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

LANGELOTH METALLURGICAL
COMPANY, LLC

and Case 06-CA-290184

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE, AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW) AND ITS LOCAL NO. 1311

Payton Gutierrez, Esq. and Alexander Figuly, Esq., for the General Counsel[1]
Michael J. Healey, Esq., for the Charging Party
Kirk M. Wall, Esq. and Diana H. Givand, Esq., for the Respondent

DECISION

STATEMENT OF THE CASE[2]

Sarah Karpinen, Administrative Law Judge. This case was tried in Pittsburgh, Pennsylvania from January 13-17 and January 22-23, 2025. The Complaint, based on a charge filed by International Union, United Automobile, Aerospace, and Agricultural Implement Workers Of America (UAW) and its Local No. 1311 (the Union), alleges that Union-represented employees of Respondent Langeloth Metallurgical Company (LMC) engaged in a strike from about September 19, 2019 through August 16, 2021, and that after the Union ended the strike and made an unconditional offer to return to work on behalf of the striking workers, LMC failed to reinstate, or delayed in reinstating, the former strikers to their former or substantially equivalent positions of employment. LMC denies the allegations.

All the parties appeared at the hearing and had the opportunity to introduce evidence and examine and cross-examine witnesses. The parties also filed post-hearing briefs, which I have read and considered. On the entire record, including my observation of the demeanor of the witnesses,[3] I make the following:

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[1] On February 3, 2025, the President appointed William B. Cowen as Acting General Counsel, replacing former General Counsel Jennifer Abruzzo. For purposes of convenience, I will refer to Counsel for both the General and Acting General Counsel as the "GC."

[2] I have included citations to the record to assist the reader and highlight certain evidence, but my findings and conclusions are based on my review and consideration of the entire record.

[3] In making my credibility determinations in this case, I considered the testimony of all the witnesses in the context of their demeanor, the weight of the evidence, the facts, the probability that the testimony was true, and the reasonable inferences that could be drawn from their statements. See *Double D Construction Group*, 339 NLRB 303, 305 (2003), citing *Daikichi Sushi*, 335 NLRB 622, 623 (2001). I also followed the general rule that credibility determinations are not "all or nothing," and that it is possible to disbelieve portions of a witness' testimony without discrediting everything that they say. See *Daikichi Sushi*, supra, at 622.

FINDINGS OF FACT

I. Jurisdiction

The parties stipulated that Langeloth Metallurgical Company (LMC) is a limited liability company engaged in the manufacturing and nonretail sale of molybdenum products from its place of business in Langeloth, Pennsylvania, and that it annually sells and ships goods valued at more than $50,000 directly to points outside the Commonwealth of Pennsylvania. The parties further stipulated, and I find that at all material times Respondent was an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the International Union, United Automobile, Aerospace, and Agricultural Workers of America (Union) was a labor organization within the meaning of Section 2(5) of the Act. (Jt. Exh. 11, paras 2-6). Based on the above, the Board has jurisdiction over this matter pursuant to Section 10(a) of the Act.

II. Background

Langeloth Metallurgical Company (LMC) has been in business for over 100 years. Its principal business is processing molybdenum sulfide concentrate into molybdenum oxide and other products for industrial use. It also processes other types of metal ore and refines and sells byproducts of the roasting process, including sulfuric acid and rhenium. (Tr. 465-467). It is a related entity of Thompson Creek Metals, Inc., and was purchased by Centerra Gold in 2016.

LMC employees receive and unload raw molybdenum and other metal products at its Langeloth facility and load it into large roasters (which stand several stories tall). The roasters heat the raw product until the sulfur is removed. The molybdenum oxide that results from the roasting process is either sold as is, or is put through a pure molybdenum trioxide process, which pulls out the pure moly trioxide and produces insoluble and silicates. Employees also put the molybdenum oxide through an additional process called ferromolybdenum, or ferro processing. This removes the oxygen from the molybdenum, making a product that is suitable for steel mills and foundries that can't process molybdenum with oxygen in it. (Tr. 466). The sulfur that burns off the molybdenum in the roaster is directed to a sulfuric acid plant. This plant not only produces acids for sale to end-users, but also extracts another saleable product, rhenium, and sends it to a separate processing plant. (Tr. 466-467).

LMC and the Union were signatory to a collective bargaining agreement that was in effect from March 11, 2016, through June 13, 2019. (Jt. Exh. 1). The record does not reflect exactly when their bargaining relationship began; however, one witness testified that the Union had been there for over seventy years. (Tr. 198).

A. The expired collective bargaining agreement

Prior to the strike, employees were divided into five general job classifications: lead person class, skilled class, operator class, labor class, and laboratory class. (Jt. Exh. 1, p. 13). Employees were able to bid into various jobs within those classifications and had seniority rights in their respective classifications in addition to having plantwide seniority. (Jt. Exh. 1, pp. 15-20). The jobs that were filled before and after the strike in each classification are listed in

Appendix 1. (Jt. Exhs. 154, R. Exh. 10). In 2018, lead and skilled class pay ranged from $24 to $26.25, operator pay ranged from $23.50- $25.25, labor rates ranged from $19.90 to $21.90, and laboratory pay ranged from $23.50 to $27.25.

Benjamin Wagner worked for LMC for twenty years and served in multiple leadership positions with the Union. (Tr. 125-129). He testified that he began his career, like many LMC workers, as a laborer, and worked in "just about all the jobs" at the facility, including molybdenum roaster operator, nickel roaster operator, ferro operator and crusher, acid plant employee, mechanic, production lead person, and packer. He had permanent bids in some of the jobs and worked temporarily in others as a member of the "extra board."[4] (Tr. 126-142, 211-217). The extra board allowed employees to sign up to work extra shifts in other classifications when needed. (Tr. 216-217). Employees submitted a preferred job sheet where they ranked desired jobs in order of preference, and LMC would follow a combination of seniority and asserted preference to assign extra board members when needed to fill a vacancy. (Tr. 224-225).

Employees could indicate their preferences for their preferred full-time bids at any time, but assignments were done through a process known as a "schedule change" that was outlined in the collective bargaining agreement. (Jt. Exh. 1, pp. 13-14). Wagner testified that LMC used a job assignment sheet to show which jobs were filled and which employees held them. (Tr. 130, GC Exh. 4). It also maintained a list of employees, which jobs they were qualified to perform, and the date they completed the qualifications for those jobs. (Tr. 131-132, GC Exh. 3).

The collective bargaining agreement called for at least 2 facility-wide schedule changes per year. (Tr. 136-137, Jt. Exh. 1, p. 14). LMC could initiate additional schedule changes as needed and would regularly do so based on production needs. (Tr. 136). Some of these were "in-house" schedule changes, when only employees who had been displaced from their regular job due to changing production needs could move to another job. (Tr. 138-139). LMC had sole discretion about whether to initiate these additional changes and whether they would be plant-wide or in-house. (Tr. 139, 221).

Operations Manager Jason Nonack testified that there were 27 schedule changes during the life of the 2016-2019 contract, resulting in over four hundred changes to job assignments over three years. (Tr. 585). He testified that this had an impact on productivity and costs, as employees had to be trained in their new positions. (Tr. 586). Under the schedule change procedure, employees were not required to show proficiency in a job before they could be awarded a bid. Instead, they would be assigned based on seniority and then receive on the job training for the position. (Tr. 139). Once an employee received training on a particular assignment, they and their supervisor would "sign off" that they were qualified for the job by going through a training form with a checklist of the required skills and duties and signing to indicate that the employee was proficient. (GC Ex. 140-141, GC Exh. 7).

Employees also had an opportunity to train in various jobs by receiving a temporary assignment through the extra board. If an extra board employee was placed in a job they had not

[4] The parties interchangeably referred to this as the "extra board" the "labor board" (see Tr. 142-143). but I will refer to it in this decision only as the "extra board" to avoid any confusion with the NLRB, which is also sometimes referred to as the "Labor Board."

previously qualified in, they would receive on the job training for the position from a lead person or foreperson. (Tr. 145). In addition, employees could bid for overtime shifts and work in other job assignments for those shifts. (Tr. 146). However, employees in unskilled positions were not able to be a fill in for skilled trade jobs, unless they were a helper for that position. (Tr. 226).

1. Pre-strike use of contractors

LMC contracted out some work prior to the strike. Former striker and union officer Benjamin Wagner testified that the Union would bargain over subcontracting and would try to get "whatever work that we could…but there were some things that were outside of the scope of work that we would agree that an outside company could do." (Tr. 128-129, Tr. 234). The Union agreed on some occasions to allow contractors to do work that existing maintenance workers could perform. (Tr. 234). However, Wagner testified that the contractors normally did specialized work that the bargaining unit did not do. (Tr. 257).

LMC produced documents showing work that was contracted out between 2014 and 2019. (R. Exh. 26). The contractors used by Langeloth before the strike included Chapman Associates, Mesta Industrial, and Groff Tractor. There were no contracts with JenMar Services or Compliance Staffing Services. (Tr. 256, R. Exh. 26). The work contracted was for specific projects, ranging from completing heat trace repairs, replacing equipment in the ore dock, roof and other repair projects, and bringing parts of the plant back into service after an outage.

III. The strike

The parties engaged in negotiations for a successor agreement beginning in February 2019. UAW servicing representative James Whisler participated in the negotiations along with Local 1311 Chair Jim Hall, Vice-Chair Joe Avolia and Recording Secretary James Veltri. Both sides agree that seniority and job assignment issues were a major point of contention. Jason Nonack, who is now LMC's operations manager, but was serving as an administrative manager in 2019, testified that the company wanted to reduce employees' ability to change jobs within the plant and retain more power to assign employees, but the Union was skeptical of the numbers it presented to support its bargaining position. (Tr. 586-587). Thomas Ondrejko, LMC's general manager and president (who also manages Centerra's molybdenum operations, including operations at the Thompson Creek Mine in Idaho) gave a presentation to the Union at the start of negotiations about the financial outlook of the company and told them what while things "hadn't gotten terrible terrible…the cracks were sort of showing, and we were having troubles," and the company wanted to improve productivity, including figuring out how to better utilize personnel. (Tr. 464- 465, 476- 478).

LMC presented the Union with a last, best and final offer dated July 16, 2019. That offer included proposed pay rates for 2019, 2020 and 2021. The proposed 2021 pay rates ranged from $25.85- 28.27 per hour for "lead class" employees, $26.60-28.27 per hour for "skilled class," and 25.31-27.19 for "operator class." (GC Exh. 2, p. 10). UAW servicing representative Whisler testified that the Union put a priority on preserving its members' seniority rights, and that the membership voted overwhelmingly to reject the company's final offer and to authorize a strike.

(Tr. 24-25, GC Exh. 2). The parties stipulated that LMC employees were engaged in an economic strike from September 9, 2019, to August 16, 2021. (Jt. Exh. 11, para. 8).

A. LMC permanently replaces the striking workers

There were about 85 hourly employees on the LMC schedule when the strike began. (Tr. 374-375, Jt. Exh. 154). About a month into the strike, LMC began hiring temporary replacement workers to perform bargaining unit work. (Jt. Exh. 11, para. 9). On January 3, 2020, LMC's attorney notified the Union that the company planned to "move forward with the permanent replacement of all bargaining unit employees presently on economic strike." He further informed the Union that the strikers "will be placed on a recall list in accordance with law." (Jt. Exh. 3).

LMC made offers to about "approximately 86 permanent replacements" between January and April 2020. (Tr. 27, Jt. Exhs. 2-3 and 11, paras 9-11). Their offer letters stated:

> As previously communicated, this offer of employment is as a permanent replacement for striking employees at LMC…Your employment will be at-will, and may be terminated by you or LMC at any time, with or without notice and/or cause. Your employment may also be terminated as a result of a strike settlement with the Union or by order of the National Labor Relations Board.

(R. Exh. 11). LMC provided copies of the letters signed by the 65[5] employees remaining at the end of the strike.

Twenty-seven replacement employees were hired as "production/ lab operators" at a rate of $24.09 per hour. Twenty-eight were hired as "production operators" at the same rate of pay. Six employees were offered positions as "laborers" at $22.45 per hour. (R. Exh. 11). One employee (Johnston) was hired as a "production operator" at the rate of $22.45 per hour. The record was unclear as to why Johnston, who worked as a packer, was offered a lower rate of pay than other production operators. (R. Exhs. 10, 11, p. 29, Jt. Exh. 168). The replacement workers were assigned to various jobs in the plant. (R. Exh. 10, Jt. Exh. 168, Appendix 2).

B. LMC withdraws recognition from the Union

On April 1, 2020, LMC filed a certification of representative (RM) petition with the National Labor Relations Board (NLRB), stating that it had a good faith doubt that the Union had majority support from its employees. It withdrew the petition on April 6. (Jt. Exhs. 4-5 and Jt. Exh. 11, paras 12-13). The parties stipulated that LMC lawfully withdrew recognition from the Union on April 8. (Jt. Exh. 6, Jt. Exh. 11, para. 14). The Union challenged the withdrawal of recognition at the time it occurred, but was unsuccessful in those efforts, ending with the

[5] Respondent did not present an employment offer addressed to John Airgood, who was still on the schedule as of August 16, 2021, but did present a letter addressed to Adam Airgood, who worked for Langeloth from April 2020 until May 2021, but signed by John Airgood. (R. Exh. 11, p. 2).

NLRB's rejection of the Union's appeal on July 14, 2021. (Jt. Exhs. 7-9, 11, paras. 15-16).

C. Union ends strike, makes unconditional offer to return to work

On August 13, 2021, the Union, through UAW Region 9 Director Jeff Binz, sent a letter to the striking workers informing them that the Union lost its appeal at the NLRB and was therefore under no legal obligation to recognize the Union. He informed them that as a result, the Union had to end its strike and take down its picket line. (Jt. Exh. 14). The letter further stated:

> Although the Company no longer recognizes the Union, we will notify the Company that we will end the strike and the picket on August 16, 2021, and make an unconditional offer for the strikers to return to work. A copy of that letter is enclosed.
>
> If you are interested in returning to work at the Company, we recommend that you also fill out the attached form and send it directly to the Company. The Company should recall you as equivalent positions become open- when the scabs who took your jobs leave or are fired.

(Jt. Exh. 14). The letter had two attachments. The first was a letter to Langeloth notifying it that the Union was ending the strike and making an unconditional offer to return to work on behalf of all the strikers, dated August 16, 2021. (Jt. Exh. 14, p. 2). The other attachment was a blank individual offer to return to work form. (Jt. Exh. 14, p. 3).

The parties stipulated that the Union sent a copy of the letter to Respondent's Manager of Regional Human Resources on August 16 stating:

> This letter is an unconditional offer of the UAW, and UAW Local 1311 on behalf of the UAW Local 1311 bargaining unit members/ strikers to return to work. More specifically, the UAW is ending the strike and ending the picketing of the facility in Langeloth, Pennsylvania, effective August 16, 2021, at 4 PM. (Jt. Exh. 10).

The parties stipulated that LMC received the letter but did not respond to it. (Jt. Exh. 11, para. 17). Union Servicing Representative Whisler testified that none of the strikers objected to the Union making an unconditional offer to return on their behalf, and that LMC never contacted the Union for clarification about its offer on behalf of the strikers. (Tr. 33-34). Thirty-three former strikers submitted individual offers to return to work. (Jt. Exh. 11, para. 17, R. Exh. 17).

Whisler testified that the striking employees remained members of Local 1311 through the end of the strike and afterward and continued to pay union dues and receive strike pay and other benefits from the Union through at least the end of August 2021. (Tr. 40-41, 43). Local 1311 dissolved as of the end of 2021. The International Union's auditor filed a report with the UAW's Secretary-Treasurer on July 11, 2022, stating that the balance in the Local Union's treasury had been placed in escrow with the International Union, and that its records were placed for safekeeping in the UAW Region 9 office. (Jt. Exh. 12, pp. 1-2). Financial statements attached

to this report showed that Local 1311 continued to disburse funds for picket line operations, refreshments, and other expenses through December 31, 2021. (Jt. Exh. 12, p. 4).

IV. Post-strike staffing

After the strike, employees were still grouped into the same general classifications as they were before the strike. (R. Exh. 10). Superintendent of Plant Services Joseph Niedzialkia testified that he was responsible for creating the last job assignment sheet prior to the strike and the job assignment sheet that was in place when the strike ended. (Tr. 745, Jt. Exhs. 154, 155, R. Exh. 10) He testified that the employees listed on the classification list at the end of the strike were on the schedule and working as of August 16, 2021. (Tr. 746, R. Exh. 10).

LMC had 66 positions on the schedule at the end of the strike, eighteen less than at the start. (Jt. Exh. 154, R. Exh. 10).[6] However, this was the lowest level of staff since LMC started hiring permanent replacement workers. LMC hired a total of about 130 replacement workers in 2020. 53 of those employees were gone before the end of 2020, but 77 remained in January 2021. Eleven replacement workers left in the months prior to the strike, with three leaving just a month before the end of the strike, and one, a replacement mechanic, leaving just a few days before the end of the strike on August 13, 2021. (Jt. Exh. 168).

A side-by-side comparison of the pre-strike and post- strike schedules is attached to this decision as Appendix 1. It was created by inputting the job classifications and numbers of employees filling them as of September 9, 2019, the day the strike started (Jt. Exh. 154), and the same information as of August 16, 2021, the day it ended. (R. Exh. 10). As the side-by-side comparison shows, LMC had many of the same jobs, and staffed them in similar numbers, both before and after the strike. Some positions were filled at the end of the strike, but not at the beginning (e.g., outside utility, rhenium operator trainee, and production lead trainee) and some were filled at the beginning, but not at the end (e.g., instrument technician, electrician, and mobile equipment operator). Some positions were combined or filled under a different name. For example, the pre-strike schedule had both electricians and instrument technicians, and the post-strike schedule had an electrician/ instrument repair classification. (Appx. 1, Jt. Exh. 168).

Production Superintendent Wagner testified that after the strike, LMC employees still did the same kinds of work that they did before the strike, including unloading shipments, transporting materials, feeding product into the roasters, roasting molybdenum and other metal products, keeping the roasters clean and clear of obstructions, monitoring their temperature, and packing the finished product, producing ferro buttons, cleaning and crushing the finished product, and packing and transporting it to the shipping area, monitoring the electric arc furnace in the pure department, cleaning and monitoring the machinery in that department (known as the pugmill) and packing the product and shipping it. Employees also monitor and operate the

[6] Respondent Exhibit 10, which shows classifications that were filled at the end of the strike, lists 65 permanent replacement employees by name and classification. It also indicates that there was one person in the classification of "labor/ packer," but that person was not named. Joint Exhibit 154, which listed employees and their classifications before the strike, did not include Kevin Crago or John Dubich, and included one employee (Bartoletti) twice.

machinery in the acid plant, load sulfuric acid for transport, and take samples of various products, prepare them for testing in the laboratory and test them in LMC's onsite laboratory, and repair and maintain the machinery and electrical systems in the plant. (Tr. 358-364).

Permanent replacement workers exited LMC at a steady pace after the strike ended, with the first leaving the day after the Union made its unconditional offer to return. To assist the parties and the readers of this decision, I created Appendix 2, which lists the replacement workers at LMC at the end of the strike along with their job titles and date of departure (if any). The departure dates are from the LMC payroll report, entered as Joint Exhibit 168; however, the termination dates for two employees, Pratt and Graham, are drawn from Respondent Exhibit 9(c) based on testimony from Quality Assurance (QA) Manager Janet Kuban that their termination dates for those employees were incorrect on the payroll report. The job classifications that each employee worked in are included next to their names. These are drawn from the classification list from the end of the strike (R. Exh. 10), the payroll report (Jt. Exh. 168), and the transcript. This is not intended to be a complete list of the jobs that replacement workers performed and is only intended to compile information that is on the record in one place for easier reference.

A. LMC hires temporary workers to fill post-strike jobs

21 replacement workers left between August 2021 and May 2022 (Appx. 2). Despite informing the Union in 2020 that it would place strikers on a recall list in accordance with the law (Jt. Exh. 3), LMC did not start creating a recall list until May 2022, and did not recall any former strikers until June 2022. Instead, LMC brought in temporary employees from a staffing agency named Compliance Staffing Agency, d/b/a Jen-Mar Services (JMS).

On August 9, 2021, a week before the strike ended, JMS Industrial Operations Manager Gary Femc contacted LMC's then-Manager of Regional Human Resources, Robert Thomas, and asked if they could discuss the services JMS could provide. (Jt. Exh. 150). JMS Vice President Ryan Litwinovich testified that Thomas made the initial contact with JMS. He could not recall the date this occurred, but believed it was "at about the same time frame that we reached out to him directly." (Tr. 118-119).

On August 19, 2021, three days after the Union made its unconditional offer to return to work on behalf of the former strikers, Thomas contacted JMS to invite them for a tour of the LMC facility. Femc responded, "[a]s we discussed, JMS is a little different from most staffing agencies, we are a contract to hire company that specializes in full time employment opportunities for our candidates." He agreed to tour LMC the following week. (Jt. Exh. 72, pp. 1-2). JMS Vice-President Litwinovich testified that "contract to hire" means that clients can usually only staff with JMS employees for a contracted period before offering them permanent employment. (Tr. 108, 110). However, LMC never signed a contract with JMS. (Jt. Exh. 83).

The August 19 email referenced a rate sheet that was not included in the Joint Exhibit, but the GC introduced a JMS rate sheet dated August 19 addressed to Thomas from Femc. The sheet showed that JMS added fifty percent of an employees' hourly wage to its rate (and an additional $2 per hour for overtime), billing $28.50 per hour for an employee making $19 per hour (and $39.90 for overtime) to $37.50 for an employee making $25 ($52.50 for overtime).

The sheet stated that JMS included pre-employment testing, background checks, workers' compensation, payroll taxes and benefits, and that employees "are eligible to be hired after 700…billable hours." (GC Exh. 18).

On September 7, 2021, LMC HR Manager Thomas sent an email to JMS Manager Femc with the following hourly rates: "Labor- 22.50; Operator- 23.93; Skilled Class- 25.83." Femc responded that he was "working on filling the positions now." (Jt. Exh. 58, pp. 1-2). Billing statements showed that JMS billed Langeloth between $30.45- $33.45 per hour for general laborers, and $46.83 for overtime, which is consistent with the 50% premium over employee hourly wages it listed in its rate sheet. (GC Exhs. 17, 18). LMC was billed for 40 hours per week for each employee, plus overtime. (GC Exh. 17). Femc told Thomas that JMS employees would use a JMS time sheet, but that JMS did not have to be involved in scheduling, and that, "[t]ypically we tell the customer to treat them as if they were your employee." He told him that JMS employees would call LMC if they had to miss work, and asked Thomas to contact JMS if they had issues with an employee. (Jt. Exh. 86, p. 3).

There is no dispute that the JMS employees did work that was formerly done by strikers. LMC Production Superintendent Robert Wagner testified that JMS employees were "hired for the roasters," but were also utilized elsewhere as "labor," which included packing, hauling oxide as it came out of the roasters to other places in the facility, including the ferro and pure oxide departments, moving bags of concentrate from the shipping area to the roasting area, and filling in at the ore dock. (Tr. 355-358). LMC Operations Manager Nonack testified that some JMS employees were also brought in to do maintenance and electrical work, although he said that this ultimately did not work out. LMC records show that at least ten JMS employees worked in the maintenance department or did electrical work. (Tr. 615, 664, R. Exh. 9(a)).

B. LMC staffing from August 2021- May 2022

As permanent replacement workers exited after the strike, LMC brought JMS workers in. Although some of the JMS employees stayed only a short time, others worked for LMC for months. To illustrate when JMS workers came to LMC and how long they stayed, I created Appendix 3. The parties provided several lists of JMS employees, including two lists of JMS employees that were included in emails from JMS to LMC (Jt. Exhs. 152 and 153), a list created by LMC (R. Exh. 9(b)) and a list created by JMS and offered by the GC. (GC Exh. 15). I used these exhibits to create Appendix 3, but because the names and dates on the lists did not always match, I also used additional evidence, including emails and invoices, to determine which lists were the most accurate. The JMS lists contained in Joint Exhibits 152 and 153 proved to be the most reliable and mainly used the names and dates in those lists to create Appendix 3.

The list offered by the GC (GC Exh. 15) showed the dates employees worked for JMS, not just for LMC, and did not include any termination dates (Tr. 111), so I referred to it only in conjunction with other exhibits. I found Respondent Exhibit 9(b) to frequently under-report the time that JMS employees spent at LMC. LMC Plant Superintendent Joe Niedzialkia testified that he compiled the list from a variety of sources, including emails from JMS and plant schedules. However, LMC did not offer the schedules into evidence and did not identify what emails were used to create the list. (Tr. 748-749). When I compared the dates in Exhibit 9(b) with those in

documents that were entered evidence, including emails Niedzialkia himself sent or received, the dates in Exhibit 9(b) were frequently shown to be wrong. For example, JMS employee Henderson is listed on R. Exhs. 9(a) and (b) as starting on September 20, but his start date is listed as September 14 on Jt. Exhs. 86 and 152 and GC Exh. 15, and JMS sent LMC an invoice charging Langeloth for 32 hours each of Henderson's labor ending the week of September 19, 2021, showing that he started working on Tuesday, September 14 of that week. (GC 17, p. 1).

Some employees were omitted entirely from R. Exh. 9(b) even though other exhibits (including LMC's own records) showed they worked at LMC. For example, JMS employee Kinley is not listed in R. Exh. 9(b), but is included in another exhibit created by LMC, R. Exh. 9(a), is named in other exhibits (Jt. Exhs. 86 and 152) and is included in JMS invoices. (GC Exh. 17, p. 1). I will not describe all the corroborating evidence I found for Joint Exhibits 152 and 153, but I have cited most of that evidence in Appendix 3. Although not every date in Exhibits 152 and 153 was corroborated, I found enough evidence to be satisfied that the lists, which were entered jointly and were generated by JMS and not one of the parties, to be reliable. Finally, I note that even if I relied on the dates in Respondent's Exhibit 9(b) instead of the joint exhibits, it would not have changed my findings significantly, as most dates were only off by a week or less. I also did not discount Exhibit 9(b) entirely, as there were certain instances where the Joint Exhibits were missing information. When that happened, I used the dates in Exhibit 9(b).

Finally, I created Appendix 4 to track the former strikers by the positions they held prior to the strike, as well as the positions they were qualified for. To create this appendix, I used Joint Exhibit 154, which was the final classification list before the strike, as well as the appendices in the Complaint, particularly Appendix A, which listed the employees who engaged in the strike and made an unconditional offer to return.[7] I also used General Counsel Exhibit 3, which listed former strikers and the qualifications they had before the strike.

1. August to December 2021

LMC lost a replacement mechanic on August 17, and a replacement roaster operator on September 8. (Appendix 2). Based on the last classification list in place before the strike, there were at least 11 former strikers that worked as mechanics prior to the strike, and 10 who worked as roaster operators. (Appx. 4). LMC did not recall any former strikers until June 2022.

On September 14, LMC brought in the first two JMS employees. Two more arrived on September 27, and a fifth was scheduled, but never worked. (Jt. Exhs. 86 and 152, GC Exhs. 15, 17, Appx. 3). JMS listed one of the employees, Henderson, as an "electrical apprentice," but listed him as a "general laborer" on its invoice. JMS employees Kinley, Harris and Needham were listed and invoiced as "general laborer[s]." (Tr. 314, GC Exhs. 15, 17). LMC Operations Manager Nonack testified that Henderson and Kinley worked as maintenance helpers, and LMC listed them as working in the maintenance department. (Tr. 664, R. Exh. 9(a)). Except for the

[7] Production Superintendent Wagner testified that some of the employees that were on the pre-strike classification list but not named in the Complaint either resigned or were terminated during the strike. (Tr. 251-254, R. Exh. 21, GC Exh. 1(c), Appx. A).

first week, when it billed 32 hours for Henderson and Kinley (who started on Tuesday, September 14), JMS billed 40 hours per week per employee, plus overtime. (GC Exh. 17).

Two more replacement workers, an acid plant operator and a roaster operator, left LMC on October 4. (Appx. 2). On that same day, LMC Operations Manager Nonack sent an email to JMS asking for "2 more operators." (Jt. Exh. 85). A replacement ferro operator left about a week later, on October 13. (Appx. 2). There were at least four former strikers who worked as ferro operators just prior to the strike, one who worked as a briquette operator, eight who worked as acid plant operators, and one who worked as an acid plant utility operator. (Appx. 4).

LMC did not recall any former strikers in October, but did bring in four new JMS employees. (Appx. 3). All were invoiced as "general laborers." (GC Exh. 17). One of the temporary employees, McEldowney, was referred to by JMS Manager Femc as an "entry level Industrial Maintenance/ Electrician" who already knew a current employee at Langeloth. (Jt. Exh. 80, p. 3). Femc said that McEldowney wanted a job as a "Maint. Tech," but would be willing to "start as labor…to prove himself." LMC Operations Manager Nonack replied that they would "bring him in as a laborer and we will give him a shot in the shop. If he sticks there we will increase his pay accordingly." (Jt. Exh. 87). Two JMS employees left by mid-October, leaving LMC with a total of six JMS employees.[8] (Appx. 3).

LMC continued to lose replacement workers and gain new JMS employees in November, with two replacement workers, a pure oxide operator and a roaster operator, leaving. At least two of the former strikers worked as pure oxide operators prior to the strike. (Appx. 4). LMC did not recall any strikers, but did bring in a new JMS employee. Two others left, leaving five JMS employees at LMC at the end of the month. (Appx. 2 and 4).

Five more replacement workers left in December: a roaster operator/ laborer, an acid plant operator, a production lead trainee/ roaster operator, a roaster operator/ laborer/ acid plant trainee and a roaster operator. (Appx. 2). At least four former strikers worked as laborers prior to the strike. (Appx. 4). LMC continued to bring in JMS workers, with two coming in and one leaving. One of the new JMS employees (Grizzell) was referred to by JMS and LMC as an electrician, and listed elsewhere as a roaster operator, mechanic, and maintenance helper. (Tr. 313, Jt. Exhs. 21, 73, 146, 152, GC Exh. 15). Four former strikers named in the Complaint were listed as electricians prior to the strike, and one was listed as an instrument technician. (Appx. 4).

After the December JMS employees arrived, Operations Manager Nonack told JMS that they could use "at least 1 more," ending 2021 with 53 replacement workers, six JMS employees and room for "at least" one more. (Appx. 4, Jt. Exh. 85).

2. January 2022- May 2022

Replacement workers continued to depart in 2022, with a replacement roaster operator leaving on January 13, 2022 (Appx. 2). LMC took on three more JMS employees, one on

[8] I will occasionally include the asserted reasons for the departure of some JMS employees in this decision. I want to note that I am not making any determinations about whether any employee involved in this matter was terminated for cause and am only citing the reasons some employees were terminated because it is relevant to whether LMC was justified in using JMS workers instead of recalling strikers.

January 3 and two on January 18. (Appx. 3, Jt. Exhs. 16 and 49, GC Exh. 15). JMS employee McEldowney left on January 26. (Appx. 3, Jt. Exh. 152). That same day, Nonack asked JMS for two more production employees, ending the month with eight JMS employees at LMC, with vacancies for at least two more. (Jt. Exh. 70).

Four replacement workers left in February, including a senior lab analyst, a packer, and two roaster operators. (Appx. 2). At least four former strikers worked as packers before the strike, and four as senior lab analysts. (Appx. 4). Two JMS employees left in February, leaving six, with a stated need for at least two more. (Appx. 3, Jt. Exh. 70).

A replacement laborer/packer left in March. (Appx. 2). At least two former strikers worked as laborers/packers just prior to the strike. (Appx. 4). LMC did not recall either of them but did take on four[9] new JMS employees on March 7, and an additional employee on March 21, all categorized as "production." (Appx. 3, Jt. Exhs. 49, 50, and 152).

In a March 17 email, JMS Recruiter Hartig told LMC that he was still working on getting four more production workers and two electricians. (Jt. Exh. 50, 51). Nonack responded that they would be losing one of the JMS employees that arrived on March 7, so they would need five more production workers instead of four. (Jt. Exh. 144). Three JMS employees left in March. (Appx. 3). At the end of the month, LMC had 47 replacement workers and eight JMS workers, with vacancies for at least five more production workers and two electricians.

Three more replacement workers left in April: two roaster operators, and replacement worker Pitts, who was hired as a production operator, scheduled as a laborer, listed on the payroll sheet as a roaster operator and remembered by Production Superintendent Wagner as a janitor, left on April 13 (Appx. 2, Tr. 337, R. Exhs. 10, 11, p. 43, Jt. Exh. 168). At least one former striker worked as a janitor before the strike. (Appx. 4).

LMC did not recall any strikers in April, but did take five more JMS workers. Nonack responded to Hartig's April 6 email notifying him of the new workers by saying that he still wanted "2 production and 1 to 2 mechanics if you can find them." (Appx. 3, Jt. Exh. 48). JMS also sent two electricians to Langeloth in April. One left within two days. (Appx. 3, Jt. Exhs. 46, 130). A third was scheduled but did not report. (Jt. Exhs. 19, 46). LMC did not recall any of the strikers who worked as electricians or instrument repair technicians prior to the strike. (Appx. 4).

Four JMS production workers left before the end of April, after Nonack's April 6 email asking for additional workers. (Appx. 3). At the end of the month, there were nine JMS production workers and one electrician, with a stated need for at least two more production workers, an electrician, one to two mechanics, and potential vacancies to replace the workers who left after Nonack made his request for more employees.

[9] Although JMS employee Shields was listed on R. Exh. 9(b) as "never worked," other documents show that he was there for at least a week. (Jt. Exhs. 16, 145, 152, GC Exh. 15).

No replacement workers left in May. JMS sent two new employees, Yazevac[10] and Pine. A third employee was scheduled to start but never worked. (Jt. Exh. 46). Yazevac and Pine were listed as "production." However, emails and LMC documents show that Pine worked in the maintenance department. (Jt. Exh. 139, R. Exh. 9(a)). In an email exchange with JMS recruiter Hartig on May 6, Operations Manager Nonack said he was "in desperate need of anyone with mechanical ability." Hartig told him they had a mechanic "in the works," and he was searching for more electricians and mechanics. Nonack replied, "Honestly even if they have some mechanical ability I'll take them at this point…can use them as helpers." (Jt. Exh. 129). The only remaining JMS electrician left in May, leaving the total number of JMS employees at Langeloth at eleven, with vacancies for at least two electricians and two production workers. (Appx. 3).

C. LMC creates recall matrix

LMC started putting together a recall list in May. (Tr. 621). Operations Manager Nonack testified that he was responsible for creating the original matrix. (Tr. 448, 617, R. Exh. 12(a)). QA Manager Janet Kuban took over the matrix after May 2022, and LMC produced an updated matrix through October 2024. (Tr. 448, R. Exh. 12). Both the original and updated matrixes tracked whether an employee made an individual unconditional offer to return to work, which Nonack testified was a prerequisite to being recalled. (Tr. 618, 642). He further testified that the individual offers had to be written, and that if an employee made a verbal offer to return, LMC would follow up with them. (Tr. 642). Although employees were assigned points in other categories, Nonack testified that the individual offer to return was the most important factor in whether an employee would be recalled or "skipped over." (Tr. 653).

The matrixes included columns showing employees' hire date, last work location, and years of service. (R. Exhs. 12, 12(a)). Points were assigned for seniority, with employees receiving 1 point for less than five years of seniority, and 2 points for more than five years. (Tr. 618-619). Nonack testified that he did not give employees points for all their years of seniority because he wanted hiring to be "based more on skill," which he defined as experience working in various classifications. (Tr. 642). The matrix also has a column titled "RT." Nonack testified that this was short for "retirement," which he described as a "nomenclature" for employees who "had started taking their 401(k)." (Tr. 653). Nonack testified that LMC "reached out to" the employees marked "RT" to see if they wanted to make an unconditional offer to return, and that he did not "believe" that LMC "heard back from most of them," but acknowledged that he did not contact any of these former strikers himself. (Tr. 654).

LMC assessed the skills of the former strikers on a scale of 0-5 for various classifications. (R. Exhs. 12, 12(a)). Nonack testified that if an employee was "task trained" on a job they received a score of 1, if they were a "fill-in[11] operator," they received a 2, and then if they were

[10] Yazevac came to LMC on May 11, 2022, but did not receive "Level 1" roaster operator training until February 28, 2023 (after he was directly hired by LMC). (Jt. Exhs. 151(a) and 152). Nonack testified that JMS maintenance helpers did not receive training, but roaster operators did. (Tr. 665).

[11] The transcript states that Nonack used the word "filling," but this appears to be in error, as the matrix indicates that a score of 2 is for a "fill-in" operator, which would make more sense than "filling."

full-time average, a 3, full-time above average, 4, and "independent operator," 5. (Tr. 619, R. Exhs. 12, 12(a)). Nonack testified that he was not involved in assigning the skill ratings and did not know how they were calculated, because he did not manage or supervise the employees and had no knowledge of their skills. (Tr. 643). QA Manager Kuban, who took over responsibility for the list from Nonack, directly supervised lab employees just prior to the strike but testified that she was not asked to provide input into the skill scores for lab employees. (Tr. 737-738). LMC did not provide any other evidence to show how the skill numbers were determined.[12]

Former strikers lost points for absences prior to the strike. Nonack testified that he did not know what time frame the absences were drawn from. (Tr. 620, 670). Employees were also given a score for completing LMC's "Work Safe Home Safe" training and participating in the program. (R. Exhs. 12, 12(a)). Nonack testified that program participation points were assigned for employees that were "living the values" of the program by being "active in the safety culture," and that these points were assigned by the Work Safe Home Safe facilitator. (Tr. 619, 652). However, he did not explain how these points were calculated. (Tr. 668).

Strikers were also deducted points for involvement in pre-strike workplace incidents that involved first aid (FA), medical treatment (MT) and lost time (LT). (Tr. 620, R. Exhs. 12, 12(a)). Nonack testified that he personally assigned points in this column. (Tr. 656). He testified that the records came from the previous seven years and were drawn from an internal safety spreadsheet from 2012-2019, but LMC did not offer this spreadsheet into evidence. (Tr. 669-670). A lost time incident was worth negative five points, and an incident requiring first aid was worth negative one point. Medical treatment meant a deduction of three points. (Tr. 670-671). The difference between first aid and medical treatment was described as the difference between "administering a Band-Aid" at the plant and getting stitches off-site. (Tr. 671).

The matrix also had a column titled "(unconfirmed)." (R. Exh. 12). This included various entries, such as "ex asphalt company," "Weirton (Cliffs)," or just the word "yes." Nonack testified that these entries showed where LMC believed employees went to work during or after the strike, but he did not know where the information came from, what types of work the former strikers might be performing, or whether the work was the same as their job at LMC. (Tr. 655).

Once all the points were assessed, Nonack testified that LMC recalled the striker with the "highest score off the last job" when a vacancy occurred in that classification, but only if they made an individual unconditional offer to work; it was "unconditional return to work first, score second." (Tr. 653). Kuban testified that she and Nonack looked at the matrix to see if there was someone who could be reinstated to the position, and if there was, they contacted the employee to offer reinstatement. (Tr. 736).

[12] Nonack testified that the information on the "left side" of the matrix came from the "production superintendent, senior supervisors, and Joe Niedzialkia…Joe used other people, I believe, to fill that section." (Tr. 619-620). Niedzialkia did not testify about how the scores were determined.

D. June 2022 staffing changes

A replacement acid plant operator (Pratt) left on June 7, 2022. (Appx. 2, R. Exhs. 9(c),[13] 10, 11, p. 46). Another replacement worker, who worked as a rhenium operator trainee, was promoted to production supervisor on June 22. (Tr. 324, R. Exhs. 9(c), 10). There were at least three former strikers who worked as rhenium operators before the strike. (Appx. 4).

Two JMS employees, Plants and Lindsay, left LMC on June 1 and 2. (Appx. 3). On June 3, JMS Recruiter Hartig emailed LMC Operations Manager Nonack to let him know he was planning to send over an electrician and two production employees. Nonack responded, "Lower your standards…[smiling face emoji] we had 2 jenmar [sic] guys quit this week and **we were already down 6 people**." (Jt. Exh. 126, p. 2)(emphasis added). When Hartig asked how many more JMS workers were needed, Nonack responded, "I need 8 more." (Jt. Exh. 126, p. 1).

JMS sent LMC seven new employees after this email exchange, with two arriving on June 7 and the rest on June 28. (Appx. 3). JMS also sent another electrician, who started on June 13, leaving LMC with a total of 17 JMS employees at the end of June. (Appx. 3).

1. LMC begins making reinstatement offers to former strikers

LMC started recalling former strikers in mid-June. Former striker Crago, who started working at Langeloth in May 2019 and was one of the first employees to be recalled, testified under subpoena about his experience. He contacted LMC about three days after the strike started to ask about returning to work and was told that the company's hands were tied. (Tr. 373, 383). He did not hear anything more until he received a call from QA Manager Kuban and Operations Manager Nonack in May 2022 asking if he would like to come back to work. (Tr. 373).

The original recall matrix, which Langeloth represented was current as of May 31, 2022, does not indicate that Crago made an unconditional offer to return to work (UORTW), although he is marked as making on one on December 18, 2021, on the updated version of the matrix. (Tr. 448, R. Exhs. 12, 12(a)). Kuban, who was responsible for the updated matrix, testified that she did not make the notation showing that Crago made an individual UOTRW, and did not know of any document showing that he made such an offer. (Tr. 719). LMC produced copies of individual UORTW from other employees, but not from Crago. (R. Exh. 17). Crago did not recall making an individual offer to return, and did not believe that he made one. (Tr. 372).

Crago received an overall score of 6 on both the original and updated recall matrix. (R. Exhs. 12, 12(a)). His last job was listed as "roaster operator," and he received a score of 3 (indicating "full time average" work) for his skill in that classification. (Tr. 619, R. Exh. 12). He testified that prior to the strike he was a laborer and a helper on Roaster 6 and other roasters and did not have a full-time bid in any job due to his lack of seniority. (Tr. 374-375, Jt. Exh. 154).

[13] QA Manager Janet Kuban testified that Jt. Exh. 168 incorrectly listed Pratt's termination date as August 10, 2021, and that the termination date listed in R. Exh. 9(c) was correct. (Tr. 685, 732).

Crago received a reinstatement offer on June 14, 2022. His letter stated:

> As a follow up to our call on 6/13/2022 and in response to your unconditional offer to return to work, I am writing to offer you the position of Roaster Operator with Langeloth Metallurgical Company LLC. This is the same job classification that you held on the date the strike commenced with the same or substantially equivalent job duties. Your rate of pay is $25.43/hr. with current benefits of…. We need to receive a written response from you within 14 calendar days of the date of this letter….By rejecting the offer of reinstatement, you are no longer eligible for recall. If we do not receive the written response from you within the timeframe, we will assume you have rejected the offer of reinstatement.

(R. Exh. 18, p. 30). The other reinstatement letters were similar to this one. (R. Exh. 18). Crago returned to work on August 8, 2022.

LMC sent reinstatement offers to four former strikers in addition to Crago on June 14. Three were also offered reinstatement as roaster operators at $25.43 per hour: Mercer, Crawford, and John Stover. (R Exh. 18, pp. 18, 24, 29). Mercer and Stover are marked on both the original and updated recall matrixes as having made individual UORTW, and LMC provided copies of their written individual offers. (R. Exhs. 17, pp. 30, 38). All had "roaster operator" listed as their last work location prior to the strike. (Appx. 4, R. Exh. 12).

Crawford was not marked as making an UORTW on the May 2022 matrix but was marked as making one on the updated matrix. (R. Exhs. 12, 12(a)). LMC provided a copy of an unconditional offer from Crawford dated August 24, 2021. (R. Exh. 17, p. 10). Crawford received a score of 3 on the May 2022 matrix, and an overall score of 4 on the updated matrix after receiving an additional point for participating in the safety program. (R. Exhs. 12, 12(a)). QA Manager Kuban testified that she and Nonack called Crawford to offer him reinstatement and asked for a response within two weeks. When he did not respond, she sent a follow-up letter on July 19, 2022, telling him that his offer was considered rejected and he was being removed from the from the reinstatement list. (Tr. 701, R. Exh. 19, p. 6).

Mercer received a score of 5 on the May 2022 recall matrix, but this score was increased to 11 on the updated matrix, with his skill points on the roaster increased from 3 to 4 and additional points added for skill as a pure operator and safety program participation. (R. Exhs. 12, 12(a)). Mercer returned to work on June 27 and is now listed as a pure oxide operator on LMC's payroll list. (Jt. Exh. 168).

John Stover received a score of 8 on the updated recall matrix. (R. Exh. 12). His recall letter indicates that LMC called him on June 13 to offer him reinstatement. (R. Exh. 18, pp. 28-29). Stover returned to LMC on July 11, 2022. (Jt. Exh. 168).

The fifth former striker to receive a reinstatement offer on June 14 was Griffith, who was offered reinstatement as a mechanic, his last position before the strike, at $27.58 per hour. (Appx. 4, R. Exh. 18, p. 14). LMC provided a copy of his individual UORTW. (R. Exh. 17, p. 15,). On the original recall matrix, Griffith had a score of negative 7. (R Exh. 12(a)). On the

updated matrix, his score was negative 5, with fewer points deducted for "lost time" accidents. (R. Exh. 12). QA Manager Kuban testified that Griffith rejected the reinstatement offer by phone, and she sent him a letter confirming his verbal rejection on June 22. (R. Exh. 19, p. 4).

a. June 15 reinstatement offers

Four former strikers received reinstatement offers on June 15. Former striker Veltri was offered a position as a mechanic at $27.58 per hour. (R. Exh. 18, p. 37). His last work location was listed as "MER" (mobile equipment repair), on the updated recall matrix and on the last classification list before the strike. (Appx. 4, R. Exh. 12). He was marked on the matrix as having made an unconditional offer to return to work, but LMC did not provide any evidence that he did so. (R. Exh. 17).[14] Veltri did not return to work until June 2023. (Jt. Exh. 168).

Former striker Stillwell was offered a position as a roaster operator on June 15. (R. Exh. 18, p. 22). LMC provided a copy of an individual UORTW from Stillwell dated August 18, 2021. (R. Exh. 17, p. 37). Stillwell's last job was roaster operator, and he got an overall score of 3 on the updated matrix, decreased from 5 on the May 2022 matrix. (Appx. 4, R. Exhs. 12, 12(a)). Kuban testified that Stillwell rejected the reinstatement offer, and she sent a confirming letter on January 11, 2023. (Tr. 701, R. Exh. 19, p. 5).[15]

Former striker Waters received an offer to return as a mechanic, his last position before the strike. (Appx. 4, R. Exh. 18, p. 45). He was marked as making an individual UORTW on the updated matrix. (R. Exh. 12). However, it presented no evidence he made one. (R Exh. 17). Waters received an overall score of 12 on the recall matrix, but was recalled after Griffith, who received a score of negative 4. (R. Exh. 12). Kuban testified that Waters did not respond to the offer, and she sent him a follow-up letter on July 19 informing him that his failure to respond within two weeks would be considered a rejection of the offer. (Tr. 703, R. Exh. 19, p. 13).

LMC also sent a reinstatement offer to former striker Findley to his pre-strike position as an acid plant operator at $27.33 per hour. (R. Exh. 18, p. 11). LMC provided a copy of his individual UORTW, dated August 16, 2021. (R. Exh. 17, p. 13). Findley received a score of 11 on the recall matrix. (R. Exh. 12). He returned to work on July 11, 2022. (Jt. Exh. 168).

b. June 16 offers:

Three employees received reinstatement offers on June 16, including Shane Stover, who was offered reinstatement as a roaster operator. (R. Exh. 18, p. 42). Although LMC provided no evidence that he made an individual UORTW, he was marked on the recall matrix as having done so. Stover was listed as a laborer just prior to the strike. (Appx. 4, Jt. Exh. 154). He returned on July 18, 2022.

[14] LMC provided a copy of a letter that was purportedly from Veltri resigning his employment on December 22, 2019. Veltri is not named in the Complaint. (GC Exh. 1(c), Appx. A-C).

[15] The Complaint incorrect lists July 19, 2022, as the date Stillwell rejected his offer. (GC Exh. 1(c), Appx. C). It should be January 11, 2023.

Former striker Withers was offered reinstatement to his pre-strike position in the acid plant at $27.33 per hour. (R. Exh. 18, p. 47, Appx. 4). LMC provided a copy of his individual UORTW dated August 17, 2021. (R. Exh. 17, p. 41). Withers received a score of 14 on the recall matrix. (R. Exh. 12). Withers received a reinstatement letter after Findley, who received a score of 11, but their letters indicated Withers was contacted by phone on June 13 and Findley on June 15. Withers returned to work on July 11, 2022. (Jt. Exh. 168).

Former striker Durbin was offered a position as a ferro crusher/ operator at $25.43 per hour. (R. Exh. 18, p. 8). LMC provided a copy of his individual UORTW, dated August 17, 2021. (R. Exh. 17, p. 12). Durbin was the only former striker listed as a ferro crusher on the recall matrix; the pre-strike classification sheet listed him as a ferro operator, as did the payroll report. (Jt. Exhs. 154, 168). Durbin returned to work at LMC on July 5, 2022. (Jt. Exh. 168).

c. Remaining June reinstatement offers:

LMC offered former striker Murphy reinstatement to his pre-strike job in the rhenium plant at $27.33 per hour on June 22. (R Exh. 18, p. 4). LMC provided an individual UORTW dated August 22, 2021, for Murphy. (R. Exh. 17, p. 31) He received an overall score of 15 on the recall matrix and had rhenium operator listed as his last work location. (R. Exhs. 12, 12(a)). LMC provided an email from Murphy declining the offer on July 19. (Tr. 700, R. Exh. 19, p. 1).

Former striker Miller was offered reinstatement as a mechanic, his last position before the strike, on June 23 and returned to work on July 18, 2022. (Appx. 4, R. Exh. 18, p. 35, Jt. Exh. 168). He was marked on the recall matrix as making a UORTW, but LMC provided no evidence that he submitted one. (R. Exh. 12, 17).

The final June offer went to former striker Diamond, who was offered reinstatement as an ore dock/ ferro operator at $29.50 per hour on June 27.[16] (R. Exh. 18, p. 48). Diamond last worked as an unloader prior to the strike (Appx. 4, Jt. Exh. 154) but is listed as a ferro operator on the recall matrix. (R. Exh. 12). He returned to work on August 1, 2022, and is now listed as a briquette operator. (Jt. Exh. 168). LMC provided a copy of an individual UORTW Diamond submitted on August 23, 2021. (R. Exh. 17, p. 11).

2. LMC starts directly hiring JMS workers

On June 17, 2022, LMC offered to directly hire JMS employee Brandon Lindsay, who started working at LMC in April 2022 and quit on June 2, directly into a position as a roaster operator at $25.43 per hour. (Jt. Exh. 156, p. 3). Lindsay started in his new position on June 27. (Jt. Exh. 168). At the time LMC offered Lindsay a job, there were still at least six former strikers who worked as roaster operators prior to the strike that had not been recalled. (Appx. 4).

[16] The Complaint incorrectly cites Diamond's rehire date as June 27. (GC Exh. 1(c), Appx. C).

E. July- August 2022 staffing

1. Reinstatement offers

Former striker Breese was offered reinstatement as an electrician at $32.50 per hour on July 5. (R. Exh. 18, p. 32). He was marked as making an UORTW, but Langeloth did not provide any documentation showing that he made an individual offer. (R. Exhs. 12, 17). Breese accepted reinstatement with a start date of September 19, but after he assertedly did not report for a scheduled physical or a rescheduled date in October, Kuban sent him an email informing him that he was considered as refusing the reinstatement offer and was being removed from the recall list. (R. Exh. 19, pp. 8-10). QA Manager Kuban did not know if replacement workers were subjected to pre-employment physical exams but testified that JMS workers were. (Tr. 739). Breese contacted Kuban in September 2024 to express interest in returning. (R Exh. 19, p. 12). [17]

On August 19, Langeloth offered former striker Johnston reinstatement to a front lab analyst position in the lab at $27.33 per hour. (R. Exh. 18, p. 1). Johnston made an individual UORTW on August 17, 2021. (Tr. 406, R. Exhs. 12, 17, p. 19). He testified that he had another job and declined reinstatement. (Tr. 407, R. Exh. 18, p. 2, R. Exh. 19). However, he had further contact with LMC in 2023 and returned on July 17, 2023, as outlined later in this decision.

2. LMC makes more direct hire offers to JMS workers

LMC made direct employment offers to JMS employees Bishop and Waitts on July 18 for positions as roaster operators at $24.43 per hour. (Jt. Exh. 156, pp. 25, 45). Production Superintendent Robert Wagner testified that Bishop cleaned the roaster, worked as a roaster operator, and later moved to a position in the rhenium plant[18], and that Waitts worked as a roaster operator and is currently working as a packer. Both are still at LMC. (Tr. 281, 288, Jt. Exh. 168). There were at least six roaster operators, four packers, and two rhenium operators among the former strikers who had not received offers as of July 2022.

JMS sent one production worker to Langeloth in July, but two others left, as did the remaining electrician, leaving the number of JMS employees at 15 at the end of July. (Appx. 3).

In August, LMC extended a direct employment offer to JMS employee Matazinski for a roaster operator job at $24.43 per hour. (Jt. Exh. 156, p. 11). He started working directly for Langeloth on August 17. Langeloth also offered to hire JMS maintenance employee Pine but later rescinded the offer. He left on August 4. (Jt. Exhs. 125, 152). Counting the conversions of Matazinski, Waitts and Bishop (who started their new jobs in August), a total of seven JMS employees left in August. (Appx. 3, Jt. Exhs. 124, 152). Plant Superintendent Niedzialka

[17] Also in September 2024, Plant Superintendent Niedzialkia said that LMC could bring Breese in "through Jenmar at the rate of $30 per hour." (Jt. Exh. 94).

[18] The transcript incorrectly identified this as the "uranium plant."

requested a replacement for one of the departing employees on August 19, leaving JMS staffing at eight with a request for more. (Jt. Exh. 124, Appx. 3).

3. Other July-August staffing changes

Three replacement workers left in July, including Lancaster, who was hired as a production operator and worked as a senior analyst in the front lab, a replacement packer, and a replacement roaster operator. Two more left in August, a replacement acid plant operator and replacement electrician/ instrument repairperson Graham.[19] (Appx. 2).

Former striker Crago returned to work in August after receiving a reinstatement offer in June. (Jt. Exh. 168). He testified that he operated a molybdenum roaster when he returned, and that the work done in the roasting department was the same as before the strike, with laborers transporting the raw molybdenum to the roasting area and operators feeding material into the roasters, monitoring the temperature of the roasters and clearing obstructions. (Tr. 375, 376-377). He testified that the roasters were not responsible for packing the finished product, and that they used the same equipment as they did before the strike. (Tr. 377).

Crago testified that he worked side by side with JMS employees, who had a high rate of turnover, and that when a JMS worker left, they were replaced. (Tr. 378). He testified that the other roaster operators and the foreperson were responsible for training the JMS employees. He was not aware of them reporting to a different supervisor. (Tr. 379). After Crago returned, he asked for a steady job on the daylight shift and was moved into the ferro department. He primarily works in that department and testified that he is willing to help out in other departments if needed but is very rarely asked to do so. (Tr. 379-380). He testified that employees in the ferro department rotate jobs, as they did before the strike, and that the work in the department remains largely unchanged. (Tr. 376, 380). The department has the same supervisor, Bob Crawford, as it did before the strike. (Tr. 380-381). It also has a packer that is dedicated just to that department. (Tr. 380).

4. LMC advertises for an electrician/ instrument repairperson

LMC placed a newspaper advertisement for an "electrician plus instrument repair and/or PLC" in August. (Jt. Exh. 159(a)). Former striker Quader, who was classified prior to the strike as an instrument technician, was never offered reinstatement. There were also at least three former strikers who worked as electricians before the strike who were not recalled. (Appx. 4).

F. September- October 2022

JMS numbers did not change in September. One JMS worker left in early October, and JMS Recruiter Hartig told QA Manager Kuban that JMS had five production candidates "in the

[19] Graham is listed as leaving in 2021 on Jt. Exh. 168; however, Janet Kuban testified that this date was incorrect and that the 2022 termination date in R. Exh. 9(c) was correct.

works" (Jt. Exh. 37). JMS sent four new production employees to LMC on October 20.[20] One of the employees only stayed one day, leaving JMS staffing at ten, with additional employees expected, at the end of October. (Appx. 3). Reinstated striker Shane Stover left LMC on October 1, and a replacement roaster operator left on October 7. (Jt. Exh. 168, Appx. 2).

1. LMC makes new hire offer

LMC sent an employment offer to new hire Hucik on September 19, 2022, for a position as "Electrician/ Instrument Repair/ PLC," at $30 per hour. (Jt. Exh. 156). It is unclear whether Hucik applied for the job in response to the August 2022 advertisement, but there is no evidence he ever worked at LMC before. Hucik started work on October 10. (Jt. Exh. 168). Operations Manager Nonack admitted that former striker Quader would have been qualified for the position "[i]f he would have put in an unconditional return to work." (Tr. 641).

2. October reinstatement offers

LMC sent reinstatement offers to two more former strikers in October- David Scott Brown, who was offered reinstatement to his pre-strike job as a mechanic at $27.58 per hour on October 19, and Jeffrey Guiddy, who was offered reinstatement to his pre-strike job as a roaster operator on October 11. (Appx. 4, R Exhs. 18, p. 10, 18(a)).

LMC provided a copy of Brown's individual UORTW, dated August 17, 2021, but did not provide one for Guiddy, who was marked on the updated matrix as making the offer on June 18, 2022. (R. Exhs. 12, 17, p. 5). Guiddy was back at work on October 31. (Jt. Exh. 168). QA Manager Kuban testified that LMC never heard back from Brown, and she sent him a letter dated November 3, 2022, telling him failure to respond would be considered a rejection, and that he would be removed from the recall list. (R. Exh. 19, p. 3).[21]

G. November and December 2022

1. Reinstatement offers

Langeloth offered reinstatement to former striker Bartoletti on November 4. Bartoletti was offered a position in the acid plant and was reinstated on December 5. (R. Exh. 18, p. 6). Bartoletti's last work location was listed as "back lab" on the recall matrix, and he was also listed as a pure oxide operator on the pre-strike classification list. (R. Exh. 12, Jt. Exh. 154). The pure oxide operator position is in the operator classification, while the acid plant is in the skilled

[20] One of these employees, Woods, is not included on R Exh. 9(b) or GC Exh. 12, but is included on Jt. Exh. 152 and is mentioned in an email by Niedzialka in January 2023 asking that he and another employee be terminated and that "3 more for production" be sent to Langeloth. (Jt. Exh. 123). I find that this is sufficient to demonstrate that Woods worked at LMC as a production worker.

[21] The Complaint states that this offer was made and rejected in September, but the record shows Brown was offered a job on October 19 and rejected it on November 3, 2022. (GC Exh. 1(c), Appx. C).

classification, and the laboratory positions are in their own separate classification. LMC provided a copy of an UORTW from Bartoletti dated August 17, 2021. (R. Exh. 17, p. 1).

QA Manager Kuban testified that Bartoletti was offered a position in the acid plant because the lab is also a skilled position, and he had prior experience in the acid plant. (Tr. 735). A pre-strike qualifications sheet confirmed that Bartoletti was qualified for the acid plant as of January 2019. (GC Exh. 3, Appx. 4). However, there were still at least six unrecalled strikers who had "acid plant operator" as their last job, both on the pre-strike classification list and the recall matrix. (R. Exh. 12, Jt. Exh. 154, Appx. 4). Bartoletti returned to LMC on December 5.

LMC also sent an offer of reinstatement as a roaster operator to former striker Jeffrey Smith on November 29. (R. Exh. 18, p. 27). Smith's last position in the plant was listed as ferro operator. (R. Exh. 12, Jt. Exh. 154, GC Exh. 3). LMC provided a copy of a December 20, 2022, letter informing Smith that he was being removed from the recall list for failing to respond to the offer. (R. Exh. 19, p. 7).[22] At this time, there were at least five former strikers who last worked as roaster operators who had not been recalled. (Appx. 4).

2. JMS staffing

A JMS production worker left on November 14, and LMC Plant Superintendent Niedzialkia asked JMS to remove JMS employee Bush (who came to LMC in July) for "multiple confrontations with production supervisors" on November 28, dropping the total number of JMS workers to eight. (Jt. Exh. 36, Appx. 3). There was no change in JMS numbers in December. Two more replacement workers left, however: a replacement roaster operator, and replacement worker Wilburn, who was hired as a production operator, identified by Production Superintendent Wagner as an electrician, classified as a production lead, and scheduled at the end of the strike as a roaster operator. (Tr. 353, R. Exhs. 10 and 11, p. 62, Jt. Exh. 168, Appx. 2).

3. LMC makes two new hire offers

LMC extended an employment offer on December 5 to new hire Kurtz for a position as "maintenance helper" at $24.69 per hour. (Jt. Exh. 156, p. 47). It also sent an offer to new hire Hunter Guiddy for a position as "mechanic trainee" at $26.78 per hour. (Jt. Exh. 156, p. 49). Guiddy is now working for Langeloth as a mechanic, and Kurtz is working in the maintenance shop. (Tr. 282-283, 288). There is no evidence that either employee ever worked at LMC before. At this time, there were at least seven former strikers who worked as mechanics prior to the strike but had not been offered reinstatement. (Appx. 4, Jt. Exh. 154).

H. January- March 2023:

A replacement unloader left on January 30. (Appx. 2). Direct hire (and former JMS employee) Lindsay also left LMC in January. (Jt. Exh. 168). Replacement Poole, who worked as a roaster operator, roaster trainer, and production lead trainee, left on March 1. (R. Exhs. 9(c),

[22] The Complaint incorrectly states that Smith was rehired on October 31, 2022. It should state that he rejected recall on December 20, 2022. (GC Exh. 1(c), p. 8).

10, 11, p. 45). At this time, there were at least three former strikers who worked as unloaders and five who worked as roaster operators who had not been recalled.

1. LMC makes additional direct and new hire offers and advertises chemist position

LMC sent direct hire offer letters for roaster operator positions to four more JMS employees: Alford and Stone (January 18), Yazevac (January 23), and Taylor (January 25) (Jt. Exh. 156, pp. 5, 9, 57, 59). It is unclear from the record if Alford, who left LMC in February, accepted the offer. (Jt. Exh. 156(a), p. 9). Stone started as a direct hire in January and was later promoted to roaster trainer, and Taylor, who started his new role at LMC in February, later held positions as a pure oxide operator and rhenium operator. (Tr. 283-285). Yazevac started in his new role at LMC in February.

LMC also extended an employment offer to new hire Tanley for an electrician position at $30 per hour. (Jt. Exh. 156, p. 7). Tanley started in January but did not finish out the month. (Jt. Exh. 168). At the time of these offers, there were numerous strikers who last worked as roaster operators, pure oxide operators, electricians, instrument repair technicians and rhenium operators who had not yet been offered reinstatement. (Appx. 4).

Former striker Brian Johnston testified that in February 2023, he saw an advertisement for a chemist position at LMC. (R. Exh. 29). After reviewing it, he determined that the job was the same one performed by former striker Porchiran, who was LMC's hourly chemist before the strike. Johnston contacted QA Manager Kuban via email in February 2023 about the job. She initially told him he was not qualified because he lacked a degree. He responded that he had the qualifications, except for the degree. However, the job required experience doing ISO 9001 audits, and he acknowledged that while he had experience with these audits, he was not certified to do them. (Tr. 425-426). Johnston returned to the lab later in 2023.

2. JMS staffing

LMC continued to bring in new JMS workers in January, with Plant Superintendent Niedzialka asking Recruiter Hartig to remove two JMS production workers and send three more. (Jt. Exhs. 35, 123). Two new JMS production employees arrived on January 17. (Appx. 3). Counting Stone's January conversion to direct hire, LMC had seven JMS employees at the end of January. JMS sent two more production workers to Langeloth in February, but one did not last out the month. (Appx. 3). With the February conversions of Yazevac and Taylor to direct hires, and the termination of Alford, the number of JMS production workers dropped to five at the end of February. JMS sent one employee to LMC in March, but another left, so the total number of JMS workers remained at five.

3. Reinstatement offer

LMC only made one new offer of reinstatement in 2023, to former striker Brady, who was offered reinstatement to his former position as a janitor at $23.70 per hour in February.

(Appx. 4, R. Exh. 18, p. 40). Brady was reinstated on March 6. (Jt. Exh. 168). Brady was marked on the matrix as having made an UORTW, but Langeloth did not provide evidence that he made an individual offer. (R. Exhs. 12, 17).

I. April- June 2023:

One JMS employee, Locy, arrived in April, raising the number of JMS employees to six. (Appx. 3). Direct hire (and former JMS employee) Yazevac, who was hired as a roaster operator in January 2023, left in April 2023. Direct hire Matazinski left in June. (Jt. Exh. 168). LMC brought in four new JMS employees in May. One of the employees, Dillow, was specifically requested by LMC Plant Superintendent Niedzialkia, who said he got his name from another LMC employee. (Jt. Exh. 120) [23]. Three JMS employees left, leaving the total number of JMS employees at seven at the end of May. (Appx. 3). The number of JMS production employees stayed the same in June, with one JMS employee arriving and another terminated a few days later. (Appx. 3, Jt. Exh. 31).

Two replacement workers left in May: a rhenium operator and a pure oxide operator. (Appx. 2). Replacement Wojtalik, who was hired as a packer/shipper and listed on the payroll sheet and schedule as a senior lab analyst, left on June 21. (Appx. 2). At this time, there were still strikers who held these positions prior to the strike who had not yet been recalled.

1. Additional reinstatements

In June, LMC contacted former striker Johnston and offered him his former position back again, with more money and vacation. (Tr. 409- 410). He was told he would oversee the work in the lab, help lab employees improve their techniques, and make standards for the machines. (Tr. 410). He returned on July 17, 2023.[24] (Tr. 410- 411, Jt. Exh. 168).

Johnston testified that prior to the strike, the lab jobs were divided into "front" and "back" lab positions. He was initially assigned to the back lab in 2021 and eventually moved into a front lab position around 2013. (Tr. 402-403). When he returned after the strike, the front and back positions were combined, but he testified that the lab employees still perform the same work as they did before the strike, apart from a pure oxide test which has been simplified since earlier technology to test it became obsolete. (Tr. 420-422). Johnston testified that replacement worker Peppers temporarily worked in the lab until he was reinstated, at which point she returned to production and later quit. (Tr. 404-405). She and Johnston were both included on a training roster for the lab on July 28, 2023. (GC Exh. 9).

LMC also reinstated former striker Veltri on June 12, 2023. (Jt. Exh. 168). Operations Manager Nonack testified that Veltri was "recalled" because he was the only striker who was qualified to do mobile equipment repair prior to the strike. (Tr. 624). Veltri was listed as a "mobile equipment operator" on the final schedule before the strike, and his last job was listed as

[23] Dillow is listed on Respondent's Exhibit 9(a) as a maintenance worker.

[24] The Complaint states that his rehire date is unknown. (GC Exh. 1(c), Appx. B).

"MER" on the recall matrix. (R. Exh. 12, Jt. Exh. 154). However, the offer letter he received on June 15, 2022, stated that he was being offered a "Mechanic" position, which was the "same job classification" that he had "on the date the strike commenced with the same or substantially equivalent job duties." (R. Exh. 18, p. 36).

QA Manager Kuban testified that the MER/mechanic position was a newly created job and that Veltri was not recalled but hired. (Tr. 739). However, LMC did not produce a copy of the second offer letter, which was marked on the recall matrix as received "about 6/12/23." (Tr. 741-742, R. Exh. 12). Kuban testified that Veltri resigned in 2019, and that LMC had no written individual UORTW for him, but he was the only employee who had both mechanical and mobile equipment repair experience. (Tr. 726-727, R. Exh. 20, p. 8).

J. July- September 2023:

A replacement packer left LMC on July 28, 2023. (Appx. 2). None of the four former strikers who worked as packers before the strike received reinstatement offers. (Appx. 4). LMC increased the number of JMS employees at the facility to nine, with one employee departing and three more arriving. (Appx. 3, 4).

A replacement worker who was hired as an electrician but transferred to an "AP" position and worked as a rhenium operator left on August 27. (Appx. 2). The two former strikers who worked as rhenium operators before the strike did not receive reinstatement offers. One JMS employee came in on August 21 but left the next week, and another JMS worker left, leaving the number of JMS employees at eight at the end of August. (Appx. 3).

JMS sent a new production employee to LMC in early September, but the employee only stayed for about a week. (Jt. Exhs. 30, 152, GC Exh. 15). The list of JMS employees that LMC Plant Superintendent Niedzialkia created, R. Exh. 9(b), states that this employee, Robertson, "never worked," but an email he sent to JMS on September 12 states that Robertson quit because of the "heat from the roasters," confirming that he did work at the facility. (Jt. Exh. 30, pp. 1-2). In the same email chain, Niedzialkia told JMS that LMC "seemed to be having difficulty keeping people you send us" and asked for a meeting to discuss how they could have a better retention rate. (Jt. Exh. 30, p. 2). Another JMS employee left at the end of September, dropping the number of JMS production workers at Langeloth to seven.

K. October-December 2023:

Two replacement workers left in October: Buzzard, who was hired as a laborer and worked as a janitor and roaster operator, left on October 2, 2023, and Johnston, who was hired as a production operator and worked as a packer, left the following day. (Appx. 2). There were at least four former strikers who worked as laborers and four who worked as packers who had not been recalled. (Appx. 4). LMC did not recall any former strikers, but continued to bring in JMS employees, with two more starting on October 2. (Appx. 3). One of these employees, Porfilio,

left on October 9;[25] another JMS employee came in on October 9 but only stayed for one or two days. A third JMS employee, Jones, left on October 9 and came back in 2024. (Appx. 3).

In an October 18 email, Niedzialkia told JMS Recruiter Hartig that LMC "picked up some toll roasting and will need to start another roaster very soon. If anyone can start sooner that would be helpful." When Hartig asked how many employees he wanted, he replied, "[f]ive would be a good start. Then we can take another look if all five stick around." (Jt. Exh. 116). Although it had a stated need for employees so it could open another roaster, LMC did not recall any strikers. Instead, it brought in two more JMS employees on October 30, bringing the total number of JMS workers to nine at the end of the month, and added five more in November. One left before the end of the month, leaving 13.[26] (Appx. 3, 4).

On November 7, 2023, LMC Safety Representative Steve Borodycia emailed JMS Recruiter Hartig to tell him he had "a friend who should be calling or emailing you about taking a roaster operator position. His name is Kevin Brown. I had already spoken to Joe about him. He said he could attend the Wednesday safety training class next Wednesday on 11/15/2023 and be able to start here on 11/20/23 @ 7AM." Hartig respondent, "Joe did mention Kevin being interested in the position" and said that he could get him into training if he wanted the job. (Jt. Exh. 128). Brown worked at Langeloth from November until February 2024. (Appx. 4).

One JMS employee left on December 1. JMS sent another over, but he only worked for a few days. (Appx. C). LMC Plant Superintendent Niedzialkia declined JMS' offer to send more workers, saying that they would "reevaluate after the new year." (Jt. Exh. 113).

L. January 2024

A replacement mechanic left LMC on January 23. (Appx. 2). No former strikers were recalled. A JMS employee was terminated on January 8, 2024 at LMC Plant Superintendent Niedzialkia's request. (Jt. Exh. 112). JMS sent another production worker on January 17, but he left at the end of the month, leaving a total of 11 JMS workers at LMC. (Appx. 3).

1. LMC makes only two reinstatement offers in 2024

LMC made only two reinstatement offers to former strikers in 2024, both on January 29. Former striker Harrison was offered reinstatement as a roaster operator, and former striker Sienkel was offered reinstatement as a pure oxide operator. (R. Exh. 18).[27] LMC provided copies

[25] Exhibit 9(b) stated that Porfilio only worked for one day, October 2 (R. Exh. 9(b)). JMS listed him as working from October 2 through October 9 (Jt. Exh. 152), which was corroborated by an email from LMC Plant Superintendent Niedzialkia asking for Porfilio to be removed on October 9. (Jt. Exh. 117).

[26] Superintendent Niedzialkia marked one of these employees (Karmann) as "never worked" on R. Exh. 9(b), but sent an email he responded to news that Karmann quit by claiming that he was "falling asleep in training and while on the Roaster…" (Jt. Exh. 115).

[27] Sienkel and Harrison were named in Appendix B of the Complaint as not receiving offers of

of individual UORTW for both. (R Exh. 17, pp. 16, 36). Harrison was reinstated on February 12 and is currently listed on Langeloth's payroll as an unloader. (Jt. Exh. 168). His last work location before the strike was plant utility operator. (R. Exh. 12, Jt. Exh. 154, Appx. 4). He qualified as a roaster operator in November 2014. (GC Exh. 3). Sienkiel was reinstated on February 12 to his pre-strike position of pure oxide operator. (Jt. Exh. 168, Appx. 4).

M. February to March 2024

Replacement Zeiler, who was hired as a laborer and worked as an acid plant utility operator and acid loader, left on February 16. (Appx. 2). The former striker who worked as an acid plant utility operator was never offered reinstatement. (Appx. 4).

On February 1, LMC Plant Superintendent Niedzialkia asked JMS to "please find us 3 new candidates for Production." (Jt. Exh. 110, p. 2). He also told JMS Recruiter Hartig he might "have a name" to give him and followed up the next day with the name Carson, which he said he got from a Langeloth employee. Carson started work on February 7 but left before the end of the month. Five additional production workers came to LMC from JMS in February. One left before the end of the month, along with five other JMS employees, dropping the total number of JMS employees to nine with Locy's conversion to direct hire. (Jt. Exhs. 109, 153, p. 3, Appx. 3).

1. LMC makes another direct hire offer

On February 23, LMC offered to directly hire JMS employee Locy as a roaster operator at $25.95 per hour. (Jt. Exh. 156, p. 39). In an email exchange between Kuban and Hartig, Kuban asked for Locy's rate of pay and Hartig informed her that it was $24.30 per hour. (Jt. Exh. 108). Superintendent Wagner testified that Locy is now working for Langeloth as a packer. (Tr. 287, 289).[28] There are at least four former strikers who worked as packers before the strike but were never offered reinstatement. (Appx. 4).

2. Other March staffing changes

Four new JMS production employees arrived at Langeloth in March, but one (Carson) did not last the month. A JMS employee who worked at Langeloth the previous year returned on March 8, but left by March 14. (Appx. 3). Another JMS employee was terminated, leaving a total of ten JMS workers at the end of March.

Former striker Haspel, who worked as an acid plant operator just prior to the strike, and held jobs as a laborer, pure operator and roaster operator during his employment, contacted LMC in March 2024 and spoke to QA Manager Kuban about returning to work. She told him he would have to send her an individual unconditional offer to return, which he did on March 7, 2024. (Tr.

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reinstatement. Based on the evidence presented at the hearing that both received offers and returned to work, I find that they should be included in Appendix C of the Complaint instead.

[28] Locy was incorrectly identified in the transcript as "Lowson." (Tr. 287).

259, 266-267, R. Exhs. 12, 17, p. 39, GC Exh. 16). Kuban testified that Haspel made an unconditional offer via telephone and then confirmed it via email. (Tr. 697, R. Exh. 17, p. 39).

N. April- May 2024 (plant shutdown)

Two JMS employees were terminated on April 1. (Appx. 3). In an email about their terminations, LMC Plant Superintendent Niedzialkia informed JMS that the plant would be going into "shutdown" during the last week of April and May. (Jt. Exh. 101). Another JMS employee left on April 24 (Appx. 3), and Niedzialkia advised JMS that although the plant would be in "shutdown mode" until the end of May, the remaining JMS employees "should be able to remain working" during that time. (Jt. Exh. 100, p. 2). There were eight JMS production employees at the plant as of the end of April. Despite the shutdown, LMC took four more JMS production workers in May, with one arriving on May 6 and the rest arriving on May 20, 22 and 29, bringing the total number of JMS production employees at LMC to 12. (Appx. 3).

O. June- August 2024

Three new JMS employees came to LMC in June, and two left. (Appx. 3). In addition to these employees, former JMS employee Trent Bush returned to LMC on June 18 despite his termination in 2022 for asserted confrontations with his supervisors, increasing the total number of JMS employees at LMC to 14. (Jt. Exhs. 36, 153).

Two replacement workers, a ferro operator and a packer/ rhenium operator/ trainee left LMC in July. (Appx. 2). At this time, there were two former strikers who worked as rhenium operators, two who worked as ferro operators, and four who worked as packers prior to the strike who had not been offered reinstatement. (Appx. 4).

Three JMS production employees also left in July, but were replaced by three new employees, so the JMS numbers remained unchanged at 14. Two JMS workers came in and August and three left, dropping the total number of JMS production employees to 13. (Appx. 3).

1. LMC asks some strikers to make individual offers to return

LMC sent a letter to former striker (and rhenium operator) Tracy Minger on July 23, 2024, stating:

> We heard that you might be interested in making an unconditional return to work. We need to receive a written response from you as to whether this is accurate within 14 calendar days of the date of this letter.
>
> If we do not receive a written response from you within the timeframe, we will assume you are not interested in making an unconditional return to work and you will no longer be eligible for recall.

(R Exh. 17, p. 40).

QA Manager Kuban also sent an email to former striker and rhenium operator Barnett on July 18, 2024, asking if he was "interested in making an unconditional return to work." He responded that he was interested but wanted to know more about job security and compensation. After Kuban responded to his questions, he told her that he would need additional pay to leave his current job, and she responded that the terms were not negotiable and asked him to respond within two weeks of the email. He followed up to ask again if pay could be negotiated, and she did not respond. (R. Exh. 17, pp. 21-25). Kuban testified that she viewed his response as a conditional offer to return, so she did not reply. (Tr. 695-696).

Kuban sent an email to former striker and electrician Green on July 17 asking him to confirm that he was not willing to make an unconditional offer to return and sent a follow-up email on July 18 asking him to respond by the following day, July 19, 2024. (R. Exh. 17, pp. 6-8). Kuban testified that she initially contacted Green because she heard he might want to return to work. (Tr. 692-694). She sent him a letter on July 23, 2024, stating:

> Per our conversation on July 17, 2024, and in my follow-up email to you on that same day, you indicated you probably weren't interested in making an unconditional return to work at LMC. We need to receive a written response from you as to whether this is accurate within 14 calendar days of the date of this letter.
>
> If we do not receive a written response from you within the timeframe, we will assume you are not interested in making an unconditional return to work and you will no longer be eligible for recall.

(R. Exh. 17, p. 8).

LMC sent similar correspondence to former strikers Hall, Jones, Testa, Watson, Wright, and Yamber in August 2024. (R. Exh. 19, pp. 14-19). Hall and Yamber received emails stating that LMC wanted to know if they were interested in making "an unconditional offer to return to work," and were told that they had to respond within 14 days or LMC would "assume you are not interested in making an unconditional return to work and you will no longer be eligible for recall." (R. Exh. 19, pp. 14, 19). Jones and Watson received emails asking them to confirm whether they were interested in making an unconditional offer to return. (R. Exh. 19, pp. 15, 17). Testa and Wright received emails confirming conversations in which they assertedly said they were not interested in making an unconditional offer and informing them that if they did not respond in 14 days, LMC would assume they were not interested, and they would no longer be eligible for recall. (R. Exh. 19, pp. 16, 18).

P. September- December 2024

LMC continued to bring in new JMS production workers in September, with seven coming in, and four leaving, increasing JMS staffing to 16. (Appx. 3). JMS sent three new production employees in October, but three left, leaving a total of 16 for October. Two more left

in November, and one came in, lowering the number to 15. (Appx 3). Two additional JMS production employees arrived in mid-December. (Appx. 3).

1. LMC advertises rhenium operator and pure oxide operator positions

LMC advertised a rhenium operator position to the public on October 7, 2024, and posted another advertisement for a pure oxide operator on November 26, 2024. (Jt. Exhs. 159(b), (c), (d)). It offered new hire Richard Duesenberry a position as rhenium operator on October 7. He declined the job. (Jt. Exh. 156, p. 51, Jt. Exh. 156(a), p. 7). Operations Manager Nonack testified they offered the job to the rhenium operators at the plant, who turned it down, and that no former strikers applied for the job. (Tr. 627). It appears Nonack was referencing the letters LMC sent to employees in July and August about making individual offers to return. Nonack further testified that LMC recalled the only former striker who last held a pure operator position, so it was posted to the public, and no former strikers applied. (Tr. 628).

Reinstated striker Sienkel (who was recalled to the pure oxide plant in January 2024) passed away in October. Direct hire Taylor was moved into Sienkel's vacated position as a pure oxide operator and later moved to the rhenium plant. (Tr. 284-285). Former striker Haspel, who last worked as an acid plant operator, testified that he contacted LMC supervisor Bob Crawford about the position, but Crawford told him that "they" said they had not received Haspel's individual offer to return to work. (Tr. 269). However, Haspel was marked on the recall matrix as making an individual UORTW in March. (R. Exh. 12, p. 3). Haspel acknowledged that the pure operator position paid less than the acid plant position, and that the working conditions were for the most part better in the acid plant. (Tr. 271). However, while he was working in the acid plant, he also worked as a pure operator on overtime shifts. (Tr. 273).

2. More direct and new hire offers

LMC offered new hire Anthony (Paul) Minger a position as a rhenium operator at $26.99 per hour on September 30. (Jt. Exh. 156, p. 5). He started work on October 21. (Jt. Exh. 168).

LMC extended direct hire offers to four JMS employees in December, John Niedzialkia, Isinghood, Healy and Stuewe. All were hired as pure oxide operators at $26.99 per hour. (Jt. Exh. 156, pp. 19, 27, 33, 156(a)). Isinghood and Niedzialkia converted to their permanent positions in December, leaving the number of JMS employees at 15, due to the two additions. Healy and Stuewe converted to direct hires in January, leaving the total number of JMS employees at 13 as of the start of the hearing in this case. (Jt. Exh. 168, Appx. 3).

Between the end of the strike and the date of the hearing, 43 replacement workers left, and 22 remained. LMC made about 19 offers of employment to former JMS workers or new hires. 17 accepted, and 13 were working as of the start of the hearing. In that same time, LMC made reinstatement offers to 24 former strikers. 16 were reinstated, and 14 remained at the plant as of January 2025. This left LMC with 49 employees on its permanent payroll and 13 temporary workers as of the date of the hearing. Of these 62 employees, half were permanent replacement workers or reinstated strikers, and half were temporary workers or new hires. About fifty former strikers never received a reinstatement offer from LMC.

ANALYSIS

The Complaint alleges that LMC failed and refused to reinstate former strikers, or failed to timely reinstate them, after the Union made an unconditional offer to return to work on their behalf. Before determining whether LMC failed to timely reinstate the former strikers, I must first determine the type of strike employees engaged in. This issue appeared to be settled at the hearing when the parties stipulated that LMC employees engaged in an economic strike from September 9, 2019, to August 16, 2021. (Jt. Exh. 11, para. 8). However, in its Brief, LMC called that stipulation into doubt by arguing that the strike was converted to an unlawful strike after LMC withdrew recognition from the Union on April 8, 2020.

I. Employees were never engaged in an illegal strike

LMC claims that it does not have to recall any of the strikers because their economic strike was converted to either an "illegal strike by a minority of employees" or an unlawful recognitional strike after it withdrew recognition from the Union in April 2020. (Respondent Brief at 35-37). There are several good reasons for me to recommend that the Board disregard this claim completely. First and most importantly, it contradicts LMC's stipulation, made at the hearing and signed by its counsel, that its employees were engaged in an "economic strike" through "August 16, 2021." (Jt. Exh. 11, p. 3, No. 8). LMC provided no justification in its brief for why it decided to contradict its own signed stipulation.

LMC also failed to signal that it was planning to make this argument in any way prior to making it in its brief. It failed to raise this claim in its Answer, and the argument that the strike was unlawful contradicts its affirmative defense that its employees were engaged in an "economic strike as defined by the National Labor Relations Act" and were therefore not entitled to "immediate reinstatement if there was not a substantially equivalent position or if there was a permanent replacement in their former position." (Answer, GC Exh. 1(e), p. 4). LMC also failed to argue that the strike was unlawful during its opening statement or otherwise put me or the other parties on notice that the legality of the strike might be at issue. (Tr. 456-460).

There is no evidence that LMC ever filed a charge alleging that the Union or the strikers engaged in an illegal strike or picketing. Employers have very strong remedies available to them when a union engages in an illegal strike- including injunctive relief under Section 10(l) of the Act. If LMC sincerely believed that its employees were engaged in an illegal strike for over a year, then it does not make sense that it simply tolerated the conduct without filing a charge. Further, by sitting on its claim for this long, LMC allowed the statute of limitations on any claim it might have to expire. Unfair labor practice claims must be raised within six months of a violation, and the Union stopped picketing on August 16, 2021, well over three years ago.

LMC also presented no evidence to support its claim. While an ALJ can find a violation of the Act in the absence of a specific complaint allegation or charge, that is reserved for cases where the allegation is "closely connected to the subject matter of the complaint and has been fully litigated." *Pergament United Sales*, 296 NLRB 333, 334 (1989). Here, there is no evidence about wording on picket signs, verbal or written demands, or anything else that might show that the strike had an unlawful purpose.

In essence, LMC is asking the Board to strip away the rights of all the former strikers without offering any evidence that the strike had an unlawful objective and without giving the Union or employees an opportunity to defend themselves. For these reasons, LMC's argument merits no further consideration. However, out of an abundance of caution about what the Board may wish to consider, I have analyzed the cases LMC cited in its brief.

LMC first argues that the strike was unlawful by analogy to Board cases finding that strikes by a minority of employees in contravention of the established collective bargaining agent were unlawful. The problem with this argument is that the only union involved in this case is the UAW, which had a seventy-plus year collective bargaining relationship with Langeloth prior to the strike. After LMC withdrew recognition from the Union, employees continued supporting the strike, and the Union went to the NLRB to make its case that the withdrawal of recognition was unlawful. After the Union exhausted its appeals, it immediately pulled down its picket line and ended the strike. There is no evidence that the strike was in any way intended to undermine a new collective bargaining representative.

The case law LMC cites is not applicable to the facts presented here. In the first case, *Emporium Capwell Co.,* 420 U.S. 50 (1975), a group of employees became frustrated with their union's decision to address racial discrimination issues through binding arbitration and decided to picket their employer to discourage members of the public from shopping there. The Supreme Court upheld the Board's finding that the employees' actions were not protected because they put the employer in the untenable position of deciding whether to deal with the picketers or participate in arbitration with the union as required by the collective bargaining agreement. *Id*. at 62-63. There is no evidence of any such competing demands in this case.

In *Confectionery & Tobacco Drivers v. NLRB,* 312 F. 2d 108 (2d Cir. 1963), employees told their union and employer mid-contract that they no longer wished to be represented. When the employer attempted to enforce the dues checkoff clause in the contract, the employees went on strike in violation of the no-strike clause. The strike was unprotected because it violated the no-strike clause, and unlawful because it sought repudiation of the dues-checkoff clause. The facts are not analogous to the ones presented here, where employees were striking for a new collective bargaining agreement, not to repudiate their old one. In addition, LMC misstated the holding of this case, claiming that the Board found that the strikers were not entitled to reinstatement even though the employer condoned their unlawful conduct. (R. Brief at p. 36). In fact, both the Board and the Second Circuit Court of Appeals found just the opposite: the employer could **not** deny reinstatement because it condoned the activity. See *Id*. at 113-114.

Finally, in *Parks v. Atlanta Printing Pressmen,* 243 F.2d 284 (5th Cir. 1957), after a CIO[29] union was certified, an AFL union struck for recognition. The strike was found to be unlawful under Section 8(b)(4)(C) of the Act, which prohibits unions from "forcing or requiring any employer to recognize or bargain with a particular labor organization…if another labor organization has been certified as the representative of such employees…" 29 U.S.C.

[29] The facts in *Parks* arose in 1953, before the AFL-CIO (American Federation of Labor- Congress of Industrial Organizations) merged into one labor organization in 1955.

158(b)(4)(C). This case is irrelevant, because there is no rival union at LMC. It was also decided before 1959, when Congress passed the Landrum Griffin Act, amending the National Labor Relations Act (Act) to include Section 8(b)(7), which addresses recognitional picketing.

LMC also argues that strikers were engaged in "at best, a recognitional strike" from April 20, 2020, until August 16, 2021, and had no legal justification delay making an unconditional offer to return. The Act defines recognitional picketing as picketing "where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees…unless such labor organization is currently certified as the representative of such employees" when (A) another union has been recognized, (B) a valid representation election has been held within the last twelve months or (C) "where such picketing has been conducted without a petition under Section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing…nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public, (including consumers) that an employer does not employ members of, or have a contract with, a labor organization...." 29 U.S.C. 158(b)(7).

As already discussed, LMC presented no evidence (such as photos of picket signs or examples of verbal or written demands) that its employees were engaged in a recognitional strike or picketing. The only case it cited in support of its claim that the union engaged in unlawful recognitional picketing was *United Mine Workers of America v. Ark. Oak Flooring Co*., 351 U.S. 62 (1956). It is unclear to me why LMC chose this case, as its primary holding concerned whether a state court could enjoin otherwise lawful recognitional picketing when the involved union failed to file non-Communist affidavits as required by Section 9 of the NLRA.[30] Further, like *Parks*, this case was decided before the Landrum-Griffin Act, so the Court did not consider Section 8(b)(7) of the Act because it did not yet exist.

Two cases that the Board decided after Landrum-Griffin, *Frank Wheatley Pump and Valve*, 150 NLRB 565 (1964) and *Whitaker Paper Company*, 149 NLRB 731 (1964), are both factually similar to this case and fatal to LMC's claim that the strike became unlawful after April 8, 2020. Both involved economic strikes where the employers hired permanent replacements and withdrew recognition. The unions (with support from the striking workers) continued to picket. The employers filed ULP charges alleging that the unions were engaged in unlawful recognitional picketing. The Board found that a lawful economic strike called by a union when it was a recognized majority representative is not converted into an unlawful strike for recognition just because the struck employer hired permanent replacements and withdrew recognition from the union. In making its decision, the Board cited the legislative history of Section 8(b)(7)(C), which made it clear that Congress did not intend to limit the right of employees to strike for better wages and working conditions, but instead to limit what it viewed as "blackmail picketing" by unions without a connection to the struck employer. See *Whitaker*, supra at 734; *Wheatley*, supra at 566. Compare *Haslett Storage Warehouse*, 287 NLRB 735, 736 (1987).

[30] The Court held that the failure to file the affidavits only prevented the union from filing its own charges at the NLRB- it did not mean that it could not strike for recognition, or that a state court could enjoin the employees from engaging in their federally protected right to strike and picket. *Id*. at 75.

II. Reinstatement rights of the former strikers

Having found that the employees never engaged in an illegal strike, I must determine what kind of strike they did engage in before deciding when they were entitled to reinstatement. LMC's decision to contradict the stipulation that this was an economic strike calls into question whether this strike was truly economic in nature. If the stipulation no longer stands and this strike is categorized as an unfair labor practice strike, then the former strikers were entitled to immediate reinstatement upon making an unconditional offer to return, displacing, if necessary, any replacement workers. See *Mastro Plastics Corp*. v. NLRB, 350 U.S. 270, 278 (1956). However, the GC and the Charging Union have not varied from their position that this was an economic strike, and no evidence was introduced that would support finding that it was caused by unfair labor practices. Therefore, I will analyze this as an economic strike.

During an economic strike, an employer may give replacement workers assurances that "their places might be permanent" and "is not bound to discharge those hired to fill the places of strikers…in order to create places for" returning strikers when the strike is over. *NLRB v. Mackay Radio*, 304 U.S. 333, 345-346 (1938). Economic strikers remain employees with recall rights, however. Board precedent is clear that "economic strikers who unconditionally apply for reinstatement at a time when their positions are filled by permanent replacements: (1) remain employees; (2) are entitled to full reinstatement upon the departure of replacements unless they have in the meantime acquired regular and substantially equivalent employment, or the employer can sustain his burden of proof that the failure to offer full reinstatement was for legitimate and substantial business reasons." *Laidlaw Corporation*, 171 NLRB 1366, 1369-1370 (1968), enfd. 414 F.2d 99 (7th Cir. 1969), cert. denied 397 U.S. 920 (1970).

A. The Union made a valid unconditional offer to return to work

To be eligible for reinstatement, former strikers must make an unconditional offer to return to work. This offer may be made by individual strikers or by a union acting on the strikers' behalf. See *In re Detroit Newspaper Agency*, 340 NLRB 1019, 1019 (2003); *National Business Forms, Inc.,* 189 NLRB 964, 964 (1971), *enf'd,* 457 F.2d 737, 741 (6th Cir. 1972); *Houston & North Texas Motor Freight Lines, Inc*., 88 NLRB 1462, 1465 (1950). Once a union has made a "collective offer to return to work for all striking employees," their employer must "offer reinstatement to employees for whom positions are available." *Colonial Haven Nursing Home*, 218 NLRB 1007, 1011 (1975), enf. partially denied on other grounds, 542 F.2d 691 (7th Cir. 1976). An employer may not require employees to submit individual requests for reinstatement after their union has made a collective offer to return on their behalf. *Id*.; see also *In re Pirelli Cable Corp*., 331 NLRB 1538, 1539, 1541 (2000).

LMC claims that it required employees to make a written individual offer to return to work before being considered for reinstatement and argues that it was justified in doing so because the Union no longer had majority support at the time it made the offer on the strikers' behalf. Both claims are unfounded. First, LMC did not prove that it required all former strikers to make an individual offer to return before being reinstated. Second, its claim that the Union's unconditional offer was invalid because it no longer represented a majority of LMC employees is

contrary to longstanding Board precedent that a union's lack of majority status does not impact its ability to make a valid unconditional offer to return to work on behalf of striking workers.

1. LMC did not show that all reinstated strikers made individual offers

LMC Operations Manager Nonack testified that former strikers had to make an individual unconditional offer as a prerequisite to being considered for recall, and that if an employee made a verbal offer, they were required to follow up in writing. (Tr. 642, 653). However, the record showed that LMC made reinstatement offers to nine employees but did not provide their written offers to return to work. (R. Exh. 17).[31] They were marked on the recall matrix as making individual UORTW, but LMC did not call any witness who could testify about what information was used to determine that these employees made an individual offer to return.

QA Manager Kuban, who took over responsibility for the matrix after Nonack, testified that she entered the information she was given into the matrix, but could not specify the source of that information. (Tr. 721). When asked about Jeff Guiddy, who was marked on the matrix as making an unconditional offer on June 18, 2022 (after she took over responsibility for the matrix), Kuban said the offer could have been made in a "phone call," which "could have been…to someone other than me." (Tr. 720-722, R. Exh. 12). She also testified that even though they "could not find" some of the written offers, that did not mean they "didn't exist," but she acknowledged that none of the employees reached out to her personally. (Tr. 734-735).

Former striker Crago testified that he did not recall making an individual offer, and did not believe that he made one. (Tr. 372). The original recall matrix, which Langeloth represented was current as of May 31, 2022, does not indicate that he made an individual UORTW. (Tr. 448, R. Exh. 12(a)). The updated matrix includes a notation that Crago made an unconditional offer to return to work on December 18, 2021. (Tr. 448, R. Exh. 12). There is no explanation for why his offer was not marked in the first matrix but was marked in the second. Kuban testified that Crago's written offer "may exist" but that she could not locate it. (Tr. 719). Based on Crago's credible testimony, and the absence of any document or other evidence showing that he made an individual offer, I find that he never one. I also find that there is no credible evidence that any of the other employees who did not have a written offer on file ever made an individual offer to return. Therefore, LMC cannot deny reinstatement to other former strikers on this basis.

2. Langeloth had no legal basis to require individual offers

Even if LMC could prove that it consistently required the former strikers to submit their own individual offers to return, it failed to demonstrate that it had any legal basis for refusing to honor the Union's unconditional offer to return to work on behalf of the striking workers and instead require employees to submit their own individual offers before they could be considered for reinstatement.

[31] The employees who received an offer of reinstatement (R. Exh. 18) but did not have an individual offer to return to work on the record (R. Exh. 17) were Brady, Crago, Stover, Guiddy, Waters, Veltri, Miller, Breese and Smith.

a. The Union had the authority to speak on the strikers' behalf

Even though the Union was no longer recognized as the collective bargaining representative at Langeloth, it still had authority to speak for the striking employees when it made an unconditional offer to return to work on their behalf. The Union provided strike benefits and other material support to the strikers through the end of the strike and afterward, and the strikers retained their membership in their Union and continued to picket their employer until the Union ended the strike. The Union told the former strikers that it planned to make an unconditional offer to return on their behalf, and there is no evidence that any of the former strikers objected to the Union's action or told LMC that the Union did not speak for them.

The Act does not prohibit "a minority representative from acting as the employees' agent for the purpose of requesting reinstatement." *F.M. Homes, Inc*., 235 NLRB 648, 649, n. 4 (1978). In *American Machinery Corporation*, 174 NLRB 130, 133 (1969), enf'd, *American Machinery Corporation v. NLRB*, 424 F.2d 1321 (5th Cir. 1970), the Board examined the validity of a union's unconditional offer to return on behalf of strikers after a withdrawal of recognition. The facts of that case are almost identical to the ones here: the employees engaged in an economic strike, and the employer hired permanent replacements and withdrew recognition from the union, which filed unfair labor practice charges. After the union's NLRB case was dismissed on appeal, it ended the strike and made a written unconditional offer to return to work on behalf of all the striking employees. The Board adopted the ALJ's finding that even though the employer withdrew recognition, their union still had authority to speak on behalf of the striking workers, even if it did not represent the replacement workers. See *Id*. at 133; see also *American Machinery Corporation v. NLRB*, 424 F.2d 1321, 1328 (5th Cir. 1970) (enforcing the Board's decision, the Fifth Circuit characterized the claim that the unconditional offer was not valid because the union was no longer recognized as a technicality of the type discouraged by the Supreme Court in *Fleetwood Trailer Co*., 389 U.S. 375, 381 (1967), finding the right "to reinstatement does not depend on technicalities relating to application.").[32]

The GC and the Union both cite *Alaska Pulp Corp*. *II*, 326 NLRB 522 (1998) in their briefs. (GC Brief at 27, U. Brief at 12). In *Alaska Pulp*, the Board found that a union's unconditional offer to return on behalf of all striking employees was valid "despite the Union's decertification." *Id*. at 527. LMC challenges the precedential value of this case, based on a footnote two pages earlier in the decision stating, "Member Hurtgen expresses no view regarding whether the Union's unconditional offer to return to work on behalf of striking employees was valid despite the Union's decertification. He notes that the Respondent does not raise the issue in its exceptions." *Alaska Pulp II*, supra, at 525, fn. 18.

[32] The Board's decision in *Teledyne Still-Man*, 298 NLRB 982 (1990) is not directly on point, but is helpful. In that case, the union was decertified during a strike. It sent a letter to the employer terminating the strike, but did not make an unconditional offer to return to work on behalf of the striking employees. The ALJ found that the union did not have the authority to end the strike after being decertified. The Board disagreed, finding that because the union was actively involved in organizing the strike, and there was no evidence that employees continued to picket after the union announced the strike was over, ending the strike was an "internal union matter" that was not affected by the decertification vote. *Id*. at 983-984.

The conclusions in an Administrative Law Judge Decision (ALJD) are only recommended unless they are adopted by the Board. And even if exceptions are filed, if a party does not file exceptions on a particular issue in an ALJD, then the Board's adoption of the ALJ's findings as to that issue does not have precedential value in future cases. See *Anniston Yarn Mills,* 103 NLRB 1495 (1953). However, the Board typically states that its review is limited to certain issues at the beginning of a decision. See, e.g., *NTN Bower Corp.,* 356 NLRB 1072, 1072, n. 1 (2011). I have been unable to find any guidance on whether a footnote from one member of a Board panel stating that an issue was not raised in exceptions would preclude the Board's finding on that issue from having precedential value. Since a Board decision has precedent even when only two members of a three-member panel agree, it seems unlikely that there would be a different result with respect to whether exceptions were filed on an issue.

Further, it is unclear if the footnote cited by LMC applies to the part of the decision cited by the Union and the GC. Footnote 18 is attached to a discussion of the employer's argument that the ALJ "erred in awarding backpay to strikers whom the Respondent eliminated from its preferential hiring list for failing to individually request reinstatement…" The footnote specifically names five employees, Ozawa, Brown, Hansen, Bagley, and Johnson, who were presumably impacted by this claim. See *Alaska Pulp*, supra, at 525, fn. 18. But the portion of the case that the GC and the Union cite in their briefs is two pages later and is part of a discussion of whether the employer improperly denied reinstatement to an employee named Petraborg, who was not named in footnote 18. *Id*. at 527. I looked for a copy of the exceptions to see if that would clarify this matter but was unable to find one.

I find that there is no barrier to relying on the Board's decision in *Alaska Pulp*, especially when the Board cited two additional cases, *United States Service Industries*, 315 NLRB 285 (1994) and *Marlene Industries Corp. v. NLRB*, 712 F.2d 1011 (6th Cir. 1983) as support for its finding. In *United States Service Industries*, 315 NLRB 285 (1994), the Board held that even though there was "no evidence that the Union was the certified or recognized representative of the striking employees," because it conducted a strike vote, organized picketing and other strike activities, provided strike benefits, and involved striking workers in its unconditional offer to return on their behalf, "it was not necessary for the Union to have majority status" to act as the strikers' agent in making an offer to return. *Id*. at 286. In *Marlene Industries Corp. v. NLRB*, 712 F.2d 1011 (6th Cir. 1983), the Sixth Circuit upheld the Board's finding that the union made a valid unconditional offer to return even though it never obtained majority status as the strikers' exclusive bargaining representative. *Id*. at 1017-1018, citing *NLRB v. I. Posner*, *Inc*., 304 F.2d 733, 774 (2d Cir. 1962) (finding that the Act does not preclude "a minority union from acting as the employees' agent to request reinstatement.") (additional citations omitted).

b. The Union's offer was not untimely

LMC also claims that the unconditional offer to return to work was untimely because it occurred more than a year after it withdrew recognition from the Union. However, the cases it cites do not support a finding that the Union's offer, which was made as soon as it exhausted its NLRB appeal, was untimely. One of the cases LMC cites is *Hassett Storage Warehouse*, supra, 287 NLRB 735, which held that the involved union "ceased to be an incumbent representative

following the Employer's lawful withdrawal of recognition." *Id*. at 736.[33] But *Hassett* had nothing to do with the timeliness or validity of a union's unconditional offer to return to work. Instead, it examined whether it would infringe on employees' Section 7 rights to hold an expedited election under Section 8(b)(7)(C) of the Act during a strike. *Id*. at 735-736.

The facts of this case are nothing those in *Haslett*, where employees immediately crossed the picket line and signed a letter stating they no longer wished to be represented by the union after the strike was called. Because the employees were not picketing or striking, the Board found that there was no concern about infringing on their Section 7 rights by holding an expedited election. But it differentiated the facts of *Haslett* from those in *Frank Wheatley,* supra, 150 NLRB 565 and *Whitaker Paper,* supra, 149 NLRB 731, where (as in this case) employees were actively participating in economic strikes when their employers withdrew recognition based "on an alleged but unproven loss of [majority] status purportedly arising from the hiring of striker replacements." *Haslett*, supra at 736. Because the fundamental right to strike was at stake, the Board determined that it was inappropriate to interfere using Section 8(b)(7)(C), which was not intended to curb economic strikes. *Id*. This was true even when the picketing continued for more than a year after the withdrawal of recognition. See *Frank Wheatley*, supra at 566.

The other cases LMC cites, *Crosby Chem., Inc*., 105 NLRB 152 (1953) and *J.H. Rutter-Rex Mfg. Co*., 158 NLRB 1414 (1966), are also not applicable. First, both involve a gap of several years between the end of picketing and the unconditional offer to return. In addition, they both address the timeliness of offers to return after unfair labor practice strikes, not economic strikes. LMC claims that the strikers in this case "certainly should not be treated more favorably that unfair labor practice strikers." (R. Brief at 36). But the Board does treat unfair labor practice and economic strikers differently when it comes to whether they made timely offers to return. Because economic strikers are not able to displace permanent replacement workers, it is less disruptive to the employer's business to accept an unconditional offer from an economic striker after a strike is over. See *Teledyne Still-Man*, 298 NLRB 982, 985 (1990).

c. The Union's offer was unconditional

LMC also argues that the Union's offer to return was "not unconditional, in part, because the Union was seeking recognition from the Company at the time of the offer." (R. Brief, pp. 38-39). There is no evidence that the Union made any demands on LMC when it ended the strike. Its letter to LMC simply states that the strike was over and that it was making an "unconditional offer of the UAW, and UAW Local Union 1311 on behalf of the UAW Local 1311 bargaining unit members/ strikers to return to work." (Jt. Exh. 10). The case LMC cites, *Automatic Plastic Molding Co*., 234 NLRB 681, 683, fn. 12, is not applicable because in that case, the union's offer to return to work was found to be "predicated on Respondent's executing a collective bargaining

[33] Langeloth also cites *Quazite Corp.* 323 NLRB 511, 512 (1997), as supporting its assertion that the Union's unconditional offer "was not valid because the Union was not the representative of the employees and it was more than a year after the lawful withdrawal of recognition." (R. Brief, p. 38). But *Quazite* doesn't say this. Instead, it examines whether an employer's pre-strike misconduct was too remote in time to taint the evidence of employee disaffection it used as a basis to withdraw recognition.

agreement." LMC has presented no evidence that the Union made any statements conditioning its unconditional offer on further bargaining, let alone on reaching an agreement.

LMC also claims that by asking it to honor the Union's unconditional offer on behalf of striking workers, the Board is asking it to "recognize a minority union for certain purposes" in contravention of Board law. This argument is unsupported by the facts or the law. The Union only made an unconditional offer to return on behalf of the former strikers. It did not ask to bargain or deal with LMC in any way, and LMC provides no case law saying that accepting an unconditional offer from an unrecognized union is unlawful. The Board allows "various types of agreements and understandings between employers and unrecognized unions…within the framework of permissible cooperation." *Dana Corp*., 356 NLRB 256, 259 (2010). The Board has consistently held that a union's unconditional offer on behalf of former strikers is valid regardless of whether the union has majority status. Therefore, there is no basis to find that acceptance of such an offer constitutes unlawful bargaining with a minority union.

d. Individual offers did not render the collective offer invalid

Finally, LMC claims that by sending employees a form to make their own individual offers to return and suggesting that they fill it out, the Union rendered its offer on behalf of all the striking workers invalid. LMC cites no case law in support of this claim. The Board rejected a similar claim in *Colonial Haven Nursing Home*, supra, 218 NLRB at 1011. In that case, the Union's unconditional offer letter to the employer stated that employees had been instructed to report to work at their regular start time, and several employees made personal inquiries about reinstatement. The Board found that the ALJ erred in finding that the employees who did not personally inquiry were not part of the Union's unconditional offer. In *F.M. Homes, Inc*., supra, 235 NLRB at 649, the Board held that its determination that a return-to-work offer would have been futile was not "precluded by the fact that some of the employees subsequently made individual offers to return." *Id*., n. 5. There is therefore no basis to find that because some employees made individual offers, the ones who didn't are not entitled to reinstatement. At most, the individual forms were an "administrative convenience" for the employer, not a legal requirement. See *Peerless Pump Co*., 345 NLRB 371, 375 (2005).

B. Langeloth had numerous vacancies beginning when the strike ended and continuing through the present day

When a strike ends, "economic strikers who unconditionally apply for reinstatement (whether by themselves or by their Union on their behalf) are to be reinstated to their former jobs." *In re Detroit Newspaper Agency*, supra, 340 NLRB at 1019-1020, citing *Laidlaw Corp.*, supra, 171 NLRB 1366. If the strikers' positions are filled by permanent replacement workers, they are "entitled to full reinstatement on a nondiscriminatory basis either upon the departure of the permanent replacements or if those positions no longer exist, to substantially equivalent positions, unless they have in the meantime acquired other regular and substantially equivalent employment or the employer can show that it failed to offer reinstatement for legitimate and substantial business reasons." *Id*., citing *Rose Printing Co.*, 304 NLRB 1076 (1991).

Post-strike vacancies arise "when, for example, the company expands its workforce or discharges a particular employee, or when an employee quits or otherwise leaves the company." *Pirelli Cable Corp.* 331 NLRB 1538, 1540 (2000), citing *NLRB v. Delta-Macon Brick & Tile Co*., 943 F.2d 567, 572 (5th Cir. 1991). The General Counsel bears the burden of establishing that a vacancy exists. *Id*., citing *Aqua-Chem, Inc*., 288 NLRB 1108, 1110 fn. 6 (1988), enfd. 910 F.2d 1487 (7th Cir. 1990), petition for rehearing denied 922 F.2d 403 (7th Cir. 1991).

Hiring a new employee before offering a vacancy to a former striker is "presumptively a violation of the Act, irrespective of intent," unless the employer can show "legitimate and substantial reasons" for failing to rehire the strikers. *Laidlaw Corp*., supra, 171 NLRB at 1369, citing *NLRB v. Fleetwood Trailer*, 389 U.S. 375 (1967) and *NLRB v. Great Dane Trailers, Inc*., 388 U.S. 26 (1967). This is because the refusal to rehire strikers, standing alone, is so "inherently destructive of employee rights that evidence of specific antiunion motivation is not needed." *Id*. The employer bears the burden of establishing a legitimate business justification for its failure to rehire (or its delay in rehiring) former strikers. *Id*. at 1370.

The GC and Union established that LMC had vacancies for the former strikers beginning on August 17, 2019, the day the first replacement worker left after the strike, and continuing to the present day, when at least 44 permanent replacement workers have left LMC. Although LMC claims it was able to operate the facility with fewer people due to increased flexibilities it developed during the strike, its decision to bring in over 100 JMS workers in three years, directly hire 17 new employees and offer jobs to others, advertise job openings, and move existing employees into jobs that were once bid through schedule changes shows that it had vacancies but repeatedly bypassed its obligation to rehire the former strikers.

1. LMC filled vacancies with JMS workers instead of former strikers

As discussed in more detail earlier in this Decision and illustrated by Appendix 3, LMC brought in numerous JMS employees beginning in September 2021 and continuing through the date of the hearing. It is undisputed that JMS did work formerly done by strikers, including operating roasters, performing electrical and maintenance work, and filling in on other jobs, and reported to LMC supervisors. JMS told LMC to treat JMS workers "as if they were your employee," and they did. LMC had full control over scheduling and assigning the JMS workers and decided which employees would be terminated. LMC also exercised control over who would be hired to work at LMC through JMS, even sending names of specific employees to JMS for hire. JMS employees received a similar hourly rate of pay as permanent replacement workers, with wages starting between $22 and $24 per hour.

LMC brought in about 11 JMS workers in 2021, 30 in 2022, 27 in 2023, and 38 in 2024, for a total of 106.[34] While it would not be appropriate to count all of these positions as a separate vacancy that a striker could have filled because of the turnover among the temporary workforce, the constant presence of JMS employees at LMC (and LMC's numerous requests for additional

[34] This number counts the three JMS employees who had two separate stints working for LMC, Bush, Jenkins and Jones, twice. However, there is no evidence they returned to the same jobs or that jobs were reserved for them. Because these were additional vacancies that just happened to be filled by repeat JMS workers, I find that it is appropriate to count them twice.

employees) show that there was a consistent need for employees that could and should have been filled by former strikers. And those vacancies were not just in the roaster operator, maintenance and electrician jobs that the JMS workers filled, because (as discussed in more detail later in this section) replacement workers, reinstated strikers, and new hires were able to transfer into other jobs as JMS workers backfilled the more entry-level positions.

LMC estimated the number of JMS employees as consistently averaging between four and eight workers since 2021. (R. Brief, p. 47). After reviewing the monthly numbers (detailed in the fact section of this decision and on Appendix 3), this is a gross underestimate. Beginning in September 2021, when LMC lost two replacement workers but brought in four JMS workers (and scheduled a fifth), LMC brought in a continuous line of JMS workers, and frequently asked JMS to send more and find ways to keep them on the job longer.

The number of JMS employees only dropped to four twice- at the beginning of LMC's relationship with JMS in September 2021, and after LMC converted several JMS workers into direct hires in February 2023. I calculated the monthly totals by adding the number of employees who came in from JMS each month and subtracting the employees that left (including employees that came in but did not last out the month). When I took those totals and divided them by 41, the number of months from September 2021 through January 2025, the average number of JMS workers at LMC during that time was ten (rounded up from 9.73). (Appx. 3). This is not a full picture of the vacancies, however, as LMC consistently asked JMS to send more workers. See, e.g., Joint Exhibits 70 (asking for 2 more), 144 (seven more), and 126 (eight more).

a. JMS workers did the same work as former strikers

An employer cannot circumvent its obligation to bring back former strikers by bringing in temporary employees to do the work the strikers once performed. See *NTN Bower Corp*., supra, 356 NLRB at 1131 ("[t]he fact that an employer uses a temporary employee to do the job of a bargaining unit member does not make that job a temporary job.") It does not matter if the temporary workers are not getting the same pay or benefits as the former strikers, or even if they are only working for a short period; what matters is whether they are doing work that was done by the former strikers. *Id*.; see also *Oregon Steel Mills, Inc*., 300 NLRB 817, 828-829 (1990), enfd., 47 F. 3d 1536 (9th Cir. 1995) and *Medallion Kitchens*, 277 NLRB 1606, 1614-1615 (1986), enf'd in relevant part, 811 F.2d 456, 460 (8th Cir. 1987).

It is undisputed that JMS employees perform bargaining unit work, including operating and cleaning roasters, performing maintenance and electrical work, and filling in on other jobs as needed. They report to the same supervisors as LMC employees, work a full-time schedule, receive a similar rate of pay, and can be removed at LMC's direction. LMC had no relationship with JMS prior to the strike, and no past practice of using temporary labor to perform day-to-day bargaining unit work. Therefore, the former strikers were entitled to recall before LMC could bring in temporary workers. See *Medallion Kitchens*, supra, 277 NLRB at 1614 (employer's past use of part-time, temporary employees to work on summer projects did not mean that it could temporary workers to perform bargaining unit work instead of recalling former strikers).

LMC claims that it was not obligated to recall any strikers in the ten months after the strike ended because their jobs were filled "with the existing permanent staff and some temporary workers," which it claims amounted to a mere "reshuffling" of employees that did not create any vacancies. (R. Brief at p. 42, citing *Textron, Inc*., 257 NLRB 1, 4 (1982), enf. partially denied on other grounds, 687 F.2d 1240 (8th Cir. 1982)). *Textron* does not support LMC's claim, however, because it found that an employer did not create new vacancies by temporarily moving employees who were already in the plant into similarly classified jobs to meet changing production needs, when the employer moved employees between these jobs before the strike and the practice was reflected in the collective bargaining agreement. *Id*. at 4-5.

You can't "reshuffle" cards that aren't already on the table. JMS may have been in contact with LMC before the strike ended, but it did not tour the facility until three days after the strike ended, and did not send any workers until September. (Tr. 118-119, Jt. Exhs. 72, GC Exh. 18). Absent a legitimate and substantial business justification, LMC was obligated to fill the vacancies that occurred after the strike "through the use of its experienced employees returning to work from the *Laidlaw* list," or "at least" to give them the choice to return before giving their jobs to temporary employees. See *Oregon Steel Mills*, supra, 300 NLRB at 829.

b. LMC did not have a legitimate and substantial justification for bringing in temporary workers

LMC failed to show that it had a legitimate and substantial business justification for bringing in temporary workers instead of recalling the former strikers. LMC offered testimony from its president, Thomas Ondrejko, that LMC had to use temporary workers because they were facing serious economic challenges. (Tr. 558-559). He painted a picture of a company that had to adapt to changing circumstances and demands from a new owner, but failed to show how these issues, which started long before the strike, prevented LMC from recalling former strikers.

Prior to 2014, LMC sourced its molybdenum from the Thompson Creek mine, a related entity. When the mine was put into maintenance status in 2014, LMC had to begin sourcing raw molybdenum on the global market, which increased its costs and lowered its production output. Ondrejko estimated that Langeloth has been operating at about one-third of its total capacity for molybdenum production since about 2015 due to problems sourcing molybdenum on the open market. (Tr. 550). However, it has opened new lines of revenue with products like rhenium, high copper moly oxide and other products, and has made significant investments into the rhenium plant and other facility and infrastructure improvements. (Tr. 474-475, 552-553).

Thompson Creek and LMC were purchased by Centerra Gold in 2016. Ondrejko testified that Langeloth processed about 18 million pounds of molybdenum that year, and about 17 million in 2019, the year the strike started. (Tr. 561-562). It also increased its production of other roasted metal products, and Centerra has continued to invest money in the company, including a $3 million investment in new sulfur burners for the acid plant in 2019. (Tr. 573).

After production dipped due to Covid-19 and other factors in 2021, Centerra increased its attention on LMC, resulting in it getting what Ondrejko described as a "conditional budget" for a "couple of years." (Tr. 499-500). He testified that Centerra conducted a strategic review of the

molybdenum business, analyzing the cost of operations, the management team, and other factors. (Tr. 500-501). Concerns were raised about the continued viability of LMC during this review, and they had to consider what would happen if LMC was reduced to minimal operations, or "care maintenance." (Tr. 502-511, R. Exhs. 1, 2). However, Centerra determined that LMC could continue operating, and it has received an annual budget each year since then, including an approved 2025 budget, and the business has largely stabilized. (Tr. 502, 506, 530, 533-534, 553).

LMC is budgeted to process 15 million pounds of molybdenum in 2025 and already has contracts to process 14 million pounds. (Tr. 553-554). This figure does not include other roasted metal products (RMP) that Langeloth plans to produce. (Tr. 562). In addition, Centerra is planning to restart the Thompson Creek mine, which will allow LMC to source higher quality molybdenum at a lower price and potentially expand its business. (Tr. 554, 572).

Although LMC has undoubtedly faced challenges over the past ten years, they started well before the strike. LMC failed to establish that economic uncertainty forced it to use temporary workers, especially when (as described in more detail below) it failed to show that it saved any money by bringing in temporary labor or avoided laying off any full-time workers by doing so. See, e.g., *Oregon Steel Mills*, supra, 300 NLRB at 829 (employer failed to establish a nexus between its economic health and use of temporary workers). Finally, LMC continued to bring in JMS labor even after business stabilized and it got an approved annual budget, showing that its decision to use JMS was not solely an economic one. In fact, JMS numbers were at their highest in 2024, with an average of almost 13 JMS workers at LMC every month. (Appx. 3).

(1) LMC failed to show that it saved money by hiring JMS workers

LMC claims that it saved money by bringing in temporary workers instead of recalling strikers. As the GC points out (GC Brief, p. 27), cost savings alone are not a "legitimate and substantial business justification" to ignore the recall rights of former strikers. (GC Brief, p. 37, citing *Medallion Kitchens*, supra, 277 NLRB at 1615). And LMC failed to demonstrate that it achieved significant cost savings by bringing in JMS workers. President Ondrejko claimed that it was necessary to hire temporary labor instead of recalling strikers to save money. However, he acknowledged that he never reviewed the numbers himself. (Tr. 568).

Operations Manager Nonack testified that he calculated the cost of temporary employees in comparison to full-time employees, and that LMC saved "about $20,000 per year" by getting workers from JMS, because they were paying a flat rate. (Tr. 614, 673-674), He estimated that Langeloth was paying $35 per hour for the JMS employees, which when multiplied by 2,100 hours for the year totaled "roughly" $80,000 per year for each employee. (Tr. 613). He estimated that full-time employees cost $26 per hour plus $24,000 for benefits and bonuses, which he estimated at about $100,000 per year. (Tr. 613-614).

The estimates do not match the claimed savings. $35 times 2,100 equals $73,000, not $80,000. $26 times 2,100 equals $54,600. Adding $24,000 for benefits only comes to an average of $78,600 per full-time employee- far below the $100,000 Nonack claimed. Nonack testified that Langeloth did a cost study, but he did not bring it with him to the hearing (Tr. 651). Based on the inaccurate estimates, coupled with the failure to produce the cost study, I find that LMC

failed to establish that it gained any significant cost savings by using JMS, especially when considering the cost of onboarding, training and terminating over one hundred temporary workers. Nonack testified that training employees after the strike had less of an impact on operations because they can do it "as we find time and as the schedules allow." (Tr. 586, 633). While LMC may have less restrictions on when it can train employees, it is still legally obligated to pay them for training time, so any claim that it is saved on training costs by bringing in temporary workers instead of recalling its experienced workforce is simply not credible.

(2) LMC failed to show it avoided layoffs by using JMS workers

Another justification that LMC provided for bringing in temporary workers was its claim that using JMS employees protected LMC's permanent workforce from layoffs. This is not a valid reason not to recall strikers, as the Board has found that former strikers are entitled to reinstatement even if their plant is under imminent threat of closure. See *Medallion Kitchens*, supra, 277 NLRB at 1614-1615; see also *Oregon Steel Mills*, supra, 300 NLRB at 829 (employer obligated to offer reinstatement to former strikers, even if jobs might be of limited duration).

Further, LMC failed to show that there was any serious threat of layoff. LMC President Ondrejko testified that there was a layoff of approximately four people in 2021. (Tr. 498). Although he could not recall if this occurred before or after the strike, a letter he sent to employees on March 1, 2021 (during the strike), states that LMC was laying off employees, and payroll records show that three replacement employees left that same day. (R. Exh. 1-A, Jt. Exh. 168). Ondrejko testified that a storm in 2022 affected production, along with a planned outage of the acid plant in 2024 but admitted that neither incident resulted in a layoff. (Tr. 563-564).

There is no evidence that LMC laid off anyone after the strike, and the record shows that even when there was a downturn, LMC continued to employ JMS workers and even bring in new ones, including while the facility was in "shutdown" mode in April and May 2024. (Jt. Exh. 100, p. 2). The parties jointly introduced over one hundred emails between JMS and LMC, and I was unable to find a single request to reduce the number of JMS employees at the plant. While individual JMS employees were terminated, LMC continually requested replacements for them.

Finally, if the true purpose of bringing in JMS workers was to have a disposable workforce that it could hire and fire at will, then it did not make sense for LMC to choose JMS, which encourages its clients to hire its temporary workers directly. LMC offered to directly hire JMS workers while skipping over former strikers, and used JMS as a hiring office, sending over the names of specific employees it wanted to hire (including the names of former strikers), undermining its claim that it was just using temporary labor as a buffer against layoffs.

(3) LMC failed to show it was more efficient using temporary labor

LMC argues that using JMS workers assisted it in maintaining "operational flexibility." In support of this claim, it provided a document showing its production statistics from 2012 to the present. (R. Exh. 7). Nonack testified that LMC was able to roast more pounds of metal per employee in the past few years than it was able to roast between 2018 and 2021 because of the

JMS employees. (Tr. 605). However, he admitted that JMS employees were not included in the employee numbers listed in the exhibit. (Tr. 660). Because the chart does not include all the employees who were working at LMC, including the JMS employees who were doing the bulk of the roasting jobs, then it at best creates a mathematical illusion of more efficiency by excluding a key element of the formula, but does not establish any actual efficiency.

To further illustrate this point, I looked at the calculations for two different years, 2018 and 2024. According to the chart, LMC roasted 16,884 pounds of oxide in 2018 and had 135 employees, resulting in an average of 125 pounds roasted per employee, which was a low water in the pre-strike numbers, which ranged from a high of 220 in 2014 to a low of 125 in 2018. (R. Exh. 7). In 2024, LMC roasted 12,669 pounds of oxide. The chart included only the 83 managerial and hourly direct hire employees in the calculation, resulting in 153 pounds roasted per employee. But when factoring in the JMS workers, who averaged 13 per month in 2024 (Appx. 3), then the pounds roasted per employee comes to 131 pounds per employee, showing no improvement over pre-strike numbers.

Emails between LMC and JMS also showed that LMC was not achieving optimal results by bringing in temporary workers. LMC complained about JMS workers that were "MIA," giving their supervisors a "hard time," displaying a bad attitude, having "multiple confrontations with production supervisors," "falling asleep," showing disrespect, "hiding when he should have been working," exhibiting poor workmanship, and spending "more time watching his phone than his roaster." (Jt. Exhs. 27, 35, 36, 38, 93, 100, 115, 124, 129, 144). Despite these issues, LMC persisted in bringing in temporary workers, and even gave a second chance to a temporary employee it had fired for assertedly having "multiple" confrontations with supervisors.

LMC's decision to continually bypass former strikers in favor of a revolving group of temporary workers is baffling given the absence of any evidence that it was saving money or achieving better results. Its managers expressed deserved pride in starting as laborers and engineers and working their way up through the jobs in the plant. (Tr. 277-278, 464, 744). The former strikers had a wide range of experience in the jobs in the plant, and their level of seniority showed that they did not have a high level of turnover. (Appx. 4, R. Exh. 12). LMC's failure to establish a business justification for using temporary workers instead of recalling its own experienced workforce supports an inference that it had animus toward the strikers for exercising their Section 7 rights. See *Omahaline Hydraulics Co*., 342 NLRB 872, 883-884 (2004) (the "suspicious nature" of rejecting experienced workers with knowledge of employer's equipment and products in favor of inexperienced employees "has been recognized since the Board's infancy"), citing *NLRB v. Remington Rand*, 94 F.2d 862, 872 (2d Cir. 1938) (opinion by Judge Learned Hand, citing longstanding principle that "seasoned men are better than green hands.").[35]

[35] Citing *Omahaline* (and other cases), the GC asks that I find that LMC had an "independent unlawful purpose" in hiring JMS workers. (GC Brief, pp. 43-36) While there is evidence of animus, I find that it is unnecessary to analyze where LMC had an independent unlawful purpose. The GC has established that JMS workers did former bargaining unit work, and LMC failed to provide a legitimate and substantial justification for hiring temporary workers instead of recalling former strikers. Because this was inherently destructive of the strikers' Section 7 rights, evidence of animus is not necessary to find that an unfair labor practice occurred. See *Laidlaw Corp*., supra, 171 NLRB at 1369. (Even though the

c. Withdrawal of recognition did not allow LMC to bring in JMS workers

LMC argues that because it had the right to unilaterally change terms and conditions of employment after it withdrew recognition from the Union, it could also lawfully subcontract bargaining unit work. Citing *International Paper Co. v. NLRB*, 115 F. 3d 1045, 1052 (D.C. Cir. 1997), LMC asserts that its right to make unilateral changes included the right to subcontract "a portion of the former bargaining unit work in a non-discriminatory manner that had a comparatively slight impact on employee rights." (R. Brief, p. 43).

International Paper is a Circuit Court case, not a Board case. As an ALJ, I am bound to follow Board law in the absence of clear Supreme Court precedent to the contrary. Leaving that aside, it is not applicable because the employer in that case permanently subcontracted all its maintenance work to an outside company while its employees were locked out. The Circuit Court determined that the employer "fulfilled its bargaining obligations on the issue," which took the employer's actions outside the "inherently destructive category." *Id*. at 1049. There is no evidence that LMC ever bargained about bringing in temporary workers to do bargaining unit work. There is also no evidence that it permanently subcontracted any work; in fact, LMC never signed a contract with JMS and did not bring in any JMS workers until the strike was over and its obligation to reinstate the former strikers had already been triggered. See *Capehorn Industry, Inc*., 336 NLRB 364, 366 (2001)(failure to reinstate striking employees based on execution of a permanent subcontract for their work was inherently destructive of their rights when there was no evidence that the employer had to enter into a permanent subcontracting agreement to continue operating during the strike).

In sum, LMC failed to show that bringing in temporary employees to work in bargaining unit jobs created greater efficiency, prevented layoffs, saved money, or otherwise served as a legitimate and substantial justification for failing to recall striking workers. At most, the use of temporary workers was an "administrative convenience, which…does not rise to the level of legitimate and substantial business justification." *Oregon Steel Mills*, supra, 300 NLRB at 829.

2. LMC transferred employees into jobs instead of recalling strikers

When a permanent replacement worker leaves, an employer is obligated to offer the initial vacancy to a qualified former striker; it can't fill the position with employees on the existing payroll absent a legitimate and substantial business justification for doing so. See *Gilmore Steel Corp., d./b/a Oregon Steel Mills,* 291 NLRB 185, 190-191 (1988), enfd., 1989 WL 435373 (9th Cir. 1989), cert. denied, 496 U.S. 925 (1990); *Nolan Systems, Inc*. 268 NLRB 1248, 1250 (1984); *Textron*, supra, 257 NLRB at 5 (employer violated the Act when it offered "bid" jobs vacated by replacement workers to employees on existing payroll before offering them to qualified strikers on the recall list); *MCC Pacific Valves*, supra, 244 NLRB at 933-934.

Laidlaw Board did not find it necessary to show intent, it also noted that if such a finding was necessary, "the employer's preference for strangers over tested and competent employees is sufficient basis for inferring such motive…" *Id*. at n. 14).

There are multiple examples of replacement workers moving from the roaster operator positions they had after the strike into other positions, including Smith and Covington, who became packers, McLaughlin, who moved to a "lab analyst, back lab" job, Wells, who became a pure oxide operator, and Kirkland, who moved to a production lead job. (Appx. 2, R. Exh. 10, Jt. Exh. 168). Replacement worker Wilburn was scheduled as a mechanic at the end of the strike but was on the payroll report as a production lead. (R. Exh. 10, Jt. Exh. 168). Replacement worker Stonestreet was able to transfer from the ferro department to the lab sometime "prior to 2023," according to Janet Kuban. (Tr. 728, R. Exh. 10, Jt. Exh. 168). Peppers, who was a rhenium operator at the end of the strike, also moved into the lab for at least a short period of time. (Tr. 336, 404, R. 10). New hires were also able to move between jobs, including new hire Taylor, who was as a roaster operator, transferred into the pure oxide department, and then moved to the rhenium plant (Tr. 368-369) and new hires Waitts and Bishop, who moved from roaster operator to packer and rhenium plant operator jobs. (Tr. 281, 288, Jt. Exh. 168).

An employer may be entitled to move employees into different jobs in the plant without triggering an obligation to recall former strikers if it has a business justification for doing so and does not hire any new employees to fill the spots vacated by the in-house transfers. See *Gilmore Steel Corp*., supra at 191; see also *Textron*, supra, 257 NLRB at 4. However, the record is clear in this case that as LMC moved employees into different jobs at the plant, it filled the vacancies left behind by bringing JMS employees into the plant to work in the roaster operator and other entry-level positions, bypassing not only the employees on the recall list who were in those positions prior to the strike, but also employees who worked in other positions.

3. LMC has substantially equivalent positions available for former strikers

LMC claims that it does not have to recall the remaining strikers because it does not have any positions that are substantially equivalent to the jobs they were doing before the strike. It argues that the JMS workers "are frequently moved to various positions to address the needs of the business- even between departments," so the positions they hold are not substantially equivalent to the jobs the former strikers did. LMC also claims that it is not obliged to recall even those strikers who made individual unconditional offers to return to work, because there are no vacancies in the positions they held prior to the strike, their pre-strike positions have substantially changed, or they rejected reinstatement. (R. Brief, p. 49-50). I have already addressed and rejected LMC's claim that it is only obligated to reinstate former strikers who made individual offers to return to work. The remainder of its claims are addressed below.

a. LMC's post-strike jobs are substantially equivalent to the jobs the former strikers performed

Former strikers are entitled to reinstatement to their former jobs, or to jobs that are "substantially equivalent" to their pre-strike jobs. See *Rose Printing Co*., 304 NLRB 1076, 1077 (1991). An employer may not deny reinstatement based on speculation regarding the employee's ability to perform available work; the duty to reinstate former strikers "preempts ... speculation as to qualification." *Lehigh Metal Fabricators*, 267 NLRB 568, 575 (1983). Any concerns the employer may have about the ability of a former striker to perform "are to be tested on the job

through recall, with the employer, later, permitted to take appropriate action if the recalled striker is in fact [un]qualified or cannot do the work." *Little Rapids Corp*., 310 NLRB 604, 604, fn. 2 (1993) (finding that employer could not refuse to reinstate former strikers to jobs because it introduced new equipment and quality control methods which would require them to complete some training, as even with these changes the positions were still substantially equivalent to the pre-strike jobs), citing *Lehigh Metal Fabricators*, supra. (additional citations omitted).

LMC failed to establish that its post-strike jobs are not substantially equivalent to the strikers' pre-strike jobs. Production Superintendent Wagner acknowledged that LMC employees continued to do the same work on the same equipment that they did before the strike, but testified that employees now go to different departments when their work is slow and are trained to do different jobs. The examples he gave included the shipper, who will go to the ore dock or ferro department to help out when work is slow in shipping, employees in the ferro department, who he testified "can do all the ferro jobs," and employees in the roasting department, who now help each other on the moly and RMP roasters as needed. (Tr. 364-365).

Former striker Crago testified that his day-to-day work in the roasting and ferro departments were about the same before and after the strike, and that he is rarely asked to work anywhere other than his department, so it is unclear how much flexibility employees exercise on a day-to-day basis. (Tr. 379-380). But even if more flexibility is required, LMC presented no evidence that the former strikers are not capable of adapting to the post-strike environment. Wagner admitted that former strikers would sometimes help with other jobs (Tr. 365) and acknowledged that the primary difference between pre-strike and post-strike jobs was the absence of the collective bargaining agreement, which contained limitations on who could do what jobs and when employees could move between them. (Tr. 370, Jt. Exh. 1).

The record shows that former strikers frequently moved into new jobs through schedule changes or by serving on the extra board, and that most were qualified for numerous jobs in the plant. (Appx. 4, GC Exh. 3). This history of movement between jobs and filling in for absent employees demonstrates that the former strikers can exhibit flexibility, and that LMC has no basis to deny them reinstatement on a baseless assumption that they cannot. See *Omahaline Hydraulics Co.,* supra, 342 NLRB at 878-882 (2004)(employer could not deny reinstatement to former strikers because it installed a new production system during the strike that required more flexibility from employees, when it exaggerated the amount flexibility required and failed to show that the former strikers would not be able to perform the work, which still involved using the same machinery to produce the same products as before the strike).

LMC failed to provide any evidence that any of the strikers did anything other than follow the provisions of the expired agreement- an agreement that LMC itself negotiated and signed. It can't use the fact that bargaining unit workers adhered to the job restrictions in that agreement to deny them reinstatement now, and its assumption that the former strikers won't be able to adapt to post-strike conditions, when considered in context with the other facts in this case, supports an inference that LMC either has animus toward its unionized workforce for striking over their seniority and job assignment protections, or is concerned that they will try to advocate for those protections if they return. See *Electrolux Home Products, Inc*., 368 NLRB No. 34, slip op. at 3 (2019), citing *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966) (internal quotations omitted).

In addition to its general claims about post-strike jobs, LMC claims that the following jobs have changed substantially or been eliminated:

(1) Electrician/ instrument repair

LMC claims that it combined the electrician and instrument repair positions into one "Electrician Instrument Repair" job that did not exist before the strike. (R. Brief, p. 7). However, the record does not support this claim. Former striker Breese received a reinstatement offer in July 2022 to an electrician position, with no mention of also doing instrument repair. (R. Exh. 18, p. 32). When replacement worker Graham, who was scheduled as "Electrician/ Instrument Repair" at the end of the strike, left in August 2022, LMC advertised for the combined position, and sent an employment offer to new hire Hucik on September 19, 2022, for a position as "Electrician/ Instrument Repair/ PLC Technician." (Jt. Exhs. 156, p. 1, 159(a)). But only a few months later, in December 2022, it offered new hire Tanley a position as an "Electrician." (Jt. Exh. 156, p. 7). Therefore, LMC failed to establish that it only has combined positions available.

Even if it could establish that the only position available is a combined one, LMC failed to show that it required all its electricians to also demonstrate proficiency in instrument repair. LMC provided a list of employees who took an electrical maintenance trainee test. (R. Exh. 23). Former striker Quader passed the test but was never offered reinstatement, and Nonack admitted that this was because he did not make an individual UORTW. There is no evidence that any JMS employees, new hires, or replacement workers who did electrical work ever took the test or passed it. (R. Exh. 9(c), R. Exh. 23). Therefore, LMC is unable to show that this test was a requirement for being recalled to an electrician or combined electrician/ instrument repair job.

(2) Lab positions

LMC further argues that it did not have to recall former strikers who worked in the lab because the front and back lab positions have been combined into one job. While it was established that the front and back lab jobs were combined into one job as of 2023 (Tr. 403), LMC did not provide any evidence of the exact date that the jobs were combined. At least two replacement workers, McLaughlin and Stonestreet, were listed on LMC's payroll report as working in the "back lab," indicating that this job still existed at some point during their tenure. (Jt. Exh. 168). The list of classifications and departments as of the end of the strike includes both front and back lab positions, but only the "senior analyst front lab" positions were filled. Stonestreet and McLaughlin were not working in the lab as of the end of the strike, suggesting that they may have been assigned to the back lab after the strike ended. (R. Exh. 10).

Under the expired collective bargaining agreement, lab employees accrued lab seniority regardless of whether they were assigned to the front or back lab and enjoyed recall rights to the lab. (Jt. Exh. 1, p. 18). Former striker Brian Johnston, who was reinstated to the lab, testified that before the strike, lab employees would typically start in the back lab, where they would work obtaining and preparing samples which the front lab employees would test. Front and back lab employees would sometimes cover for each other, and there was no qualifying test to move from the back lab to the front lab. (Tr. 414-419). When lab jobs became available, employees

could bid on them based on seniority. The highest-ranking bidder would be given a test and if they failed, the next person would be given an opportunity until the position was filled by the most senior employee who could pass the test. Once the bid was awarded, the selected employee would get on-the-job training from other lab employees. (Tr. 411).

QA Manager Janet Kuban, who directs the lab, testified that back lab employees were able to bid on jobs in the front lab, and would be trained on front lab procedures if they were awarded the bid. (Tr. 711-712). LMC presented training sheets showing that the former strikers who worked as back lab employees had not been trained on front lab procedures. (Tr. 714, R. Exh. 24). However, Kuban acknowledged that the replacement workers currently holding the combined lab positions, Stonestreet, Trudeau and Bankston, all had to be trained on the front lab work when they got their jobs, and that she did not have evidence that employees working in the back lab before the strike could not have done the same. (Tr. 734).

An employer has an obligation to treat former strikers "the same as they would have been had they not withheld their service" by striking. *Rose Printing*, supra, 304 NLRB at 1078. It is undisputed that the work in the lab is largely unchanged and that back lab employees were able to bid into front lab positions before the strike and receive training once they were awarded the bids. There is no reason to believe that they would not be able to do that now, especially when replacement workers were not required to demonstrate proficiency in front lab tasks before being hired into the lab. Therefore, the former front and back lab employees should have been offered reinstatement to the combined front/back lab positions before LMC allowed existing employees or new hires to take the jobs. See *Towne Ford, Inc*., 327 NLRB 193, 194 (strikers who worked as apprentice painters before strike entitled to reinstatement to polisher position created by employer during strike, when the work was part of their job before the strike.)

(3) Safety facilitator

Former striker Craig Markish was on the pre-strike schedule as a safety facilitator. Markish made an individual UORTW on August 26, 2021. (R. Exh. 17, pp. 28-29). LMC states that the safety facilitator position has been eliminated, and that it has hired a full-time safety professional. (Tr. 473). The facilitator position was listed before the strike as "ends 12/13/2019." (Jt. Exh. 154). Since it appears the assignment was of limited duration and he would have had to bid on or bump into another position when it ended, there appears to be no reason why Markish should not be eligible to be reinstated to another position. If the position was not intended to expire, then LMC has failed to demonstrate that it had a business justification for reassigning the facilitator's job duties. See *Radio Elec. Serv. Co*., 278 NLRB 531, 532 (1986) (when the employer provided no justification for reassigning work previously performed by strikers to other employees, it could not establish that no vacancies existed for the strikers).

(4) Shippers

LMC argues that the shippers now have expanded duties and now support the ore and ferro docks. However, Production Superintendent Robert Wagner testified that if work is slow in the shipping area, the shipper will go to the ore dock or ferro pit to assist other employees. (Tr. 364). Therefore, it appears these expanded duties are not a daily part of the shipper job and are

just something the shipper might do if work is slow. There is no basis to find that the shipper job has substantially changed just because the person doing the job helps in other departments, especially when LMC claims that all employees are now required to pitch in when needed.

(5) Plant Utility Worker/ Unloader

LMC asserts in its brief that this job has been eliminated. (R. Brief, p. 17). However, at the hearing, Operations Manager Nonack testified that the plant utility position was combined with the unloader job, which allowed the person doing outside maintenance to also go to the ore dock "and things like that." (Tr. 589). Testimony at the hearing established that before the strike, in addition to maintaining the plant grounds and other outside maintenance, the plant utility worker would sometimes assist the shippers with unloading trucks. (Tr. 173). Therefore, the job has not changed substantially by adding unloader duties. In addition, the record is unclear about whether LMC still has the "outside utility" job that it created during the strike and assigned to replacement worker Cervi, who is still working at LMC. (R. Exh. 10, Appx. 2). Therefore, LMC has failed to establish that this job was eliminated or that former strikers who performed it would be unable to perform a combined plant utility/ unloader job.

(6) Hourly Chemist

LMC asserts that the hourly chemist job has been eliminated. LMC advertised a chemist job in 2024. (R. Exh. 29). QA Manager Kuban testified that the chemist position LMC advertised was salaried and not hourly, but I could not find a reference to salary in the advertisement. (Tr. 715-716, R. Exh. 29). The advertised position requires a degree, but Johnston testified that the hourly chemist in place before the strike had a degree, and the pre-strike job description for the hourly chemist states that a degree in chemistry is required. (Tr. 418, Jt. Exh. 158, p. 17).

Kuban testified that the chemist hired from the advertisement would not do the same work as the hourly chemist because they would also train be her replacement and take on some of her duties, including developing analytical methods. (Tr. 733). However, it was unclear whether the chemist would have these duties while Kuban remains in charge of the lab or would be learning them in preparation for taking over the lab when she left. It was also unclear whether LMC is planning to merge the lab manager and chemist positions when Kuban leaves.

Kuban acknowledged that LMC did not contact former hourly chemist Porchiran about the advertised position. The job advertisement stated that the successful candidate would have experience with ISO 9001 audits, which Kuban testified that Porchiran did not do prior to the strike; however, there is no evidence anyone checked to see if he had that experience. (Tr. 734). Based on the above, I find that LMC presented insufficient evidence that the chemist position has changed to such an extent that it is no longer required to offer it to a former striker.

(7) Mechanic/ Mobile Instrument Repair

Operations Manager Nonack testified that Langeloth eliminated the stand-alone mobile equipment repair (MER) position during the strike, and combined it with the mechanic position,

claiming that "historically, we had one person that would just sit over in the shop and didn't do anything," but that Langeloth could now "push them over" to work on vehicles that needed repair. (Tr. 589). Even if the MER position has been combined with the mechanic position, LMC had twelve mechanics prior to the strike, and continued to fill mechanic positions with JMS workers and replacement workers after the strike. It offered new hire Kurtz a position as "maintenance helper" and new hire Hunter Guiddy a position as "mechanic trainee." Guiddy is now a mechanic, and Kurtz is working in the maintenance shop. (Tr. 282-283, 288). LMC has not shown that any of those employees passed the MER test, which was last administered in 2017. (R. Exh. 22). Therefore, it cannot deny reinstatement to other mechanics just because the MER employee is also doing mechanical work; nor can it show that it has not had vacancies that could have been filled by the former strikers. (Appx. 4, Jt. Exh. 154).

C. LMC's requests for UORTW were not offers of reinstatement

LMC argues that some of the former strikers rejected reinstatement after it reached out to them and asked them to make individual UORTW. (R. Brief, 50). The former strikers were not contacted by LMC until July and August 2024, after they had been repeatedly bypassed for reinstatement in favor of JMS workers and new hires, so even if they did reject reinstatement, LMC is not absolved of liability. More importantly, however, the former strikers in this group were not given unconditional offers of reinstatement but were instead asked if they were "interested in making an unconditional return to work."

LMC sent former striker Green a letter in July 2024 asking him to confirm whether he was interested in making an unconditional offer within two weeks and told him that if he did not respond, he would "no longer be eligible for recall." (R. Exh. 17, pp. 6-8). It sent similar communications to former strikers Barnett and Minger in July (R. Exh. 17, pp. 21-25) and former strikers Hall, Jones, Testa, Watson, Wright, and Yamber in August. (R Exh. 17, p. 40, R. Exh. 19, pp. 14-19).

None of these were valid offers of reinstatement, because LMC improperly conditioned reinstatement on making an individual offer to return to work after the Union already made a valid unconditional offer on behalf of all the former strikers. See *In re Pirelli Cable Corp*., supra, 331 NLRB at 1539, citing *Alaska Pulp Corp*. *I*, 300 NLRB 232 (1990), enfd. 944 F.2d 909 (9th Cir. 1991); see also *Marlene Industries Corp*., supra, 712 F.2d at 1018. In addition, none of the letters made a firm offer of reinstatement, instead focusing on the offer to return, so they were not "specific, unequivocal, and unconditional" enough to toll LMC's backpay liability. See *Jones Plumbing Co*., 277 NLRB 437, 449 (1986).

1. Other evidence of resignations and retirements

LMC provided other documents purportedly showing that various former strikers resigned. To demonstrate that an employee is no longer interested in reinstatement, the employer must present "unequivocal evidence of intent to permanently sever the employment relationship." *Harowe Servo Controls*, 250 NLRB 958, 964 (1980) (quoting *S & M Mfg. Co.*, 165 NLRB 663 (1967)). The best way for an employer to determine an employee is interested in

employment is by fulfilling its obligation to offer them reinstatement, as "the public interest in protecting the statutory right to strike and protection of strikers' rights to reinstatement require that striker statements of unwillingness to accept reinstatement by discounted until tested by the crucible of an actual offer of reinstatement." *Alaska Pulp Corp. I*, 300 NLRB 232, 239 (1990), citing *Heinrich Motors*, 166 NLRB 783, 785 (1967), enfd. 403 F.2d 145 (2d Cir. 1968).

Whether any of these employees had an intent to permanently sever their relationship with LMC is a matter best left to compliance, where the information can be examined alongside the availability of vacancies, as even if some strikers did resign, they may still be owed a remedy if they were eligible for recall prior to the date of their resignation.

D. LMC's order of recall was arbitrary, inconsistent and discriminatory

An employer can choose an order of recall other than seniority as long as its chosen method is not discriminatory and is consistently applied. See *Lone Star Industries*, 279 NLRB 550, 551 (1986), enfd. in part, 813 F.2d 472 (D.C. Cir. 1987), decision on remand, 298 NLRB 1075 (1990), vacated on other grounds 956 F.2d 317 (D.C. Cir. 1992).

LMC's matrix fails on both counts. First, it places an undue emphasis on employees making an individual unconditional offer to return to work, which is improper when a union makes an unconditional offer to return to work on the strikers' behalf. See, e.g., *Peerless Pump Co*., supra, 345 NLRB at 375. LMC also failed to consistently apply this factor, allowing some employees to return even though it could not produce evidence that they made individual offers, and insisting that others could not return because they did not make an individual offer, even though they did. It also failed to follow its point system at times, recalling some employees with overall scores before those with higher ones.

The GC also established that LMC discriminated based on union activity when selecting employees for recall. Former striker Crago testified that sometime around September 2022, he had a conversation with a supervisor who he initially declined to name, and then reluctantly identified as Operations Manager Nonack. He testified that he asked Nonack about recalling former striker Guiddy. Crago testified that Nonack implied Langeloth would call back "who they wanted," and told him, "Some people are problems. Some people weren't." (Tr. 381, 286). Crago testified that he had the impression that Nonack was referring to union affiliation. He admitted that Nonack did not specifically mention the Union but that it was his impression that Nonack was comparing Crago and Guiddy to other strikers when he said, "You guys are here. They're not." (Tr. 381, 386, 387). Guiddy was recalled the next month. (Jt. Exh. 168, R. Exh. 18(a)).

LMC's counsel asked Nonack if he told "anybody at any point" that he was "recalling people based upon whether or not they were troublemakers or anything like that." Nonack responded, "I do not recall ever having those kinds of conversations. No." (Tr. 623). I credit Crago's testimony over that of Nonack. Crago was clearly very reluctant to testify on such a charged topic but ultimately told his story clearly and without exaggeration, admitting that the word "union" was never used. Nonack, on the other hand, never specifically denied that he was refusing to recall former strikers based on their union activity or perceived "troublemaker" status, but instead only said that he did "not recall" having conversations like that. Nonack did

deny using anything "other than the matrix" to recall former strikers (Tr. 624), but (as discussed more fully below) the matrix itself was so arbitrary and subjective that even if I credited this statement, it would not be enough to show that no discrimination occurred.

While Crago admittedly never heard Nonack use the word "union," there is other evidence on the record showing that LMC management had animus toward their formerly unionized workforce, including the assumption that they would be less willing to work different jobs and help as needed, and the insistence on bringing in temporary workers over experienced former strikers despite the lack of a business justification for doing so, to draw an inference that LMC exhibited animus in recalling the former strikers.

LMC's recall matrix cannot save it from this inference of animus because the point system in the matrix was clearly arbitrary. The system reduces an employee's years of service to one point for less than five years, and 2 for more than five years. Nonack testified that he did not give employees points for all their years of seniority because he wanted hiring to be "based more on skill," which he defined as skill in working various classifications. (Tr. 642). However, the longer an employee worked at LMC, the more positions they had the opportunity to have, and many of the strikers were qualified for numerous jobs. (Appx. 4). Yet in many cases, employees' experience and skill was not reflected in their score.

Former striker Benjamin Wagner, who worked as a mechanic before the strike, was given a score of "1," or "task trained" as a roaster and pure operator, and "2," or "fill-in operator," in the acid plant and mechanic categories, for a total skill score of 6, even though he worked for LMC for 20 years, performed almost every job in the facility, and was qualified as an acid plant operator, ferro crusher or operator, janitor, leadman, operator or assistant on any roaster, packer, plant utility operator, RMP roaster, charger or packer, pure oxide operator, shipper and unloader. (R. Exh. 12, GC Exh. 3, Appx. 4). He was deducted 7 points for requiring "first aid" at some point in the seven years before the strike started, one point for absences, awarded two points for seniority, one point for attending safety training and a seemingly random 2 points for "living" the safety program, leaving him with a final score of 3. (R. Exh. 12, Appx. 4). Former striker David Hall, who worked for LMC for 19 years, received no skill points because none of the jobs he did (briquette operator, ferro operator, janitor, packer or unloader) were scored on the matrix. He lost 13 points for "first aid" and received other deductions, leaving him with a score of negative 17.

LMC provided no justification for dropping employees who gave 19 or 20 years of service to the company to the bottom of the recall list just because they got a Band-Aid at some point up during the seven years before the strike. Operations Manager Nonack testified that the injury scores were drawn from a spreadsheet tracking workplace incident, but did not offer the spreadsheet as an exhibit or provide any explanation as to why a minor work-related injury that might have occurred over twelve years ago merited deducting points from employees.

None of LMC's witnesses could explain how the skill scores were calculated, or who did the calculations. A cursory review of the matrix shows that some strikers were given no points in jobs they had full-time bids in before the strike, including former striker Jaggie, who was on the schedule as a roaster operator before the strike and qualified as a ferro crusher and a roaster, but received no skill points, and former striker Testa, who worked as a laborer before the strike and

qualified in many jobs including roaster and pure oxide operator, but also received no skill points. (Appx. 4, R. Exh. 12, GC Exh. 3).

LMC also failed to explain why some scores went up and down between the original and updated matrices, or how employees were awarded points for "living the values" of its safety program. Several employees were given the maximum number (3) of points for "living" the program even though they received 0 points for attending the training that presumably taught the values they were expected to live. (R. Exh. 12). Absent any rational explanation, the only conclusion that can be drawn is that the point system was arbitrary.

E. Some former strikers may be entitled to reinstatement to positions they did not hold prior to the strike

The GC urges me to find that, at least in some cases, the former strikers may be entitled to reinstatement to jobs other than those that they were performing when the strike started. (GC Brief, p. 41). Employers are only obligated to offer a former striker reinstatement to jobs that are substantially equivalent to their pre-strike job. *Rose Printing*, supra, 304 NLRB at 1079. However, a history of cross-training and transfer between jobs can be used to demonstrate that jobs are substantially equivalent. See *Arlington Hotel Co.*, 273 NLRB 210 (1984), cited favorably by the Board in *Rose Printing*, *Id*. at 1078, n. 13. (emphasis added).

The GC concedes that skilled positions at LMC should be treated as distinct from each other, due to the training requirements for those positions. But it argues that the operator positions, other than the roaster operator position, which is an entry-level position due to the physical difficulty of the work, are very interchangeable" and should be treated as substantially equivalent to each other. I agree that the pure operator and ferro operator positions are substantially equivalent, with employees in both jobs using various tools and machines to further process roasted molybdenum (Tr. 160-162, 165-166, 264, 630). The briquette operator position, however, is distinct, as it pays more and is only in place on an as-needed basis, with the briquette operator returning to work as a ferro operator when they did not have work. (Tr. 168-169).

The shipper, packer, unloader and plant utility positions are also listed as operator positions and receive the same rate of pay as the ferro and pure operator positions. There was some crossover between the utility and shipping positions prior to the strike, and there is even more interchange now, with the shipper sometimes working as an unloader or in the ferro department. (Tr. 364-365). In addition, LMC combined some of these positions, including the unloader and plant utility positions, after the strike. (Tr. 150- 154, 173, 589). Finally, LMC did not include any scores for shipping, unloading or packing on the recall matrix, suggesting that it does not view these positions as distinct from other operators. (R. Exh. 12).

Based on the above, there is enough similarity and interchange between the operator positions (other than the higher paid briquette operator position and entry-level roaster operator positions) to make them substantially equivalent for recall purposes.

F. LMC's Constitutional and other claims

LMC makes numerous claims that the Complaint in this matter should be dismissed on Constitutional and other grounds. Its first claim is that I (as an Administrative Law Judge), am unable to act because the Board lacks a quorum of at least three members. (R. Brief, p. 29-30). LMC argues that previous cases finding that Regional Directors retained the ability to act while the Board lacked a quorum of at least three members, including *U.C. Health v. NLRB*, 803 F. 3d 669 (D.C. Cir. 2015) have been "called into question" because they were decided under *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc*., 467 U.S. 837 (1984), which the Supreme Court overruled in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

As an ALJ, I am bound to follow Board law as it currently stands, which is that Regional Directors retain authority to act in representation cases when the Board lacks a quorum, in part because "[n]o decision of the Regional Director's is ever final under its own power. Only the acquiescence of the parties or the Board's ratification can give binding force to a Regional Director's determination." *Hospital of Barstow*, 364 NLRB 565, 567, n. 4 & 5 (2016), enfd., 897 F.3d 280 (D.C. Cir. 2018), citing *U.C. Health*, supra, 803 F.3d at 680. LMC has not cited any case law saying that an ALJ cannot act in an unfair labor practice proceeding when the Board lacks a quorum. Other than noting that my decision is also not final without ratification from the Board or the acquiescence of the parties, I will not address this argument further.

LMC claims that it has a Seventh Amendment right to a jury trial because the Board expanded its make-whole remedy in *Thyrv, Inc*, 372 NLRB No. 22, slip op. at 17 (2022), vacated in part, 102 F.4th 727 (5th Cir. 2024), to include remedies "for direct or foreseeable pecuniary harms that result from a respondent's unfair labor practice" in the Board's standard make-whole remedy. (R. Brief, pp. 31-33). The *Thyrv* Board specifically rejected the argument that the expanded make-whole remedy implicated the Seventh Amendment. *Id*., slip op. at 16. Therefore, I have no basis to recommend a different outcome here.

Finally, LMC argues that it is "clear that the ALJ in this matter is unconstitutionally appointed." (R. Brief, p. 33). However, LMC provided no evidence or case law concerning the appointment of ALJs. It did make arguments concerning the constitutionality of ALJ removal protections, however. See R. Brief, pp. 33-35. The Board has rejected similar claims in other cases. Therefore, there is no basis for me to recommend that it rule any differently here. See *Commonwealth Flats*, 373 NLRB No. 142, slip op. at 1, n. 1 (2024) and *Nexstar Media, Inc*., 374 NLRB No. 1 (2024), slip op. at 1, n. 1, both citing *Decker Coal v. Pehringer*, 8 F.4th 1123, 1133-1136 (9th Cir. 2021) and *SJT Holdings, Inc*., 372 NLRB No. 82, slip op. at 1, n. 4 (2023) (additional citations omitted).

APPENDIX 1

Classifications at the beginning and end of the strike. (Jt. Exh. 154, R. Exh. 10).

	9/9/19	8/16/21
Lead class		
Production lead trainee	0	2
Skilled class		
Instrument technician	1	0
Acid Plant Operator	8	8
Electrician	4	0
Elec/Instrument Repair	0	1
Mechanic	12	6
Mobile Eq. Operator	1	0
Acid Plt Utility Op.	1	8
Rhenium Operator	4	4
Rhen. Op. Trainee	0	1
Safety Facilitator	1	0
Operator class		
Briquette Operator	1	0
Ferro Operator	4	4
Packer	5	5
Plant Utility Operator	1	0
Outside Utility	0	1
Pure Oxide Operator	4	4
Roaster Operator	16	16

Shipper	2	1
Unloader	4	2
Labor class		
Laborer	4	3
Janitor	1	1
Labor/packer	2	1
Laboratory class		
Hourly Chemist	1	0
Sr. Analyst, Front Lab	4	5
Analyst, Back Lab	3	0
Total	84	66

APPENDIX 2

Former replacement listed in order of when they left Langeloth. Unless otherwise noted, all were hired as either production/ lab operators or production operators. (R. Exh. 11). Where the job titles in the August 2019 classification list (R. Exh. 10) and the payroll report (Jt. Exh. 168) matched, only the title is included; where those exhibits differed or there was other record evidence of there the employee worked, the title and corresponding exhibit are listed.

J. Balcer	1/6/20- 8/17/21. Mechanic.
C. Pleise	4/6/20-9/8/21. Roaster operator.
F. Richardson Jr.	1/6/20- 10/4/21. Roaster operator. (Tr. 332).
J. Bridge	1/9/20- 10/4/21. Acid plant operator. (Tr. 320).
M. Statzer	1/9/20- 10/13/21. Ferro operator.
D. Hall	1/6/20-11/1/21. Roaster operator.
N. Addy	1/6/20- 11/8/21 Pure oxide operator.
J. Smucker	4/15/20- 12/6/21. Roaster op. (Tr. 353) Laborer. (R. Exh. 10, Jt. Exh. 168).
T. Wilson	1/6/20 - 12/9/21. Pure oxide operator
D. Call	4/9/20- 12/24/21. Roaster op (Jt. Exh. 168). laborer. (R. 10), possible acid plant operator or trainee. (Tr. 321-322)
W. Hostetler	1/6/20- 12/31/21. Roaster operator.
A. French	1/6/20-12/20/21 Roaster op./ prod. lead trainee
D. H. Shreves	1/6/20- 2/17/22. Roaster operator.
D. Mahan	1/6/20- 1/13/22 Roaster operator. (Tr. 331).
L. Huey	1/6/20-2/5/22. Packer.
F.A. Richardson Sr.	1/6/20- 2/9/22. Roaster operator.
J. Pederson	1/6/20- 2/11/22. Sr. analyst, lab.
D. Clark	1/6/20- 3/20/22. Packer. Hired as laborer. (R. Exh. 11, p. 16).
J. Bigelow	1/9/20- 4/8/22. Roaster operator
B. Pitts	1/9/20- 4/13/22. Roaster operator (Jt. Exh. 168), laborer (R. Exh. 10), janitor (Tr. 337)
D. Cash	4/6/20- 4/28/22. Roaster operator.

J. Pratt	1/9/20- 6/7/22 (Tr. 730, R Exh. 9(c)). Acid plant operator. (R Exh. 10)
B. Jones	Hired 1/6/20. Moved into supervision on 6/22/22. Worked as rhenium operator trainee. (Tr. 324, 329, R. Exh. 10, Jt. Exh. 168).
R. McClaughlin	1/9/20-7/18/22. Roaster operator (R. Exh. 10), back lab (Jt. Exh. 168).
P. Lancaster II	4/6/20- 7/18/22. Front lab/senior analyst.
A. Smith	4/6/20- 7/28/22. Packer (Tr. 350, Jt. Exh. 168), roaster op. (R. Exh. 10).
S. Graham	4/6/20- 8/10/22 (Tr. 731, R. Exh. 9(c)). Electrician/ instrument repair (R. Exh. 10), electrician (Jt. Exh. 168).
R. Smith	1/9/20- 8/17/22. Acid plant operator Jt. Exh. 168, R 10.
K. McCallum	1/6/20- 10/7/22. Roaster operator.
A. Airgood	4/15/20- 12/1/22. Roaster operator.
D. Wilburn	4/15/20- 12/1/22. Electrician (Tr. 353), production lead (Jt. Exh. 168), roaster operator (R. Exh. 10).
D. Simms	1/6/20-1/30/23. Unloader
G. Poole	1/6/20- 3/1/23. Production lead trainee. (Tr. 732, R. Exh. 9(c), 10).
I. L. Campbell	1/6/20-5/20/23. Rhenium operator.
B. Steadman	1/6/20- 5/27/23. Pure oxide operator.
M. Wojtalik	1/6/20- 6/1/23. Sr. analyst, lab. Hired as packer/shipper (R Exh. 11, p. 64).
R. Myers	1/6/20- 8/27/23. Rhenium operator, hired as electrician, but moved to “AP position” on 1/14/20. (R Exh. 11, p. 39).
T. Buzzard	1/6/20-10/2/23. Janitor (Tr. 321, R. Exh. 10), roaster op. (Jt. Exh. 168). Hired as laborer. (R. Exh. 11, p. 10).
J. Johnston	1/6/20- 10/3/23. Packer.
B. Wagner	1/6/20- 1/23/24. Mechanic.
S. Zeiler	1/6/20- 2/16/24. Acid plt utility op. (Jt. Exh. 168), acid loader (R Exh. 10). Hired as laborer. (R. Exh. 11, p. 65).
D. Farnsworth	1/6/20-7/15/24. Ferro operator. (R Exh. 10, Jt. Exh. 168).
A. Peppers	1/6/20-7/27/24. Rhenium operator and lab trainee (Tr. 336, 404, R. 10).

Replacement workers who were still at LMC as of the date of the hearing:

J. Bankston	Hired 1/13/20. Senior analyst, lab. (R Exh. 10, Jt. Exh. 168).
J. Boden	Hired as laborer, 1/6/20. (R. Exh. 11, p. 6). Packer.
S. Boruch	Hired as mechanic, 1/6/20 (R. Exh. 11, p. 7). Mechanic.
M. R. Brewer	Hired 1/6/20. Ferro operator.
L. Carroll	Hired 4/6/20. Acid plant operator.
D. Cervi	Hired as laborer, 1/13/20. (R. Exh. 11, p. 15). Mechanic, (Tr. 322, Jt. Exh. 168), outside utility (R Exh. 10).
C. Covington	Hired 1/9/20. Packer (Tr. 323, Jt. Exh. 168), roaster op. (R. Exh. 10).
R. Haten	Hired 4/6/20. Pure oxide operator.
M. Henderson	Hired on 4/6/20. Mechanic (R. Exh. 10), maintenance lead trainee (Jt. Exh. 168).
M. Jarrett	Hired 4/15/20. Rhenium operator.
R. Jenkins	Hired 1/6/20. Shipper. (R Exh. 10, Jt. Exh. 168).
A. Kirkland	Hired 4/6/20. Roaster trainer (Tr. 348), production lead (Jt. Exh. 168), roaster operator (R. Exh. 10).
D. Loggie	Hired 1/6/20. Acid plant operator
C. Miner	Hired 1/9/20. Acid plant operator.
L. Mullins Jr.	Hired 1/6/20. Acid plant operator.
D. Nelson Sr.	Hired as laborer, 1/6/20. (R. Exh. 11, p. 40). Unloader.
D. C. Parkinson	Hired 1/6/20. Acid plant operator. (R Exh. 10, Jt. Exh. 168).
T. Scott	Hired 1/6/20. Maintenance lead.
D. Stonestreet	Hired 4/6/20. Ferro op. (R. Exh. 10), analyst, back lab (Jt. Exh. 168).
G. Trudo	Hired 1/6/20. Lead analyst, lab
K. Ward	Hired 1/6/20. Packer.
D. Wells	Hired 1/6/20. Roaster op. (R. Exh. 10), pure ox. op. (Tr. 345, Jt. Exh. 168).

APPENDIX 3: JMS workers in production, maintenance and electrician positions

For the reasons outlined in my Decision, I relied mainly on the dates provided by JMS in Joint Exhibits 152 and 153 for the dates of employment for JMS employees; where other (or additional) exhibits were used, I have included those below. Most of the JMS employees below were identified in emails and on GC Exh. 15 as production or labor; if they were given different titles, that is noted in the decision. DH means the employee was directly hired on the date indicated (or offered employment).

September 2021:

J. Henderson	9/14- 11/12/21 (Tr. 314, Jt. Exhs. 22, 86, 152, GC Exhs. 15, 17, R. Exh. 9(a))	
A. Kinley	9/14- 10/19/21 (Jt. Exhs. 86, 152, GC Exhs. 15, 17, R. Exh. 9(a))	
J. Harris	9/27- 12/7/21 (Jt. Exhs. 86, 152)	
C. Needham	9/27- 10/21/21 (Tr. 314, Jt. Exhs. 86, 152)	

October 2021:

L. McEldowney	10/11/21- 1/26/22 (Jt. Exhs. 70, 73, 80, 86, 87, 152, R. Exh. 9(a))	
J. Rhodes	10/11- 11/10/21 (Jt. Exh. 152, GC Exh. 15)	
T. Chaney	10/25/21- 2/22/22 (Jt. Exhs. 18, 56, 73, GC Exh. 15)	
J. Plants	10/18/21- 6/1/22 (Tr. 313, Jt. Exh. 16, 49, 73, 152, GC Exh. 15)	

November 2021:

G. McGrew	11/29/21- 2/24/22 (Jt. Exhs. 55, 57, 152, GC Exh. 15)	

December 2021:

L. Grizzel	12/13/21-2/24/22 (Tr. 313, Jt. Exhs. 21, 73, 152, GC Exh. 15)	
D. Hart	12/20/21- 4/11/22 (Jt. Exhs. 16, 46, 152, GC Exh. 15)	

2022

January 2022

L. Reitmeyer	1/3- 10/12/22 (Jt. Exhs. 16, 49, 152, GC Exh. 15)	
R. Russell	1/18- 3/9/22 (Jt. Exhs. 144(a), 152, GC Exh. 15)	
J. Matazinski	1/18- 8/14/22 (Jt. Exhs. 16, 49, 152, GC Exh. 15)	DH, 8/17/22-6/9/23

March 2022

J. Shields	3/7- 3/17/22 (Tr. 315, Jt. Exhs. 16, 144, 145, 152, GC Exh. 15)	
K. Nicholson	3/7- 3/25/22 (Tr. 312, Jt. Exhs. 16, 152, GC Exh. 15)	
R. Jordan	3/7- 4/11/22 (Jt. Exhs. 16, 49, 152, GC Exh. 15)	
N. Bishop	3/7- 8/3/22 (Jt. Exhs. 16, 49, 152, GC Exh. 15)	DH, 8/3/22
D. Valero	3/21- 4/28/22 (Jt. Exhs. 49, 321, GC Exh. 15)	

April 2022

R. Gracia	4/12- 7/1/22 (Jt. Exhs. 41, 47, 57, 152, GC Exh. 15)	
D. Burkett-	4/12- 4/28/22 (Jt. Exhs. 46, 47, 57, 152, GC Exh. 15)	
A. Vranesevich	4/12- 8/9/22 (Jt. Exhs. 46, 47, 152)	
J. Cherry	4/12- 8/29/22 (Jt. Exhs. 38, 46, 47, 152, GC Exh. 15)	
B. Lindsay	4/12- 6/2/22 (Jt. Exhs. 46, 152, GC Exh. 15)	DH, 6/7/22- 1/2/23
R. Masilon	4/11- 4/13/22 (Jt. Exhs. 46, 130)	
C. Howard III	4/12- 5/24/22 (Jt. Exh. 152, Tr. 309-310, Jt. Exhs. 46, 152)	

May 2022

T. Yazevac	5/11- 2/13/23 (Jt. Exhs. 140, 152, GC Exh. 15)	DH, 2/13/23- 4/17/23
E. Pine	5/11- 8/4/22 (Jt. Exhs. 140, 152, GC Exh. 15)	DH offer (date UNK)

June 2022

L. Vranesevich	6/7- 8/9/22 (Jt. Exhs. 126, 127, 152, GC Exh. 15)	
T. Waitts	6/7- 8/14/22 (Jt. Exh. 152, GC Exh. 15)	DH, 8/5/22

M. Harvey	6/28- 7/1/22 (Tr. 307, Jt. Exh. 152, GC Exh. 15)	
S. Alford	6/28/22-2/6/23 (Tr. 307, Jt. Exh. 152, GC Exh. 15)	DH offer, 1/18/23
D. Stone	6/28/22- 1/30/23 (Tr. 283, Jt. Exh. 152, GC Exh. 15)	DH, 1/30/23
I. Taylor	6/28/22- 2/13/23 (Jt. Exh. 152, GC Exh. 15)	DH, 2/13/23
W. Courtney	6/28/22- 8/19/22 (Tr. 307, Jt. Exhs. 124, 152, GC Exh. 15)	
J. Hanson	6/7- 7/27/22 (Jt. Exh. 152, Tr. 308-309, Jt. Exhs. 43, 45, GC Exh. 15)	

July 2022

T. Bush	7/18-11/28/22 (Tr. 305-306, Jt. Exhs. 36, 152)	Returned in 2024

October 2022

L. Woods	10/20/22- 1/3/23 (Jt. Exhs. 123, 152)	
D. Gress	10/2/220- 1/3/23 (Jt. Exhs. 35, 152, GC Exh. 15)	
W. Kuntz	10/21- 10/22/22 (Tr. 304, Jt. Exh. 152, GC Exh. 15)	
J. Daugherty	10/20- 11/14/22 (Tr. 304-305, Jt. Exh. 152, GC Exh. 15)	

2023

January 2023

S. Stevens	1/17- 5/3/23 (Tr. 303, Jt. Exhs. 32, 152, GC Exh. 15)	
D. Boardley	1/17-5/9/23 (Tr. 304, Jt. Exh. 152, GC Exh. 15)	

February 2023

D. Archie	2/6- 2/8/23 (Tr. 303, Jt. Exh. 152, GC Exh. 15)	
R. Brown	2/27- 3/2/23 (Tr. 303, Jt. Exh. 152, GC Exh. 15)	

March 2023

M. Wade	3/13/23- 1/8/24 (Tr. 303, Jt. Exhs. 112, 152, GC Exh. 15)	

April 2023

R. Locy	4/10- 2/26/24 (Tr. 287, Jt. Exh. 152)	DH, 3/4/24

May 2023

S. Osborn	5/15- 5/16/23 (Tr. 302, Jt. Exh. 152)	
K. Kuzminsky	5/15- 7/14 (Tr. 302, Jt. Exh. 152, GC Exh. 15)	
L. Dillow, Jr.	5/15- 6/10/23 (Tr. 302, Jt. Exhs. 31, 120, 152, GC Exh. 15)	
E. LeMasters	5/25/23- 2/1/24 (Jt. Exhs. 111, 152, GC Exh. 15)	

June 2023

S. Jones	6/12/23-10/9/23 (R. Exh. 9(b))	Returned in 2024

July 2023

J. Falcone	7/17- 8/4/23 (Tr. 301, Jt. Exh. 152, GC Exh. 15)	
D. Schaffer	7/31- 12/1/23 (Tr. 300, Jt. Exh. 152, GC Exh. 15)	
K. McNeely	7/31- 9/27/23 (Tr. 301, Jt. Exhs. 118, 152, GC Exh. 15)	

August 2023

J. Huxley	8/20- 9/1/23 (Tr. 300, Jt. Exhs. 137, 152, GC Exh. 15)	

September 2023

D. Robertson	9/5- 9/13/23 (Tr. 300, Jt. Exhs. 30, 152, GC Exh. 15)	

October 2023

S. Porfilio	10/2- 10/9/23 (Tr. 299, Jt. Exhs. 117, 152, GC Exh. 15)	
B. Adams	10/2/23- 1/29/24 (Tr. 300, R. Exh. 9(b), GC Exh. 15)	
J. Mottle	10/9- 10/10/23 (Tr. 299, Jt. Exh. 152, GC Exh. 15)	
S. Jenkins	10/30/23- 2/23/24 (Tr. 299, Jt. Exhs. 104, 152, GC 15)	Returned in 2024

K. Isinghood	10/30/23- 12/6/24 (Jt. Exhs. 152, 168, GC Exh. 15)	DH 12/6/24

November

D. Sullivan	11/6- 2/22/24 (Tr. 298-299, Jt. Exh. 152, GC Exh. 15)	
R. Karmann	11/13- 11/16/23 (Jt. Exhs. 115, 152, GC Exh. 15)	
K. Brown	11/28- 2/19/24 (Tr. 298, Jt. Exhs. 128, 152, GC Exh. 15)	
T. Davidson	11/28- 2/4/24 (Tr. 298, Jt. Exhs. 107, 152, GC Exh. 15).	
J. Niedzialkia	11/6/23- 12/6/24 (Jt. Exh. 152, GC Exh. 15)	DH, 12/6/24

December 2023

R. Boyd 12/4- 12/12/23 (Tr. 298, Jt. Exhs. 113, 152, GC Exh. 15)
Removed, called off 2 days and no call/ no show the 3rd 12/13/23 Jt. Exh. 113"never worked"

2024

January 2024

B. Mason 1/17/24- 9/8/24 (Tr. 297, Jt. Exh. 153, GC Exh. 15)

February 2024

R. Carson	2/12- 2/26/24 (Tr. 297, Jt. Exh. 152, GC Exh. 15)
E. Parkinson	2/14- 7/8/24 (Tr. 297, Jt. Exh. 153, GC Exh. 15)
K. Petges	2/26-3/11/24 (Tr. 296, Jt. Exh. 152, GC Exh. 15)
P. Johnston	2/19- 4/1/24 (Jt. Exhs. 27, 101, 152)
Z. Howard	2/20- 2/22/23 (Jt. Exhs. 104, 153, GC Exh. 15)
G. Golding	2/21- 6/14/24 (Tr. 296, Jt. Exh. 153, GC Exh. 15)

March 2024

J. Johnson	3/4- 3/28/24 (Jt. Exhs. 28, 152)	
N. Healy	3/4/24- 1/6/25 (Jt. Exhs. 152, 168, GC Exh. 15)	DH, 1/6/25
S. Jones	3/7/24- 3/14/24 (Returnee. Jt. Exhs. 103, 104, 152)	
J. White	3/6- 3/31/24 (Jt. Exhs. 27, 153, GC Exh. 15)	
D. Brown	3/25- 4/24/24 (Jt. Exhs. 100, 152)	

May 2024

B. Beisner	5/6/24- present (Tr. 295, R. Exh. 9(b), GC Exh. 15)
M. Peckens	5/20- 9/9/24 (Tr. 295, R. Exh. 9(b), GC Exh. 15, Jt. Exh. 153)
N. Lance	5/22- 6/12/24 (Tr. 294-295, Jt. Exhs. 99, 153, GC Exh. 15).
J. Byard	5/29- 7/14/24 (Tr. 294, Jt. Exhs. 132, p. 4, 153, GC Exh. 15).

June 2024

N. Stuewe	6/12/24- 1/06/25 (Jt. Exh. 153, GC Exh. 15)	DH, 1/6/25
Z. Hennis	6/19- 7/9/24 (Jt. Exh. 153, GC Exh. 15)	
R. Nonemaker	6/24/24- 8/12/24 (Tr. 314, R. Exh. 9(b), GC Exh. 15)	
T. Bush	6/18/24- (Jt. Exh. 153; also worked for LMC in 2022)	

July 2024

R. Drewett	7/17- 9/29/24 (Tr. 294, Jt. Exh. 153, GC Exh. 15)
R. McGuire	7/17-8/18/24 (Tr. 293-294, Jt. Exhs. 97, 153, GC Exh. 15)
J. Morris	7/22- 8/4/24 (Tr. 292, Jt. Exh. 153, GC Exh. 15)

August 2024

K. Bach	8/7- 9/26/24 (Tr. 292, Jt. Exhs. 93, 153, GC Exh. 15)
B. Hodgkins	8/7-10/27/24 (Tr. 292, Jt. Exh. 153, GC Exh. 15)

September 2024

J. McMullen 9/3/24- (Tr. 291, Jt. Exh. 153)

S. Jenkins	9/10/24- (Jt. Exh. 153; also worked for LMC in 2023)
J. Dalrymple	9/11- 10/4/24 (Tr. 291, Jt. Exhs. 91, 96, 153, GC Exh. 15)
E. Bradac	9/11- 11/6/24 (Tr. 291, Jt. Exh. 153, GC Exh. 15)
B. Clutter	9/18/24- (Tr. 290, Jt. Exh. 153, GC Exh. 15)
J. Barney	9/18- 11/6/24 (Tr. 291, Jt. Exh. 153, GC Exh. 15)
M. Moorhead	9/25/24- (Tr. 290, Jt. Exh. 153, GC Exh. 15)

October 2024

M. Gibson	10/9/24- (Tr. 290, 293, Jt. Exh. 153, GC Exh. 15)
N. Strand	10/7/24- 10/28/24 (Tr. 311, R. Exh. 9(b), GC Exh. 15)
T. Smith	10/31/24- (Tr. 290, R. Exh. 9(b), GC Exh. 15)

November 2024

K. Seevers	11/25/24- present (R. Exh. 9(b), GC Exh. 15)

December 2024

S. Miller	12/16/24- present (Tr. 287, 292, R. Exh. 9(b), GC Exh. 15).
K. Barton	12/16/24- present (Tr. 314-315, R. Exh. 9(b), GC Exh. 15)

APPENDIX 4

Strikers named in Complaint, listed by job on final schedule before the strike (Jt. Exh. 154). "2/25/19" column is the job former striker had on LMC's 2/25/19 job assignment sheet. (GC Exh. 4). Qualifications are the jobs striker was listed as being qualified for as of 8/30/19. (GC Exh. 3). Employees with an asterisk were offered reinstatement. Jobs are abbreviated as follows:

Acid Plant: AP	Moly Rstr. Ass't: MRA	Rhenium Op.: RH
Briquette Operator: BQO	Moly RO 1-2-4: MRO 1-4	RMP Rst./ Chrg.: RMP CH
Ferro crusher: FC	Moly RO 6: MRO 6	RMP Rst./ Packer: RMP PK
Ferro: FO	Packer: PK	Shipper: SH
Ferro Packer: FP	Plant Utility Op.: PUO	Unloader/ roasting: UL
Leadman: LM	Pure Oxide: PO	Electrician: EC
Janitor: JN	Roaster Operator: RO	Unassigned Labor: UNLB

	Name	**2/5/19 job**	**Qualifications**
<u>Skilled</u>			
Instrument tech	R. Quader	Inst. Repair	
Acid Plant	S. Withers*	AP	AP, LM, MRA, MRO 1-4, PK, PO
	C. Brodmerkel	AP	AP, BQ
	R. Froats	AP	AP
	R. Watson	AP	AP, PK
	D. Findley*	AP	AP, FO, PK, PO, RMP CH, RMP PK, UL
	T. Haspel	AP	AP, MRA, MRO 1-4, 6, PK, PO, RMP CH, PK
	S. Osko	AP	AP, FO, MRO 1-4, PK, RH, RMP CH
	J. Priselac	AP	AP, MRO 1-4, 6, PK, RMP CH
Electrician	D. Russell	EC	FC, FO, PK, PUO, UL
	C. Green	EC	AP, JN
	M. Breese*	EC	FC, MRA, MRO 1-4, 6, PUO
	C. Polen	EC	FO, JN, MRA, PO
Mechanic	D. Griffith*	Mech.	JN, PK, RMP PK

	D. Boyd	Mech.	MRO 1-4, 6, PK, PUO, RMP CH
	J. Hall	Mech.	
	F. Jones	Mech.	BQ, RMP PK
	J. Avolia	Mech.	
	B. Wagner	Mech.	AP, FC, FO, JN, LM, MRA, MRO 1-4 & 6, PK, PUO, PO, RMP CH & PK, SH, UL
	D. S. Brown*	Mech.	AP, BQ, FO, JN, MRA, MRO 1-4, PK, PO, RMP CH, SH, UL
	M. Miller*	Mech.	FO, LM, MRA, MRO 1-4, 6, PK
	J. Fonner	Mech.	FO, MRO 1-4, 6, PUO
	H. Guzell	UL	FO, MRA, MRO 1-4, PK, PO
	S. Waters*	UNLB	FC, FO, MRA, MRO 1-4 & 6, PK, RMP CH, SH
Acid Plt. Util. Op.	J. Speicher	APUO	AP, FO, MRA, MRO 1-4, PK, PO, RH
Rhenium Op.	T. Minger	RH	FC, FO, LM, MRA, MRO 6, PK, PO, RH, RMP CH
	M. Barnett	RH	AP, MRO 1-4, PK, PUO, PO, RH, RMP CH
	B. Murphy*	RH	AP, FO, MRA, MRO 1-4 & 6, PK, PO, RH
Safety Fac. (ends 12/31/19)	C. Markish	Safety Fac.	FO
Operator			
Briquette. op.	T. Wright	FO	AP, BQ, FC, FO, JN, LM, MRA, MRO 1-4 & 6, PK, PUO, PO, RH, RMP CH & PK, SH, UL
Ferro op.	C. Durbin*	FO	BQ, FC, FO, MRA, MRO 1-4 & 6, PK, PUO, PO, RMP CH, UL
	T. Govey	FP	FO, MRA, MRO 1-4 & 6, PK, PO, RMP CH & PK, SH
	J. Shiel	FO	BQ, FO, JN, MRA, MRO 1-4 & 6, PK, PUO, RMP CH

	J. Smith*	FC	FO, MRA, MRO 1-4 & 6, PK, PO
Packer	J. Schmalstieg	PK	FO, MRA, MRO 1-4, PK, PUO, RMP CH
	J. Brown	PK	FC, FO, MRA, MRO 1-4 & 6, PK
	L. McManus	PK	PK, PUO, RMP CH
	M. Dulaney	UNLB	FO, MRO 1-4, PK, RMP CH
Plt. Utlty. Op.	D. Harrison*	PUO	BQ, FO, JN, PK, PUO, UL
Pure Oxide Op.	C. Bartoletti*	PO	AP, BQ, MRO 1-4 & 6, PK, PO, RH, RMP CH
	D. Sienkiel*	RMP CH	MRA, MRO 1-4, PK, PO
Roaster Op	E. Link	MRO 4	MRO 1-4, PO
	D.Riddle, Jr.	MRO 2	FC, MRA, MRO 1-4 & 6, PK, PO
	J. Crawford*	MRO 4	MRO 1-4 & 6, UL
	J. Guiddy*	PK	MRA, MRO 1-4 & 6, PK, UL
	B. Credo	UNLB	MRA, MRO 1-4
	J. Stover*	UNLB	MRA, MRO 1-4, PK, RMP PK
	K. Flanigan	UNLB	FO, MRA, PK
	D. Stillwell*	UNLB	MRA, MRO 1-4
	J. Jaggie	RMP CH	FC, MRO 1-4, RMP CH
	D. Mercer*	MRO 4	MRO 1-4, RMP CH
Shipper	A. Yamber	SH	PK, SH, UL
	C. Smith	SH	JN, MRO 1-4, PK, PUO, RMP PK, SH, UL
Unloader	D. Hall	UL	BQ, FO, JN, PK, UN
	W. Diamond*	BQ	BQ, FO, JN, LM, MRA, MRO 1-4 & 6, PUO, RMP CH & PK

	P. Pallet	UL	FC, FO, MRA, MRO 1-4, PK, PO, RMP CH & PK, UL
	S. Almason	LB/PK	FO, JN, MRO 1-4 & 6, PK, PO, RMP CH, SH, UL
Labor			
Janitor	R. Brady*	JN	BQ, FC, FO, JN, MRA, PK, PO, SH
Laborer	F. Testa	UNLB	JN, MRA, MRO 6, PK, PUO, PO, RMP PK, SH, UL
	D. Darras	UNLB	JN, MRA, MRO 1-4 & 6, PO, RMP CH & PK, SH, UL
	R. Baker	UNLB	MRO 1-4, PK, PO, RMP CH
	S. Stover*	UNLB	MRO 1-4 & 6, SH, UL
Lab/pack	J. Wagner	Mech.	FO, JN, MRO 1-4 & 6, PK, PUO, SH
	B. Bonus	LB/PK	BQ, FC, FO, JN, MRA, MRO 1-4 & 6, PK, PUO, PO, RMP CH & PK, SH, UL
Laboratory			
Hrly Chemist	D. Porchiran	N/A	N/A
Sr An Frt Lab	B. Froats	AP	AP
	B. Johnston*	N/A	FO, JN, MRO 1-4, PO, RMP PK, UL
	M. Shimko	N/A	
	G. Bilby	N/A	FC, FO, JN, MRO 6, PK, PUO, PO, RMP CH
Bk Lab	C. Bartoletti*	PO	see above
	R. Puskarich	N/A	n/a
	E. Shiel	FO	BQ, FO, JN, MRA, MRO 1-4 & 6, PO
Not on Exh. 154	K. Crago*		MRO 1-4, RMP CH
	J. Dubich		AP, PUO, RMP PK, SH, UN

CONCLUSIONS OF LAW

Based on the above I issue the following recommended conclusions of law:

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

2. International Union, United Automobile, Aerospace, and Agricultural Implement Workers Of America (UAW) and its Local No. 1311 (Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(3) and (1) of the Act by engaging in the following conduct:

   (a) failing to appropriately place former economic strikers on a preferential recall list after the Union made an unconditional offer to return to work on their behalf on August 16, 2021;

   (b) implementing and maintaining a recall system from May 2022 to the present that gives preference in terms and conditions of employment to former strikers based on whether they made an individual offer to return to work and their actual or perceived union affiliation or activity;

   (c) failing and refusing to reinstate former economic strikers to existing vacancies in their former or substantially equivalent positions of employment;

   (d) failing to timely reinstate economic strikers to existing vacancies in their former or substantially equivalent positions of employment.

   (e) The unfair labor practices described above affect commerce within the meaning of Sections 2(6) and (7) of the Act.

REMEDY

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

Having found that the Respondent violated Section 8(a)(3) and (1) of the Act by failing to appropriately place strikers on a preferential recall list after the Union made an unconditional offer to work, implementing and maintaining a discriminatory recall procedure, and by failing and refusing to reinstate, or timely reinstate, former economic strikers to existing vacancies in their former or substantially equivalent positions of employment in the absence of a substantial business justification, Respondent shall be ordered to rescind the recall procedure it implemented in May 2022 and appropriately place strikers on a preferential recall list, and, if it has not already done so, (2) offer employees who have been denied recall to vacancies in their former or substantially equivalent positions full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, discharging, if necessary, any employees currently in those positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and (3) make employees who were denied reinstatement or offered delayed

reinstatement whole for any loss of earnings and other benefits, and any direct or foreseeable pecuniary harms, suffered as a result of the discrimination against them.[36]

The backpay remedy shall be computed on a quarterly basis, less any interim earnings, as prescribed in *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).

In accordance with *Thryv, Inc.*, 372 NLRB No. 22 (2022), Respondent shall also be ordered to make the former strikers whole, with interest, for any other direct or foreseeable pecuniary harm suffered because of the refusal to reinstate them, or the delay in reinstatement, including reasonable search-for-work and interim employment expenses, if any, regardless of whether these expenses exceed interim earnings. See *King Soopers, Inc.*, 364 NLRB 1153 (2016), enfd. in relevant part 859 F.3d 23 (D.C. Cir. 2017). Compensation for these harms shall be calculated separately from taxable backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

Further, Respondent is ordered to compensate the former strikers for the adverse tax consequences, if any, of receiving lump-sum backpay awards and to file with the Regional Director for Region 6, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award(s) to the appropriate calendar year(s). *AdvoServ of New Jersey, Inc*., 363 NLRB No. 143 (2016). In accordance with *Cascades Container Board*, 370 NLRB No. 76 (2021), as modified in 371 NLRB No. 25 (2021), Respondent is further ordered to file with the Regional Director for Region 6 copies of the W-2 form(s) reflecting the backpay awards.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[37]

ORDER

Respondent Langeloth Metallurgical Company, LLC and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

   (a) Failing to appropriately place former economic strikers on a preferential recall list after they make an unconditional offer to return to work.

[36] I will leave to the compliance stage of this proceeding the determination of the number and identity of employees affected by the Respondent's failure to implement a nondiscriminatory preferential recall system and its refusal to reinstate strikers, or timely reinstate them, to their prestrike or substantially equivalent positions. See *United Site Services of California*, 369 NLRB No. 137 (2020), n. 78.

[37] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Implementing and maintaining a recall system for former economic strikers that gives preference in terms and conditions of employment based on whether they made an individual offer to return to work after the Union made an unconditional offer to return to work on their behalf, or their actual or perceived union affiliation or activity.

(c) Failing and refusing to reinstate former economic strikers to vacancies in their former or substantially equivalent positions of employment in the absence of a legitimate and substantial business justification.

(d) Failing to timely recall former strikers to vacancies in their former or substantially equivalent positions of employment in the absence of a legitimate and substantial business justification.

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

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

(a) Within 14 days from the date of this Order, rescind its discriminatory recall procedure and appropriately place former economic strikers on a preferential recall list.

(b) Within 14 days from the date of this Order, if it has not already done so, offer former economic strikers who were unlawfully denied reinstatement full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, discharging, if necessary, any employees that have been newly hired since the end of the strike and any temporary employees, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(c) Make whole former economic strikers who were not offered reinstatement, or were not timely offered reinstatement, for any loss of earnings and other benefits and any direct or foreseeable pecuniary harms suffered because of the discrimination against them.

(d) Compensate the affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and, 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 6 a report allocating the backpay awards to the appropriate calendar years for each affected backpay recipient.

(e) File with the Regional Director for Region 6, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, or such additional time as the Regional Director may allow for good cause shown, a copy of W-2 form(s) reflecting the backpay awards.

(f) Within 14 days from the date of this Order, remove from its files any references to the unlawful refusals to reinstate or timely recall former economic strikers, and within 3 days thereafter, notify affected employees in writing that this has been done and that the refusals to reinstate or timely recall them will not be used against them in any way.

(g) 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 back pay due under the terms of this Order.

(h) Within 14 days after service by the Region, post at its Langeloth, Pennsylvania facility copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. 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 shall be mailed to all current employees and former employees employed by the Respondent at any time since August 16, 2021.

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

Dated, Washington, D.C., July 16, 2025

Sarah Karpinen

Sarah Karpinen
Administrative Law Judge

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.

THE NATIONAL LABOR RELATIONS ACT 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 place former strikers on a preferential recall list after the Union makes an unconditional offer to return to work on their behalf.

WE WILL NOT discriminate against former strikers with respect to reinstatement because they did not make an individual offer to return to work after the International Union, United Automobile, Aerospace, and Agricultural Implement Workers Of America (UAW) made an offer on their behalf, or because of their actual or perceived union affiliation or activity.

WE WILL NOT fail and refuse to reinstate former strikers to existing vacancies in their former or substantially equivalent positions of employment.

WE WILL NOT fail and refuse to timely reinstate former strikers to vacancies in their former or substantially equivalent positions of employment.

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 Section 7 of the Act.

WE WILL within 14 days from the date of the Board's Order, rescind our discriminatory recall procedure and appropriately place former economic strikers on a preferential recall list.

WE WILL within 14 days from the date of the Board's Order, offer former economic strikers who were unlawfully denied reinstatement to vacancies in their former or substantially equivalent positions of employment reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, discharging if necessary any employees currently in

those positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make any former strikers who were denied reinstatement or were untimely reinstated whole for any loss of earnings and other benefits resulting from our unlawful conduct less any net interim earnings, plus interest. **WE WILL** also make former strikers whole for any direct or foreseeable pecuniary harms they suffered because of our unlawful conduct, including reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate all affected employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award and **WE WILL** file with the Regional Director for Region 6, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award(s) to the appropriate calendar year(s), as well as a copy of the corresponding W-2 form(s) reflecting the backpay award(s).

WE WILL, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, or such additional time as the Regional Director may allow for good time shown, file with the Regional Director for Region 6 a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any references to the unlawful refusals to reinstate or recall economic strikers and we will, within 3 days thereafter, notify the affected employees in writing that this has been done and that our refusals to reinstate or recall them will not be used against them in any way.

LANGELOTH METALLURGICAL COMPANY, LLC
(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.

NLRB REGION 6
100 Liberty Avenue, Room 904
Pittsburgh, PA 15222-4111
Tel: (412) 395-4400
Hours of operation: 8:30am – 5:00pm ET

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/06-CA-290184 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.