UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

THE POMPTONIAN INC., d/b/a POMPTONIAN FOOD SERVICE

and Case 22-CA-312629

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 32BJ

Joanna Pagones Ross, Esq., for the General Counsel
Marc Furman and Lauren N. Bass, Esqs.
(Cohen Seglias Pallas Greenhall & Furman, P.C.),
Philadelphia, PA, for the Respondent
Brent Garren, Esq. (SEIU Local 32BJ),
New York, NY, for the Charging Party

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried in Newark, New Jersey on May 5 and 7, 2025. Based on timely filed charges by Service Employees International Union, Local 32BJ, (Union), the Acting General Counsel (General Counsel) issued a complaint on February 10, 2025 alleging that The Pomptonian Inc., d/b/a Pomptonian Food Service (Respondent), violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act)[1] by failing and refusing to comply with the parties' collective-bargaining agreement (CBA) in the following respects: (1) since about August 2022,[2] (a) failing and refusing to provide newly hired employees with applications for Union membership and dues check-off authorization forms, and (b) failing and refusing to provide the Union with the completed membership forms and other documentation; (2) since about January 31, refusing to deduct employee wages and remit them to the Union pursuant to valid, unexpired, and unrevoked employee check-off authorizations; (3) about April 11, denying the Union access to the Respondent's Springfield locations; and (4) about January 31, withdrawing recognition of the Union.

The Respondent denied the material allegations and asserts that: (1) some of the claims are untimely;[3] (2) its actions were based on legitimate, non-discriminatory reasons, and were not motivated by employees' protected concerted activities; (3) its withdrawal of recognition of the

[1] 29 U.S.C. Sec. 158(a)(5) and (1).
[2] All dates are between August 2022 and May 2023 unless stated otherwise.
[3] The Respondent's untimeliness defense lacks merit, as the charge was filed on February 21, 2023, which was within six months of August 2022, the earliest accrual date alleged.

Union was based on (a) objective evidence that the Union was no longer the majority representative of unit employees, and (b) the filing of a decertification petition by unit employees.[4]

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

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a New Jersey corporation, has been engaged in the provision of food services in public schools throughout the State of New Jersey, including Springfield, New Jersey. Annually, the Respondent purchases and receives at its New Jersey locations, including its Springfield locations, goods and materials valued in excess of $50,000 directly from points outside the State of New Jersey. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Respondent's Operations

The Respondent, a family-owned food service company, manages and operates cafeteria programs for approximately 114 New Jersey school districts. Including management, the Respondent has approximately 2,200 employees. Candy Vidovich and Mark Vidovich are the owners; Candy Vidovich is chief executive officer; Mark Vidovich is president. Tina Cappello is vice president and director of operations, and an admitted statutory supervisor and agent.

Since 2014, the Respondent has been the food services contractor for the Springfield School District (Springfield). Richie Collins, the Respondent's food services director for Springfield, supervises the managers in the district's five school cafeterias, and is an admitted statutory supervisor and agent of the Respondent.[5]

B. The Respondent's Relationship with the Union

1. The Collective-Bargaining Agreement

Labor organizations represent the Respondent's employees at eight of its 114 New Jersey school districts. In January 2023, four of those districts were represented by the Union: Springfield, South Orange & Maplewood, Woodbridge, and Princeton.

[4] Respondent also asserted in its post-hearing brief that the Union improperly filed an unfair labor practice charge rather than exhaust the grievance and arbitration procedure at Articles 19-20 of the collective-bargaining agreement between the parties. However, such a defense was not alleged in the Respondent's answer and is not considered here.

[5] Cappello and Collins are supervisors and agents of the Respondent within the meaning of Sections 2(11) and 2(13) of the Act, respectively. (Jt. Exh. 1.)

The Union's relationship with the Respondent at Springfield began in July 2014, when the Respondent recognized the Union as the exclusive collective bargaining representative of its Springfield employees (the bargaining unit or Springfield unit):

> Included: All full-time and regular part-time food service workers employed by the Employer at its Springfield School District facilities.
>
> Excluded: Managers, management trainees, receptionists, nutritionists, registered or licensed dieticians, students, executive chefs, chef managers, chefs, employees of other employers, subcontractors, all other employees not specifically identified above, office clericals, supervisors, guards, and confidential employees as defined in the Act.

Since the Respondent's initial recognition of the Union, the relationship has been embodied in successive collective-bargaining agreements, the most recent of which was effective from September 1, 2018 to August 31, 2022 (the CBA). The following CBA provisions are particularly relevant:

> ARTICLE 7 – UNION SECURITY
>
> Section [1]: In the manner and to the extent permitted by law, it shall be a condition of employment that all employees covered by this Agreement shall become and remain members in the Union on the thirty-first (31st) day following their employment, or the effective date of this Agreement, whichever is later. The requirement of membership hereunder is satisfied by the payment of the financial obligations of the Union's initiation fee, agency fees, and periodic dues uniformly Imposed.
>
> Upon receipt by the Company of a letter from the Union's Secretary-Treasurer requesting an employee's discharge because he or she has not met the requirements of this Section, the employee shall be discharged within fifteen (15) days of the letter If prior thereto the employee does not take proper steps to meet the requirements.
>
> The Union agrees to indemnify and hold the Company harmless with respect to any liability incurred by reason of any actions taken by the Company for the purpose of complying with any provision of this Article, provided, with respect to the removal of employees under the Union Security provisions, the Company has done nothing to cause or increase its liability.
>
> Section 2: During an employee's first week of work, a union steward or designee will have the opportunity to meet with the employee for 15 minutes starting 5 minutes before the employee's regular break time in order to provide the employee with an orientation to the union. Neither the new employee nor the union steward (or designee) shall have his/her pay reduced as a result of time spent in the meeting.
>
> ARTICLE 8 – UNION DEDUCTIONS
>
> Section 2: The Company shall remit each month to the Union the amount of deductions made for that particular month including initiation fees, reinstatement fees, membership

dues, permits and arrears, together with a list of employees for whom such deductions have been made, a unique identification number for each listed employee, and the gross pay amount per week/month. The list will indicate all official personnel actions that result in a change in status of bargaining unit members, including new hires, terminations, promotions, etc. The information shall be in computer readable electronic form, whenever possible. The remittance shall be forwarded no later than the twentieth (20th) of the month following the month in which deductions were made.[6]

Section 4. In order to simplify the Company's and the Union's administration of this action, the Company shall upon the hiring of new employees give each employee an application for Union membership and dues check-off authorization form. The Company shall remit the completed forms to the Union monthly.[7]

ARTICLE 12 – ACCESS TO LOCATION

Section 1: This section provides a Union visitation process that will ensure the proper balance between operations and the accredited representative visitation to the Company's public and private business areas for the purposes of conferring with the Company and the Union Steward and monitoring the administration of this Agreement. Management can withhold access to the premises for legitimate reasons. However, access will not be unreasonably withheld.

An authorized representative of the Union will notify the Food Service Director or authorized designee in advance of arriving on the Company's of School District's premises of the representative's desire to visit. Upon arrival on the Company's or School District's premises, the Union accredited representative will notify the Food Service Director or authorized designee of his/her presence prior to speaking to any employee. At that time, the Food Service Director or authorized designee will inform the Union accredited representative if there any business reasons for limiting the Union's visitation with employees or visiting the premises. Such visitation shall not interfere with the work of the employes or the service to the customers of the Company and will follow the School District's security regulations.

Section 2. The union acknowledges that the operations of the Company are subject to the rules and regulations of the School District and that such rules and regulations may restrict and/or modify the provisions for union access otherwise provided for in the Union Representation Article 11.

ARTICLE 37 – DURATION

[6] Kimberly Walker, the Respondent's dues director, referred to this information as "back up" documents. (Jt. Exh. 2 at 6; Tr. 131-136, 138; GC Exh. 15-16.)

[7] The CBA did not incorporate a specific membership application and dues authorization form to be distributed by Respondent. However, Esther Innis, the Union's field representative since August 2022, identified the form utilized by the Union at that time. It consists of four sections: (1) member's personal and contact information; (2) payroll deduction authorization, (3) political action contribution authorization, signup, and (4) informational update and volunteer designation. (GC Exh. 4; Tr. 27-29.)

> Section 2: This Agreement shall automatically renew from year to year after August 31, 2018 unless notice, in writing, is given sixty (60) calendar days prior to the expiration date by either party that such party terminates the Agreement on the expiration date. Failure by either party to give such notice shall be deemed to be consent to a renewal of this Agreement for a period of one (1) year from the termination date affixed herein. Notwithstanding any other provision of this Agreement, in the event the Company's contract with the School District ends at any time and for any reason, then this Agreement and all obligations under this Agreement automatically shall terminate no later than the effective date of termination of the Company's contract with the School District. The Company will make a good faith effort to give the Union as much prior notice of such termination as reasonable under the circumstances, up to sixty (60) calendar days prior to the effective date of such termination.
>
> Section 3: Should negotiations be commenced to amend or modify this Agreement, the entire Agreement shall be extended and remain in full force and effect during the period of such negotiations until such time as a new Agreement is signed or either party terminates the extension period by giving the other party written notice by certified or registered mail. The extension of this Agreement will terminate thirty (30) calendar days after notice of termination is received.

2. The Respondent's Administration of the CBA

During the period of January 2022 to February 2023, the Respondent mailed to the Union's Dues Department a monthly check for dues and a list of the bargaining unit employees from whom dues were deducted.[8] However, those monthly transmittals did not include information about personnel actions, such as new hires, leaves of absence, promotions, terminations, or other employment status changes. Moreover, the Dues Department was not otherwise notified when the Respondent hired new employees.[9] As a result, the Union was not informed about the 12

[8] The Respondent submitted the monthly payments and corresponding lists by mail rather than utilize the Union's self-service database (ESS database) that enables employers to upload monthly employee rosters and dues remittances. The February 2023 payment was for dues withheld in January 2023. (Tr. 51-52, 130-139, 183-184; GC Exh. 15-16.)

[9] I credited the testimony of Kimberly Walker's, the Union's dues director, testimony that the Respondent did not send the Union monthly the requisite personnel action-related information of new employees. (Tr. 133-139, 152-155.) I deny the General Counsel's motion for an adverse inference striking Candy Vidovich's testimony since the Respondent no longer employs the two individuals who allegedly emailed information to the Union, Howard Grinberg and Frank Musillo. However, Vidovich's testimony was not credible on this point. She testified that the Respondent sent the Union information relating to newly hired employees, their dates of hire and terminations, and union membership status. She did not know how frequently that occurred. (Tr. 230-231.) Nor was her testimony corroborated, as the Respondent produced no information in response to the General Counsel's subpoena duces tecum for personnel action-related documentation. (GC Exh. 20 at ¶ 9; Tr. 372-376.) Walker's testimony, on the other hand (Tr. 133-139, 152-155.), was corroborated by the Respondent's position statement that it only provided the Union monthly with a list of employees who signed authorization cards:

> Pomptonian alerts new hires of their obligation to join the Union upon beginning work in the Springfield School District. Regarding the failure to report newly hired employees, Pomptonian has relied on past practice. Pomptonian distributes a monthly list with its dues remittance with a breakdown of dues for each employee that has signed a dues authorization card. (GC Exh. 23 at 3.)

employees hired, and six employees terminated, in 2022, and the three bargaining unit employees hired in 2021.[10]

Between 2015 and April 2022, during visits to Springfield, Union field representative Antonio Silva would ask the manager or person in charge of the kitchen if there were new employees, as well as employees who left.[11] However, the responsibility for collecting the membership forms from new employees remained with the food service directors, who were supposed to tell employees that they were working in a union shop and required to sign membership and dues authorization forms. In 2022, Respondent's food service directors and managers did not provide new hires with the Union membership and dues authorization forms.[12] On September 2, the Respondent's payroll director, Frank Musillo, confirmed in an email to Cappello that the Respondent relied on the Union's shop stewards to get the membership applications from new employees: [13]

> As I understand it, as in Woodbridge School District, the shop steward is required to have the new employees sign off on the authorization cards allowing us to deduct dues.
>
> I have attached samples of the authorization cards.
>
> We provide the list to the SEIU and also we allow time at the time of hire for the shop steward to discuss the union authorization/check off card to be handled however we do not always received the signed back.[14]

[10] The uncontroverted testimony of Silva and Innis established that there was no side agreement permitting Respondent to ignore its obligation ("shall give" and "shall remit") to provide the requisite notifications relating to new hires. (Tr. 52, 182; R. Exh. 1 at 1; GC Exh. 17.)

[11] Silva's hedged and speculated that the Respondent provided new hires with the membership applications and dues authorization forms, but did not testify that he received any in 2022. (Tr. 182-184.)

[12] Vidovich's inconsistent testimony, contradicted by payroll director Musillo's September 2 email, infra, established that the Springfield food service director did not distribute the forms to new employees in 2022 because, as she recalled, "[w]e don't have any cards." (Tr. 227-230.)

[13] Tina Cappello's testimony on the issue of membership form or card distribution was inconsistent, evasive, nonresponsive, and/or contradicted by the record. Asked if the Union membership application (GC Exh. 2) had ever been physically distributed at Springfield, Cappello had no knowledge—"I can't say if it was or it wasn't," as she "wasn't the person handing them out in Springfield." Confronted with her prior sworn statement that "we never physically distributed any materials," she claimed that the Respondent's food service directors distributed blue index cards to new hires in represented districts. Probed as to why she stated differently in her affidavit, her response was evasive: "Because I'm specifically referring to the blue cards' materials, and this affidavit could be anything." (Tr. 347-351.) Finally, Cappello's testimony was contradicted by Musillo's email to Furman explaining that the Respondent's representatives believed it was the shop steward, not the Respondent, who was responsible "to have new employees sign off on the authorization card allowing us to deduct dues." (R. Exh. 4.)

[14] It is unclear as to what "list" Musillo was referring. (R. Exh. 4.) Aside from the lists accompanying the Respondent's monthly remittal of dues, there was no other evidence of lists that were provided to the Union prior to the two lists sent to Innis by Furman and Innis in September 2022.

3. Silva's Departure

Silva was the Union field representative assigned to Springfield from approximately 2016 until April 2022. Since the Springfield bargaining unit has never had a shop steward, Silva communicated directly with the employees or Howard Grinberg, the Respondent's human resources representative. Silva provided Grinberg with copies of the Union membership application.[15]

Silva would find out from employees or Grinberg about the dates of the Springfield back-to-school meetings and he or another Union representative would attend the meetings. At these meetings, Silva or another representative would be given 20-30 minutes to address unit employees before or after the meeting or around the lunch time break. Silva would also ask members to fill out new membership applications so he would have their updated contact information.[16]

Silva would also contact Grinberg about one or two weeks in advance to obtain the school district's approval for space to meet with the employees after work hours, as well as enough time to notify the membership. Silva also dealt with Grinberg regarding various employee issues, including grievances, schedules, and time and attendance. Grinberg's employment with the Respondent ended roughly around the same time that Silva left the Union. In addition to arranged and back-to-school meetings, which required coordination with Greenburg, Silva also made shop visits to Springfield. However, in contrast with scheduled meetings, shop visits did not have to be prescheduled with the Respondent and approved by the school district. During shop visits to represented districts, Silva would ask the manager or head cook at each location if there were any new employees. If so, Silva would request their Union membership applications. [17]

Although Silva usually dealt with Grinberg regarding issues affecting Unit employees, he reached out to Cappello before his departure. On April 20, Silva emailed Cappello regarding expiring collective-bargaining agreements:

> Looking over upcoming Bargaining work, we have a few CBA's set to expire.
> Perhaps we can streamline this work.
> What do you think of a Mini Master that would be exclusive to Pomptonian?
> When would you be available to discuss this?
> I believe this would be advantageous for both Pomptonian and the Union.

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[15] I credited Silva's undisputed testimony that he sent Grinberg the forms and requested them from "either the person in charge of the kitchen or the manager" whenever he visited Springfield. (Tr. 194-195.)

[16] Silva explained that "every year was a new year and I'd ask everyone to fill out a new one every year. Some folks did, some folks didn't. . . . Some people change their phone numbers, some people move, you know, get us the right information so when we need you, we can reach out, you know, in case there's an issue." (Tr. 192-193.) Silva's efforts in 2022, however, fell far short, as the Union did not receive Union membership forms from numerous unit employees on the Respondent's payroll. (R. Exh. 1.)

[17] Although credible, the bulk of Silva's testimony described his general practices throughout his assigned districts. (Tr. 172-191.) With respect to Springfield, his practice of asking managers or unfamiliar employees for membership applications and collecting them, obviously fell short. As he explained, "[w]hether the Union, you know, reached out to the Employer through our Dues Department, that kind of thing, that's different." (Tr. 195-197; GC Exh. 15-16.)

Looking forward to Hearing from you.[18]

On May 10, the Respondent's counsel, Marc Furman, replied to Silva. Furman wrote that the Respondent wanted to "negotiate separately for each district, even though there will obviously be similar terms amongst them." He added that the "CBAs will not expire until the end of summer" and suggested they schedule the time and location for the negotiations in August. On May 11, Furman's email was returned as undeliverable.[19]

There was no further communication from the Union until about June 17, when the Union's contract manager notified the Respondent that the Union "intends to terminate and modify" the Springfield CBA:

> The Union intends to negotiate a successor agreement with revised wages, benefits and other conditions of employment. We will be contacting you for the purpose of negotiating a new agreement.[20]

4. Innis Replaces Silva

On August 9, Esther Innis, Silva's replacement, emailed Cappello, but received an out-of-office message, On August 15, Innis emailed Cappello again, introducing herself as the Union's new field representative and requesting "the name and contact information for the person . . . that I will be dealing with for lists" in the South Orange & Maplewood and Springfield School Districts. Cappello replied that she and Furman, who was on vacation until August 24, would be handling the negotiations. Innis replied that, in the meantime, she needed the "back to school information—date, time and place for the 2 school districts. I am planning on attending." Cappella then asked, "Are you looking for the shop stewards?" Innis replied that she wanted contact information for the shop stewards, as well as the day, time, and place for the back-to-school meetings because she was "trying attend as many as possible."[21]

On August 16, Cappello replied that the back-to-school staff meetings were for the food service directors (FSD), but Innis could "set up a union meeting that would begin after the FSDs staff meeting." She provided Innis with the contact information for the South Orange & Maplewood shop steward but noted that "Springfield does not currently have a [steward] that we know of."[22] Since Cappello did not provide her with the dates requested, Innis did not attend the back-to-school meetings at Springfield.[23]

On August 31, Innis emailed Furman that the Union was "not ready yet" for negotiations. She also attached a letter requesting "[a] roster of the school District staff" and comprehensive

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[18] R. Exhs. 8 at 1.

[19] Id. at 2-3.

[20] The Union sent similar notices regarding the other represented districts. (Jt. Exh. 3; R. Exh. 8 at 4.)

[21] The school cafeterias were closed for the summer and the Respondent's Springfield employees did not return until the back-to-school meetings were held. (R. Exhs. 2 at 2-5, and 8 at 5-12; Tr. 34.).

[22] R. Exh. 8 at 7-8; Tr. 34-35 .

[23] Capello's response departed from prior years when the Respondent would provide time for Silva to speak with unit employees during the back-to-school meetings. (Tr. 34-35, 180-181.)

personnel information relating to each employee "[i]n preparation for our upcoming Bargaining at Springfield and South Orange/Maplewood School Districts."[24]

On September 19, Furman provided Innis with a spreadsheet responding to her request for information. He also requested proposed dates to meet. The spreadsheet specified the job titles, job locations, hours worked, hourly pay rates, dues deductions, and email addresses, if any, for 19 employees in the Springfield bargaining unit. It also showed that only 10 of those employees were listed as having dues deducted from their salaries: Louann Becker, Paulette Cooper, Milagros Estoque, Margarita Ferreira, Valerie Fontain, Phillis Goode, Christine Pluchino, Marsha Repko, Andromaqi Shyti, and Flora Turner. Sixteen of the employees had email addresses.[25]

On September 27, Cappello provided Innis with the contact information for Richie Collins, the Springfield food services director. On September 28, Cappello informed Collins that Innis would be contacting him "to set up a location and time in the school for her to meet with the staff." She also instructed Collins "[t]hat is all you need to do. It is her responsibility to speak to and invite the staff to attend."[26]

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5. Innis Meets with Bargaining Unit Employees

After receiving the email addresses of the Springfield unit employees, Innis invited them to meet on October 26. Approximately 10 employees attended the meeting. Although Innis intended to update the employees regarding upcoming bargaining, three or four of the members changed the focus of the meeting. The employees were upset that some employees were paying dues, while others were not. They were also upset that they had not heard from the Union for some time.[27] On October 27, Collins emailed Cappello about the meeting:

> I'm not getting involved but want to share some things I overheard that came from the meeting with the union rep yesterday.
>
> A majority of the workers do NOT want to be in the union.
> Out senior person would like to speak with someone from Pomptonian.
> They were told if Pomptonian is taking $ from your paycheck for dues they are pocketing that money. (Like I said just passing along what I heard).

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[24] R. Exh. 8 at 13-14.

[25] Innis also requested and received similar information around this time from Cappella. The exact dates are unknown because the Union deletes emails every 90 days. (Tr. 36-46; GC Exhs. 4-5; R. Exh. 3.) The spreadsheet did not include certain employee information requested: social security numbers, telephone or cellular phone numbers, or home addresses. (R. Exh. 5.) Cappello's list provided additional information, including the email addresses of unit employees. Both spreadsheets established that dues were being deducted from only 10 of the 19 members of the bargaining unit. There is no evidence in the record that the Union contacted the Respondent about the employees who were not having dues deducted.

[26] R. Exh. 8 at 18-19.

[27] Innis attributed the dissension expressed by members to the Respondent's failure to provide the Union's new employees' with authorization cards or otherwise notify the Union of monthly personnel actions in accordance with Article 8, Section 4. (Tr. 46-51, 113-115.)

On October 31, Cappello replied to Collins that the "only information we can offer for employees looking for answers" was to research the National Labor Relations Board and National Right to Work Foundation websites.[28]

On November 2, Innis reiterated her request for information and proposed meeting dates in November and December. On November 4, Furman replied that he was available for all of Innis' proposed meeting dates. On November 7, Innis replied that conflicts arose with the other dates. After an exchange of emails, on November 11, the Respondent agreed to schedule the next meeting at Springfield for 3:00 p.m. on January 5.[29]

In preparation for the January 5 meeting, Innis notified the 16 Springfield unit employees for whom she had email addresses. However, she did not receive any responses. Since the Springfield unit lacked a shop steward and no employees were expected to attend the January 5 bargaining session, the Union decided to cancel. At 10:42 a.m. on January 5, Innis emailed Furman that she needed to cancel the meeting and asked if he was available on February 1. Pancio confirmed the Respondent's availability on that February 1 at 3:00 p.m.[30]

During a bargaining session in either December or January, Innis provided Cappello and Furman with a link to the Union's online membership portal. She told them that it was to be distributed to new employees in all of the Respondent's represented districts in lieu of the paper version of the membership form. On January 9, Cappello apprised Collins and the Respondent's food service directors in other represented districts of their obligations:

> Since your employees are members, (or should be) of a collective bargaining agreement, we are required to advise all new hires of this and give them the information to sign up for a union card at time of hire. Moving forward whenever you have a new employee, please provide them the link, which I have attached here for your convenience.
>
> As a reminder your obligation with this is **only to give them the [attached] link**, that's it. No follow up is needed by our management team, we should not be answering questions regarding the union. New hire[s] can follow the link to find answers to their questions or find the shop steward for further assistance. Let me know if you have any questions. (emphasis in original)[31]

6. Respondent Withdraws Recognition of the Union

On January 31, Innis notified Furman that she needed to cancel the February 1 meeting and stated she would reach out to reschedule. Once again, the cancelation was due to the lack of a shop steward or unit employee interest in attending the meeting.[32]

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[28] R. Exh. 8 at 17-18.

[29] GC Exh. 7 at 3-8; R. Exh. 8 at 21-24.

[30] GC Exh. 7; R. Exh. 8 at 21-25; R. Exhs. 17-18; Tr. 56-58.

[31] The testimony of Cappello and Innis is consistent to the extent that it was at a bargaining session for the Woodbridge School District in either December 2022 or January 2023 that Innis asked the Respondent to start sharing the online link in lieu of the paper version of the membership form for all of the districts represented by the Union. (R. Exh. 11; Tr. 315-317, 383-387, 349-351.)

[32] GC Exh. 8; R. Exh. 8 at 26; Tr. 59-60..

On the same day, Collins sent Cappello a petition purportedly signed by 19 Springfield employees. The petition contained their names, the two choices—"WE DON'T WANT UNION 32BJ" or "WE WANT UNION 32BJ"—and the date. Eighteen of the 19 employees purportedly expressed disinterest in the Union. Cappello then gave it to Mark and Candy Vidovich, the owners. No one investigated the signatures. That afternoon, Furman rejected Innis' request to meet: [33]

> My client has just received objective evidence that Local 32BJ is no longer the representative of a majority of the bargaining unit employees working in the Springfield School District. Pomptonian has not decided whether it will file a decertification petition with the Labor Board.
>
> In any event, it would be unlawful for my client to continue to negotiate with Local 32BJ under these circumstances. Further, I understand that you have requested a meeting on February 10 with the bargaining unit employees. unfortunately, Pomptonian is not able to agree to your request based on the foregoing.

On February 1, Innis disputed the Respondent's contention that it had "objective evidence" of the Union's loss of majority support, asked for the evidence upon which the Respondent relied, and asserted that it was not "prevented from negotiating with the Union or allowing the Union to hold a meeting with the employees as it has in the past."[34] A few hours later, Furman declined Innis's request and informed her of the Respondent's intention to file a decertification petition.[35] The Respondent also ceased remitting dues to the Union.[36]

On February 10, Innis emailed Furman with the request to meet with the bargaining unit at Springfield High School on February 21.[37] Furman did not respond. Instead, the Respondent reserved the school cafeteria for meeting on February 17 at 3:00 p.m. [38]

On February 16, at the end of a Woodbridge School District bargaining session, Furman informed Innis that she could meet with the bargaining unit employees the following day, February 17. Innis replied that it was too short notice. On Saturday, February 18, Cappello informed Innis that the February 17 employee meeting had been rescheduled to Tuesday, February 21, the day following the President's Day federal holiday. During the morning of February 21, Cappello emailed Innis twice about the meeting scheduled for that day. Innis replied a short while later that the short notice was unacceptable. She proposed two dates, February 27 or March 3, and asked "to be notified with an adequate period of time, so members can be made aware of the meeting."[39] Cappello did not respond to Innis's February 21 email.

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[33] Cappello conceded that no one attempted to authenticate the signatures on the document, which was not shared with the Union at that time. It was subsequently attached to the Respondent's decertification petition. (GC Exhs. 9 and 19; Tr. 338-340.).

[34] GC Exh. 10.

[35] GC Exh. 11.

[36] GC Exh. 16; Tr. 139.

[37] GC Exh. 12.

[38] There is no indication whether the notice was posted. (R. Exh. 12.)

[39] Cappello's second email to Innis on February 21 indicated that her first email, which she believed she sent on February 18 and found in her "draft folder," was actually sent to Innis nine minutes earlier. (GC

7. The Decertification Election

On February 8, after withdrawing recognition from the Union, the Respondent filed a decertification petition in Case 22-RM-311852.[40] The election was held on March 15. However, the Regional Director impounded the ballots after the Union requested to block the election due to the allegations in this case.[41]

By March 6, Candy Vidovich instructed Collins and Cappello to distribute the following letter to the bargaining unit employees:

> Based on the objective evidence we received from our team members in the Springfield School district, Pomptonian filed a Decertification Petition with the National Labor Relations Board (NLRB). The NLRB requires employers to provide employee's home addresses, phone numbers and email addresses as part of this process. The company has no choice but to provide the information to the Board and the Company cannot control what the Union does with this information. We hope you can appreciate Pomptonian's position. We can only react to what is required from the Labor Board.
>
> A Secret Ballot Election is planned for **Wednesday March 15** at Johnathan Drayton High School from 8:30am to 10:30am and 1pm to 3pm. (emphasis in original)
>
> If you have any questions, please reach out to Board Agent Saulo Santiago, at the NLRB. He can be reached at Saulo.Santiago@nlrb.gov

On March 19, the Union emailed the Respondent that it had "not received any dues remittance on Springfield SD since the February 2023 invoice. Can you send us an update on this account?" On March 22, Cappello replied that "[t]he Union is no longer the majority representative in Springfield as of February 2023."[42]

On April 5, Innis requested again to meet with the Springfield unit employees sometime between May 8 and 12. She also asked Cappello to "send me any updated information regarding new hires and the such." On April 11, the Respondent's counsel rejected Innis' request, asserting the Respondent "no longer has any obligation to provide the Union with access to its employees, as the Union is no longer the majority representative."[43]

On July 21, Innis emailed the Respondent's food service directors for the represented school districts and asked to be informed of the dates for the "Back to School Start up meetings." She expressed her intention to "attend as many as I can!" On July 24, Cappello replied that the Respondent "no longer as any obligation to provide the Union with access to the employees in Springfield, as the Union is no longer the majority representative." On July 26, Innis replied, [a]s

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Exh. 13.) However, Innis conceded having seen the email on February 18. (Tr. 64-69.)

[40] Jt. Exh. 5.

[41] Jt. Exh. 6.

[42] It is also undisputed that the Union did not receive any requests from unit employees to cancel their dues authorizations. (Joint Exh. 4; Tr. 148-149.)

[43] GC Exh. 14.

I understand it, until there is an election that proves otherwise, we remain the majority representative."[44]

LEGAL ANALYSIS

I. THE PARTIES' ARGUMENTS

The complaint alleges that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to comply with the CBA in the following respects: (1) since about August 2022, (a) failing and refusing to provide newly hired employees with applications for Union membership and dues check-off authorization forms, and (b) failing and refusing to provide the Union with the completed membership forms and other documentation; (2) since about January 31, 2023, refusing to deduct employee wages and remit them to the Union pursuant to valid, unexpired, and unrevoked employee check-off authorizations; (3) about April 11, 2023, denying the Union access to the Respondent's Springfield locations; and (4) about January 31, 2023, withdrawing recognition of the Union.

The Respondent denies that it imposed midterm modifications to the CBA and asserts: (1) it informed new hires of their obligation to join the Union as a condition of employment; (2) it regularly notified the Union regarding which unit employees were and were not paying dues; (3) despite receiving this information, the Union failed to take any meaningful action to address the situation; (4) it was the Union, not the Respondent, that unilaterally altered the administration of the CBA when it changed from using traditional paper dues authorization cards to an online digital portal for employee registrations; and (5) the Union neglected to assign a shop steward or provide on-site support at Springfield, undermining its own ability to engage employees and facilitate dues collection. In essence, the Respondent contends that the absence of dues authorizations was a direct result of the Union's failure to secure them, and not any action, or inaction, by the Respondent.

II. THE RESPONDENT'S MIDTERM MODIFICATIONS

A. Applicable Law

The complaint alleges at Paragraphs 7(a) and (b) that, "[s]ince about August 2022," Respondent (1) failed and refused to provide newly hired employees with applications for Union membership and dues check-off authorization forms as required at Article 8, Section 4; and (2) failed and refused to provide the Union with the completed membership forms and other official personnel documentation as required at Article 8, Sections 2 and 4.

The parties agree that the contract modification theory applies to the facts of this case, as well as the specific CBA provisions at issue—Article 7 and Article 8, Sections 2 and 4. The General Counsel asserts that the Respondent contractually modified the contract without the Union's consent. The Respondent denies the allegation and insists it met its obligations. A party seeking to modify the terms of an existing contract must obtain the other party's consent, and either party may refuse to negotiate over midterm changes to any terms and conditions contained in a

[44] R. Exh. 16.

contract. *C & S Industries, Inc.*, 158 NLRB 454, 457 (1966); *Jacobs Mfg. Co.*, 94 NLRB 1214, 1217–1218 (1951), enfd. 196 F.2d 680 (2d Cir.1952).

In *Bath Iron Works Corporation*, 345 NLRB 499, 501 (2005), the Board established the test to be applied when analyzing an allegation that an employer has modified a collective-bargaining agreement midterm without the union's consent:

> In the "contract modification" case, the General Counsel must show a contractual provision, and that the employer has modified the provision. The allegation is a failure to adhere to the contract. . . . A defense to the contract modification can be that the union has consented to the change. In terms of remedy, the remedy for a contract modification is to honor the contract.

Where an employer modifies a collective-bargaining agreement midterm, the Board ordinarily will not find a violation where the employer has a "sound arguable basis" for its interpretation of the contract and is not motivated by union animus, acting in bad faith, or seeking to sought to undermine the union. *NCR Corp.*, 271 NLRB 1212, 1213 (1984) *Westinghouse Elec. Corp.,* 313 N.L.R.B. 452, 452 (1993), enfd. mem. sub nom. *Salaried Employees Ass'n v. NLRB,* 46 F.3d 1126 (4th Cir.1995).

Since July 2014, the Union has been recognized as the exclusive collective-bargaining representative of the Springfield bargaining unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from September 1, 2018 to August 31, 2022. Pursuant to Article 37, "Duration," the CBA continued in effect from year to year.[45]

The CBA included a union security provision requiring Union membership as a condition of employment. In that regard, the plain language of the CBA required the Respondent to distribute membership and dues authorization forms to new employees, collect completed forms, and submit them to the Union. In addition to remitting monthly union dues to the Union, the Respondent was required to include lists of all official personnel actions, including employees hired.

B. The Respondent's Obligation to Provide Monthly Lists of New Hires

Article 8, Section 2 of the CBA required the Respondent to remit employees' dues to the Union each month, as well as a list of "all official personnel actions that result in a change in status of bargaining unit members, including new hires, terminations, promotions, etc." The Respondent remitted a monthly list of employees from whom dues were deducted, along with a check for dues. However, the Respondent's monthly transmittals to the Union in 2022 did not include any information about official personnel actions. The CBA clearly set forth the type of information

[45] The Union did not terminate the CBA by notifying the Respondent on June 16 that it "intends to terminate and modify" the CBA and "negotiate a successor agreement." That notification did not terminate the CBA, which automatically renewed year to year pursuant to Article 37. Consistent with the provisions in Article 37, the parties were in the process of scheduling Springfield bargaining sessions when the Respondent withdrew recognition of the Union on January 31, 2023.

that needed to be shared: "official personnel actions that result in a change in status of bargaining unit members, including new hires, terminations, promotions, etc."

Contrary to the Respondent's argument, it did not inform the Union monthly about the unit employees who were not paying dues. The Respondent confirmed as much in its position statement. As a result, the Union was not informed monthly about the employees hired and terminated in 2022 until Furman responded to Innis' request for information on September 19. That spreadsheet specified the job titles, job locations, hours worked, hourly pay rates, dues deductions, and email addresses, if any, for 19 employees in the Springfield bargaining unit. It also showed that only 10 of those employees were listed as having dues deducted from their salaries.

C. The Respondent's Obligation to Distribute and Collect Union Forms

The plain language of Article 8, Section 4 required the Respondent to distribute Union membership applications and dues check-off authorization forms to newly hired employees, and "remit the completed forms to the Union monthly." Silva, until he left in April, would ask the manager or persons in charge of the school kitchens in the Union's represented districts if there were new employees, as wells employees who left. He would also ask employees at back-to-school meetings to fill out their forms so he had updated contact information. With respect to Springfield, however, Silva obviously fell short, as numerous employees on the payroll did not join the Union and have dues deducted from their pay. In any event, his efforts did not ameliorate the Respondent's failure in 2022 to provide new hires with the Union membership application and dues authorization forms.

As Cappello conceded in her prior sworn testimony and Musillo confirmed in his September 2 email, the Respondent abdicated its obligation to distribute those forms to, and collect them from, newly hired employees with the expectation that shop stewards should handle it. However, the Springfield unit has never had a shop steward.

Contrary to the Respondent's assertions, neither the CBA nor Board precedent required the Union to assign a shop steward or file grievances to enforce the union security provision. "[A] union is not required to aggressively police its contracts." *Moeller Bros. Body Shop, Inc.,* 306 NLRB 191, 193 (1992). The payroll records produced revealed that the Respondent did not inform the Union monthly about newly hired employees going back as far as 2021 and that failure to adhere to the contract continued beyond August 2022, the accrual date in the complaint.

Unlike in previous years, the Union representative's request for the dates of the Springfield back-to-school meetings went unanswered. As a result, Innis was not afforded the opportunity to meet with the unit employees in August when they returned to work, including those who had not yet joined the Union. The Respondent did respond to Innis's information request for unit employees' contact information on September 19 and arranged for her to meet with them on October 26. By then, however, Innis encountered Union members who were upset because the majority of employees were not paying dues and Innis had not met with them until then.

Having learned that the Respondent was not distributing and collecting the membership forms at Springfield and other districts, the Union changed the process for enrolling new employees. During the December 2022 or January 2023 bargaining session for the Woodbridge

School District, Innis provided Cappello and Furman with a link to the Union's online membership portal. She told them that it was to be distributed to new employees in all of the Respondent's represented districts in lieu of the paper version of the membership form. On January 9, Cappello instructed the food service directors in represented districts that, "[m]oving forward," their only obligation was to give new employees the link to the membership portal and "[n]o follow up is needed."

The Union's modification on January 9 of the CBA requirement that the Respondent provide new employees with the link to the Union's membership portal does not erase the fact that the Respondent did not comply with its contractual requirement to distribute Union membership and dues authorization forms to new employees in 2022 and remit them monthly to the Union.

D. The Respondent's Midterm Modifications

The Board has long considered union security and dues checkoff as matters related to "wages, hours, and other terms and conditions of employment" within the meaning of Section 8(d) of the Act and, thus, mandatory subjects for collective bargaining. *Valley Hospital Medical Center, Inc.,* 368 NLRB No. 139, slip op. at 6 (2019); *Tribune Publishing Co.*, 351 NLRB 196, 197 (2007), enfd. 564 F.3d 1330 (D.C. Cir. 2009); *Bethlehem Steel Company*, 136 NLRB 1500 (1962), enfd. In relevant part sub nom. *Industrial Union of Marine & Shipbuilding Workers v. NLRB,* 320 F.2d. 615 (3d Cir. 1963), cert. den. 375 U.S. 984 (1965); *NLRB v. The Proof Company,* 242 F.2d 560 (7th Cir. 1957); *United States Gypsum Company,* 94 NLRB 112 (1951).

The Respondent's breach of Article 8, Sections 2 and 4 throughout 2022 by failing to distribute, collect, and remit monthly the Union membership and dues authorization forms constituted a midterm modification without the consent of the Union in violation of Section 8(a)(5) and (1). The issue is whether the Respondent had a sound arguable basis for its actions or, in this case, inaction. It did not. In fact, the Respondent's contention is that it complied with the CBA by distributing Union membership and dues authorization forms. However, the facts demonstrate otherwise. The Respondent clearly did not meet its obligations from August 2022 onward. *Moeller Bros. Body Shop, Inc.,* supra at 192-193 (1992) (finding that employer unlawfully failed to withhold dues pursuant to union security provisions, but capping damages pursuant to Section 10(6) due to the union's lack of "reasonable diligence" for over a decade); cf. *Metalcraft of Mayville, Inc.,* 367 NLRB No. 116, slip op. at 4-5 (2019) (employer acted in good faith pursuant to a sound arguable interpretation of the contract in light of Wisconsin's recently-enacted right-to-work law).

The Respondent's failure to comply with its contractual obligations prevented the Union's Dues Department from learning about the 12 employees hired, and six employees terminated, in 2022. That was more than a mere breach of the contact because it resulted in 12 new employees not joining the Union and having dues deducted from their pay. As such, it created a discrepancy between the dues and non-dues paying members that continued into August 2022 and contributed to the complaints expressed by unit employees toward the Union at the October 26 meeting. Once again, the Respondent's failure to adhere to the CBA constituted an midterm modification without the Union's consent in violation of Section 8(a)(5) and (1).

III. THE RESPONDENT'S WITHDRAWAL OF RECOGNITION FROM THE UNION

A. The Respondent Did Not Establish the Union's Loss of Majority Support

Paragraph 8 of the complaint alleges that the Respondent, [a]bout January 31, 2023, withdrew recognition of the Union as the exclusive bargaining representative of the bargaining unit. Section 8(a)(5) of the Act requires that an employer recognize and bargain with the labor organization that its employees have properly chosen. Once a labor organization is recognized, it enjoys a continued presumption of majority support by employees. But when the union has been the collective-bargaining representative of the employees for over a year that presumption can be rebutted by the employer. To rebut that presumption and lawfully withdraw recognition, the employer must establish that: (1) the union has lost a majority of employee support; and (2) there are no unremedied unfair labor practices tending to cause employees to become disaffected from the Union. See *Levitz Furniture Co. of the Pacific*, 333 NLRB 717, 723 (2001).

The employer has the burden of proving that "an incumbent union has, in fact, lost majority support" before withdrawing recognition. See *Levitz,* id. Absent the preferred method of requesting the Board to conduct a representation election, an employer may choose at its peril to unilaterally withdraw recognition if presented with "objective" evidence of an asserted loss of majority support. See *Levitz,* supra at 725. If a union disputes the grounds for withdrawal of recognition, the employer must prove by a preponderance of the evidence "that the union had, in fact, lost majority support at the time [it] withdrew recognition." Id. The employer may only rely upon evidence that existed at the time of the withdrawal of recognition. Objective evidence relied upon by the employer when withdrawing recognition may include admissions by union officials that the union no longer has majority support and written and oral statements which clearly state that the bargaining unit employees do not want to be represented by the union. If the employer fails to meet its burden of proof, the withdrawal of recognition is a violation of Section 8(a)(5).

In determining that the Union lost majority support, the Respondent relied on a petition, which it attached to its subsequent decertification petition, purportedly signed by 19 Springfield employees. The petition stated that 18 employees no longer wanted the Union to represent them, while one employee favored continued representation. However, the Respondent did not seek to authenticate the signatures through the testimony of the alleged signatories, witnesses to the signing of the document, or comparator documents. Cappello testified that she received it from Collins, the food service director, and did not investigate the circumstances. Moreover, 15 of the 19 names were printed and at two sets of names appeared to be in the same handwriting: Pluchino and Simeus (printed), and Webb and Brucal (cursive).

Bargaining unit employees did express their dissatisfaction with the Union at the October 26 meeting and Collines emailed Cappello the next day that he "overheard" from employees that attended that "[a] majority of the workers do NOT want to be in the union." However, Collins' email was not objective evidence. He did not testify and the reliability and accuracy of his email could not be verified. Moreover, that was not the information upon which the Respondent relied when it decided to withdraw recognition on January 31. The Respondent relied solely on the list purportedly signed in January by 19 employees, which was also insufficient proof. The Board has consistently held that where an employer relies on an employee petition as evidence of the union's loss of majority support, it is the employer's obligation to authenticate the petition signatures on

which it relies, "the same standard of proof required of a union (or the General Counsel) when seeking a bargaining order based on authorization cards." *Latino Express, Inc.,* 360 NLRB 911, 913 fn. 3, 925 (2014); *Ambassador Services,* 358 NLRB 1172, 1172 fn. 1 and 3 (2012) (accord).

B. Respondent's Unfair Labor Practices Tainted Any of Loss of Union Support

Assuming, arguendo, that the Respondent was able to prove that the Union lost a majority of employee support when it withdrew recognition, the Board also requires that the employer's action be lawful and the support for the withdrawal "must be raised in a context free of unfair labor practices of the sort likely, under all the circumstances, to affect the union's status, cause employee disaffection, or improperly affect the bargaining relationship itself." *LTD Ceramics*, 341 NLRB 86, 88 (2004), citing *Lee Lumber & Building Material Corp.*, 322 NLRB 175, 177 (1996), affd. in part and remanded in part, 117 F.3d 1454 (D.C. Cir. 1997).

The Board considers four factors in determining whether the employer's decision was tainted by the causal relationship between unfair labor practices and the subsequent disaffection petition: (1) the time period between the unfair labor practice and the withdrawal of recognition; (2) the nature of the unfair labor practice and its potential effect on unit members; (3) the possible tendency to cause employee disaffection from the Union and (4) the effect on employee morale and membership in the Union. *Master Slack Corp.,* 271 NLRB 78, 84 (1978); See also *AT Sys. West, Inc.*, 341 NLRB 57, 60 (2004) ("it is the objective evidence of the commission of unfair labor practices that has the tendency to undermine the Union, and not the subjective state of mind of the employees, that is the relevant inquiry in this regard").

The period of time between the continuous unfair labor practices and the withdrawal of recognition strongly suggests a causal connection. See, e.g., *Gene's Bus Co.*, 357 NLRB 1009 (2011) (approximately seven months passed between manager's public denigration of and physical assault on the shop steward, and five to six months passed between direct-dealing incidents and the circulation of the decertification petition); *AT Systems West*, id. (Nine months between unlawful direct dealing and circulation of decertification petition). The Respondent consistently failed to comply with its contractual obligations to distribute, collect, and remit to the Union membership applications throughout 2022, and that continued into January 2023, when Respondent withdrew recognition of the Union.

The Respondent's unfair labor practices deprived the Union's Dues Department from learning about the 12 employees hired, and six employees terminated, in 2022, and three employees hired in 2021. As a result, the Union knew of only nine out of the 19 names listed on the January 31 petition. As evidenced by employees' complaints at the October 26 meeting, the unfair labor practices had a direct and lasting effect on dues-paying members, who became disillusioned by the fact that most unit employees were not paying dues See *Penn Tank Lines, Inc.*, 336 NLRB 1066, 1068 (2001 (citing *May Department Stores Co. v. NLRB*, 326 U.S. 376, 385 (1945) ("In addition, by unilaterally changing the employees' terms and conditions of employment, the Respondent. 'minimize[d] the influence of organized bargaining' and "emphasiz[ed] to the employees that there is no necessity for a collective-bargaining agent.").

The Respondent's midterm modification also impacted non-dues paying employees, who became disaffected from the Union because they did not wish to pay dues. *Coreslab Structures*

(Tulsa) Inc., 372 NLRB No. 31, slip op. at 12 (2022) (judge's finding adopted by the Board that "f]or the unit employees who opted not to join the Union and to accept the Respondent's alternative of annual profit-sharing payments, the possibility of losing profit sharing due to the pension audit reasonably would have led them to believe that the Union was not acting in their interests.")

C. Conclusion

In conclusion, the facts warrant finding that: (1) the Respondent failed to demonstrate that it relied on objective evidence when it withdrew recognition of the Union as the labor representative for the bargaining unit; and (2) the decertification petition, which was significantly tainted by the Respondent's unfair labor practices, was not ameliorated by subsequent developments. Under the circumstances, the Respondent's January 31, 2023 withdrawal if recognition from the Union as the labor representative for unit employees violated Section 8(a)(5) and (1).

IV. RESPONDENT UNLAWFULLY STOPPED DEDUCTING UNION DUES

Paragraph 7(c) of the complaint alleges that, since "about January 31, 2023," the Respondent has refused to deduct union dues and fees "pursuant to valid, unexpired, and unrevoked employee checkoff authorizations, as required at Article 8 of the CBA."

An employer may file an RM or RD petition in lieu of withdrawing recognition if it has actual evidence of actual loss of majority support. In that case, the employer "remains obligated to continue recognizing the union while the RM is pending." *T-Mobile Usa, Inc.*, 365 NLRB 175, 186 (2017), citing *Levitz,* supra, at 726-727. Thus, the "employer's bargaining obligation continues, while the RM (or RD) election proceedings are underway." *Levitz,* Id.

Pursuant to Article 8, Section 2, the Respondent was required to remit dues to the Union by the 20th of each month. After unlawfully withdrawing recognition from the Union on January 31 based on a tainted petition, the Respondent filed a decertification petition on February 8. Without notifying the Union and affording it an opportunity to bargain, the Respondent also stopped deducting dues in February. It took this action even though there was neither requests nor authorizations by any unit employees to cancel their dues authorization.

By ceasing dues payments, a mandatory subject of bargaining, without providing the Union with prior notice and a meaningful opportunity to bargain over the changes during the pendency of an RM case, the Respondent failed to maintain the status quo and engaged in a midterm modification in violation of Section 8(a)(5) and (1). *NLRB v. Katz,* 369 U.S. 736 (1962) (an employer violates its duty to bargain by unilaterally changing terms and conditions of employment during negotiations).

V. THE RESPONDENT UNLAWFULLY DENIED THE UNION ACCESS TO THE MEMBERSHIP

Paragraph 7(d) of the complaint alleges that the Respondent, "[a]bout April 11, 2023," denied the Union access to Springfield locations" contrary to Article 12, Section 1 of the CBA. That section provided a process for the Union field representative to visit the unit employees "for the purposes of conferring with the Company and the Union Steward and monitoring the

administration of this Agreement. Management can withhold access to the premises for legitimate reasons. However, access will not be unreasonably withheld."

On April 11, 2023, consistent with its position that it had lawfully withdrawn recognition of, and no longer had an obligation to bargain with, the Union, the Respondent denied Innis' request to meet with unit employees. As explained above, however, the Respondent's January 31 withdrawal was unlawful and its was required to continue adhering to the terms of the CBA. Innis' request to meet with the membership on April 11 was clearly a "legitimate" reason. However, the Respondent "unreasonably withheld" the Union's access to unit employees.

The Respondent asserts that it arranged two separate meetings for Innis to meet with unit employees on February 17 and 21, 2023, but Innis failed to accept these offers. However, the Respondent provided the Union with insufficient notice of one day for each of these meetings. Although Article 12 is silent on the notice requirement, it was clear from the parties' past practice that approximately one week's notice was needed in order for the Union to notify unit employees.

By refusing to comply with the terms of Article 12 and unreasonably withholding access from the Union to meet with unit employees for reasons that were not legitimate, the Respondent committed another midterm modification without the Union's consent in violation of Section 8(a)(5) and (1).

CONCLUSIONS

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

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

3. The Respondent violated Section 8(a)(5) and (1) of the Act in the following respects: (a) since August 2022, by failing to adhere to its contractual obligation to distribute Union membership and dues authorization forms to newly hired unit employees, collect them, and remit those forms and their personnel action-related information to the Union monthly, thereby committing a midterm modification of the contract without the consent of the Union; (b) on January 31, 2023, by withdrawing recognition Union as the labor representative for unit employees based on a tainted petition and in the absence of objective evidence that the Union had lost the majority support of the bargaining unit; (c) in February 2023, by ceasing dues payments, a mandatory subject of bargaining, without providing the Union with prior notice and a meaningful opportunity to bargain over the changes during the pendency of an RM case; and (d) on April 11, by refusing to comply with the terms of Article 12 and unreasonably withholding access from the Union to meet with unit employees for reasons that were not legitimate.

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

REMEDY

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

Specially, having found that the Respondent violated Section 8(a)(5) and (1) of the Act, I shall order the Respondent to cease modifying the terms of the CBA without the consent of the Union and, on request, bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of unit employees

The Respondent shall post an appropriate informational notice, as described in the attached appendix. This notice, on a form provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the Respondent shall distribute the notice 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 Respondent to ensure that the notice is not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed its facility, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at its Springfield, New Jersey facilities at any time since August 2022.

On these findings of fact and conclusions of law and on the entire record, I Issue the following recommended[46]

ORDER

The Respondent, The Pomptonian Inc., d/b/a Pomptonian Food Service, Springfield, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of unit employees.

(b) Withdrawing recognition from the Union, the Service Employees International Union, Local 32BJ, and failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of unit employees.

[46] 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 due under the terms of this Order.

(c) Modifying the terms of the collective-bargaining agreement between the Respondent and the Union without first notifying the Union and giving it an opportunity to bargain.

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

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

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

> Included: All full-time and regular part-time food service workers employed by the Employer at its Springfield School District facilities.
>
> Excluded: Managers, management trainees, receptionists, nutritionists, registered or licensed dieticians, students, executive chefs, chef managers, chefs, employees of other employers, subcontractors, all other employees not specifically identified above, office clericals, supervisors, guards, and confidential employees as defined in the Act.

(b) On request by the Union, rescind the modifications to the CBA that were implemented without the Union's consent on January 31, February 1, and April 26, 2023.

(c) Within 14 days after service by the Region, post at its Springfield, New Jersey facilities copies of the attached notice marked "Appendix."[47] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 2022.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 22 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.

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

Dated, Washington D.C. July 16, 2025

Michael A. Rosas
Administrative Law Judge

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT withdraw recognition from the Union and fail and refuse to bargain with the Union as your exclusive collective-bargaining representative.

WE WILL NOT modify the terms of the collective-bargaining agreement between the Respondent and the Union without first notifying the Union and giving it an opportunity to bargain.

WE WILL NOT fail and refuse to bargain with Service Employees International Union, Local 32BJ (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT unreasonably withhold access from the Union access to meet with Springfield unit employees for reasons that are not legitimate.

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

WE WILL, on request by the Union, rescind the modifications to the modifications to the CBA that were implemented without the Union's consent on January 31, February 1, and April 26, 2023.

The Pomptonian Inc., d/b/a Pomptonian Food Service

(Employer)

Dated _____ By _____

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

20 Washington Place, 5th Floor, Newark, NJ 07102-3110
(973) 645-2100, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/22-CA-312629 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 (862) 229-7055.