

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

**Forepeak Steel, LLC and International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers.** Cases 04–CA–340084 and 04–CA–351200

March 27, 2026

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY  
AND MAYER

On December 9, 2024, Administrative Law Judge Michael A. Rosas issued the attached decision. The General Counsel filed exceptions with supporting argument.

The Board has considered the decision and the record in light of the exceptions and argument and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions only to the extent consistent with this Decision and Order.<sup>2</sup>

AMENDED CONCLUSION OF LAW

Delete the judge's Conclusion of Law 4 and renumber the subsequent paragraphs accordingly.

<sup>1</sup> In the absence of exceptions, we adopt the judge's finding that the Respondent violated Sec. 8(a)(5) and (1) of the Act by laying off employees in April 2024 without first notifying the Union and affording it an opportunity to bargain over the decision and its effects. We also adopt, in the absence of exceptions, the judge's finding that the Respondent violated Sec. 8(a)(5) and (1) of the Act by closing its business without giving the Union notice and an opportunity to bargain over the effects of that decision.

We find merit in the General Counsel's exception that the judge erred in dismissing an allegation that the Respondent violated Sec. 8(a)(5) and (1) by closing its business without providing notice to the Union and affording it an opportunity to bargain over the decision. As the General Counsel argues, no such violation was alleged in the complaint. Rather, with respect to the closure, the General Counsel alleged only an effects-bargaining violation. Accordingly, we grant the General Counsel's request to correct the judge's inadvertent finding dismissing a decision-bargaining allegation.

We decline to reach the General Counsel's exception asserting that the judge made a factual error regarding the onset of the Respondent's financial difficulties. Because no exceptions have been filed challenging the judge's finding of the relevant violation of the Act, reaching the merits of this exception would not affect the outcome of this case.

<sup>2</sup> We have amended the judge's Conclusions of Law consistent with our findings herein. We shall modify the judge's remedy to include the Board's standard remedy of make-whole relief for employees laid off in April 2024 as a result of the Respondent's unlawful failure to bargain over the decision and the effects of the decision to lay off. The make-whole relief shall be paid from the time of their layoff in April 2024 until the business closed in July 2025, at which time the judge properly ordered a limited backpay remedy under *Transmarine Navigation Corp.*,

ORDER

The Respondent, Forepeak Steel, LLC, Point Pleasant Borough, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers (Union), as the exclusive collective-bargaining representative of the employees in the unit set forth below, over the effects of the Respondent's decision to cease operations at its Point Pleasant Borough, New Jersey facility:

All full-time and regular part-time ironworkers employed by the Employer from its 1503 River Avenue, Point Pleasant Borough, New Jersey facility, excluding all other employees, salaried employees, office clerical employees, professional employees, confidential employees, managerial employees, guards, and supervisors as defined in the Act.

(b) Laying off unit employees in April 2024 without first affording the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers (Union), adequate notice and an opportunity to bargain over those decisions and their effects.

170 NLRB 389 (1968), for the failure to bargain over the effects of the closure. Backpay for the period from the layoffs until the closure of the business shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with our decision in *Thryv, Inc.*, 372 NLRB No. 22 (2022), enf. denied on other grounds 102 F.4th 727 (5th Cir. 2024), the Respondent shall also compensate employees for any other direct or foreseeable pecuniary harms incurred as a result of the unlawful layoff, including reasonable search-for-work and interim employment expenses, if any, regardless of whether these expenses exceed interim earnings. Compensation for these harms shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

As stated in *Performance Plumbing, LLC*, 374 NLRB No. 48, slip op. at 2 fn. 2 (2026), and *Lodi Volunteer Ambulance Rescue Squad, Inc.*, 374 NLRB No. 26, slip op. at 3 fn. 3 (2026), Members Murphy and Mayer find no need at this time to express an opinion whether the novel remedies announced by the Board majority in *Thryv* are permissible under the Act. They would be open to reconsideration of that precedent in a future proceeding, but in the absence of a three-member majority to overrule it at this time, they agree to apply *Thryv*.

We shall also modify the judge's recommended Order to conform to the Board's standard remedial language for the violations found. We shall also substitute a new notice to conform to the Order as modified. Finally, we have corrected inadvertent typographical errors in the judge's decision. These inadvertent errors have not affected our disposition of this case.

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

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

(a) On request, bargain collectively and in good faith with the Union concerning the effects of the Respondent's decision to lay off employees and cease operations at its Point Pleasant Borough, New Jersey facility, and reduce to writing and sign any agreement reached as a result of such bargaining.

(b) Pay unit employees their normal wages for the period set forth in the remedy section of the judge's decision, with interest.

(c) Make Troy Griffin, Matt Griffin, Leslie Mann, Jason Chango, and Keith Hesterman whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms suffered as a result of their layoff, in the manner set forth in the remedy section of the judge's decision as amended in this decision.

(d) Compensate Troy Griffin, Matt Griffin, Leslie Mann, Jason Chango, and Keith Hesterman for the adverse tax consequences, if any, of receiving lump-sum backpay award(s), and file with the Regional Director for Region 4, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year(s) for each employee.

(e) File with the Regional Director for Region 4, 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, a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.

(f) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix" to the Union and all former unit employees who were employed since January 1, 2024. In addition to the physical mailing 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.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form,

necessary to analyze the amount of backpay due under the terms of this Order.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region 4 attesting to the steps that the Respondent has taken to comply.

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

James R. Murphy, Chairman

David M. Prouty, 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

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 collectively and in good faith with the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, (Union) as the exclusive collective-bargaining representative of our former employees in the following appropriate unit:

All full-time and regular part-time ironworkers employed by the Employer from its 1503 River Avenue, Point Pleasant Borough, New Jersey facility, excluding all other employees, salaried employees, office clerical employees, professional employees, confidential

employees, managerial employees, guards, and supervisors as defined in the Act.

WE WILL NOT lay you off without first affording the Union adequate notice and an opportunity to bargain over those decisions and their effects on you.

WE WILL NOT close the business without first affording the Union adequate notice and an opportunity to bargain over the effects of that decision on you.

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 on request, bargain in good faith with the Union about the effects of our decision to lay off employees and close the business.

WE WILL pay our unit employees their normal wages for the period set forth in the remedy section of the judge's decision, with interest.

WE WILL make Troy Griffin, Matt Griffin, Leslie Mann, Jason Chango, and Keith Hesterman whole for any loss of earnings and other benefits resulting from their layoff, less any net interim earnings, plus interest, and WE WILL also make such employees whole for any other direct or foreseeable pecuniary harms suffered as a result of the layoff, including reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Troy Griffin, Matt Griffin, Leslie Mann, Jason Chango, and Keith Hesterman for the adverse tax consequences, if any, of receiving lump-sum backpay award(s), and WE WILL file with the Regional Director for Region 4, within 21 days of the date the amount of backpay is fixed either agreement or Board order, a report allocating the backpay awards to the appropriate calendar year(s) for each employee.

WE WILL file the Regional Director for Region 4, 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, a copy of each backpay recipient's, corresponding W-2 form(s) reflecting the backpay award.

#### FOREPEAK STEEL, LLC

The Board's decision can be found at <https://www.nlr.gov/case/04-CA-340084> 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.



*Jun S. Bang, Esq.*, for the General Counsel.

*Michael McGuire, Esq. (Marco, McGuire & Arreola, LLC)*, of Oakbrook Terrace, Illinois, for the Charging Party.

*Camillo Papa, Pro Se*, for the Respondent.

#### DEISION

#### STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried via Zoom for Government videoconference technology in November 20, 2024.<sup>1</sup> The consolidated complaint alleges that Forepeak Steel, LLC (the Respondent), violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act)<sup>2</sup> by: (1) in or about late March to early April 2024 by laying-off five bargaining unit employees without giving prior notice to the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers (the Union) and providing the Union an opportunity to bargain with Respondent with respect to this conduct or the effects of this conduct;<sup>3</sup> and (2) ceasing operations, closing its facility and terminating all employees on July 1 without affording the Union an opportunity to bargain with Respondent with respect to this conduct or the effects of this conduct. The Respondent denied the material allegations of the complaint.

On the entire record,<sup>4</sup> including my observation of the demeanor of the witnesses, and after considering the closing arguments of the parties,<sup>5</sup> I make the following

#### FINDINGS OF FACT

##### I. JURISDICTION

The Respondent, a limited liability company, has been engaged in the erection of structural steel at its facility in Point Pleasant Borough, New Jersey (the facility) where it annually purchases and receives goods valued in excess of \$50,000 directly from points outside the State of New Jersey. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

<sup>1</sup> All dates are in 2024 unless otherwise stated.

<sup>2</sup> 29 U.S.C. § 158(a).

<sup>3</sup> On September 9, the initial complaint involving Case 04-CA-340084 was amended to delete Appendix A containing specific sums allegedly owed laid off employees.

<sup>4</sup> The complaint was amended at hearing, without objection, at Paragraphs 1(a) and 1(b) regarding the method and date of service of the complaint. (Tr. 6-7.) Additionally, the General Counsel's unopposed motion to correct the transcript, dated December 4, 2024, is granted.

<sup>5</sup> The parties agreed to make closing arguments in lieu of post-hearing briefs.

## II. ALLEGED UNFAIR LABOR PRACTICES

### A. *The Respondent's Operations*

The Respondent was in business for about ten years and served customers in New Jersey, Philadelphia, and Northeast Pennsylvania. Within the past year, the Respondent also had a job in Massachusetts (the Massachusetts job). Camilo Papa is the sole owner and manager. The Respondent does not have any other managers or supervisors. Papa generally communicated with his employees by telephone or text message.

Although the Respondent had no written guidelines in place, Papa often laid-off employees for weeks or months at a time when work was slow.<sup>6</sup> The Respondent would also overdraft on its bank accounts whenever there were delayed payments owed on jobs. As a result, the Respondent occasionally closed and opened bank accounts with available overdraft privileges and credit lines. (Tr. 36-37, 50-52.)

### B. *The Union*

The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act (the unit):

All full-time and regular part-time ironworkers employed by the Employer from its 1503 River Avenue, Point Pleasant Borough, New Jersey facility, excluding all other employees, salaried employees, office clerical employees, professional employees, confidential employees, managerial employees, guards, and supervisors as defined in the Act

On September 7, 2023, a majority of unit employees voted in favor of the Union. On January 25, the National Labor Relations Board (the Board) certified the Union as the exclusive collective-bargaining representative of the unit. At all times since January 25, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On February 1, the Union requested to meet with the Respondent for the purpose of negotiating a collective-bargaining agreement. The Union also advised Respondent that it “make no make any unilateral changes with respect to the terms and conditions of employment of any employee in the bargaining unit without affording an opportunity to the [Union] to bargain over the effects of such change or changes.” (GC Exh. 2.) On the same day, the Union submitted an information request to the Respondent in order to prepare for collective bargaining. (GC Exh. 3.)

### C. *The Respondent Experiences Financial Difficulties*

By February, the Respondent was experiencing significant financial difficulties. On February 16, March 12, and August 13,

<sup>6</sup> The Respondent offered no evidence as to whether employees were immediately laid off after the completion of jobs or kept on the payroll for a period of time thereafter.

<sup>7</sup> Papa testified that, as of July 1, he still had “a glimmer of hope” that he “was going to be able to do a job or get money because I had very lucrative credit, so I was always able to get 90 or \$100,000 in credit, and I’m still getting offers today. So I would be able to get a 24-hour overnight credit of money into my account and pay for the insurance, and I could do a job.” Those assertions were not credible. They were not corroborated

the Respondent worker’s compensation, business liability, and excess liability insurance coverages were canceled due to non-payment of premium. (GC Exhs. 11(a)-(c), 12.) By March, Papa realized that there would be no more money coming in and he anticipated the company would be filing for bankruptcy protection from creditors. (Tr. 37-40.)

By early April, Papa called each of the five Unit employees to inform them they had been laid-off. (Tr. 36.) Troy Griffin, Matt Griffin, Leslie Mann, and Jason Chango were initially laid-off. Keith Hesterman was laid-off a week later.

As time passed, the Respondent’s financial picture did not improve. On July 1, Papa was notified by a customer, J&P Ironworks, LLC, that it would be issuing the Respondent a check for \$5,000 for the “BMA” project. Papa replied that he thought the balance was \$37,000 but conceded that he did not know what the amount was. (GC Exh. 13; Tr. 40-41.) On the same day, the Respondent canceled its employee group medical plan effective that day because it “is out of business as of that date.” (GC Exh. 10.) At that point, Papa had a reasonable expectation that the business would be closing.<sup>7</sup> That expectation was evident from the Respondent’s profit and loss statement for the period of January 1 to September 12, which showed that the company was consistently operating at a net negative operating income. (GC Exh. 14.) By August, PNC Bank closed Respondent’s bank account because it was overdrawn (Tr. 43-44.)

### D. *The Parties Engaged in Bargaining*

In the midst of the Respondent’s economic difficulties, the parties were engaged in collective-bargaining. On March 12, Don Heverly, the Union representative and John Vreeland, Respondent’s attorney, met by videoconference for the parties’ first bargaining session.

On April 5 or 6, the Union was informed of the layoffs by unit employees. At no time prior to that point did the Respondent inform the Union of the layoffs.<sup>8</sup> (Tr. 19-23.) On April 12, the Union notified the Respondent’s that the layoffs constituted unilateral changes and demanded to bargain over the actions. (GC Exh. 4.)

On April 18, Vreeland and Union representatives Heverly and Chad Rink met by videoconference for a second bargaining session. Vreeland began the negotiations by stating that he was aware that the Union filed a charge for failure to bargain, but explained that the company routinely laid-off off its employees. Heverly replied that the Respondent was obligated to bargain over the effects of the layoffs because the Union was now the certified representative. Vreeland replied that he would “give [his] statement to the Board” and the parties resumed negotiating for a contract. (Tr. 23-24.)

On May 25, Heverly and Vreeland met for the third bargaining

by evidence of an available credit line, jobs that Papa was trying to obtain, and he canceled the employee group insurance on July 1 because the company was “out of business.” He also conceded that the fact that he received \$5,000 instead of \$37,000 for the Massachusetts job was “pretty much” the reason why the business closed. (Tr. 41-44; GC Exh. 10.)

<sup>8</sup> Papa testified that, on advice of counsel, he did notify the Union of the April layoffs because it “was common practice and that it should be fine.” (Tr. 51.)

session. Other than stating that the Respondent's business was slow, Vreeland did not mention anything about the business closing or going into bankruptcy. (Tr. 25.)

The next bargaining session was scheduled for September 13. On September 3, however, Vreeland informed Heverly that he no longer represented the Respondent and had removed the September 13 bargaining session from his calendar. (GC Exh. 5.) The Union contacted the Respondent that same day and, notwithstanding the withdrawal of Respondent's counsel, insisted that the parties meet to bargain on September 13 as scheduled. On September 5, Papa replied that the Respondent was "[no] longer in business." At no time prior to September 5 did the Respondent tell the Union that it was in financial distress, filing for bankruptcy, or closing the business. Nor did the Respondent inform the Union that it had cancelled the unit employees' group health insurance. (GC Exh. 6; Tr. 30-31.)

#### *D. The Parties Engaged in Effects Bargaining*

On September 27, the Union demanded that the Respondent bargain over the effects of the closure of the business. On September 30, the Respondent replied that the Union "should have requested effects bargaining sooner. The company has been wound down at this point. Your request for bargaining is too late." The Union replied the same day that it "requested to bargain over closures, relocation or any changes in the workplace in our initial letter" on February 1. (GC Exh. 7.) The Union also followed-up shortly thereafter with a "demand to bargain over the effects of the closure of the [Respondent] as stated in your email on September 5, 2024." (GC Exh. 8.)

On October 3, the Respondent agreed to engage in effects bargaining. The Union replied that it would contact the Respondent regarding bargaining dates. (GC Exh. 9.) Heverly and Papa met twice to bargain over the effects of the layoffs, on October 14 and 29. (Tr. 29-30.) However, the parties were unable to reach an agreement on all subjects. The main area of disagreement was over the Union's severance package proposal, which the Respondent rejected. (Tr. 33-34.)

### LEGAL ANALYSIS

#### *A. The Respondent's Unilateral Decision to Lay-Off Unit Employees*

The preponderance of the record established that the Respondent was certified as the collective-bargaining representative of the Union's employees on January 25. On February 1, the Union requested the Respondent to commence bargaining for an initial contract and warned Respondent not to make unilateral changes without providing notice to the Union and affording it an opportunity to bargain over any changes. Bargaining commenced on March 12. Notwithstanding the Union's certification as the collective-bargaining representative, the Respondent laid-off all its employees in April without prior notice to the Union and without affording the Union an opportunity to bargain over the decision to lay off employees or the effects of the layoffs. Additionally, the Respondent closed its business by July 1 without giving the prior notice to the Union and affording it an opportunity to bargain over the closure. Subsequent requests by the Union to bargain over the decision to lay off employees were ignored by the Respondent.

An employer may not change the terms and conditions of employment of represented employees without providing their representative with prior notice and an opportunity to bargain over such changes. See *NLRB v. Katz*, 369 U.S. 736, 747 (1962). In order to find that an employer made unilateral changes to an employee benefit in violation of the Act, it must be shown that (1) material changes were made to the employees' terms and conditions of employment; (2) the changes involved mandatory subjects of bargaining; (3) the employer failed to notify the union of the proposed changes; and (4) the union did not have an opportunity to bargain with respect to the changes. *Garden Grove Hospital & Medical Center*, 357 NLRB 653, 653 fn. 4, 657 (2011); *San Juan Teachers Assn.*, 355 NLRB 172, 175 (2010); *Alamo Cement Co.*, 281 NLRB 737, 738 (1986).

The elements of a prima facie violation were established. Management decisions to lay off employees are a mandatory subject of bargaining because they are "almost exclusively 'an aspect of the relationship' between employer and employee." *Chemical and Alkali Workers*, 404 U.S. 157, 178 (1971). It is undisputed that the Respondent failed to notify the Union of its unilateral action in laying off employees and the Union did not have an opportunity to bargain over that decision.

The Respondent contends, however, that it laid off unit employees in accordance with its past practice. In *Wendt Corp.*, 372 NLRB No. 135 (2023), the Board reaffirmed the longstanding principle that an employer cannot defend a unilateral change to terms and conditions of employment by invoking a past practice that was developed before the Union represented the unit employees and before the employer had a statutory duty to bargain with the Union. In overruling *Raytheon Network Centric Systems*, 365 NLRB 1722 (2017), the *Wendt* Board returned to precedent under *NLRB v. Katz*, 369 , finding that unilateral changes undertaken at the employer's discretion cannot be unilaterally implemented as a past practice. Here, the Respondent's reliance on a past practice defense fails because it did not have a set layoff policy and layoffs were implemented at Papa's discretion.

The Respondent also failed to demonstrate that bargaining to impasse or agreement over the decision to lay off unit employees would have jeopardized its business in any way. *Pertec Computer Corp.*, 284 NLRB 810, 811, fn. 3 (1987); see also *Olivetti Office U.S.A. v. NLRB*, decision supplemented 298 NLRB 609 (1990), enfd. in relevant part sub nom. 926 F.2d 181, 186 (2d Cir. 1991), cert. denied 502 U.S. 856 (1991). Nor did it demonstrate that any suggestions by the Union would have been futile in its decision to lay off employees and the timing. See *Geiger Ready-Mix Co. of Kansas City*, 315 NLRB 1021, 1032 (1994) ("[a]n employer must offer something more than a self-serving assertion that there was nothing the bargaining agent of its unionized employees could do to change its mind.").

In the circumstances, the Respondent violated Section 8(a)(5) and (1) by laying off unit employees in early April without first notifying the Union and affording it an opportunity to bargain over the decision and its effects.

#### *B. The Respondent's Decision to Close the Business*

"The words of [§ 8(d)] . . . plainly cover termination of employment which . . . necessarily results" from closing an

operation. *Fibreboard Paper Products Corp.*, 379 U.S. 203, 210 (1964). On the other hand, an employer's decision to close its business purely for economic reasons does not affect employees' "terms and conditions" as contemplated at Section 8(d) of the Act. *First National Maintenance Corp.*, 452 U.S. 666, 686 (1981).

By the time the Respondent informed the Union on September 5 that it was no longer in business, it had no intention of replacing the unit employees or moving its operation elsewhere. Its sole purpose was to reduce its economic loss and there is no claim of antiunion animus. Nor is there evidence of any advice or concessions that could have been offered by the Union that would have enabled it to forestall the economic decision to close. Moreover, the Union was not certified as bargaining representative until after the Respondent's severe economic downturn was already underway.

Apart from the decision to close, however, a representative union must be given a significant opportunity to bargain about these matters of job security as part of the "effects" bargaining mandated by Section 8(a)(5). See, e.g., *NLRB v. Adams Dairy, Inc.*, 350 F.2d 108 (8th Cir. 1965), cert. denied, 382 U.S. 1011 (1966); *11 West 51 Realty LLC*, 371 NLRB No. 83 (2022); *Tramont Manufacturing, LLC*, 369 NLRB No. 136, slip op. at 5 (2020); *Allison Corp.*, 330 NLRB 1363, 1365 (2000) (citing *First National Maintenance Corp. v. NLRB*, 452 U.S. at 681–682). Moreover, effects bargaining "must be conducted in a meaningful manner and at a meaningful time, and the Board may impose sanctions to insure its adequacy." *First National Maintenance Corp.*, supra.

The Union was not provided with adequate notice and an opportunity to bargain about the effects on the closure on unit employees. The Board requires pre-implementation notice because there may be alternatives that the employer and union can explore to avoid or reduce the impact of the decision without calling into question the decision itself. *Good Samaritan Hospital*, 335 NLRB 901, 903–904 (2001); *Allison Corp.*, 330 NLRB at 1366. In such situations, "the employer's duty [is] to give pre-implementation notice to the union to allow time for effects bargaining." *Willamette Tug & Barge Co.*, 300 NLRB 282, 282 (1990).

Albeit late, the Respondent finally met with the Union less than two months ago to bargain over the effects of the layoffs. However, the parties were unable to reach an agreement on all subjects at that time. The main issue of disagreement was over the Union's severance package proposal, which the Respondent rejected. There is no evidence that the parties had arrived at an impasse.

Accordingly, the allegation that the Respondent violated Section 8(a)(5) by closing its business without providing notice to the Union and affording it the opportunity to bargain over that decision is dismissed. However, the Respondent violated Section 8(a)(5) and (1) by failing to give pre-implementation notice to the Union in order to afford it a meaningful opportunity to bargain over the effects of the closure on the unit employees.

#### CONCLUSIONS

1. The Respondent, Forepeak Steel, LLC, is an employer engaged in commerce within

the meaning of Section 2(2), (6), and (7) of the Act.

2. The International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers is a labor organization within the meaning of Section 2(5) of the Act and serves as the labor representative of Respondent's employees in the following bargaining unit:

All full-time and regular part-time ironworkers employed by the Employer from its 1503 River Avenue, Point Pleasant Borough, New Jersey facility, excluding all other employees, salaried employees, office clerical employees, professional employees, confidential employees, managerial employees, guards, and supervisors as defined in the Act

3. The Respondent violated Section 8(a)(5) and (1) of the Act by laying off employees Troy Griffin, Matt Griffin, Leslie Mann, Jason Chango, and Keith Hesterman in April 2024 without giving prior notice to International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers (the Union) and affording the Union an opportunity to bargain with Respondent with respect to this conduct or the effects of this conduct.

4. The Respondent did not violate Section 8(a)(5) of the Act by failing to provide the Union with pre-implementation notice of its intent to close the business and that allegation is dismissed.

5. The Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide the Union with pre-implementation notice of its intention to close the business in order to afford the Union with a meaningful opportunity to bargain over the effects of the decision.

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

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. In view of the fact that the Respondent's facility is closed, the Respondent shall be required to mail a copy of the attached notice to the Union and to their former employees at their last known addresses.

As the Respondent is out of business, I do not recommend implementation of a bargaining order over its decision to lay off unit employees in April 2024. However, the recommended order will require the Respondent to bargain with the Union over the effects on employees of its decisions to lay them off and close the business as the Union is still representing the employees and it has not been demonstrated that the parties have arrived at an impasse.

As requested by the General Counsel as a remedy for the unfair labor practices, the Respondent shall be ordered to make whole the unit in the manner set forth in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968). Under a *Transmarine* analysis, the standard remedy for effects bargaining is a limited make-

whole relief. *Transmarine Navigation Corp.*, 170 NLRB 389 (1968); *Melody Toyota*, 325 NLRB 846 (1998); *Rochester Gas & Electric Corp.*, 355 NLRB 507, 508 (2010). The Respondent shall pay to the following employees— Troy Griffin, Matt Griffin, Leslie Mann, Jason Chango, and Keith Hesterman—backpay at the rate of their normal wages when last in the Respondent’s employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following: (1) the parties bargain to an agreement about the effects of Respondent’s decision to close the business and terminate unit employees; (2) a bona fide bargaining impasse; (3) failure of the Union to request the resumption of effects bargaining within 5 days after receipt of this Decision and Order or to start negotiations within 5 days after notice of Respondent’s request to bargain with the Union; or (4) the Union’s subsequent failure to bargain in good faith; but in no event will the sum paid to the unit employees exceed the amount the employees would have earned as wages from the date on which the Respondent closed the business, to the time the employees secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However in no event will this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last employed by Respondent. See *Transmarine Navigation Corp.*, supra at 390; *Champaign Builders Supply Co. and Teamsters Local Union No. 26*, 361 NLRB 1382, 1387 (2014).

Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as provided in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). Respondent shall file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters. Respondent shall also compensate the employees for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year, *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>9</sup>

#### ORDER

The Respondent, Forepeak Steel, LLC, Point Pleasant Borough, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from
  - (a) Laying off unit employees without first affording the

<sup>9</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>10</sup> If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work. If, while closed or not staffed by a substantial complement of employees due to the

International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, (Union) adequate notice and an opportunity to bargain over those decisions and their effects.

(b) Closing the business without first affording the Union adequate notice and an opportunity to bargain over the effects of that decision.

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

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

(a) Resume bargaining, on request with the Union about the effects of the layoffs and business closure on unit employees.

(b) Make-whole employees who were laid off in April 2024 in the manner set forth in the remedy section of this decision

(c) Within 14 days after service by the Region, mail copies of the attached notice marked “Appendix”<sup>10</sup> to the Union and all former employees who were employed since January 1, 2024.

(d) Within 14 days from the date of this Order, compensate Troy Griffin, Matt Griffin, Leslie Mann, Jason Chango, and Keith Hesterman for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 4 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.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region 4 attesting to the steps that the Respondent has taken to comply.

Dated, Washington D.C. December 9, 2024

#### APPENDIX

##### NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that “This notice is the same notice previously [sent or posted] electronically on [date].” If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

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 collectively and in good faith with the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, (Union) as the exclusive collective-bargaining representative of our former employees in the following appropriate unit:

All full-time and regular part-time ironworkers employed by the Employer from its 1503 River Avenue, Point Pleasant Borough, New Jersey facility, excluding all other employees, salaried employees, office clerical employees, professional employees, confidential employees, managerial employees, guards, and supervisors as defined in the Act

WE WILL NOT lay you off without first affording the Union adequate notice and an opportunity to bargain over those decisions and their effects on you.

WE WILL NOT close the business without first affording the Union adequate notice and an opportunity to bargain over the effects of that decision on you.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the

Act.

WE WILL pay Troy Griffin, Matt Griffin, Leslie Mann, Jason Chango, and Keith Hesterman the wages and any benefits they lost because we laid them off, less any net interim earnings, with interest.

WE WILL on request, bargain in good faith with the Union about the effects on you of our decision to close the business.

WE WILL compensate Troy Griffin, Matt Griffin, Leslie Mann, Jason Chango, and Keith Hesterman for the adverse tax consequences, if any, of receiving a lump-sum backpay award and WE WILL file with the Regional Director for Region 5, a report allocating the backpay award to the appropriate calendar year(s).

FOREPEAK STEEL, LLC

The Administrative Law Judge's decision can be found at <https://www.nlrb.gov/case04-CA-340084> 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.

