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

ACCURATE METAL FABRICATING, LLC

Cases 13–CA–344936
and **13–RC–305160**

TEAMSTERS LOCAL 781

and

PLASTIC WORKERS UNION LOCAL NO. 18, AFL–CIO

Christina B. Hill, *Esq.,* for the General Counsel.
Neal Stern, *Esq.,* for the Respondent.
Librado Arreola, *Esq.,* for the Charging Party.
Suzanne C. Dyer, *Esq.,* for the Plastic Workers Union.

DECISION

STATEMENT OF THE CASE

CHRISTAL J. KEY, Administrative Law Judge. This case was tried in Chicago, Illinois, on July 15, 2025. In 2022, Accurate Metal Fabricating, LLC (Respondent) consolidated two facilities. Prior to the consolidation, Teamsters Local 781 (Teamsters) represented employees at one of the facilities and the Plastic Workers Union Local No. 18, AFL–CIO (Plastic Workers) represented employees at the other facility. Following a representation case hearing, the Regional Director for Region 13 (Regional Director) issued a Decision and Direction of Election in which she found the consolidation obliterated the historical bargaining units and created a new merged appropriate unit. On January 5, 2023, the National Labor Relations Board (NLRB) conducted an election among the merged unit of employees. The Teamsters filed objections to that election and on June 13, 2024, the NLRB conducted a re-run election. On June 20, 2024, the Teamsters filed objections in Case 13–RC–305160 alleging Respondent had engaged in conduct affecting the results of the re-run election. (GC Exh. 1(j).) On June 21, 2024, the Teamsters filed an unfair labor practice charge in Case 13–CA–344936. (GC Exh. 1(k).) The objections and the charge allegations are essentially identical. On March 11, 2025, the Regional Director issued a Complaint and Notice of Hearing in Case 13–CA–344936 (the complaint). (GC Exh. 1(m).) The complaint alleges that in about July 2023, Respondent violated Section 8(a)(1) and (2) of the National Labor Relations Act (the Act) by entering into a collective-bargaining agreement with the Plastic Workers while a question

concerning representation existed in Case 13–RC–305160 and at a time when they did not represent an uncoerced majority of Respondent's employees in the appropriate merged unit.[1] The complaint further alleges that Respondent violated Section 8(a)(3) of the National Labor Relations Act (the Act) because its contract with the Plastic Workers provided for annual wage increases to employees historically represented by the Plastic Workers, but not to employees historically represented by the Teamsters. The complaint alleges that the union security clause in the Plastic Workers' contract violates Section 8(a)(3) of the Act. Finally the complaint alleges Respondent violated 8(a)(2) of the Act by providing the Plastic Workers unlawful assistance by granting their representatives access to its workers and its facility while denying the same to the Teamsters.[2] On June 18, 2025, the Regional Director issued an order consolidating for hearing the Teamsters' objections with the complaint allegations. (GC Exh. 1(p).) On March 25, and July 10, 2025, Respondent filed answers to the complaint and amended complaint in which it denied the essential allegations in the case. Respondent's answer includes various affirmative defenses including that the Teamsters filed the charge outside of the statute of limitations. After the conclusion of the trial, the Respondent and the General Counsel filed briefs.

Based 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[3]

I. JURISDICTION

At all material times, Respondent has been an Illinois limited liability company with an office and place of business in Cicero, Illinois (Cicero facility) and has been engaged in the fabrication and painting of metal assemblies. In conducting its operations annually, Respondent sold and shipped from its Cicero, Illinois facility goods valued in excess of $50,000 directly to points outside the State of Illinois. Respondent admits, and I find, that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. (GC Exhs. 1(o) at ¶ II, 1(t) at ¶ II.) The Teamsters and the Plastic Workers are labor organizations within the meaning of Section 2(5) of the Act. (GC Exhs. 1(o) at ¶ III, 1(t) at ¶ III.)

II. ALLEGED UNFAIR LABOR PRACTICES

A. Allegations Related to Respondent Entering into a Contract with the Plastic Workers

1. Consolidation of Respondent's employees represented by the Teamsters and Plastic Workers and the status of wage increases at the time of the consolidation

In approximately 2007, the Respondent purchased and began operating a facility located on North Kostner Avenue in Chicago, Illinois ("Kostner facility"). Employees at the Kostner

[1] At hearing the General Counsel amended this date to May 13, 2024. (Tr. 10, 12.)

[2] On June 27, 2025 the Regional Director issued an amendment to the complaint which modified the date regarding this allegation from June 2023 to May 13, 2024 (the amended complaint). (Tr. 10, 12, GC Exh. 1(r).)

[3] Although I have included several citations in this decision to highlight particular testimony or exhibits in the evidentiary record, I emphasize that my findings and conclusions are not based solely on those specific citations, but rather are based on my review and consideration of the entire record for this case.

facility ("Kostner employees") were historically represented by the Plastic Workers, and their bargaining relationship was embodied in successive collective-bargaining agreements.[4]

On about September 8, 2021, Respondent purchased and began operating a facility previously owned by The Marvel Group, Inc. located on West 43rd Street in Chicago, Illinois ("43rd Street facility"). Employees at the 43rd Street facility were historically represented by the Teamsters. Respondent and the Teamsters negotiated an initial collective-bargaining agreement covering the 43rd Street employees, with effective dates from September 8, 2021, through September 7, 2024. (R. Exh. 1 at 13.) The Respondent closed the 43rd Street facility on about April 30, 2022 and began transferring 43rd Street employees into a newly acquired facility located in Cicero, Illinois.

Around August 8, 2022, Respondent began transferring Kostner employees to the Cicero facility. At the time Respondent transferred Kostner employees to Cicero, the Plastic Workers and Respondent were parties to a collective-bargaining agreement which was effective July 1, 2020, through June 30, 2023. That agreement provided for hourly wage increases as of July 1, 2020, 2021, and 2022, of 70 cents, 50 cents and 50 cents. (Jt. Exh. 1 at 26.)

2. Unit clarification and representation case petitions filed with the NLRB

On September 13, 2022, Respondent filed a unit clarification petition, Case 13–UC–303359 under Section 9(b) of the Act seeking to accrete employees represented by the Plastic Workers into a bargaining unit represented by the Teamsters based on the consolidation of two existing facilities at a new location.

On October 13, 2022, the Plastic Workers filed a representation petition, Case 13–RC–305160 under Section 9(c) of the Act seeking to represent all of Respondent's employees at the Cicero facility who had historically been represented by the Teamsters and the Plastic Workers. The Teamsters intervened in the processing of that petition. On December 14, 2022, the Regional Director issued a Decision and Direction of Election in order for Respondent's employees to vote regarding whether or not they wish to be represented by the Plastic Workers, the Teamsters, or neither. That decision stated in part:

> In the instant case, the parties stipulated that all Human Resource, labor relations, benefits, and payroll functions regarding employees at the Cicero facility, including former Kostner and former 43rd Street employees,[5] are fully integrated and the Employer does not distinguish between former Kostner employees and former 43rd Street employees for any Human Resource, benefits, or payroll purposes. All employees use the same timekeeping system and receive their paychecks from a single source. Similarly, the day-to-day supervision of all employees at the Cicero

[4] I have relied heavily on the Decision and Direction of Election issued by the Regional Director to draft the facts related to the history of Respondent's operations and the consolidation. (GC Exh. 1(e).) The parties agreed to the admission of that Decision and Direction of Election and I have ensured the facts set forth herein are consistent with the evidence received at hearing. Further, in its answer, Respondent admitted many of the facts related to the consolidation. (GC Exhs. 1(o) at ¶ V (a)–(e), 1(t) at ¶ V (a)–(e).)

[5] The Decision and Direction of Election referred to these employees as "Marvel employees". However for consistency I have modified such to "43rd Steet employees".

> facility is fully integrated, with all supervisors ultimately reporting to a single Plant Manager and Operations Manager. Thus, the Employer's consolidation of the 43rd Street facility and the Kostner facility at its new Cicero facility obliterated the historical bargaining units represented by Intervenor and Petitioner, respectively. Intervenor represented 52 employees at the 43rd Street facility when those operations were transferred to the Cicero facility, and Petitioner represented 48 employees at the Kostner facility when those operations were transferred to the Cicero facility. While the record does not reveal if all 43rd Street employees and Kostner employees transferred to the Cicero facility, the Employer currently employs approximately 102 employees in the petitioned-for unit, including 10 individuals in previously unrepresented classifications. Thus, neither Intervenor nor Petitioner can be said to represent a predominantly sufficient majority of the Cicero employees. Accordingly, I find that a question concerning representation of the petitioned-for Cicero employees exists and dismiss the petition in Case 13–UC–303359. I further find that neither Intervenor's contract with the Employer nor Petitioner's contract with the Employer is a bar to processing the representation petition in Case 13–RC–305160.

The Decision and Direction of Election ordered an election among the following bargaining unit:

> Included: All full-time and regular part-time Assembly employees, grinders/polishers, turret press operators, turret set-up, brake press operators, brake press set-up/leads, laser operators, laser set-up/leads, Weld Line employees, welders, spot welders, spot weld set-up, robotic welders, material handlers, packers, packing leads, drivers, shear/crane operators, Paint employees, paint leads, quality assurance inspectors, and custodians employed by the Employer at its facility currently located at 4620 West 19th Street, Cicero, Illinois.
>
> Excluded: All managers, confidential employees, office clerical employees and guards, and professional employees and supervisors as defined in the Act. (GC Exhs. 1(e).)

The NLRB conducted an election on January 5, 2023. (Jt. Exh. 7.) The Plastic Workers won that election. On January 12, 2023, the Teamsters filed overlapping unfair labor practice charges and objections to that election. (Jt. Exh. 7 ¶ 2, GC Exh. 1(h).) On February 28 and 29, 2024, the Plastic Workers, the Teamsters and Respondent signed a settlement agreement resolving the unfair labor practice charges and objections. (Jt. 4.) The parties also agreed to set aside the results of the first election. (Jt. Exhs. 4–5.) On February 29, 2024, the Regional Director approved that agreement. On June 13, 2024 the NLRB conducted a re-run election and the Plastic Workers won that election. On June 20, 2024, the Teamsters filed objections to that election which allege:

> **Objection 1:** The Employer unlawfully assisted the Plastic Workers Union by negotiating a new collective bargaining agreement despite the Employer merging the Plastic Workers and Teamster bargaining units.

Objection 2: The Employer unlawfully assisted the Plastic Workers Union by negotiating a new collective bargaining agreement and by offering Plastic Worker members $1 per hour increase effective July 1, 2023 and an $0.80 per hour increase effective July 1, 2024, and a $0.90 per hour increase effective July 1, 2025.

Objection 3: The Employer discriminated against the Teamsters Union members by failing to offer them the same raise that was given to the Plastic Worker members.

Objection 4: The Employer unlawfully assisted the Plastic Workers Union by discriminating against the Teamsters Union by restricting their access to Teamster members within the facility. (GC Exh. 1(p).)

3. Respondent and the Plastic Workers reach an agreement and execute a contract that provides for annual wage increases and contains a union security clause

On March 11, 2024, the Plastic Workers signed a contract with Respondent which was effective by its terms from July 1, 2023 through June 30, 2026. (Jt. Exh. 2 at cover page, 26–27.) On May 13, 2024, Respondent signed that contract. (Jt. Exhs. 2 at 27, 7 at ¶ 5.) That contract states it covers only Respondent's employees in the unit historically represented by the Plastic Workers. (Jt. Exh. 2 at 2.) The record does not establish the precise date that the Plastic Workers and Respondent agreed to the terms of that contract. The agreement states all non-probationary employees represented by the Plastic Workers would receive wage increases effective as of July 1, 2023, 2024 and 2025, of $1, 80 cents and 90 cents. (Jt. Exh. 2 at 25–26.) No party introduced payroll or similar documents showing precisely when employees received their first wage increase pursuant to that contract. However, Respondent's Director of Operations Jonathan Gawlak testified that within a couple weeks of Respondent and the Plastic Workers reaching an agreement regarding the 2023 contract, it went into effect. (Tr. 158.) Gawlak testified that in September 2023, Respondent promoted him from Quality Manager to Director of Operations. He testified that sometime prior to September 2023, while he was still the Quality Manager, he was in a management meeting where someone announced that the employees represented by the Plastic Workers were going to receive a wage increase effective July 1, 2023. (Tr. 167–168, 174–175.) It is unclear to the undersigned why it took the parties so long to sign that contract especially since it was very similar to the parties' predecessor contract. (Jt. Exhs. 1, 2.) However, I credit Gawlak's testimony that Respondent granted the $1 per hour wage increase and put the contract into effect sometime prior to September 2023. Respondent admits it gave employees historically represented by the Plastic Workers the wage increases provided for in the contract, but it did not give those increases to employees historically represented by the Teamsters. (GC Exhs. 1(o) at ¶ VIII (b)–(d), 1(t) at ¶ VIII (b)–(d).)[6]

The Teamsters' contract which was effective by its terms from September 2021 to September 2024, provided for a 40 cent per hour rase effective December 1, 2021 and December 1, 2022. (R. Exh. 3 at 10.) Employees historically represented by the Teamsters have not received

[6] Respondent filed it answers prior to July 1, 2025, thus the answer does not admit giving the 2025 raise. (GC Exhs. 1(o), 1(t).)

a wage increase since December 1, 2022. (GC Exhs. 1(o) at ¶ VIII (b)–(d), 1(t) at ¶ VIII (b)–(d), Tr. 137–138.)

Article III of the Plastic Workers' 2023 contract is entitled "Union Shop" and it contains a union security clause. Article IV is entitled "Checkoff" and provides for employees to sign dues authorization forms. (GC Exhs. 1(o) at ¶ VIII (a), 1(t) at ¶ VIII (a), Jt. Exh. 2 at 3.) Respondent stipulated that it withheld and remitted union dues to the Plastic Workers without cessation up through July 10, 2025, which was the Thursday prior to the hearing. (GC Exhs. 1(o) at ¶ VIII (a), 1(t) at ¶ VIII (a), Jt. Exh. 7 at ¶ 9.)

4. Evidence regarding complaint allegations being barred by Section 10(b) of the Act

The Teamsters filed the charge in this case on June 21, 2024, and the Region served it on June 24, 2024, thus the operative date for purposes of Section 10(b) of the Act is December 24, 2024 (the 10(b) date.) There is no dispute that prior to the 10(b) date, Respondent did not provide, Teamsters' Business Agent Tracy Treadwell or any other person employed by the Teamsters, notice that it had reached an agreement with the Plastic Workers regarding the terms of a new contract or given employees historically represented by them a raise in 2023. There is also no evidence that, prior to the 10(b) date, Respondent provided the Teamsters' stewards such notice. Since the consolidation in 2022, employees historically represented by the Teamsters and the Plastic workers have worked side by side. (Tr. 153.)[7] Gawlak testified that while he was the Quality Manager, Teamsters employees talked to him about the fact that the Plastic Workers' employees had gotten raises while they had not. (Tr. 161.) Gawlak recalled that on some date prior to September 2023, he spoke with an employee by the name of Fidel Rios and a MIG welder Jose (last name unknown) about the fact that they had not received pay increases. (Tr. 175–177.) Gawlak testified that he could not recall all his conversations with employees, but he testified the conversations were so common he "felt like the entire plant knew about it…" (Tr. 162.) Gawlak also testified that after he became the Director of Operations, employees discussed with him the issue of some of them not getting a raise. (Tr. 162.) Gawlak did not testify to any specifics, such as the date, time, place or identity of the employees, related to these later conversations.

Respondent called Teamsters' Business Agent Tracy Treadwell to testify during their case regarding its 10(b) defense. Treadwell acknowledged that prior to the 10(b) date, between June 2023 and December 2024, he handled various grievances with Respondent. (Tr. 89–93, R. Exhs. 3–4.) Treadwell testified he learned about grievances by speaking with Teamsters' Steward Torres. (Tr. 99, 104–105.) He testified that prior to the 10(b) date, he discussed with Respondent's attorney issues related to employees' terms and conditions of employment. (Tr. 86–88, 94–95, R. Exh. 5.)

After the 10(b) date, on February 20, 2024, Treadwell sent Respondent's attorney an email regarding Teamsters' Shop Steward Teodoro Torres. The email related to time clock and attendance point issues. It also stated, "Also, he's not receiving additional pay for work [on] the laser machine, the young man makes more money a[n] hour. He wants to receive the same pay, when working over there." (R. Exh. 7.) Gawlak testified that he was involved with the resolution

[7] The only exception to this is that employees in the paint department were historically only represented by the Teamsters.

of this pay issue and the other employee referenced as operating the laser was a Plastics Worker. (Tr. 156.) Gawlak testified that employees are paid different rates primarily based on their skill level, but also based on the machinery they operate. (Tr. 171.) Gawlak testified that Torres' complaint regarding pay, discussed in Treadwell's February 20, 2024 email, arose from Torres wanting more money because of the machinery he was operating. (Tr. 172.) Gawlak further testified that Torres' complaint did not relate to the $1 per hour wage increase the employees historically represented by the Plastic Workers received effective July 1, 2023. (Tr. 172.)

After the 10(b) date, in January 2024, Treadwell met with employees historically represented by the Teamsters at the Cicero facility in the lunchroom to discuss the informal NLRB settlement which was eventually approved on February 29, 2024. (Tr. 111–115, Jt. Exh. 4.) In March 2024, Treadwell first learned that employees historically represented by the Plastic Workers had received a raise. (Tr. 113–114, 125–126, 128–129.) Treadwell testified that Steward Torres advised him of this after the February 29, 2024 settlement. (Tr. 115.) Treadwell testified, "[Torres] just said he heard that they got an increase, or got some money. He didn't say how much it was. He just said he just heard that they got a raise." (Tr. 115.) When Torres told Treadwell this, he told Torres he needed to investigate the matter and get something to document the raises. (Tr. 116.) On May 6, 2024, Treadwell sent Respondent's attorney a text message asking for documentation about any new wage increases for the Plastic Workers or their contract. (GC Exh. 2.) Treadwell testified he requested this information in order to investigate Torres' statement to him that the Plastic Workers had gotten a raise. (Tr. 128–129.) On May 13, 2024, Respondent's attorney sent Treadwell an unsigned copy of the Plastic Workers' contract via email. (Tr. 130–131, GC Exh. 6(a)–6(b).)

B. Access Issue

Paragraph 6 of the complaint alleges Respondent violated Section 8(a)(1) and (2) of the Act by granting the Plastic Workers' representative access to its workers and to its Cicero facility while denying such access to the Teamsters. Treadwell testified regarding this allegation. He testified that when he visited Respondent's employees at the 43rd Street facility he would ring a doorbell and enter the facility through the non-public employee entrance. (Tr. 39–40.) Once he entered he would speak with someone from the human resources staff and advise them who he was there to see. The person would go get the employee and he would meet with them. Treadwell testified that he was not restricted regarding where he could go once he was inside the facility. (Tr. 40.) When employees transferred from the 43rd Street facility to the Cicero facility in about May 2022, he would enter through a front door which was used as the employee and shipping entrance. (Tr. 41.) Similarly, he would tell Plant Manager Michael Zolla, who he wanted to see and he would go and get the employee. He would then meet with the employee on the production floor and he was not restricted regarding where he could go. (Tr. 42.) When Treadwell visited the Cicero facility he normally went there to see one of his stewards, Victor Padilla or Teodoro Torres. (Tr. 39–40.) Between February 28, 2024, when the parties agreed to set aside the results of the first election, and the date of the re-run election on June 13, 2024, Treadwell visited the Cicero facility about six times. (Tr. 46–47.) Starting around February 28, 2024, Plant Manager Zolla instructed Treadwell to start using the public visitor entrance. (Tr. 48.) When he entered through the visitor entrance he was met by a receptionist in the lobby and he would tell the receptionist who he wanted to see. (Tr. 48–50.) When Treadwell visited the facility during this period he would ask to meet with the Steward Teodoro Torres. (Tr. 48–49.) He met with Torres in the lobby or one time he

met with him in a conference room. Treadwell testified that between February 28, 2024 and June 13, 2024, he was not allowed to go into the production area. (Tr. 50–51.) However, Treadwell did not testify that he ever requested to go into a production area or that any of Respondent's supervisors or managers told him he could not go onto the production floor. On January 3, 2024, Treadwell asked Respondent's attorney for permission to use Respondent's lunchroom for purposes of holding a meeting with first and second shift employees to discuss and NLRB settlement. On January 4, 2024, Respondent's attorney responded and told Treadwell that he could hold the requested meetings. (R. Exh. 12.) Treadwell testified that none of Respondent's managers ever told him he needed to secure their permission to visit the facility. (Tr. 134.)

Article XII of the Plastic Workers' 2020 and 2023 contracts state that Respondent shall give the Plastic Workers' representatives access to its facility, with permission to check on grievances, post notices on the Union's bulletin board and conduct other union business. (Jt. Exhs. 1 at 15, 2 at 14–15.) The Teamsters' contract does not contain a similar provision. (R. Exh. 1.) On one occasion between February 28, 2024 and June 13, 2024, Steward Torres was walking through the press break department on the production floor. He briefly observed the Plastic Workers' Business Agent Christina Ramirez speaking with an unspecified number of employees historically represented by the Plastic Workers. (Tr. 68–71.)

II. CREDIBILITY

A. General Principles

Evaluating certain issues of fact in this case requires an assessment of witness credibility. Credibility determinations involve consideration of the witness's testimony in context, including factors such as witness demeanor, "the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole." *Double D. Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001), enfd. 56 Fed.Appx. 516 (D.C. Cir. 2003); see also *Hill & Dales General Hospital*, 360 NLRB 611, 615 (2014). Corroboration and the relative reliability of conflicting testimony are also significant. See, e.g., *Pain Relief Centers, P.A.*, 371 NLRB No. 70 slip op. at 1, fn. 4, 14 (2022), enfd. 2023 WL 5380232 (4th Cir. 2023). As a general matter, in making credibility resolutions here, I have considered the demeanor of the witnesses, the context of their testimony, corroboration via other testimony or documentary evidence or lack thereof, the internal consistency of their accounts, and the witnesses' apparent interests, if any.

B. Jonathan Gawlak

I credit Gawlak's testimony that prior to September 2023, while he was still the quality manager, he had conversations with employees historically represented by the Teamsters about the fact the Plastic Workers' employees had received a wage increase, but they had not. I rely on Gawlak's demeanor and I find the testimony logical where employees historically represented by the Plastic Workers and Teamsters worked side by side at the Cicero facility. I also credit Gawlak's testimony that sometime prior to September 2023, Respondent granted the $1 per hour wage increase set forth in the Plastic Workers' new contract. As I have discussed in greater detail in the analysis section of this decision, I do not find Gawlak provided sufficient details and facts

to support his speculation that there was broad knowledge of the wage increases among Respondent's employees.

C. Tracy Treadwell

I credit Treadwell's testimony that he did not learn of the raises or the possibility of the Plastic Workers' contract until March 2024. I base this on his demeanor, his clear recollection of the facts related to this issue, and the fact that his testimony is consistent with documents including his May 6, 2024 text message with Respondent's counsel. (GC Exh. 2.) For example, Treadwell had a clear and unequivocal recollection that Torres told him about the raises after the February 29, 2024 NLRB settlement. Further, he recalled the he told Torres to get documents to demonstrate that Respondent gave the raises to the Plastic Workers' employees and he sent the May 6, 2024 text message to investigate the matter. Finally, I find Treadwell to be a credible witness based on his demeanor and his willingness to fully answer questions posed by General Counsel as well as Respondent.

D. General Counsel's Failure to Call Steward Teodoro Torres Regarding Respondent's 10(b) Defense

Respondent contends in its brief, because Torres testified at the hearing, General Counsel could have re-called him as a rebuttal witness to testify that he was unaware of the Plastic Workers' contract and the raises given pursuant to that contract. (R. Br. at 7 fn. 2.) It states that I could draw an adverse inference from General Counsel's failure to call him to testify about this issue. I do not find it appropriate to draw an adverse inference from General Counsel's failure to call Torres regarding this issue. Respondent bears the burden to prove its 10(b) defense. Thus, General Counsel was not obligated to present any evidence regarding this issue during its case in chief. Further, during Respondent's case, it did not present evidence demonstrating that prior to the 10(b) period, Torres knew about the contract or the raises. Thus, there was no evidence in the record which General Counsel needed to call Torres to rebut during that portion of the hearing. In *Riverdale Nursing Home*, the Board ruled it was improper for the judge to rely on an adverse inference to fill an evidentiary gaps in a party's case. 317 NLRB 881, 882 (1995). If Respondent had evidence such as a supervisor who spoke with Torres, overheard a relevant conversation or documents demonstrating that Torres knew about the contract or raises outside of the 10(b) period they could have presented such evidence. Further, Respondent could have called Torres to testify during their case. Finally as discussed more fully below, Respondent did not establish facts which would warrant imputing Torres' possible knowledge to the Teamsters.

III. ANALYSIS

A. Did Respondent Violate the Act by Entering into a Contract with the Plastic Workers which Provided for Raises and Contained a Union Security Clause

1. Respondent's defense that the charge is barred by Section 10(b) of the Act

Respondent's answer asserts an affirmative defense that the Teamsters filed the charge in this matter outside the period allowed by Section 10(b) of the Act.[8] December 24, 2024, is the 10(b) date, which is the date 6 months prior to the date the Region served the charge. *Dun & Bradstreet Software Services*, 317 NLRB 84, 84–85 (1995). The 6-month charge filing period does not begin to run until the charging party has clear and unequivocal notice of the acts alleged to constitute the unfair labor practice. *Castle Hill Health Care Center*, 355 NLRB 1156, 1191 (2010)*; John Morrell & Co.*, 304 NLRB 896, 899 (1991). Such knowledge can be actual or constructive. Id. Respondent as the party raising the 10(b) defense bears the burden of proof. *Chinese American Planning Council*, 307 NLRB 410, 410 (1992).

As set forth in the fact section, there is no dispute that Respondent did not provide anyone employed by the Teamsters or their steward actual notice of the contract or the raises until May 6, 2024, when Respondent's attorney emailed Treadwell the unsigned contract. Thus, the Teamsters did not have actual knowledge prior to the 10(b) date. The next issue is did the Teamsters have constructive knowledge of the contract or raises prior to the 10(b) date. Respondent did not demonstrate the Teamsters had constructive knowledge. I have credited Treadwell's testimony that he first learned of the raises in March 2024. There is no evidence that any other person employed by the Teamsters had any knowledge of the contract or the raises prior to this. Respondent states in its brief, that it demonstrated constructive knowledge because they contend that it is undisputed that Teamsters' employees including their steward, Teodoro Torres, complained regularly beginning in June or July, 2023, about the Plastic Workers' raises. (R. Br. at 2–3.) Contrary to Respondent's assertion, there is no evidence in the record that prior to the 10(b) date, that the Union's stewards including Torres had knowledge that the Plastic Workers had agreed to a new contract with Respondent or that the employees historically represented by the Plastic Workers had received a wage increase pursuant to that agreement. Respondent contends it demonstrated constructive knowledge through Gawlak's testimony. Gawlak testified he felt like the entire plant knew about the raises because of the frequency of conversations he had with employees about the issue. (Tr. 162.) He also testified, "So, I'm not sure if this is good or bad, but when you have news that come(s) on the floor, it's like wildfire, right? Like, if somebody's going to get a raise, everybody knows about it." (Tr. 173.) I find these portions of Gawlak's testimony purely speculative and unsupported by his testimony. I make this finding because Gawlak provided very limited and vague testimony about his conversations with employees regarding the raises. For example, he could only identify by name two employees he spoke with about the issue and he did not testify whether he spoke to the two employees during a single conversation or separate conversations. With regard to this conversation(s), he did not testify to a date except that it occurred prior to September 2023, while he was still the quality manager. He also did not testify about the location of the conversation(s) or what exactly each person said. He did not testify to

[8] Sec. 10(b) provides in relevant part that "no complaint shall issue based upon any unfair labor practice occurring more than 6 months prior to the filing of the charge with the Board."

the specifics of any other conversation(s) he had with employees regarding the issue of raises. Thus, I do not find Gawlak testified to sufficient facts to support his speculation that there was plant wide or broad knowledge among employees about the wage increases.

The Board will find constructive knowledge sufficient to invoke 10(b) of the Act if a party fails to exercise reasonable diligence to discover an unfair labor practice. *Moeller Bros. Body Shop*, 306 NLRB 191, 192–193 (1992), See also *Oregon Steel Mills*, 291 NLRB 185, 192 (1988), enfd. mem. (unpublished) WL 435373 (9th Cir. 1989), cert. denied 496 US 925 (1990). Therefore, I must consider what the Teamsters' representatives knew or should have known about the Plastic Workers' contract or the raises prior to December 24, 2024. Here, prior to the 10(b) date, between July 1, 2023 and December 23, 2024, Treadwell was actively engaged in representing Respondent's employees. During that period, he visited the Cicero facility on multiple occasions, talked with Steward Torres regarding grievances, processed grievances and he discussed unit employees' terms and conditions of employment with Respondent's attorney. (Tr. 39–42, 80–94, R. Exhs. 3–5.) However, there is no evidence in the record to demonstrate that Treadwell had any reason to suspect or investigate whether Respondent entered into a contract with the Plastic Workers or gave some employees a raise. To the contrary, because there was a question concerning representation at the time the Plastic Workers' contract expired, Treadwell would have reasonably assumed that Respondent and the Plastic Workers would not have entered into a new contract. Once Torres told Treadwell about the raises in March 2024, Treadwell promptly took steps to investigate the issue and once Respondent provided him with the contract he filed the charge.

The record demonstrates that as of February 20, 2024, which is within the 10(b) period Torres had learned how much a Plastic Worker employee who operated a laser machine was earning per hour, that it was less than he was earning when he operated the laser, and Torres wanted to receive the same pay when he operated that machine. While Torres had learned how much the Plastic Worker was paid when he operated the laser, this does not demonstrate that he knew the employee had received a $1 per hour raise as a result of the Plastic Workers' 2023 contract. By March 2024, which is again within the 10(b) period, Torres had learned that employees historically represented by the Plastic Workers had received a raise and he advised Treadwell of this information and Treadwell had asked him to obtain documentation demonstrating such. (Tr. 115–116.) The record is void of evidence demonstrating that Steward Torres knew about the raises prior to the 10(b) date. Further, Respondent did not establish facts which would warrant imputing any potential knowledge by the Teamsters' members or its steward to the Teamsters. *Broadway Volkswagen*, 342 NLRB 1244 (2004) (refusing to impute constructive knowledge to the union because the employees did not inform the union about the changes and there was no evidence that the changes were apparent). See also *Coreslab Structures (Tulsa) Inc.,* 372 NLRB No. 31 (Dec. 16, 2022) citing *Colorado Symphony Association*, 366 NLRB No. 122, slip op. at 37 (2018), citing *Brimar Corp.*, 334 NLRB 1035, 1035 fn.1 (2001) (finding that a union steward's knowledge of a unilateral change could not be imputed to the union because the steward had no role in matters relating to bargaining and the employer had no reason to believe otherwise), and *Catalina Pacific Concrete Co.*, 330 NLRB 144, 144 (1999) (rejecting the employer's Section 10(b) defense in part because the employer did not have a reasonable basis to believe that a union steward had the authority to act as the union's agent with respect to receiving notice of proposed unilateral changes), enfd. 19 Fed. Appx. 683 (9th Cir. 2001). In contrast, the Board will impute knowledge to a union where a steward had knowledge of the alleged unlawful conduct and had heavy

involvement in contract negotiations. *The Baytown Sun*, 255 NLRB 154, 160 (1981) (unit employee's actual knowledge of a unilateral change was imputed to union, given the employee attended 25 of 30 bargaining sessions) See also *Courier Journal*, 342 NLRB 1093 (2004) (a steward's knowledge was imputed to the union where he was "not only a steward" but a member of the union's negotiating committee who had himself participated in bargaining.) Here Respondent did not establish that Steward Torres was involved in contract negotiations. Respondent failed to meet its burden to establish the Teamsters knew or should have known Respondent and the Plastic Workers entered into a new contract which provided for raises.

There is no factual basis to find actual or constructive knowledge by the Teamsters of facts sufficient to bar the charge or the complaint allegations under Section 10(b) of the Act.

2. Whether entering into the contract violated the Act

a. The parties' contentions

General Counsel argues Respondent violated Section 8(a)(2) of the Act because, while there was a question concerning representation, it recognized the Plastic Workers and entered into a contract with them. General Counsel cites the following cases to support its contention. *Midwest Piping & Supply Co.*, 63 NLRB 1060 (1945), *Bruckner Nursing Home,* 262 NLRB 955, 957– 958 (1982), *Traub's Mkt.*, 205 NLRB 787, 788 (1973), and *Martin Marietta Co.*, 270 NLRB 821, 822 (1984). (GC Br. at 10–12.) Respondent acknowledges that there is a line of Board case law holding that it is unlawful for an employer to negotiate a new agreement with a union when there is a question concerning representation. (R. Br. at 6.) However, Respondent argues this is effectively a case of first impression because Respondent was faced with two unions with whom it had prior contracts and bargaining relationships. It argues the Teamsters received the benefit of their contract after Respondent entered into the successor contract with the Plastic Workers and thus Respondent should not be punished for executing the new contract.

b. Relevant caselaw and analysis

Despite the presence of a question concerning representation, an employer must bargain with an incumbent union when a rival union files a valid representation petition or employees file a decertification petition. *RCA Del Caribe,* 262 NLRB 963, 965 (1982), *Dresser Industries*, 264 NLRB 1088 (1982).[9] In fact, in such circumstances, the employer must execute a contract with the incumbent union if they reach an agreement, however if the incumbent loses the election their contract is void. Id. The Board's rationale is that an incumbent union enjoys a special status allowing it to maintain a "… presumption of continuing majority status…". *RCA Del Caribe,* at 965. Here, however, neither the Teamsters nor the Plastic Workers could claim an incumbency of the newly created Cicero bargaining unit. Following the filing of the representation case petitions, the Region conducted a representation hearing and the Regional Director issued a Decision and Direction of Election. In the Decision, the Regional Director found that the consolidation

[9] In support of its case General Counsel cites to *Traub's Mkt.* Supra. (GC Br. at 10.) However, the Board overruled *Traub* on the point for which General Council cited the case. *RCA Del Caribe,* 262 NLRB 963, 965 (1982). Further, in *Santa Rosa Hospital,* the Board specifically recognized that it had overturned *Traub*'s central holding. 272 NLRB 1004, 1006 fn. 3 (1984).

obliterated the prior units and created a new merged unit.[10] (GC Exh. 1(h).) *Martin Marietta*, 270 NLRB 821, 822 (1984) (When employers with multiple bargaining units merge the Board first determines whether the "historical" units retain their separate identity or "changed circumstances have obliterated the previous separate identities.") In *Teamsters Loc. Union No. 206,* the Board address facts consistent with those in the present case. 368 NLRB No. 15 slip op. at 1 fn. 3 (2019). The Board found that where a question concerning representation arises from a merger, which substantially changes the nature of the prior unit(s), an employer has no duty to recognize and bargain with any of the unions involved during the pending resolution of the question concerning representation. Id. citing *Nott Company, Equipment Division*, 345 NLRB 396, 401–402 (2005); see also *Geo. V. Hamilton, Inc.*, 289 NLRB 1335, 1338–1339 (1988) (same); *Purolator Products*, 160 NLRB at 82 (same). While the facts in *Teamsters Loc. Union No. 206,* involved a charge against a union, the Board subsequently cited its relevant holding with authority in the context of an 8(a)(5) charge against an employer. *ADT, LLC,* 368 NLRB No. 118 (2019). Following the consolidation the Teamsters' unit and the Plastic Workers' unit lost their separate identities and neither union has ever been lawfully certified or recognized to represent the new merged unit.

Respondent admits that it recognized the Plastic Workers and negotiated a contract with them for only employees historically represented by the Plastic Workers at a time there was a question concerning representation. An employer violates the Act when it recognizes and enters into a contract with a non-incumbent union at a time when there is a question concerning representation. *Signal Transformer Co., Inc.,* 265 NLRB 272, 274 (1982). When an employer is "…notified of a valid petition, an employer must refrain from recognizing any of the rival unions." *Brukner Nursing Home,* 262 NLRB 955, 957 (1982). Such an employer should follow a course of strict neutrality with respect to competing unions until such time as the "real question concerning representation" is resolved through the mechanism of a Board-conducted election. Id at 956. The rationale behind the neutrality doctrine is that when there is a question concerning representation, an employer should avoid "unduly influenc[ing] or effectively ending a contest between labor organizations" by putting its hand on the scale in favor of one union. Id at 958. Following the consolidation, the Plastic Workers' historical bargaining unit ceased to exist, and they have never been the incumbent union for the appropriate merged unit. Thus, Respondent violated Section 8(a)(2) of the Act by entering into a new collective-bargaining agreement with the Plastic Workers. *Midwest Piping and Supply Co., Inc.*, 63 NLRB 1060 (1945).

General Counsel established that Respondent violated Section 8(a)(2) of the Act by entering into a new contract with the Plastic Workers.

3. Did the contract's wage increase provisions violate the Act.

General Counsel alleges Respondent violated Section 8(a)(3) of the Act because its new contract with the Plastic Workers provided for annual hourly wage increases of $1, 80 cents, and 90 cents. Section 8(a)(3) of the Act makes it unlawful for an employer to discriminate in regards to terms and conditions of employment in order to encourage or discourage membership in a labor organization. In granting the wage increases set forth in the Plastic Workers' contract Respondent discriminated between the two units of employees because employees historically represented by

[10] No party filed a request for review of that decision with the Board. Thus it became a final administrative determination. *D.O. Prods., LLC,* 370 NLRB No. 139 slip op. at 3 fn. 6 (June 17, 2021).

the Teamsters have received no wage increases since December 1, 2022 when they received a 40 cent per hour raise. (R. Exh. 1 at 10, GC Exhs. 1(o) at ¶ VIII (b)–(d), 1(t) ¶ VIII (b)–(d).) Respondent's discrimination with regard to the raises in the Plastic Workers' 2023 contract is exacerbated by the fact that those raises were significantly higher than the 70 cent, 50 cent and 50 cent raises contained in the Plastic Workers' 2020 contract. (Jt. Exhs. 1–2.) Finally, the 2023 raises which Respondent gave at a time when there was a question concerning representation, demonstrated Respondent's lack of neutrality in the election between the two unions. The raises sent a message to employees that Respondent favored the Plastic Workers and employees should vote for them because Respondent would provide that union more favorable terms of employment than the Teamsters.

General Counsel established that Respondent violated Section 8(a)(3) of the Act by entering into a contract with the Plastic Workers which granted raises only to employees historically represented by the Plastic Workers.

4. Did the contract's union security clause violate the Act

During the hearing, Respondent and the Plastic Workers' counsel repeatedly argued that it was unfair that the Teamsters' union was able to take advantage of the union security clause in their contract, but General Counsel alleged the union security clause in the Plastic Workers' 2023 contract was unlawful. Respondent raises the same defense in its brief. (R. Br. at 5–6.) The Board has held that when an employer executes a contract in violation of 8(a)(2) it engages in a derivative violation of Section 8(a)(3) of the Act if there is a union security clause contained in the contract. *Hillcrest Nursing Home*, 251 NLRB 59 (1980). See also *United Parcel Service,* 303 NLRB 326, 326–328 (1991), enf. 17 F.3d 1518 (D.C. Cir. 1994), cert. denied 513 U.S. 1076 (1995). The Board's rationale in these cases is that the union security provisions violate Section 8(a)(3) because they discriminatorily force employees to join a union at a time when an uncoerced majority has yet to select the union as their designated representative. Id. In the present case, the union security clause in the Plastic Workers' 2023 contract violated 8(a)(3) because they entered into it when the Plastic Workers did not represent an uncoerced majority of Respondent's employees within an appropriate unit.

With regard to the remedy for such, the Board has also ruled that when two separate units merge into a new consolidated unit an employer is required to maintain the status quo of the terms of both contracts after the consolidation. *Borden, Inc. & Loc. 222, Int'l Bhd. of Teamsters, AFL–CIO*, 308 NLRB 113, 115 (1992). The Board in *Borden,* reasoned that, "maintaining the status quo ensures that both portions of the merged unit begin from the same relative point." Id. Thus, following the consolidation, it was lawful, and in fact required, that Respondent withhold and remit dues to the Plastic Workers and the Teamsters on behalf of all employees who signed dues authorizations. Further, dues-checkoff provisions survive a contract's expiration. *Valley Hosp. Med. Ctr., Inc.,* 371 NLRB No. 160, slip op. at 17 (2022). Dues authorizations that employees signed on behalf of the Plastic Workers prior to July 1, 2023, were based on a lawful contract. Further, a dues-checkoff authorization is a contract between an employee and his employer. *Auto Workers Loc. 128(Hobart Corp.),* 283 NLRB 1175, 1177 (1987). However, with respect to any employee hired after June 30, 2023, and placed in the historical Plastic Workers unit, their dues and membership requirements were based solely on an unlawful contract. The record does not

reflect how Respondent determined which unit it placed new hires into or how many employees signed dues authorization cards on behalf of the Plastic Workers after June 30, 2023.

General Counsel established that Respondent violated Section 8(a)(3) and (1) of the Act by entering into a contract with the Plastic Workers which contained a union security clause at a time it did not represent an uncoerced majority of Respondent's employees in an appropriate unit.

B. Allegation that Respondent Denied the Teamsters Access

General Counsel contends in paragraph 6 of the complaint that Respondent violated Section 8(a)(1) and 8(a)(2) of the Act by allowing the Plastic Workers' representatives access to their employees on the production floor while denying such access to the Teamsters' representatives. General Counsel presented evidence of one occasion, between January 2024 and the June 13, 2024 re-run election, when the Plastic Workers' business agent went into the production area and spoke with an unspecified number of employees historically represented by the Plastic Workers. (Tr. 68–71.) General Counsel failed to establish that Respondent denied Teamsters' Business Agent Treadwell access to its employees on the production floor. Rather, Treadwell testified that when he visited the Cicero facility, he went there to see one of his stewards. (Tr. 39–40, 48–49.) Initially, when Respondent moved its operations to the Cicero facility, Treadwell would enter the facility through the employee/shipping entrance. Treadwell would tell Plant Manager Michael Zolla which of his two stewards he wanted to see and he would meet with the steward on the production floor. (Tr. 41–42.) During the three and a half months leading up to the June 13, 2024 re-run election, Treadwell visited Respondent's Cicero facility about six times. (Tr. 46–47.) Starting around February 28, 2024, Zolla instructed Treadwell to use the public visitor entrance and he would meet with his steward in the lobby or conference room. (Tr. 48–50.) Treadwell testified that after February 28, 2024, he was not allowed to walk in the production area. (Tr. 50–51.) However, Treadwell did not testify that after Zolla instructed him to use the public entrance that Treadwell ever asked to go into a production area to speak with employees or that any of Respondent's supervisors told him he could not go onto the production floor. (Tr. 76–142.) Further, when Treadwell requested to meet with all the employees in the Teamsters' historical bargaining unit, in Respondent's lunchroom in late January 2024, Respondent allowed such. (R. Exh. 12.) Thus, the evidence does not demonstrate evidence that Respondent assisted the Plastic Workers' union by allowing them access to the production floor to meet with employees while denying the same to the Teamsters' representative.

Accordingly, I recommend that complaint paragraph 6 be dismissed.

C. Did Respondent Engage in Conduct that Warrants Setting Aside the Results of the Representation Election?

The Union filed four timely objections to the representation election held on June 13, 2024. Based on the analysis set forth above, I sustain objections one through three and I overrule the fourth objection.

1. Applicable legal standard

The Union's objections essentially mirror the unfair labor practice allegations, and I will refer to my conclusions set forth above. The Board ordinarily sets aside the results of a representation election whenever an unfair labor practice has occurred during the critical period, between the filing of the petition and the election, unless it is virtually impossible to conclude that the misconduct has affected the outcome of the election. *Cemex Constr. Materials Pac., LLC*, 372 NLRB No. 130 slip op. at 9 (2023). The only exception to that policy is where the misconduct is de minimis, such that it is virtually impossible to conclude that the election outcome has been affected. In determining whether misconduct could have affected the results of the election, the Board has considered the number of violations, their severity, the extent of dissemination, the size of the unit, the margin of the vote, the proximity of the conduct to the election date, and the number of unit employees affected. *Union Tank Car. Co.*, 369 NLRB No. 120, slip op. at 3 (2020); *Bon Appetit Mgmt. Co.*, 334 NLRB 1042, 1044 (2001). The party seeking to set aside an election has the burden of proof. *Crown Bolt, Inc.*, 343 NLRB 776, 779 (2004).

2. Analysis

On January 12, 2022, the Teamsters filed objections to an election that the NLRB conducted on June 5, 2022, and companion unfair labor practice charges. (GC Exh. 1(g), Jt. Exh. 1.) On February 29, 2024, the Respondent entered into a settlement agreement resolving the unfair labor practices. (Jt. Exh. 4.) As part of that settlement, the parties agreed to a stipulation to set aside the results of the election and agreed to a re-run election. (Jt. Exh. 4 attachment.) During the critical period[11] preceding the June 13, 2024 re-run election, Respondent violated Section 8(a)(1), (2) and (3) of the Act by unlawfully entering into a contract with the Plastic Workers when it did not represent an uncoerced majority of Respondent's employees in an appropriate unit and further agreeing as part of that contract to wage increases to only employees historically represented by the Plastic Workers. By engaging in this conduct Respondent sent a message to employees that it favored the Plastic Workers and if they selected them in an election they could secure more favorable conditions of employment than the Teamsters. I find that conduct was sufficiently disseminated and severe to affect the results of the election even though employees voted in favor of the Plastic Workers and against the Teamsters by a margin of 50 to 9 with 16 challenged ballots and 1 vote against union representation. I therefore recommend that the results of the June 13, 2024 election be set aside and Case 13–RC–305160 be severed and remanded to the Regional Director to conduct a third election whenever the Regional Director shall deem appropriate.

[11] In *Goodyear Tire and Rubber Company*, 138 NLRB 453 (1962), the Board defined the critical period before an election as the interval from the date of the filing of the petition to the time of the election. The critical period in this case began when the Plastic Workers filed a representation petition on October 13, 2022.

D. *Respondent's Other Affirmative Defenses*

1. Respondent's defense regarding the sufficiency of the charge.

Respondent's answer states an affirmative defense that some or all of the allegations in the complaint fall outside the scope of the charge. (GC Exhs. 1(o) at 7, 1(t) at 7.) The charge in this case alleges that Respondent violated Section 8(a)(1), 8(a)(2) and 8(a)(3) of the Act by:

> Within the past 6 months, the Employer unlawfully assisted the Plastic Workers Union by negotiating a new collective bargaining agreement with the Plastic Workers and discriminated against Teamster members by granting high wage increases to the Plastic Workers members.
>
> With the past 6 months, the Employer unlawfully assisted the Plastic Workers Union by discriminating against the Teamsters Union by restricting their access to Teamster members inside the facility.

A charge "is sufficient if it informs the alleged violator of the general nature of the violation charged against him and enables him to preserve the evidence relating to the matter." *NLRB v. Louisiana Mfg. Co.*, 374 F.2d 696, 704–705 (8th Cir. 1967), quoting *NLRB v. Raymond Pearson, Inc.*, 243 F.2d 456, 458 (5th Cir. 1957). A charge merely serves to initiate a Board investigation to determine whether a complaint should be issued. It is not a pleading and is not measured by the standards applicable to a pleading in a private lawsuit. See *FDRLST Media, LLC*, 2–CA–243109, unpub. Board order issued Feb. 7, 2020 (2020 WL 1182438, 2020 NLRB LEXIS 57), reaffd. 370 NLRB No. 49, slip op. at 1 n. 4 (2020), affd. on point but enf. denied on other grounds 35 F.4th 108 (3d Cir. 2022) citing *NLRB v. Fant Milling Co.*, 360 U.S. 301, 307 (1959) and *NLRB v. Indiana & Michigan Electric*, above, 318 U.S. at 18 ("The charge does not . . . serve the purpose of a pleading."). The charge language here, clearly informed Respondent of all the allegations which were eventually included in the complaint. It also provided Respondent with sufficient details to allow them to preserve evidence regarding every allegation. While the charge did not specifically allege that the union security clause in the contract was unlawful, it alleged the contract itself was unlawful which was sufficient. In its brief, Respondent contends that the Teamsters "…never filed a charge over the raises given in 2024…" rather the charge centered on raises given in 2023. (R. Br. at 7 fn. 1.) The charge language above clearly encompassed all raises given under the new contract because the charge alleges the contract to be unlawful and that the "wage *increases"* under that contract were unlawful. (GC Exh. 1(k). emphasis added.)

2. Respondent's constitutional defenses

Respondent raised three challenges to these proceedings under the U.S. Constitution, contending that: 1) any administrative proceeding in this matter would be invalid because it would be presided over by an administrative law judge ("ALJ") who is serving in a position that has been unconstitutionally created; 2) the scheme via which the NLRB is constituted, is unconstitutional; and 3) any Board administrative proceeding in this matter would violate Respondent's Seventh Amendment right to a jury trial for "Suits at Common Law". The Board rejected similar constitutional challenges in *Commonwealth Flats Development Corp. d/b/a Seaport Hotel Boston*, 373 NLRB No. 142, slip op. at 1 fn. 1 (2024), and I am bound by that authority. Further, since

ruling on Respondent's constitutional challenges could entail halting (at least in part) the operation of the agency, and such a step would be in tension with my duty to faithfully administer the Act, I deny Respondent's constitutional challenges with the understanding that federal courts will likely address the issues at some point in the future. See *National Association of Broadcast Employees & Technicians – Broadcasting & Cable Television Workers Sector of the CWA, AFL–CIO, Local 51 (NABET)*, 370 NLRB No. 114, slip op. at 1–2 (2021) (setting forth similar reasoning in declining to rule on a challenge to the constitutionality of the President's removal of the General Counsel and the appointment of an Acting General Counsel).

CONCLUSIONS OF LAW

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

2. Respondent violated Section 8(a)(2) of the Act by assisting or contributing support to the Plastic Workers Union, Local No. 18, AFL–CIO (Plastic Workers), by negotiating a new contract with them while there was a question concerning representation and during a period when the Plastic Workers did not represent an uncoerced majority of Respondent's employees in an appropriate bargaining unit.

3. Respondent violated Section 8(a)(3) of the Act by discriminating against its employees by entering into a contract with the Plastic Workers which granted annual wage increases only to employees historically represented by the Plastic Workers while withholding such from employees historically represented by the Teamsters in order to encourage membership with the Plastic Workers.

4. Respondent violated Section 8(a)(3) of the Act by entering into a collective-bargaining agreement with the Plastic Workers which contained Union Shop and Checkoff articles at a time when it did not represent an uncoerced majority of Respondent's employees in an appropriate bargaining unit in order to encourage membership in the Plastic Workers.

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

6. Respondent did not otherwise violate the Act.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative actions designed to effectuate the policies of the Act.

General Counsel seeks an order requiring Respondent to grant the raises provided for under Respondent's 2023 contract with the Plastic Workers to the employees historically represented by the Teamsters. I find that remedy appropriate. The Board seeks to provide remedies that effectuate the policies of the Act. "The purpose of a Board remedial order is to 'restore so far as possible the status quo that would have obtained but for the wrongful act.'" *Raymond Interior Sys.,* 367 NLRB No. 124 slip op. at 7 (2019) quoting *Rutter-Rex Mfg. Co,* 396 U.S. 258, 265 (1969). Here

Respondent's relevant wrongful act was discriminating against its employees by entering into a contract with the Plastic Workers which granted annual wage increases only to employees historically represented by the Plastic Workers while failing to grant such to employees historically represented by the Teamsters in order to encourage membership in the Plastic Workers. In order to restore the status quo, one option would be to order that upon request from the Teamsters, Respondent shall rescind the raises given under the contract. However, such a remedy would not effectuate the purposes and policies of the Act because it would put the Teamsters in a no win situation of further discouraging membership with the Teamsters or leaving the Plastic Workers union to enjoy the benefits of the unlawful contract. In determining an appropriate remedy, I am guided by the Board's holding that the finding of unlawful discrimination against employees warrants a presumption that some backpay is owed to employees. See *Gimrock Construction,* 356 NLRB 529, 538 (2011) enfd. in relevant part 694 F.3d 1188 (11th Cir. 2012); *G & T Terminal Packaging Co.,* 356 NLRB No. 181, 189 (2010). I find granting employees historically represented by the Teamsters the same raises as those provided for in the Plastic Workers' 2023 contract, is the only viable remedy that will restore the status quo of the relative positions the unions enjoyed among Respondent's employees prior to Respondent entering into the unlawful contract with the Plastic Workers. Further, in cases where the Board has found an employer discriminated against one group of employees as compared to another, in order to discourage union activity, the Board has ordered a remedy that the employees who were denied the raises be given retroactive increases equal to those given to the other employees. *Kurdziel Iron of Wauseon, Inc.,* 327 NLRB 155, 155–156 (1998). See also *Leeds Cablevision,* 277 NLRB 103, 104 (1985).

Because Respondent violated Section 8(a)(3) and (1) of the Act by failing to grant wage increases to employees historically represented by the Teamsters, I shall order the Respondent to make whole those employees for the retroactive wage increases provided for in the Plastic Workers' 2023 contract. Backpay shall be computed as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as outlined in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

To the extent Respondent's backpay obligations result in adverse tax consequences for affected employees due to their receiving lump–sum payments, Respondent is ordered to compensate those employees for the adverse tax consequences, if any, of receiving a lump–sum backpay award, and file with the Regional Director, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016). In accordance with the Board's decision in *Cascades Containerboard Packaging–Niagara*, 370 NLRB No. 76 (2021), as modified in 371 NLRB No. 25 (2021), the Respondent shall also be required to file with the Regional Director of Region 13 a copy of each backpay recipient's corresponding W–2 form reflecting the backpay award. The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration at the appropriate time and in the appropriate manner.

On these findings of facts and conclusions of law and on the entire record, I issue the following recommended[12]

ORDER

Respondent, Accurate Metal Fabricating, LLC, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Assisting or contributing support to Plastic Workers Union, Local No. 18, AFL–CIO (Plastic Workers), by negotiating a new contract with them while there is a question concerning representation and during a period when the Plastic Workers do not represent an uncoerced majority of its employees in an appropriate bargaining unit.

(b) Discriminating against employees by entering into a contract with the Plastic Workers which grants annual wage increases only to employees historically represented by the Plastic Workers while failing to grant such to employees historically represented by the Teamsters in order to encourage membership with the Plastic Workers.

(c) Giving effect to or enforcing the collective-bargaining agreement executed with the Plastic Workers effective by its terms from July 1, 2023 to June 30, 2026 (July 1, 2023 contract) or to any extension, renewal, or supplement thereto, including applying the "Union Shop" or "Checkoff" articles of that agreement to employees hired after June 30, 2023, unless and until the Plastic Workers is certified by the National Labor Relations Board as the exclusive bargaining representative of its employees in an appropriate bargaining unit; provided, however, that nothing herein shall require Respondent to vary or abandon any wage, hour, seniority, or other substantive features of its relations with said employees which have been established in the performance of any such agreement or to withhold from employees any rights they may have thereunder.

(d) 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) Reimburse with interest all employees hired after June 30, 2023, for any money required to be paid pursuant to the Plastic Workers' July 1, 2023 contract for dues, initiation fees, and other obligation of membership in the Plastic Workers union.

(b) Make whole, plus interest computed in accordance with current Board policy, all employees historically represented by the Teamsters for the retroactive wage increases that are set forth in the July 1, 2023 contract with the Plastic Workers, as well as any associated benefit contributions such as 401K contributions, and

[12] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Orders 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.

compensate employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award.

(c) File with the Regional Director for Region 13, within 21 days of the date the amount of backpay is fixed, a report allocating the backpay award to the appropriate calendar year(s).

(d) File with the Regional Director for Region 13, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, copies of the W–2 forms reflecting the backpay awards.

(e) Preserve and, within 14 days of 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 all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, Post at its Cicero, Illinois facility, copies of the attached notice marked "Appendix." Copies of said notice, on forms provided by the Regional Director for Region 13, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in this proceeding, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at the closed facility at any time since July 1, 2023.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 13 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.

(h) It is further ordered that paragraph VI of the complaint is dismissed.

(i) The Regional Director for Region 13 shall set aside the representation election conducted in Case 13–RC–305160 and in accordance with Section 102.69(c)(2) of the Board's Rules and Regulations, that case is severed and transferred to the Regional Director for Region 13 for further processing.

Dated, Washington, D.C., January 5, 2026.

Christal J. Key
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.

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL cease and desist from negotiating a new collective-bargaining agreement with the Plastic Workers unless and until such time as they lawfully represent an uncoerced majority of employees in an appropriate collective-bargaining unit.

WE WILL cease and desist from maintaining and giving effect to the collective-bargaining agreement with the Plastic Workers which became effective by its terms as of July 1, 2023, or any renewal, extension, or modification thereof, unless and until the Plastic Workers is certified by the Board.

WE WILL make whole with interest, all employees historically represented by Teamsters, Local 781 for the wage increases, retroactive to July 1, 2023, set forth in the contract we signed with the Plastic Workers which became effective by its terms as of July 1, 2023, as well as any associated benefit contributions such as 401K contributions.

WE WILL reimburse with interest all present or former employees hired after June 30, 2023, for all dues, initiation fees, and other moneys paid by or withheld from their paychecks pursuant to Articles III (Union Shop) and IV (Dues-Checkoff) of the collective-bargaining agreement we signed with the Plastic Workers which became effective by its terms as of July 1, 2023.

WE WILL file with the Regional Director for Region 13, within 21 days of the date the amount of backpay is fixed, a report allocating the backpay award to the appropriate calendar year(s).

WE WILL file with the Regional Director for Region 13, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, copies of the W–2 forms reflecting the backpay awards.

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

ACCURATE METAL FABRICATING, 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. We conduct secret–ballot elections to determine whether employees want union representation and we investigate and remedy 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 or you may call the Board's toll–free number 1–844–762–NLRB (1–844–762–6572). Callers who are deaf or hard of hearing who wish to speak to an NLRB representative should send an email to relay.service@nlrb.gov. An NLRB representative will email the requestor with instructions on how to schedule a relay service call

National Labor Relations Board, Region 13
219 S. Dearborn, Suite 808
Chicago, Illinois 60604
Telephone: (312) 353-7570
Hours of Operation: 8:30 a.m. to 5:00 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/13-CA-344936 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 (312) 353-7169.