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Solution One Industries, Inc. and International Association of Machinists and Aerospace Workers, AFL-CIO. Case 09–CA–293349

February 27, 2026

DECISION AND ORDER

BY MEMBERS PROUTY, MURPHY, AND MAYER

Upon a charge filed by International Association of Machinists and Aerospace Workers, AFL–CIO (the Union) on March 29, 2022, and an amended charge filed by the Union on May 27, 2022, the General Counsel issued a complaint and notice of hearing against Respondent Solution One Industries, Inc. (the Respondent) on June 28, 2022. The complaint alleges that, since May 14, 2022, the Respondent has failed to continue in effect all of the terms and conditions of employment of the parties’ collective-bargaining agreement by refusing to settle five grievances in accordance with Article 9.1.1(a) of the agreement, after failing to answer those grievances in writing within the time limit set forth in Article 9.2 of the agreement. The complaint further alleges that the Respondent engaged in the above-described conduct without the Union’s consent and that the Respondent, by this conduct, has failed and refused to bargain collectively and in good faith with the exclusive bargaining representative of its employees within the meaning of Section 8(d) of the National Labor Relations Act, in violation of Section 8(a)(1) and (5). On July 12, 2022, the Respondent filed an answer in which it denied having committed any unfair labor practices and asserted various affirmative defenses.

On September 8, 2022, the parties filed a joint motion to waive a hearing by an administrative law judge and to transfer this proceeding to the Board for a decision based on a stipulated record. On August 8, 2023, the Board granted the parties’ joint motion. Thereafter, the General Counsel and the Respondent filed opening briefs.¹ The General Counsel filed an answering brief.

On the entire record and briefs, the National Labor Relations Board makes the following

¹ In its brief, the Respondent does not argue in support of the affirmative defenses raised in its answer to the complaint. It has therefore abandoned those affirmative defenses. Cf. *Wisconsin Bell, Inc.*, 346 NLRB 62, 64 fn. 8 (2005) (holding that although the respondent raised deferral as an affirmative defense in its answer, it waived the argument by failing to raise the issue subsequently at the hearing or in its brief to the judge).

² The unit is as follows:

All full time and part-time Shipping/Receiving Clerks, Order Fillers, Warehouse Specialists, Medium Truck Drivers, Material Specialist,

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Lexington, Kentucky, has been engaged in the business of warehousing, logistics, and transportation. In conducting its operations during the 12-month period ending June 1, 2022, the Respondent performed services valued in excess of \$50,000 in states other than the Commonwealth of Kentucky. At all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act. In addition, at all material times, District Lodge 1888 and Local Lodge 219 have been labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Stipulated Facts*

The Respondent, at its office and place of business in Lexington, Kentucky, is engaged in the business of warehousing, logistics, and transportation. Tyrone McLaurin is the Respondent’s president and chief operating officer (COO). Misty Jones is the Respondent’s operations manager. McLaurin and Jones are supervisors within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act.

Since about January 16, 2018, and at all material times, the Respondent has recognized Local Lodge 219 as the exclusive bargaining representative of unit employees.² The parties’ most recent collective-bargaining agreement was effective from January 1, 2021, through June 30, 2023.

The agreement sets forth a grievance-arbitration procedure at Article 9. As is relevant here, Article 9.1.1, “Grievance Time Limits,” provides as follows:

- a. **In the event the Company does not answer a grievance within the time limits set forth in the grievance procedure, the grievance shall be considered settled on the basis of the Union’s written request.** Any grievance that is not instituted by the employee or referred by the Union to the next appropriate step within

Logistics Specialist, Supply Technicians, Material Coordinators, and Carpenters employed by [Respondent] at its locations at Bluegrass Station, 5749 Briar Hill Road, Buildings 5, 101, 102, 135, 140, 141, 190, 192, 194, 195, 197, 220, 221, and 341 Lexington, Kentucky and Richmond Bluegrass Army Depot, 431 Battlefield Memorial Highway, Building 254, Richmond, Kentucky including any future buildings or locations, at which [Respondent] employees are assigned, excluding all other employees, office clerical employees, managerial employees, and professional employees, guards and supervisors as defined in the Act.

the time limit specified in the grievance procedure shall be considered settled in favor of the Company.

b. The parties shall grant, on a case by case basis, **prior to the expiration of the time limits**, time limit extensions on all grievances appealed beyond Step 1 of the grievance procedure. **Such extension of time limits must be made in writing and acknowledged by signature or initial by the other party.**

While the granting of this extension will be made without question, both parties affirm their conviction that the timely resolution of grievances is in the mutual best interest of all parties.

Exhibit H to Joint Motion at p. 11 (emphasis added).

Under Article 9.2, the Respondent must answer Step 3 grievances “in writing within five (5) regular working days after the date of [the] meeting at which it was discussed.” Article 9.2 also provides that “[e]xceptions to timelines will be adjusted on a case by case basis at the request of either party.”

On various dates in January and February 2022, five grievances (2022-06, 2022-07, 2022-08, 2022-09, and 2022-10) were filed at Step 2 of the grievance-arbitration procedure set forth in Article 9.³ The Respondent, on February 22, denied the grievances in written Step 2 answers provided to District Lodge 1888 and Local Lodge 219.

On February 25, the Union, in writing, moved the grievances to Step 3 of the procedure set forth in Article 9. Then, on March 3, representatives of the Respondent, District Lodge 1888, and the Union met at the Respondent’s facility to discuss grievances, including the five at issue, at a Step 3 grievance discussion. The union representatives present at this meeting were District Lodge Business Representative Ryan McCarthy and Local Lodge 219 Chief Steward Bryan Martin. For the Respondent, Operations Manager Jones and Daniel Hernandez (title unknown) were physically present, and President and COO McLaurin participated by phone. During the meeting, the representatives for the respective parties discussed the five

grievances. Specifically, McCarthy read each grievance individually, and the participants discussed the merits of each grievance. This meeting satisfied the requirements set forth in Article 9.2, Step 3 of the agreement and therefore constituted a Step 3 meeting.

During the Step 3 meeting, Operations Manager Jones took notes summarizing the parties’ discussions. With respect to Grievance 2022-06, she wrote, in part, that McLaurin stated, “We are going to need some time to locate the interview documents.” And, with respect to Grievance 2022-08, she wrote, in part, that McLaurin stated, “[W]e will need to locate the email and send it over.” She noted that Union Representative McCarthy stated, “Need to get the email sent.” Jones’s notes do not show that McLaurin made any such statements with respect to the other grievances.

On March 14, District Lodge 1888 Business Representative McCarthy, in a letter addressed to McLaurin that he emailed to McLaurin and Jones, stated that the Union considered the five grievances settled on the basis of the Union’s request and demanded “to be made whole immediately.” McCarthy explained that the agreement so required because, as of the date of the letter, the Respondent had neither answered the Step 3 grievances within the time limit specified in the agreement nor requested any extension. Later that day, Operations Manager Jones sent an email with attached documents to Chief Steward Martin (copying McCarthy and McLaurin) stating, “Per our conversation in the step 3 meeting the Company stated that additional time would be needed to gather the information for the Truck Driver interviews.” She did not specify the grievance to which she was referring.

On March 24, Jones, McLaurin, McCarthy, and Martin met at the Respondent’s facility to discuss other Step 3 grievances unrelated to the five at issue in the instant proceeding. At that meeting, McCarthy asked the Respondent’s representatives whether they intended to settle the five grievances per Article 9. McLaurin replied that it was the Respondent’s position that Jones, in her March 14 email, had provided written answers to the grievances.

³ In Grievance 2022-06, grievant Daniel Clem alleged that the Respondent had breached Article 8 by failing to select the most qualified employee for the position of medium truck driver. In the “settlement” section of the grievance form, he demanded the Respondent “utilize the most senior qualified employee.” In Grievance 2022-07, a class-action, grievant Local Lodge 219 alleged that the Respondent had breached Article 11.8 on January 7, 2022, by altering the shift hours to only allow unit employees to work a 5-hour shift while forcing them to use 3 hours of paid personal leave to equal an 8-hour shift. Local Lodge 219 demanded that the Respondent make whole unit employees for all lost hours they were forced to use. In Grievance 2022-08, grievant Daniel Clem alleged that the Respondent had breached Article 11 by emailing employees asking for volunteers to be on a standby list to work the

weekend of January 29-30. He demanded that the Respondent make whole all employees who had been put on the standby list. In Grievance 2022-09, a class-action, grievant Local Lodge 219 alleged that the Respondent had breached Article 11.8 by sending home bargaining-unit employees around noon on February 3, 2022, while “our customer” remained working for the remainder of the day. It demanded that the Respondent make whole all unit employee for all lost time while being forced to leave work early. And, in Grievance 2022-10, grievant Brian Davidson alleged that the Respondent had breached Article 14 by taking away time that had not yet been earned for the “physical” year. He demanded that the Respondent restore his PTO and “give him no pays for the time he did not have and make whole for all the [] time [the Respondent] took away from him.”

Later that day, the Union and the Respondent exchanged emails. McCarthy disputed the Respondent's claim that Jones's March 14 email constituted an answer to the grievances. He also stated that, regardless, March 14 would have been too late; the due date was March 10. McCarthy again asked the Respondent to consider the five grievances settled on the basis of the Union's written request. McLaurin again responded that, at the March 3rd meeting, the Respondent notified the Union that additional time would be needed. He also asserted that during the March 24th meeting (which, as mentioned above, involved unrelated grievances), the Union's business representative and chief steward acknowledged that they had not opened or reviewed the Respondent's March 14 email. For those reasons, he disputed that the Respondent had missed the deadline for answering the grievances.

McCarthy responded by email to McLaurin, stating that the Union completely disagreed with McLaurin's previous email. McCarthy denied that the Union had received any answers to the grievances. He added that March 14 was after the deadline for providing answers to the grievances. Further, he stated that the Respondent "never submitted in writing for an extension in writing for any/all grievances related to the March 3 grievance meeting . . . as per the [collective-bargaining agreement]" and that the agreement has a deadline of five workdays for responding to grievances. He indicated that, if the Respondent had made a written request for a reasonable extension of time, the Union would have approved it, as it had previously requested extensions.

On March 28, McLaurin responded by email to McCarthy's March 24 email. McLaurin wrote that, at the March 3 meeting, the Respondent stated that additional time would be needed to collect all information the Union requested from the Respondent. He further stated that the Respondent had provided responses to the Union's request for information, "which had an important impact as it related to both parties['] grievances discussion on March 3rd." Also, he stated that the agreement "doesn't require a writ[ten] request [for an extension]." McLaurin cited in support, "Article 9 of the [agreement] under 9.1 Step 3 'at the request of either party.'"⁴ He wrote that the Respondent made this request to the Union at the March 3 meeting and that there is "no language[] in the [agreement] that states that the Company or the Union much [sic] approve such request."

⁴ McLaurin appears to have erroneously cited Art. 9.1 instead of 9.2 (which contains the language McLaurin referenced). In any event, this does not affect our disposition of the matter.

B. The Parties' Contentions

The General Counsel argues that the Respondent committed an unlawful midterm modification of the agreement by refusing to consider the grievances settled under Article 9. More specifically, the General Counsel argues that, under Article 9, the Respondent had five "regular working days" to answer the five Step 3 grievances (2022-06, 2022-07, 2022-08, 2022-09, and 2022-10) in writing following the undisputed Step 3 grievance meeting on March 3. By her calculation, the deadline for the Respondent to answer was March 10, which was five regular working days after March 3.⁵ The Respondent did not provide the Union with written answers within that deadline. Therefore, according to the General Counsel, the Respondent was obligated to abide by the Union's written requests to consider the grievances as settled under Article 9.1.1(a), which clearly sets forth the consequences for failing to timely answer grievances.

The Respondent counters that it has a "sound arguable basis" for its interpretation that it was not required to consider the grievances as settled. The Respondent primarily argues that, under the agreement, it was entitled to orally obtain a unilateral extension of time to submit answers to the grievance, and therefore it did not have to provide answers to the Step 3 grievances by March 10. Specifically, citing Article 9.2 Step 3 of the agreement—which provides that "[e]xceptions to timelines will be adjusted on a case by case basis at the request of either party"—the Respondent argues that either party may orally extend the grievance timeline unilaterally upon request. The Respondent claims that, at the Step 3 meeting on March 3, it unilaterally orally adjusted the timeline under Article 9.2 for submitting answers to the Step 3 grievances when it stated that it would need some time to locate the interview documents regarding one grievance and "will need to locate the email and send it over" regarding another grievance. Further, the Respondent asserts that its subsequent conduct reflected that it made this unilateral adjustment. It points to a March 14 email from Jones to the Union in which, it claims, Jones provided the Union with the above-mentioned information referenced at the grievance meeting. The Respondent also states that, in McLaurin's March 28 email to the Union, McLaurin "explained" that the Respondent had "orally requested" additional time to provide Step 3 responses by stating that it needed additional time to collect the requested information responsive to the grievances. The Respondent further asserts that, in any event, it provided a sufficient answer to the Step 3

⁵ The Respondent does not dispute that, absent an extension, the due date was March 10.

grievances in its March 14 email and that the agreement does not specify that answers must take a particular form. Finally, the Respondent argues that even if it lacked a “sound arguable basis” for its interpretation of the agreement, the matter does not rise to the level of an unfair labor practice.

In her answering brief, the General Counsel disputes that the Respondent has articulated a sound arguable basis for its interpretation, again pointing to the clear terms of Article 9.1.1. She further argues that, in the alternative, the Board should overrule *Bath Iron Works Corp.*, 345 NLRB 499 (2005), affd. sub nom. *Bath Marine Draftsmen’s Assn. v. NLRB*, 475 F.3d 14 (1st Cir. 2007), replace its sound arguable basis test for analyzing midterm contract modifications with a “clear and unmistakable waiver” standard, and find that no such waiver occurred here.

C. Discussion

Section 8(a)(5) and (1) and Section 8(d) of the Act prohibit an employer from modifying terms and conditions of employment established by a collective-bargaining agreement during the agreement’s term without the union’s consent. See, e.g., *Oak Cliff-Golman Baking Co.*, 207 NLRB 1063, 1063–1064 (1973), enfd. mem. 505 F.2d 1302 (5th Cir. 1974), cert. denied 423 U.S. 826 (1975). When an employer defends against a midterm-modification allegation by arguing that its challenged conduct was consistent with the contract (as the Respondent argues here), the Board will not find a violation if the employer’s interpretation of the contract has a “sound arguable basis.” *Bath Iron Works*, 345 NLRB at 502.⁶ “If an employer has a sound arguable basis for its position that the contract permitted it to act as it did, then the General Counsel cannot show that the employer modified the contract in the first place.” *Transportation Services of St. John, Inc.*, 369 NLRB No. 15, slip op. at 1 fn. 2 (2020); see also *Stericycle, Inc.*, 372 NLRB No. 131, slip op. at 13 (2023)

⁶ We deny the General Counsel’s request to overrule *Bath Iron Works* in this case. Member Prouty notes that he was not a member of the Board when *Bath Iron Works* issued, and he would be open to considering whether *Bath Iron Works* was correctly decided in a future appropriate proceeding.

⁷ The complaint is properly construed as alleging that the Respondent committed an unlawful midterm modification of the agreement. See, e.g., *Solution One Industries, Inc.*, 372 NLRB No. 141 (2023) (*Solution One Industries I*). We note that, in *Solution One Industries I*, which involved the same parties, the Board adopted, in the absence of exceptions, the judge’s finding that the Respondent committed an unlawful midterm contract modification by failing to consider as settled two grievances that the Respondent did not timely answer. The Board also affirmed the judge’s dismissal of allegations involving the Respondent’s alleged failure to consider six grievances as settled on the Union’s terms. In doing so, the Board adopted the judge’s finding that the General Counsel had failed to prove that the parties had engaged in a Step 3 discussion that

(explaining that, under the sound arguable basis test, “an employer’s action is lawful if its interpretation of [the] relevant [contractual] provision is at least colorable”). Further, “[i]n interpreting a collective-bargaining agreement to evaluate the basis of an employer’s contractual defense, the Board gives controlling weight to the parties’ actual intent underlying the contractual language in question” and “examines both the contract language itself and relevant extrinsic evidence, such as a past practice of the parties in regard to the effectuation or implementation of the contract provision in question, or the bargaining history of the provision itself.” *Knollwood Country Club*, 365 NLRB 404, 406 (2017) (internal quotation omitted) (quoted in *Pacific Maritime Assn.*, 367 NLRB No. 121, slip op. at 4 (2019), enfd. 967 F.3d 878 (D.C. Cir. 2020)).⁷

At bottom, the question before us is whether the Respondent had a sound arguable basis for its position that it was not required to consider the five grievances as settled under the agreement.⁸ For the reasons discussed below, we find that the Respondent lacked a sound arguable basis for interpreting the agreement as having permitted it to orally and unilaterally extend the contractual deadline for answering grievances. And, as explained below, we reject the Respondent’s contentions that it timely answered in writing the five grievances and that, regardless, its failure to consider the grievances settled on the Union’s terms did not rise to the level of an unfair labor practice.⁹

To begin, the Respondent lacks a sound arguable basis for interpreting the agreement as permitting it to have orally extended the deadline for answering the five Step 3 grievances. The agreement clearly provides that an extension of time for answering a Step 3 grievance must be in writing and signed or initialed by the other party. Article 9.1.1 (“Grievance Time Limits”) governs deadline extensions and applies broadly to grievances at all stages. Subsection 9.1.1(b) specifically addresses “time limit extensions on all grievances appealed beyond Step 1 of the

would have contractually required the Respondent to answer the grievances within 5 regular working days. The Board also affirmed the judge’s dismissal of an allegation that the Respondent unlawfully failed to consider another grievance as settled on the Union’s terms.

⁸ Members Murphy and Mayer note that although the parties in this case agreed to have the Board make this determination, these types of disputes are typically and more appropriately handled within contractual grievance mechanisms.

⁹ The Respondent’s answer denied the complaint’s allegation that the Respondent’s refusal to consider settled the five grievances involved a mandatory subject of bargaining. However, the Respondent did not address this issue in its brief. The grievance-arbitration procedure is a mandatory subject of bargaining. *Transportation Services of St. John, Inc.*, 369 NLRB No. 15, slip op. at 8. So too is the subject matter of each of the five grievances, which involved work hours, paid personal leave, standby pay, and a promotion.

grievance procedure.” It provides that “[s]uch extension of time limits *must be made in writing and acknowledged by signature or initial by the other party*” (emphasis added).

Notwithstanding this language, the Respondent asserts that it had a sound arguable basis for finding that it was privileged to, and did, unilaterally obtain an *oral* extension of time to file answers. In support of that argument, it cites a separate provision, Article 9.2, which provides, in part:

Step 3. Written Grievance Handling at Union Representative/Company Representative Level.

...

The Human Resource Manager, Program Manager or his designated representative, will answer the grievance in writing within five (5) regular working days after the date of this meeting at which it was discussed. . . . **Exceptions to timelines will be adjusted on a case by case basis at the request of either party.**

Exhibit H to Joint Motion at p. 12 (emphasis added).

We find no merit in the Respondent’s claim that the last-quoted sentence of Article 9.2 arguably allowed it to extend a deadline orally. To be sure, Article 9.2 provides that exceptions to timelines will be adjusted on a case-by-case basis at the request of either party. But it does not even arguably address *the process* by which a deadline must be extended. Article 9.1.1(b) governs that issue, and it does so clearly. Simply put, Article 9.2 does not even arguably eliminate Article 9.1.1(b)’s clear and specific requirement that an extension “must be made in writing and acknowledged by signature or initial by the other party.” Further, there is no evidence in the stipulated record of a past practice of noncompliance with Article 9.1.1(b). For these reasons, we find that the Respondent lacked a sound arguable basis for its contract interpretation.¹⁰

Further, the stipulated record establishes that the Respondent failed to secure a written extension of the deadline to answer the five grievances, much less one that was signed or initialed by a Union agent. Without an

¹⁰ Even assuming the Respondent had a sound arguable basis for interpreting the agreement to permit oral, unilateral extensions of deadlines, the stipulated record does not support the Respondent’s assertion that it in fact orally requested an extension before the March 10 deadline had passed. The record merely shows that, at the Step 3 meeting on March 3, President and COO McLaurin stated the Respondent needed “some time to locate the interview documents” for Grievance 2022-06 and needed to locate “the email and send it over” for Grievance 2022-08. McLaurin never stated that he needed or wanted a deadline extension (i.e., that the Respondent needed longer than 5 working days to locate that information or to answer the grievances), and there is no evidence that the parties orally acknowledged an extension of the deadline to a specific date or even indefinitely. Moreover, none of McLaurin’s statements implicated Grievances 2022-07, 2022-09, or 2022-10, which is an

extension, the Respondent’s answers were due by March 10. But the Respondent did not submit answers by that deadline (or at any point). We reject the Respondent’s claim that Jones’s March 14 email to the Union constituted a timely answer to the grievances. Not only was this email sent after the March 10 deadline, but the email did not even arguably constitute an answer. It did not purport to deny, sustain, or resolve any of the five grievances, unlike the numerous other Step 3 answers contained in the record.¹¹ In her March 14 email, Jones merely stated that “Per our conversation in the step 3 meeting the Company stated that additional time would be needed to gather the information for the Truck Driver interviews.” Jones attached certain information (the resume of Todd R. Richter, notes of job interviews with Richter, a job posting, and a January 28, 2022 email asking recipients whether they would be willing to work the upcoming weekend). While the information furnished presumably was related to the Grievances 2022-06 (regarding the medium truck driver position) and 2022-08 (regarding the standby list), nothing in Jones’s email or the attached documents purported to answer those two grievances or even addressed Grievances 2022-07, 2022-09, or 2022-10. In short, the Respondent failed to timely answer the five grievances and contravened Article 9.1.1(a)’s clear command to consider them settled on the basis of the Union’s written request.

We reject the Respondent’s argument that its refusal to consider the five grievances settled was, at most, a breach of contract that did not rise to the level of an unfair labor practice. According to the Respondent, the Board may not find an unlawful midterm contract modification absent a wholesale repudiation of the agreement. However, in *Transportation Services of St. John*, the Board adopted a judge’s finding that an employer located in the Virgin Islands unlawfully modified an agreement’s arbitration provision by insisting on using a local arbitrator or video or teleconference technology to arbitrate a single grievance that the employer felt was not worth the expense of adhering to the procedure set forth in the parties’ arbitration clause. 369 NLRB No. 15, slip op. at 1 fn. 2. The judge,

additional basis for rejecting the Respondent’s argument as to those particular grievances.

¹¹ The Respondent asserts that the collective-bargaining agreement does not specify that an answer must take any particular form and claims that the record does not contain past-practice evidence about what Step 3 answers should look like. Contrary to the Respondent’s assertion, however, the record in *Solution One Industries I*—which is part of the stipulated record before us, per the terms of our August 8, 2023 Order—contains evidence showing the Respondent’s standard practice of answering grievances. Those examples identify the grievance number, describe the grievance, and provide an answer. Jones’s March 14 email is markedly different from those documents in its lack of detail and specificity; simply put, it was not how the Respondent answered Step 3 grievances. Accordingly, we find it was not a Step 3 answer.

whose reasoning the Board adopted, found that the employer had committed an unlawful midterm contract modification, not a mere breach of contract, even though only a single grievance was involved. The judge noted that, “[a]s a general proposition, a mere contract violation will not be found to violate Section 8(a)(5) unless it demonstrates a repudiation of the contract. However, a midterm modification of a contract provision regarding a mandatory subject of bargaining without the union’s consent will violate Section 8(a)(5).” *Id.*, slip op. at 8. Consequently, the judge concluded that, “[a]lthough the evidence involves only one valid grievance, the [r]espondent’s actions and statements in the record make clear that it intends to apply the modification generally,” without the General Counsel needing to prove repudiation of the whole collective-bargaining agreement or even repudiation of the whole grievance-arbitration clause. *Id.*, slip op. at 9.¹²

Here, the Respondent has similarly made clear its general position that the collective-bargaining agreement does not require deadline extensions to be in writing and signed or initialed by the other party and that Article 9.1.1(a) does not require it to consider settled any grievance answered after the 5-workday deadline provided that the Respondent had orally announced an extended deadline. Further, the Respondent’s conduct has not been limited to the five grievances at issue here. As mentioned above, the Respondent has previously been found to have unlawfully modified Article 9.1.1(a) when it relied on a purported deadline extension that had not been reduced to writing. *Solution One Industries I*, 372 NLRB No. 141, slip op. at 23. The Respondent’s course of conduct here was not a

mere contract breach on a particular set of facts; it was a midterm modification.¹³

In sum, we find that, by failing to consider the five grievances as settled, the Respondent violated Section 8(a)(5) and (1) and 8(d) of the Act.

CONCLUSIONS OF LAW

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

2. The Union, District Lodge 1888, and Local Lodge 219 have been labor organizations within the meaning of Section 2(5) of the Act.

3. The Respondent has violated Section 8(a)(5) and (1) and 8(d) of the Act by refusing to consider as settled on the Union’s written terms Grievances 2022-06, 2022-07, 2022-08, 2022-09, and 2022-10, in accordance with Article 9.1.1(a), after failing to answer the grievances in writing within the time limit set forth in Article 9.2.

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

REMEDY

Having found that the Respondent engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent unlawfully made midterm modifications, without the Union’s consent, to Article 9.1.1(a) of the collective-bargaining agreement’s grievance procedure, we shall order it to give effect to all provisions of the collective-bargaining agreement, including Article 9.1.1(a), by

¹² See also *Southwestern Electric*, 274 NLRB 922, 922 (1985) (finding that employer committed unlawful midterm modification of a grievance-arbitration clause by refusing to select arbitrators or otherwise process a small number of grievances unless and until the union submitted the grievances in writing where the clause did not require grievances to be in writing), enfd. 794 F.2d 276 (7th Cir. 1986); *Independent Slave Co.*, 233 NLRB 1202, 1202 (1977) (finding that employer committed unlawful midterm modification when it refused to process certain grievances unless the local union first submitted an affidavit attesting that the international union had not helped process grievances where agreement contained no such condition precedent), enfd. 591 F.2d 443 (8th Cir. 1979), cert. denied 444 U.S. 829 (1979).

¹³ *Cherry Hill Textiles*, 309 NLRB 268 (1992), enfd. 7 F.3d 221 (2d Cir. 1993), and *General Chemical Corp.*, 290 NLRB 76 (1988), cited by the Respondent, are distinguishable. In *Cherry Hill Textiles*, the Board reversed the judge’s finding that the employer’s refusal to arbitrate a grievance was an unlawful unilateral change to the parties’ collective-bargaining agreement. 309 NLRB at 268–269. The Board explained that the employer only refused to arbitrate a single grievance, and the refusal lasted just 17 days, at which time the employer agreed to arbitrate the grievance. *Id.* Unlike in *Cherry Hill Textiles*, the present case does not involve a mere temporary refusal to arbitrate a single grievance.

Similarly, *General Chemical* is also distinguishable. That case, which the *Cherry Hill Textiles* Board cited, involved the same, inapposite circumstance of an employer that arbitrated grievances “except on a very narrow and specific grievance matter.” *General Chemical Corp.*, 290 NLRB at 84. Specifically, the employer in that case refused to arbitrate a union’s grievances challenging the discharge of five employees for alleged misconduct during a strike. *Id.* The employer and union disputed whether the discharges happened before or after the retroactive start date of their new collective-bargaining agreement and hence whether the discharges were arbitrable. *Id.* The employer did not refuse to arbitrate any other grievances. *Id.* In that context, the judge found that the employer had not committed an unlawful midterm contract modification. *Id.* The Board affirmed. *Id.* at 76. Here, unlike in *General Chemical*, the Respondent is not merely in disagreement about the application of the agreement to a limited class of grievances. Rather, the Respondent substantially repudiated Sec. 9.1.1 by taking the general position that Art. 9.1.1 does not require deadline extensions to be in writing and does not require the Respondent to consider settled a grievance answered after the contractual deadline based on a purported oral extension by the Respondent. The Respondent’s position is one of general applicability, there is no sound arguable basis for it, and it infringes upon the Union’s and employees’ rights under Sec. 8(d).

considering settled, on the Union’s written terms, Grievances 2022-06, 2022-07, 2022-08, 2022-09, and 2022-10.

ORDER

The National Labor Relations Board orders that the Respondent, Solution One Industries, Inc., Lexington, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the International Association of Machinists and Aerospace Workers, AFL–CIO, District Lodge 1888, and its Local Lodge 219 (the Union) as the exclusive collective-bargaining representative of the employees in the following unit by modifying the grievance-arbitration procedure set forth in Article 9.1.1(a) of its January 1, 2021, to June 30, 2023 collective-bargaining agreement with the Union without the Union’s consent:

All full time and part-time Shipping/Receiving Clerks, Order Fillers, Warehouse Specialists, Medium Truck Drivers, Material Specialist, Logistics Specialist, Supply Technicians, Material Coordinators, and Carpenters employed by [Respondent] at its locations at Bluegrass Station, 5749 Briar Hill Road, Buildings 5, 101, 102, 135, 140, 141, 190, 192, 194, 195, 197, 220, 221, and 341 Lexington, Kentucky and Richmond Bluegrass Army Depot, 431 Battlefield Memorial Highway, Building 254, Richmond, Kentucky including any future buildings or locations, at which [Respondent] employees are assigned, excluding all other employees, office clerical employees, managerial employees, and professional employees, guards and supervisors as defined in the Act.

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

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

(a) Abide by the terms of its January 1, 2021, to June 30, 2023 collective-bargaining agreement with the Union, including Article 9.1.1(a), for any grievances arising under that agreement.

(b) Consider settled, in accordance with Article 9.1.1(a) of its January 1, 2021, to June 30, 2023 collective-bargaining agreement with the Union, Grievances 2022-06, 2022-07, 2022-08, 2022-09, and 2022-10.

(c) Within 14 days after service by the Region, post at its Bluegrass Station jobsites in Lexington, Kentucky, and Richmond Bluegrass Army Depot in Richmond, Kentucky, copies of the attached notice marked “Appendix.”¹⁴ Copies of the notice, on forms provided by the Regional Director for Region 9, 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 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 facilities 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 May 14, 2022.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 9 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 27, 2026

David M. Prouty, Member

James R. Murphy, Member

Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

¹⁴ 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

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 fail and refuse to bargain in good faith with the International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 1888, and its Local Lodge 219 (the Union) as the exclusive collective-bargaining representative of the employees in the following unit by modifying the grievance-arbitration procedure set forth in Article 9.1.1(a) of our January 1, 2021, to June 30, 2023 collective-bargaining agreement with the Union without the Union's consent:

All full time and part-time Shipping/Receiving Clerks, Order Fillers, Warehouse Specialists, Medium Truck Drivers, Material Specialist, Logistics Specialist, Supply Technicians, Material Coordinators, and Carpenters employed by [Respondent] at its locations at Bluegrass Station, 5749 Briar Hill Road, Buildings 5, 101, 102, 135, 140, 141, 190, 192, 194, 195, 197, 220, 221, and 341 Lexington, Kentucky and Richmond Bluegrass Army Depot, 431 Battlefield Memorial Highway, Building 254, Richmond, Kentucky including any future buildings or locations, at which [Respondent]

employees are assigned, excluding all other employees, office clerical employees, managerial employees, and professional employees, guards and supervisors as defined in the Act.

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

WE WILL abide by the terms of our January 1, 2021, to June 30, 2023 collective-bargaining agreement with the Union, including Article 9.1.1(a), for any grievances arising under that agreement.

WE WILL consider settled, in accordance with Article 9.1.1(a) of our January 1, 2021, to June 30, 2023 collective-bargaining agreement with the Union, Grievances 2022-06, 2022-07, 2022-08, 2022-09, and 2022-10.

SOLUTION ONE INDUSTRIES, INC.

The Board's decision can be found at <https://www.nlr.gov/case/09-CA-293349> 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

