facilities products, goods, and materials valued in excess of $5000 directly from points outside the Commonwealth of Pennsylvania. The Respondent admits, and I find, that at all relevant times it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Guild has been a labor organization within the meaning of Section 2(5) of the Act.

II. BACKGROUND

For many years, the Guild has been the collective bargaining representative for a unit of editorial department employees at the Respondent's facility in Pittsburgh, Pennsylvania. As of October 2022, approximately 97 employees were in the bargaining unit. Tr. 46. The Guild's most recent collective bargaining agreement (CBA) with the Respondent went into effect on October 15, 2014, and had an expiration date of March 31, 2017.

The parties met for negotiations for a successor to the CBA that expired on March 31, 2017, but did not reach agreement on terms, and, beginning on September 11, 2019, the Guild filed unfair labor practices charges challenging the Respondent's conduct during the negotiations. On July 27, 2020, the Respondent asserted that the parties had reached an impasse in negotiations and unilaterally implemented new terms of employment. On October 18, 2022, the Guild initiated a strike, citing the Respondent's bad faith bargaining and unilateral implementation of terms. Tr. 41. Of the 97 bargaining unit employees, about 60 initially joined the strike, but a significant portion, 37 unit employees, did not do so. Another four or five unit employees abandoned the strike and returned to work during the strike. Tr. 46. Of the approximately 55 unit employees who did not work during the strike, approximately 30 have since resigned their positions with the Respondent and taken jobs with other employers. Ibid.

On September 20, 2024, the Board found merit in charges filed by the Guild, and held that the Respondent had violated Section 8(a)(5) of the Act by failing and refusing to bargain in good faith with the Guild and by unilaterally implementing terms without reaching a good faith impasse. 373 NLRB No. 93 (2024). The Board also held that the Respondent had coerced employees in violation of Section 8(a)(1) of the Act by creating the impression that the employees' protest of the Respondent's conduct had been placed under surveillance. The Board's order required, inter alia, that the Respondent bargain in good faith with the Guild and, upon request, rescind the changes that were unilaterally implemented on July 27, 2020.[2]

[2] The General Counsel has sought enforcement of the Board's order in the U.S. Court of Appeals for the Third Circuit and, on March 24, 2025, the Court of Appeals ordered the Respondent to, inter alia, bargain in good faith with the Guild for a collective bargaining agreement, submit bargaining progress reports every 30 days, and provide the Guild with notice and an opportunity to bargain before implementing any changes to unit employees' terms and conditions of employment. *PG Publishing Co., Inc. v. NLRB*, No. 24-2788 and 24-

Stan Wischnowski has been the newspaper's executive editor since September 2020 when he started with the Respondent. Zachary Tanner is a long-time unit employee of the Respondent and, since July 2022, has been the president of the Guild local at the Respondent. During his employment with the Respondent, Tanner was also a Guild unit delegate starting in 2015 and a Guild unit chair starting in November 2021. Wischnowski and Tanner were the only two witnesses who were called by the parties to testify about their personal knowledge regarding the facts relevant to this decision.[3]

III. GRANTS OF MERIT INCREASE AND BONUSES PRE-STRIKE AND POST-STRIKE

The General Counsel contends in this case that the Respondent violated the Act by granting various bonuses and merit pay increases to unit employees who continued performing bargaining unit work during the strike. As is discussed further below, the General Counsel argues that pay enhancements were unlawful both because the Respondent did not bargain with the Guild before granting bonuses and because granting the pay enhancements was discriminatory and coerced employees' exercise of their right to strike. As is discussed more fully below, prior to the strike the Respondent had an existing practice of granting bonuses and merit pay increases to unit employees without bargaining with the Guild. However, the record also shows that during the strike the Respondent increased the frequency of, and bases for, those pay enhancements as compared to a time period shortly before the strike.

A. Provisions in the Expired CBA

The CBA does not specifically discuss the types of bonuses and merit pay increases that the Complaint contends were granted in violation of the Act.[4] The CBA does, however, include a provision that expressly permits employees to "bargain[] individually for pay increases" above the contractual minimums as a way of "acknowled[ging]" "individual merit." Joint Exhibit Number (J Exh.) 39 at Page 8 (Article III, Section 6). Tanner, the Guild local president, testified that, under this provision, unit employees were able to negotiate, and did negotiate, pay increases directly with the Respondent without any notice to the Guild. Tr. 35; see also Tr. 158. The CBA

3057 (3d Cir. March 24, 2025).

[3] Robin Albaugh, the Respondent's human resources manager, also testified, but her examination was confined to her role as custodian of records.

[4] The CBA does discuss some pay enhancements. Specifically, the CBA provides time-in-service bonuses and also additional pay for unit employees temporarily assigned to a higher classification. Joint Exhibit Number (J. Exh.) 39 at Pages 8, 9 and 21. The CBA also provides that the Respondent's Washington and Harrisburg correspondents "will receive a salary differential of $20 a week," J Exh. 39 at Page 8, but the evidence shows that the Respondent paid the Washington and Harrisburg correspondents quarterly bonuses far in excess of the weekly differential set forth in the CBA. See, e.g., J Exhs. 2, 9 and 12 (Washington correspondent receives quarterly bonus of $5000); J Exh. 19 at Page 5 (Harrisburg correspondent receives quarterly bonus of $3800).

provides that after its expiration date "[t]he terms and conditions of this Agreement will remain in effect as long as negotiations continue."[5] J Exh. 39 at Page 38 (Article XXIII, Section 2).

B. Increases and Bonuses Granted Pre-Strike

A report that the Respondent provided to the Guild regarding bonuses paid to unit employees for the period from 2016 to 2020 shows that many employees received pay enhancements in each of those years, although the frequency declined significantly in 2020. Respondent Exhibit Number (R Exh.) 2.[6] The Respondent: in 2016 paid 60 bonuses; in 2017 paid 79 bonuses; in 2018 paid 89 bonuses; in 2019 paid 53 bonuses; and in 2020 paid 14 bonuses. The amount of individual bonus payments ranged from as little as $50 to as much as $5000. During this time, a significant portion of bonuses were paid based on merit (i.e., "commendable performance"). A minority of the bonuses were paid as part of offers of employment. The offer-related bonuses were granted: to four employees in 2016 (Belko, Boselovic, Mauriello, Subramaniam); to three additional employees in 2017 (Gilliland, Mellon, Ward); to three additional employees in 2018 (Santiago, Starkey, Vensel); and to one additional employee in 2020 (Grine).[7] In some other cases the enhancements were paid four times a year. Those included the pay increases made to Mark Belko ($2000 quarterly payments from 2016 to 2019), Arthi Subramaniam ($4000 quarterly payments from 2016 to 2020) and Matt Vensel ($1250 quarterly payments in 2019).

The Respondent granted pay enhancement less frequently during the period from 2021 until immediately before the start of the strike in October 2022. For the vast majority of the pay enhancements that are shown during that period, the Respondent articulated a specific justification for granting the additional pay, rather than attributing it imprecisely to "commendable performance" or "merit." The justifications that the Respondent referenced for pay enhancements during that period included: serving on a "acting" basis in a higher paid role; overseeing a special editorial assignment; serving as the Washington, D.C. correspondent; and being granted an employment-offer bonus. J Exhs. 1 to 11; Tr. 40-41, 99-101. During the year-long period preceding the strike, the Respondent gave merit raises to two unit employees. One of those, Bob Batz, was identified as having assumed additional duties and received a quarterly bonus in addition to a pay increase. J Exhs. 5 and 9. The other, Jonathan Silver, received what was described simply as a "merit raise." J Exh. 11. During the months before the strike began, the Respondent also continued to give pay enhancements that were part of employment offers – paying one to Noelle Mateer on July 30, 2022, and one to Solomon Gustavo in September or October 2022. J Exhs. 10 and 12.

[5] Tanner testified that negotiations for a successor CBA are continuing. Tr. 35.

[6] I credit the information in this report, which was admitted into evidence without objection. I note that the Respondent provided this report in February 2021, at the Guild's request and well before the strike began in October 2022.

[7] I count each employee who received pay enhancements as part of an employment offer only once, although some of those employees received the pay enhancements on a recurring basis. See Attachments to R Exh. 2.

The General Counsel does not claim, and the record does not suggest, that the Respondent negotiated with the Guild regarding any of the above-discussed individual pay enhancements granted prior to the strike and the available evidence supports finding that the Respondent did not do so. As mentioned earlier, the expired CBA contains a provision that empowered unit employees to directly negotiate with the Respondent for compensation in excess of the minimums provided by the CBA. Tanner, president of the Guild local, testified that, under that provision, unit employees and the Respondent negotiated individual pay increases without notice to the Guild. Tr. 35, 158.

C. New Merit Increases and Bonuses During Strike

Once the strike began, the Respondent, without giving the Guild notice or an opportunity to bargain, granted individual pay enhancements to a number of the unit employees who continued working during the strike. The record indicates that, during the strike, the Respondent increased the rate at which it was granting merit increases and bonuses above the levels seen in 2020, 2021, and earlier in 2022, but did not exceed, and in fact did not reach, the annual numbers seen from 2016 to 2019. According to the summary charts submitted by the General Counsel, see Brief of General Counsel Appendix A and Appendix B, which are consistent with my review of the underlying exhibits, in the portion of 2022 that followed the start of the strike, the Respondent paid individual bonuses and merit increases to unit employees eight times. In 2023, the Respondent paid 26 such enhancements to unit employees, and in 2024 it paid 48 such enhancements to unit employees.

Some of the pay enhancements that the Respondent has granted during the strike to unit members who continued working are ongoing quarterly bonuses that are not expressly linked to a special assignment or increase in duties. As discussed above, bonuses like that were not unusual from 2016 to 2019, but became uncommon from 2020 to October 2022. Wischnowski stated that between the time he became executive editor in September 2020 and when the strike started in October 2022, he had never granted a new quarterly bonus. Tr. 162. During the weeks after the start of the strike, the non-strikers who were granted quarterly bonuses included Belko (who previously received quarterly bonuses from 2016 to 2019), Litvak, and J. Mackey. Subsequently, the Respondent granted quarterly bonuses to Anya Sostek and Ben Kail. Tanner testified that he had heard Litvak make antiunion statements in employee meetings, and that he had heard J. Mackey and Belko both state that they opposed the strike, although Belko had originally joined the strike action.

In addition to the substantial bonuses granted to particular employees, the Respondent, in about October 2023, decided to grant a one-time, “newspaper of the year,” bonus of $250 to each of 91 employees. General Counsel Exhibit Number (GC Exh.) 7; Tr. 160.

D. Respondent's Stated Reasons for the Merit Increases and Bonuses

Wischnowski is the newspaper's executive editor and has held that position since coming to the Respondent 2 years before the start of the strike. Wischnowski was the only witness who testified on behalf of the Respondent regarding reasons, beyond those stated in the documentary evidence, for the merit increases and bonuses. Wischnowski's testimony was plausible, but much of it was also vague, conclusory, and/or uncertain. In most instances he stated that the increase or bonus was warranted because the recipient's performance and/or value to the newspaper was exceptional. Tr. 135, 141, 145 (line 10 and line 24), 155, 156, 159. He repeatedly stated that this performance and/or value was demonstrated by the employee having received one or more awards, but in most instances Wischnowski did not specify the award or the date it was received. Tr. 135, 141,145, 148-149, 155, 156 (lines 1-2). Moreover, he did not explain why many of the specific pay enhancements were only granted after the strike began even though the decision was purportedly based on a sustained history of outstanding performance that began before the strike. See, e.g., Tr. 162,163-164; also compare Tr. 157-158 (Wischnowski gave Kirkland a merit raise in 2024 because his "work had been excellent for quite a while") with Tr. 162 (Wischnowski had never given Kirkland a raise or bonus prior to the strike); compare Tr. 159-160 (Mamula received a merit raise in 2024 because, inter alia, he had won national awards for the past 3 years) and Tr. 163 (Mamula had not received a merit raise prior to the strike).[8]

With striking frequency (at least eight times during his rather brief testimony, Tr. 133-167), Wischnowski resorted to the vague formulation that a particular pay enhancement was granted to an individual because Wischnowski "thought it was fair." Tr. 135, 139, 140, 141 (lines 11-12 and 23), 144, 145, 150. In multiple instances, he conceded either that he was not the one who initiated the pay enhancement, or that he was not sure why it was granted. Tr. 135, 149, 150, 155; see also Tr. 140 (Wischnowski states that it "sounds plausible" that an employee received a merit raise in October 2022) and 147-148 (Wischnowski states that it "sounds right" that an employee received merit bonuses because he was being recruited by a competitor).

Regarding the $250 bonus that was granted broadly to 91 staff members in about October 2023, Wischnowski testified that it was a "newspaper of the year" bonus granted in recognition of the fact that the Pennsylvania News Media Association had given the Respondent the most awards in 2022, 2023, and 2024. Tr. 160-161. The testimony that the bonus was based, in part, on awards in 2024 appears to be mistaken since the documentary evidence shows that the Respondent's officials had approved the bonus in October 2023. If Wischnowski was correct that the decision to grant the

[8] The Respondent did not provide any non-hearsay support for Wischnowski' s assertion that unit employees had received offers from competitors or that competitors were attempting to "poach" the Respondent's employees. Wischnowski's testimony about the competitor's efforts was consistently vague and often facially uncertain. See, e.g., Tr. 142-143 (vague testimony about competitor's purported offers to Litvak and J. Mackey), Tr. 147-149 (vague testimony that competitors were offering Norman "other jobs").

bonus was based on three consecutive years of awards, then the awards must have been received in 2021, 2022, and 2023 – in other words, in significant part for work done before the strike. Wischnowski did not explain why the bonus was not paid during the pre-strike years when the newspaper won a number of the awards that he says justified the bonus. I note, moreover, that the Respondent did not provide evidence that there was any precedent for bonuses being granted in recognition of newspaper-wide achievement, rather than to an individual employee in recognition of his or her contribution.

Based on the record and for the reasons discussed above – including his vagueness and uncertainty – I find that in most instances Wischnowski's testimony regarding the reasons that individual bonuses or increases were granted is entitled to limited weight. Although that is the case, I credit much of that testimony given the absence of evidence rebutting Wischnowski's statements about the individual merits of particular unit employees and the part that those merits played in the decisions to grant the pay enhancements.

As the General Counsel points out in its brief, Wischnowski testified that the strike did play a part in the decision to grant raises and bonuses to unit employees who continued working, or were hired, during the strike. Brief of General Counsel at Page 16. However, Wischnowski made that statement in the context of his testimony that the Respondent had to work to retain good reporters because the newspaper's competitors saw the strike as "an opening" to "poach" reporters from the Respondent's staff. Tr. 164-165. That testimony by Wischnowski does not constitute an admission that the Respondent granted the raises and bonuses to discourage employees from exercising their right to strike.

The record does not include evidence that the Respondent ever made statements to striking unit members promising to grant raises or bonuses if they returned to work during the strike. Nor was there any evidence that the Respondent promised the unit employees who were working during the strike that new merit raises or bonuses would be forthcoming for those who continued to work during the strike. The record indicates that between the time the strike began in October 2022 and December 2024,[9] the Respondent granted individual merit bonuses and increases to approximately 13 of the 41 to 42 of the non-striking unit members who were employed when the strike commenced, but who do not appear to have been receiving those pay enhancements during the immediate pre-strike period.[10]

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[9] December 2024 is the month covered by the last report stipulated to by the parties regarding such actions. See J Exh. 38. This report was transmitted to the Guild in January 2025, and includes actions through December 2024.

[10] In this category I include, G. Collier, G. Dulac, R. Fittipaldo, J. Hilston, B. Kail, K. Kirkland, A. Litvak, J. Mackey, G. McKay, A. Sostek, F. Turner, M. Vensel, and M. White. I do not include Belko, who had received bonuses from 2016-2019 and also, it seems, shortly before the start of the strike. Nor do I include others – for example, Mann – who was hired after the start of the strike and therefore has no pre-strike history of receiving, or not receiving, the benefit. Nor do I include others – for example, Batz, Murray, Norman, and Rush – who

E. Hiring During Strike

The parties disagree about whether individuals hired to perform unit work after the start of the strike should be considered new permanent bargaining unit members or whether they should be considered striker replacements. As discussed below, the record shows that the Respondent did not engage in a mass hiring to replace strikers at any point during the strike, but rather hired at a rate roughly commensurate with the attrition rate among non-striking unit employees.

The record shows that in the year preceding the start of the strike, the Respondent had already lost significantly more unit employees – reported by the Respondent as "departures" – than it had hired. J Exhs. 1 to 12.[11] This meant that, even aside from the staffing decrease resulting from employees' participation in the strike, the Respondent had approximately 19 fewer unit employees immediately before the strike than it had a year earlier on October 1, 2021. Moreover, shortly after the start of the strike, a number of unit members left the Respondent even though they did not participate in the strike. Specifically, in December of 2022, the Respondent reported nine additional unit employee "departures" from among the non-striking employees and no new hires. J Exhs. 13 and 14. During the period from the start of the strike until December 2024, the Respondent's reports generally showed a small number of departures and/or a small number of hires each month. J Exhs. 13 to 38. Aggregating the departures and hires set forth in the monthly reports, it appears that the Respondent had approximately seven more employees doing bargaining unit work in December 2024 than it had in late 2022 after the strikers ceased work. Given that between 55 and 60 employees went on strike, that would mean that in December 2024, with the seven-employee net increase since late 2022, the Respondent still had not "replaced" 48 strikers. This suggests that the Respondent was not hiring employees to fill in for the striking employees, but rather was hiring new permanent employees to offset attrition among non-striking employees.

The conclusion that the Respondent was hiring permanent unit employees, not strike replacements, is further supported by the fact that the written offers the Respondent provided to those new hires did not state that the positions were temporary, that the positions were as strike replacements, or that the employment might end if the striking employees returned to work. GC Exh. 4, 15-24. Similarly, the Respondent's "Guild Payroll Roster," which it regularly provided to the Guild, consistently listed the individuals hired after the start of the strike as part of the Guild roster. J Exhs. 15-38.

Based on the evidence discussed above, and the record as a whole, I find that the persons the Respondent hired to perform bargaining unit work during the strike were

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had already started receiving those benefits during the period leading up to the strike.

[11] The Respondent provides monthly reports to the Guild setting forth, inter alia, employee departures, new employee hires, bonuses, and raises, affecting the bargaining unit. Tr. 29-30, J Exhs. 1 to 38.

new bargaining unit employees retained to fill positions that were vacant for non-strike reasons, and were not hired as strike replacements.

ANALYSIS

I. SECTION 8(A)(5) AND (1)

Where, as here, employees are represented by a union, their employer violates Section 8(a)(5) and (1) of the Act by making changes to the employees' terms and conditions of employment without providing the union with notice and an opportunity to bargain. *NLRB v. Katz,* 369 U.S. 736, 746-747 (1962); *Midwest Terminals*, 365 NLRB 1680, 1691 (2017), enfd. 783 Fed. Appx. 1 (D.C. Cir. 2019); *Whitesell Corp.*, 357 NLRB 1119, 1171 (2011); *Ivy Steel & Wire, Inc.,* 346 NLRB 404, 419 (2006); *Mercy Hospital of Buffalo,* 311 NLRB 869, 873-874 (1993); *Associated Services for the Blind,* 299 NLRB 1150, 1164-1165 (1990); *Taft Broadcasting Co.*, 163 NLRB 475, 478 (1967), enfd. 395 F.2d 622 (D.C. Cir. 1968); *Bethlehem Steel Co. (Shipbuilding Div.),* 136 NLRB 1500, 1503 (1962).

The Complaint alleges that the Respondent violated its bargaining obligations since about October 18, 2022 (the start of the strike), by granting bonuses, a mandatory subject of bargaining,[12] to certain bargaining unit employees without first affording the Guild an opportunity to bargain. With respect to the bonuses the Respondent granted to unit employees on an individual basis after October 18, 2022, I find that the General Counsel has failed to show that this constituted a change. Indeed, the evidence shows that since 2016 – as far back as the record evidence on the subject reaches – the Respondent has made extensive use of bonuses to recognize the individual merit of particular unit members, and has done so without consulting the Guild. In each of multiple years it granted over 50 such bonuses to unit employees. There was no year prior to the alleged change when it was shown that the Respondent did not pay multiple individual bonuses to unit employees. The granting of these individual bonuses was sufficiently frequent and recurrent that employees would recognize the allegedly unlawful individual pay enhancements as part of a familiar pattern comporting with the Respondent's usual method of conducting its operations. See *Tecnocap*, 372 NLRB No. 136 , slip op. at 8 (2023); *Wendt Corp.*, 372 NLRB No. 135, slip op. at 7 and 9-10 (2023).

The General Counsel's argument that, during the strike, the Respondent meaningfully changed its practice regarding individual bonuses is dependent on the assertion that the pre-existing practice is only what happened during a brief pre-strike period from November 2021 to September 2022. It is true that during that period the Respondent granted pay enhancements at a lower rate than it did during the strike and that, when it did, the Respondent generally cited a specific justification for the grant[13] –

[12] The Respondent admits that bonuses are a mandatory subject of bargaining. GC Exh. 1(m) at Paragraph 13(b) and GC Exh. 1(o) at Paragraph 13(b).

[13] An exception is the "merit raise" granted to Jonathan Silver. J Exh. 11.

such as that the employee was performing additional duties or a special assignment, or that the enhancement was part of an offer of employment. However, I see no adequate justification on this record for donning the blinders offered by the General Counsel and confining consideration of the Respondent's existing practice to the narrow period that suits the General Counsel's argument. When viewed in its totality, the evidence regarding the Respondent's practice of granting individual pay enhancements shows that the Respondent's challenged practice during the strike was a continuation of its pre-strike practice, not a change from it. This is true with respect to both the range of frequency with which individual pay enhancements were granted and the bases (including otherwise unspecified "merit") for such grants.[14] In reaching this finding, I considered the evidence of the Respondent's practice during the 1-year period immediately prior to the strike as part of the evidence of its practice during the wider period shown by the record.

The General Counsel argues that the Respondent cannot escape a finding that it violated Section 8(a)(5) by granting the individual bonuses unless the Respondent establishes a past-practice defense by showing that the Respondent lacked substantial discretion with respect to granting the bonuses. Brief of the General Counsel at Page 20-21. The General Counsel's argument shifts the burden to Respondent to establish a defense to a violation based on a change in terms of employment before the General Counsel has met its own initial burden of showing that a material change was made. In *International Shipping Agency, Inc.*, the Board affirmed that it is the General Counsel's burden to show that the employer made a material change to a consistent practice before the "[t]he burden shifts to the employer to show that the change was . . . consistent with established past practice." 369 NLRB No. 79, slip op. at 20 (2020);[15] see

[14] The practice was also consistent with a provision in the parties' expired CBA that permits individual unit employees to negotiate directly with the Respondent for recognition of "individual merit" through pay enhancements in excess of the contractual minimums. J Exh. 39 at Page 8; see also J Exh. 39 at Page 38 (terms of CBA remain in effect after expiration as long as negotiations continue). The Respondent has not relied on that provision to argue either that, during the strike, the employer was authorized to grant the individual pay enhancements without Guild involvement or that the Guild waived bargaining over individual grants of such enhancements. In addition, neither the General Counsel nor the Charging Party argues that the contract provision that permitted employees to negotiate directly with the Respondent for pay enhancements was a "management rights" clause such that neither that provision, nor any practice regarding bonuses developed under it, survived the contract's expiration absent evidence of an intent to continue it. *Tecnocap LLC*, 372 NLRB No. 136, slip op. at 9-14 (a management rights clause and practices developed under that clause, do not survive the CBA's expiration absent evidence of parties' intent to continue it in effect). Since the parties do not discuss, and at the hearing did not explore, the thorny issues relating to the CBA provision that permits direct negotiations over bonuses, I do not address any potential such issues.

[15] The quoted language is from the administrative law judge's analysis. However, the Board expressly stated that, "for the reasons stated by the judge," it was affirming the dismissal of allegations that the employer "violated Section 8(a)(5) by changing . . . maintenance workers' hours and by changing its auto checker procedures." *International Shipping Agency,* 369 NLRB No. 79, slip op. at 2.

also *National Steel & Shipbuilding*, 348 NLRB 320, 323 (2006) (it is the General Counsel's burden to show the existence of an established practice that an employer cannot change without providing notice and an opportunity to bargain), enfd. 256 Fed. Appx. 360 (D.C. Cir. 2007). Indeed, given that the Respondent had been unilaterally granting bonuses based on individual merit every year since at least 2016, it arguably would have been an unlawful unilateral change if, upon the initiation of the strike, the Respondent had completely ceased granting such bonuses. See *Bryant & Stratton Bus. Inst. v. NLRB*, 140 F.3d 169, 182 (2d Cir. 1988) (Respondent's "suspension of the discretionary merit wage increases constituted a unilateral change . . . in violation of Section 8(a)(1) and (5)"), enfg. 321 NLRB 1007 (1996).

For the reasons discussed above, I find that the General Counsel has failed to establish that the individual bonuses, discussed above, were a change to an established practice.

A different situation pertains with respect to the "newspaper of the year" bonuses that the Respondent granted in identical amounts of $250, en masse to 91 employees, in acknowledgment of "the team." Tr. 160. The Respondent does not claim, and the record does not show, that the Respondent had an established practice of granting bonuses to acknowledge staff-wide accomplishments rather than to acknowledge a particular employee's contribution. Unlike the individual pay enhancements discussed above, the "newspaper of the year" bonus was not shown to be tied to the specific employee's individual merit, duties, assignment, or offer of employment. The Respondent did not provide the Guild with notice, or an opportunity to bargain over, the "newspaper of the year" bonus granted during the strike.[16] The Board has held that where, as here, an employer grants new bonuses that are "based on a departmentwide achievement and were awarded across-the-board to all employees in the . . . department, regardless of the individual employee's personal contribution," it is making a unilateral change even though it had a history of granting individual merit bonuses to employees. *Philadelphia Coca-Cola Bottling Co.*, 340 NLRB 349, 354 (2003), enfd. 112 Fed. Appx. 65 (D.C. Cir. 2004).

I find that the Respondent violated its bargaining obligations under Section 8(a)(5) and (1) of the Act by when it granted the "newspaper of the year" bonus in about October 2023.

[16] The Respondent does not appear to defend its failure to bargain with the Guild over the "newspaper of the year" bonus based on its contention that it was entitled to unilaterally set the hiring terms of strike replacement workers. Brief of Respondent at Pages 9 and 27-30. At any rate, as discussed earlier, the individuals the Respondent hired to perform bargaining unit work after October 2022 were permanent employees, not striker replacements. Moreover, the record shows that many of the individuals who received the "newspaper of the year" bonus had been bargaining unit employees since well before the strike. Compare R Exh. 2 (recipients of pre-strike bonuses) and GC 7 (beneficiaries of "newspaper of the year" bonus).

II. SECTION 8(A)(3) AND (1)

The Complaint alleges that the Respondent's grants of increased wage rates and bonuses during the strike were discriminatory in violation of Section 8(a)(3) and (1) of the Act. Brief of the General Counsel at Page 12, citing *NLRB v. Erie Resistor Corp.*, 373 U.S. 221, 233 (1963) (It is a violation of Section 8(a)(3) for an employer to use discrimination to "discourage[e] participation in concerted activities, such as a legitimate strike."). The General Counsel acknowledges that establishing discrimination requires a showing of antiunion animus, Brief of General Counsel at Pages 12-13, citing *Radio Officers v. NLRB*, 347 U.S. 17, 42-45 (1954), but contends that, in the instant case, "no proof of antiunion motivation is needed" because the Respondent's actions were 'inherently destructive' of important employee rights," Brief of General Counsel at Page 13, quoting *NLRB v. Great Dane Trailers, Inc.*, 388 U.S. 26, 33-34 (1976).[17]

I find that the record evidence does not support finding either that the grants of raises and merit bonuses during the strike were discriminatorily issued based on anti-union animus or that those grants were inherently destructive of employees' rights under the Act. Contrary to the General Counsel's contentions, the record does not show that the Respondent's decision to grant the challenged raises and bonuses were motivated by animus towards the strike or other union activity.[18] The record is devoid of evidence of statements by the Respondent's officials expressing antiunion motivation or connecting antiunion motives to the decision to grant the pay enhancements. I note, moreover, that it was not shown that the Respondent promised to grant raises or bonuses to striking employees if they agreed to abandon the strike, or that the Respondent threatened that strikers would be permanently excluded from such enhancements unless they returned to work by a certain deadline. Nor was it shown

[17] None of the parties mention the Board's *Wright Line* decision in their arguments about whether discrimination was shown. The Board, however, has applied that standard when considering allegations that an employer's unilateral changes to it practices were discriminatory in violation of Section 8(a)(3). See, e.g. *Golden State Warriors*, 334 NLRB 651, 672 (2001), enfd. 50 Fed. Appx. 3 (D.C. Cir. 2002); *Ippolito, Inc.*, 313 NLRB 715, 715 n.2 (1994), enfd. 54 F.3d 769 (3d Cir. 1995). Under *Wright Line*, when an employer's antiunion motivation is at-issue, the General Counsel's initial burden includes showing that the employer bore animus towards the union activity. 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); see also *Camaco Lorrain Mfg. Plant*, 356 NLRB 1182, 1184-1185 (2011).

[18] The General Counsel does not contend that the Respondent's failure to bargain in good faith, either as found by the Board previously, 373 NLRB No. 93 (2024), or as found in this case with respect to the grant of "newspaper of the year" bonuses, demonstrates animus towards the strike activity. See *Diamond Detective Agency*, 339 NLRB 443, 444-445 (2003) (administrative law judge finds that Section 8(a)(5) violation shows antiunion animus, but Board "rejects the judge's analysis" and declines to determine whether animus was shown); *Denver Post Corp.*, 328 NLRB 118, 118 n. 2 (1999) (unilateral promotion of apprentices to provisional pressman status in violation of Sec. 8(a)(5) is not evidence of antiunion animus); but see *Mondelez Global*, 369 NLRB No. 46, slip op. at page 3 n.6 (2020) (employer's unlawful unilateral changes provide "additional" support for finding antiunion animus).

that the Respondent promised the unit employees who were working during the strike that new pay enhancements would be forthcoming if they continued to work during the strike.

The General Counsel argues that discrimination is shown by the fact that, during the early weeks of the strike, the Respondent granted merit bonuses to one unit member who Tanner (Guild local president) had heard express strong antiunion sentiments during meetings with employees, and to two other employees who Tanner had heard state that they opposed the strike. The Respondent's grant of bonuses to these three unit members does not show antiunion discrimination. One of the three, Belko, was already a frequent recipient of bonuses before the strike, and had initially joined the picket line. In addition, the General Counsel has not shown that the Respondent was aware of the antiunion or anti-strike statements that Tanner heard any of the three employees make, or that the Respondent had reason to believe that those employees were more notable in their opposition to the strike than were any of the other approximately 35 unit members who continued working when the strike started.

The evidence also does not support finding that the bonuses granted during the strike were inherently destructive of employee interests. An employer's action is found to be inherently destructive when that action is so unavoidably destructive of employee rights that the employer "must have intended" that harm, and the harm is more than "comparatively slight." *Great Dane Trailers,* 388 U.S. at 33-34; *Dole Fresh Vegetables, Inc.*, 339 NLRB 785, 787 and n. 9 (2003). Here it is hard to discern any destruction of employees' rights by the Respondent continuing to grant pay raises and bonuses during the strike largely as it had previously. Indeed, in addition to the 37 unit employees who never honored the strike, only an additional four or five unit employees are alleged to have abandoned the strike and returned to work during the more than 2 years that the strike has been ongoing. The record does not show that even that handful of strike defectors were motivated by the raises or bonuses granted to non-strikers. The vast majority of the striking employees who abandoned the strike did so in order to take jobs with *other* employers, not to return to the Respondent in hopes of obtaining the types of bonuses that the Respondent had paid to some non-strikers.

As alluded to previously, there is no claim here that the Respondent promised unit members that they would receive raises or bonuses if they returned to work, or that it ever threatened to deny them their accrued benefits unless they returned to work by a certain date. This conduct is far removed from what was deemed "inherently destructive" in *Great Dane.* That case, like the instant one, concerned the employer's action during a strike, but in *Great Dane* the employer threatened that it would extinguish the strikers' already accrued vacation pay if they did not return to work by the employer's deadline, and promised that employees who did return by that deadline would receive the accrued vacation pay. 388 U.S. at 29-30. The Respondent's conduct is also clearly distinguishable from that in *Erie Resistor*, where the employer promised to grant "super seniority" to striking employees who returned to work – meaning that employees who abandoned the strike would be guaranteed permanent and significant advantages over employees who continued to exercise their right to strike. The

"combination of threat and promise" in *Erie Resistor* was "crippling" to the strike effort and was followed by its "virtual collapse." 373 U.S. at 230-231. The Respondent's challenged conduct here, on the other hand, did not include threats or promises, and, as previously discussed, its effect on the strike effort was not shown to be more than "comparatively slight" or even to exist at all. See *Great Dane Trailers,* 388 U.S. at 34 (conduct is not inherently destructive when the resulting harm to employee rights is "comparatively slight").

I note that although Wischnowski was not a compelling witness regarding the business reasons for the challenged raises and bonuses, there was no significant contrary evidence to weigh against his testimony either about the merits of the recipients of raises and bonuses or about the intensity of recruitment efforts by the Respondent's competitors. In addition, his testimony that the pay enhancements were a response to competitor "poaching" efforts, rather than an attempt to discourage participation in the strike, is consistent with the fact that, unlike the employers in *Great Dane* and *Erie Resistor*, the Respondent was not shown to have tethered the benefits to promises or threats regarding strike participation.

For the reasons discussed above, the Respondent's grants of increased wage rates and bonuses during the strike were not shown to be a violation of Section 8(a)(3) and (1) of the Act and the allegation regarding that must be dismissed.

CONCLUSIONS OF LAW

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

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent failed to bargain in good faith, and violated Section 8(a)(5) and (1) of the Act, by failing to provide the Guild with pre-implementation notice of, and an opportunity to bargain over, its October 2023 decision to grant unit employees a "newspaper of the year" bonus based on staff-wide achievement.

4. The above unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide the Union with pre-implementation notice and the opportunity to bargain over the 2023 newspaper of the year bonus granted to bargaining unit employees, I recommend that it be ordered to cease and desist from failing to provide the Guild with pre-implementation notice and

an opportunity to bargain regarding changes to bargaining unit employees' terms and conditions of employment and that, upon request by the Guild, it bargain over, or rescind, the newspaper of the year bonus issued to non-striking bargaining unit employees.

In its brief, the General Counsel's does not state what remedies are currently being sought, nor does it provide a proposed order. The potential remedies identified in the Complaint largely concern allegations that I dismissed at the start of the hearing. See, supra, footnote 1. The Charging Party nevertheless requests the full range of remedies sought in the Complaint. Brief of Charging Party at Page 2. The Charging Party does not cite legal authority for granting any of the remedies sought and only two of those warrant consideration. First, the Charging Party requests that I order the Respondent to "hold a meeting or meetings during work hours to ensure the widest possible attendance at which the Notice will be read to employees in the presence of a Board agent and a Union representative" and that during those meetings each employee be provided with a copy of the Notice. The Board has held that a read aloud remedy is not warranted except when it is shown that other remedies will be insufficient. *Chinese Daily News*, 346 NLRB 906, 909 (2006). The violation established in this case is quite limited and the record does not suggest that the standard remedies would be insufficient to address it. Therefore, the request for a notice reading is denied.

In addition, Charging Party asks that I order the Respondent to grant the striking Union members wage increases and bonuses comparable to those that the Respondent unilaterally granted to bargaining unit employees who did not participate in the strike. No authority is cited for ordering that relief. To the extent that the Charging Party is asking that the Respondent be ordered to make payments to striking employees while the strike is ongoing, that request is contrary to Board law that, absent proof of prior accrual, "an employer is not required to finance a strike against itself by paying wages or similar expenses" to strikers. *Texaco*, 285 NLRB 241, 245-246 (1987), citing *Gen. Elec. Co.*, 80 NLRB 510 (1948). Whether it would be unlawful for the Respondent to withhold certain pay enhancements to strikers once they return to work is another question that is not presented here. Cf. *Pride Ambulance Co.*, 356 NLRB 1023, 1027-1028 (2011) (holding that it is unlawful for an employer to withhold vested benefits after strikers return to work). I decline to order the Respondent to pay wage increases or bonuses to striking employees.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended Order.

ORDER

The Respondent, PG Publishing Co., Inc. d/b/a Pittsburgh Post-Gazette, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) failing to provide the Newspaper Guild of Pittsburgh/CWA Local 38061 (the Guild) with pre-implementation notice and an opportunity to bargain over changes to the terms and conditions of employment of bargaining unit employees.

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

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

(a) Upon request by the Guild, bargain over, or rescind, the 2023 newspaper of the year bonus that was granted to unit employees.

(b) Within 14 days after service by the Region post at its Pittsburgh, Pennsylvania, offices copies of the attached notice marked "Appendix."[19] Copies of the notice, on forms provided by the Regional Director for Region 6 of the National Labor Relations Board, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notice shall be distributed to employees electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed its Pittsburgh, Pennsylvania, offices, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former unit members employed at those offices by the Respondent since October 2023.

(c) Within 21 days after service by the Region, file with the Director for Region 6 sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., July 15, 2025

PAUL BOGAS
U.S. Administrative Law Judge

[19] 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 interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL NOT fail to provide the Newspaper Guild of Pittsburgh/CWA Local 38061(the Guild) with pre-implementation notice and an opportunity to bargain over changes to the terms and conditions of employment of employees in the editorial department bargaining unit.

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

WE WILL, upon request by the Guild, bargain over, or rescind, the 2023 newspaper of the year bonus that was granted to bargaining unit employees in the editorial department.

PG PUBLISHING CO., INC. D/B/A
PITTSBURGH POST-GAZETTE
(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: www.nlrb.gov

William S. Moorhead Federal Building, Room 904, Pittsburgh, PA 15222-4111
(412) 395-4400, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/06-CA-311136 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 (412) 690-7117.