Century Linen & Uniform, Inc. *and* Rochester Regional Joint Board, Local 368. Cases 03–CA–283806 and 03–CA–288979

April 7, 2026

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY AND MAYER

On January 30, 2023, Administrative Law Judge Arthur J. Amchan issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and the Charging Party each filed answering briefs, and the Respondent filed separate reply briefs to each answering brief. The General Counsel filed cross-exceptions and a supporting brief, the Respondent filed an answering brief, and the General Counsel filed a reply brief. The Charging Party filed cross-exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order.[2]

On September 9, 2021, the Respondent withdrew recognition from the Union after receiving a decertification petition that contained the signatures of a majority of unit employees. The General Counsel alleges multiple unfair labor practices by the Respondent both before and after it withdrew recognition. The judge found merit in some of the allegations, dismissed some, and failed to rule on others.

As explained below, we find that the Respondent violated the National Labor Relations Act by: (1) directly soliciting employees to sign the decertification petition; (2) withdrawing recognition from the Union; (3) unilaterally denying or restricting union representatives' access to the Respondent's facilities to meet with unit employees; (4) unilaterally granting employees a wage increase; (5) interrogating employees about their union activities; (6) telling employees that the Union was gone or not coming back after unlawfully withdrawing recognition from the Union; and (7) threatening an employee with retaliation if he complied with a Board subpoena to testify in this case.[3]

I. WITHDRAWAL OF RECOGNITION

The Respondent operates a commercial laundry and linen rental business, with two facilities in Johnstown, New York (referred to as the Johnstown and Belzano facilities) and one facility in Gloversville, New York (referred to as the Gloversville facility). The Union represents a unit of production and maintenance employees at these facilities. The parties' most recent collective-bargaining agreement was effective June 1, 2017, through May 30, 2020. The parties extended that contract through December 31, 2020, and later through June 30, 2021.

Donna Persse is a unit employee at the Respondent's Belzano facility. Over two days in early September 2021, during work time and in work areas, Persse repeatedly solicited unit employees to sign a decertification petition. Persse successfully collected 50 signatures for the petition, which constituted a majority of unit employees. On September 9, 2021, the Respondent informed the Union that it had relied on the petition to withdraw recognition from the Union.[4]

Employees Kelly Kretser, Kathleen Ryle, and Jessy Wilson credibly testified that Persse's solicitation of signatures was in open and full view of the Respondent's

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We have amended the conclusions of law and remedy consistent with our findings herein. We shall modify the judge's recommended Order to conform to our findings and the Board's standard remedial language. We shall substitute a new notice to conform to the Order as modified.

[3] There are no exceptions to the judge's finding that beginning mid-September 2021, the Respondent violated Sec. 8(a)(5) and (1) by failing and refusing to furnish the Union with a list of new employees, including their start dates, jobs, and shifts worked. In addition, no party excepts to the judge's dismissal of or failure to address the complaint allegations that the Respondent violated Sec. 8(a)(3) by requiring certain employees to work at a different facility so that those employees could be present to sign the decertification petition, and that the Respondent violated Sec. 8(a)(1) in September 2021 by: (i) directing an employee to solicit employees to sign the decertification petition; (ii) soliciting employees to sign the decertification petition through an employee, acting as an agent of the Respondent; (iii) impliedly promising an employee a benefit if she solicited employees to sign the decertification petition; (iv) granting an employee greater access to employees to sign the decertification petition; and (v) telling employees the Union was nothing but trouble, telling employees not to speak to union representatives, but telling them instead to speak to management. Lastly, no party excepts to the judge's dismissal of the allegation that the Respondent violated Sec. 8(a)(1) by interrogating an employee about her Board testimony without providing *Johnnie's Poultry* assurances.

[4] The record shows that both before and after the Respondent's withdrawal of recognition, the Union proposed bargaining dates for successor contract negotiations. There is little evidence of any actual successor contract negotiations save limited testimony from Union Agent Emily Vick that the parties met on August 19, 2021, for a bargaining session.

supervisors and managers. Kretser testified that on one day, Persse asked her several times to sign the petition. Kretser testified that on a second day, Persse left her work area on multiple occasions, for about 10 minutes each time, to solicit employees for signatures. Kretser further testified that Persse's direct supervisor, Angel Hickok, Production Manager Jordan Calderwood, and Director of Operations Robert Powell were present on the work floor that second day during Persse's signature collection. Ryle testified that she observed Persse leave her work area several times one day to solicit employee signatures, for between three to five minutes each time, while supervisors were on the work floor. Ryle also testified that she overheard Persse bragging to an employee about collecting three full sheets of signatures. Jessy Wilson testified that Persse, just before a work break, approached him at his work area and asked if he wanted to sign the petition. Wilson further testified that he observed Plant Manager Laura Hathaway with Persse during some of Persse's signature collection and that both Persse and Hathaway asked employees to sign the petition. Accordingly, the judge found that Hathaway was "with" and "close by" Persse during her signature solicitation and that Hathaway had "direct involvement" in the decertification effort because she "asked . . . employees to sign the petition."

The judge concluded that the Respondent unlawfully assisted and encouraged the circulation of the decertification petition and thus, was not privileged to rely on the petition to withdraw recognition from the Union. The judge reasoned that because the Respondent permitted Persse to circulate the petition in full view of its supervisors and in violation of work rules, reasonable employees would have understood that the Respondent approved or sanctioned Persse's efforts. The judge did not, however, rely on Hathaway's direct involvement in the decertification effort because, in his view, the General Counsel did not allege a violation on the basis of that conduct. For the following reasons, we reverse in part the judge's determinations.

"It is well settled that an employer violates Section 8(a)(1) of the Act by actively soliciting, encouraging, promoting, or providing assistance in the initiation, signing, or filing of an employee petition seeking to decertify the bargaining representative." *Mickey's Linen & Towel Supply*, 349 NLRB 790, 791 (2007) (internal quotations omitted). When an employer engages in this unlawful assistance, the decertification petition is tainted and the employer's reliance on the petition as a basis for withdrawing recognition from the union violates Section 8(a)(5). *SFO Good-Nite Inn, LLC*, 352 NLRB 268, 270–271 (2008), affd. 357 NLRB 79 (2011), enfd. 700 F.3d 1 (D.C. Cir. 2012).

We find that the Respondent unlawfully assisted the decertification effort by directly soliciting employees to sign the petition. The Respondent has not excepted to the judge's finding that Hathaway was with Persse during some of Persse's signature collection *and* that Hathaway had direct involvement in the decertification effort by soliciting employees to sign the petition. This conduct is a plain violation of Section 8(a)(1). See *Sociedad Española de Auxilio Mutuo y Beneficencia de P.R.,* 342 NLRB 458, 459, 471 (2004) (finding unlawful assistance where a supervisor called an employee into her office and asked the employee to sign a decertification petition), enfd. 414 F.3d 158 (1st Cir. 2005); *Armored Transport, Inc.*, 339 NLRB 374, 377 (2003) (observing that "an employer may not solicit its employees to circulate or sign decertification petitions").

We recognize that the complaint does not specifically allege that Hathaway's direct involvement in the decertification petition was an 8(a)(1) violation. However, the Board "may find and remedy a violation even in the absence of a specified allegation in the complaint if the issue is closely connected to the subject matter of the complaint and has been fully litigated." *Pergament United States*, 296 NLRB 333, 334 (1989), enfd. 920 F.2d 130 (2d Cir. 1990). We find that both prongs of *Pergament* are satisfied.

First, the issue is closely connected to the subject matter of the complaint. The complaint alleges that the "Respondent, by Angel Hickok and Jordan Calderwood, at Respondent's Belzano facility, unlawfully assisted in employees' efforts to remove the Union as their exclusive bargaining representative by allowing an employee to solicit employees to sign a petition to remove the Union as their exclusive bargaining representative while the employee was on work time." Like Hickock and Calderwood, Hathaway is a management official at the Belzano facility who allowed Persse to solicit other employees to sign the petition during working time. At the hearing, the judge granted the General Counsel's motion to amend the complaint to allege that Hathaway was a supervisor of the Respondent, and the Respondent admitted the allegation. Hathaway's own solicitation of employees to sign the petition took place on the same date as Persse's solicitation and is an instance of the same unlawful conduct—"unlawfully assist[ing] in employees' efforts to remove the Union"—that the complaint addresses.

Second, the issue was fully and fairly litigated. Counsel for the General Counsel asserted at the hearing, in her opening statement, that "one manager even helped her [Persse] obtain signatures," elicited Wilson's above testimony that specifically named Hathaway as that manager, and stated in her posthearing brief that Hathaway

"escorted Persse around the Johnstown facility with the petition and directly solicited signatures herself." The Respondent had the opportunity to, and did, cross-examine Wilson about his testimony concerning Hathway and Persse. Moreover, the Respondent had the opportunity to call Hathaway as a witness but chose not to do so. Accordingly, it is appropriate for the Board to find that the Respondent, through Hathaway, violated Section 8(a)(1) by directly soliciting employees to sign the decertification petition.[5]

Because the Respondent's unlawful assistance tainted the decertification petition, the Respondent was not privileged to rely on the petition as a basis for withdrawing recognition from the Union. *SFO Good-Nite Inn*, 352 NLRB at 270–271. Accordingly, the Respondent violated Section 8(a)(5) when it withdrew recognition from the Union. See id.

II. DENYING OR RESTRICTING UNION ACCESS TO ITS FACILITIES

A. Facts

The parties' collective-bargaining agreement contained two provisions relevant to the Union's access rights. The recognition clause provided:

> [t]he Employer shall recognize and deal only with such representative of all its employees in its production facilities at reasonable hours of the day as the Union may elect or appoint. There shall be no interference with the Employer's production. The Union representative will be permitted to enter the establishment during working hours, provided he first reports to the office and receives permission from a duly authorized person. In no event shall such permission be unreasonably withheld.

The management-rights clause provided:

> [e]xcept as limited by the provisions of this Agreement, the Employer is vested with and reserves and retains all rights to manage and operate its business and the plants. All decisions on such rights and/or any other matters not defined in this Agreement are reserved solely and exclusively to the Employer's jurisdiction and discretion. Among such reserved rights, but not limited thereto, the Employer shall have the sole right to . . . restrict and/or prohibit access to the plant. . . .

Prior to 2020, the union agent assigned to the Respondent's facilities frequently visited them without advance notice and, during those visits, freely walked work floors unescorted to meet with unit employees and union stewards. Around September 2020, Emily Vick began serving as the Union's agent for the Respondent's facilities and requested walkthrough visits at each facility. The Respondent notified Vick that she would need to provide 48-hours advance notice prior to facility visits, which the Respondent claimed was consistent with the parties' past practice and necessary given the COVID-19 pandemic. Vick initially resisted this notice requirement, citing the parties' contract, but ultimately agreed to it. She did not, however, complete any facility visits at that time. In April 2021, Vick began requesting facility visits, which she told the Respondent was prompted by her completion of Covid vaccinations. In June 2021, the Respondent granted Vick's requests but limited her access to employee breakrooms.

Susan Hickok served as a union steward at Belzano and testified that prior to January 2021, during her facility visits, the Respondent would instruct new unit employees to meet Hickock in breakrooms to sign dues checkoff authorization cards. Beginning January 2021, however, the Respondent began requiring Hickok to provide it with a list of new unit employees, whom the Respondent would then send to breakrooms to meet with Hickok. Around March 2021, Hickok went on worker's compensation. In April 2021, she requested a Belzano visit, but the Respondent explained that she was no longer allowed inside the facility. The Respondent did, however, permit Hickok to meet with unit employees during their breaks at picnic tables outside the facility. Hickok testified that she visited unit employees outside the facility once or twice per week.

On June 9, 2021, Vick emailed Vice President Fuller to set up Johnstown and Belzano visits on June 17, with the understanding that she would remain in the breakroom to meet unit employees. Vick also requested an updated list of unit employees, including newer employees who would need to sign dues checkoff authorization cards. She requested that the Respondent "call the members who need to sign the cards up to the break room as was the practice when Sue [Hickok]" was the Union's assigned agent. The Respondent simply replied that Vick's proposed visit dates were "good."

[5] In light of this finding, we find it unnecessary to pass on the judge's finding that the Respondent also unlawfully assisted the decertification effort by allowing Persse to circulate the petition during work time as such a finding would be cumulative and would not materially affect the remedy.

Member Prouty joins in finding that the Respondent violated Sec. 8(a)(1) by directly soliciting employees to sign the decertification petition. However, he would also find a violation on the additional, independent basis that the Respondent had knowledge of and tolerated Persse's leaving her work station to get people to sign the petition during work time, contrary to its enforced non-loitering policy. *Albertson's, Inc.*, 323 NLRB 1, 6–8 (1997), enfd. 161 F.3d 1231 (10th Cir. 1998); *Hermitage Hospital Prods.*, 239 NLRB 216, 219 (1978).

On June 17, 2021, Vick arrived at Belzano and asked Human Resources Generalist Tammi Austin to send new unit employees to the breakroom to sign dues checkoff authorization cards. Austin refused that request without explanation. Accordingly, Vick only met 2 out of 20 new unit employees that day.

In early September 2021, Hickok arrived at Belzano to meet outside with employees. Supervisor Tanya Page, however, told her that she was no longer allowed outside the property.

On September 15, 2021, without notice to the Respondent, Vick went to the Belzano and Johnstown facilities. Vick explained that she intended to protest the Respondent's withdrawal of recognition. Vick testified that at Belzano, Fuller denied her request for a facility visit and directed her to the Respondent's counsel. At Johnstown, an unnamed receptionist did the same.

The complaint alleges that the Respondent violated Section 8(a)(5) and (1) by "restrict[ing]" or "den[ying]" union representatives' "access to its . . . facilities to meet with employees" without providing the Union an opportunity to bargain on three separate occasions: (1) on June 17, 2021, at Belzano, (2) in early September 2021, at Belzano, and (3) on September 15, 2021, at Belzano and Johnstown. At the hearing, Counsel for the General Counsel elicited the above-cited testimony regarding all three occasions. Citing that testimony, she argued in her posthearing brief that the Respondent, inconsistent with its past practice and contractual access provisions, violated the Act by unilaterally restricting union representatives' access to its facilities on the same three occasions. In her briefing before the Board, the General Counsel has repeated this same argument.

The judge broadly found that in 2020, the Respondent changed its practice regarding union access to an unnamed "facility." The judge focused his analysis on the Respondent's March 2020 requirement that the Union provide 48-hours advance notice before facility visits. The judge found that this requirement represented a change in practice and that the Respondent failed to show that this change was necessitated by the COVID pandemic. The judge also found that the Union did not waive its contractual access rights by "past practice or otherwise." These findings, however, are insufficient to resolve the three allegations pursued by the General Counsel. For the following reasons, we find that the Respondent violated Section 8(a)(5) and (1) by restricting or denying union access to its facilities on the three occasions specifically alleged in the complaint.

B. Analysis

It is well settled that if "an employer and a union have an agreement allowing the union access to its property to carry out its representational activities, or the employer has an established past practice of allowing access, the employer cannot unilaterally alter that agreement or practice" and such a change violates Section 8(a)(5). *CPL (Linwood) d/b/a Linwood Care Center and Its Successor 201 New Road Care Center Operations, LLC d/b/a Linwood*, 367 NLRB No. 14, slip op. at 1 fn. 3 & 13 (2018) (citing *Ernst Home Centers*, 308 NLRB 848 (1992)). As the Board has explained:

> [A] unilateral change in an employer's policy permitting access by union representatives to its premises is a unilateral change in the employees' terms and conditions of employment and is, ordinarily, unlawful. . . . It is clear under established principles of our jurisprudence, that once employees select a representative, representation is a condition of employment that cannot be unilaterally altered. . . . if an employer makes unilateral changes that impair a representative's ability to represent employees effectively, or that impair employees' ability to effectively support their representative, the employer violates Section 8(a)(5).

Turtle Bay Resorts, 355 NLRB 1272, 1272 (2010), enfd. 452 Fed.Appx. 433 (5th Cir. 2011).

Here, the parties' agreement provided that Union representatives "will be permitted to enter the establishment during working hours, provided he first reports to the office and receives permission from a duly authorized person. In no event shall such permission be unreasonably withheld." We reject the Respondent's argument that the agreement's management-rights clause granted it the sole discretion to unilaterally set and change rules concerning union access to its facilities. By its terms, the authority granted by the clause is "limited by the provisions of this Agreement" and only applies to "decisions on such rights and/or any other matters not defined in this Agreement . . ." Because the Union's access rights are defined in the Recognition Clause, the management-rights clause does not confer on the Respondent any contractual authority to unilaterally modify those rights under either the Board's current standard set forth in *Endurance Environmental Solutions, LLC*, 373 NLRB No. 141 (2024) (holding that contractual waiver of the right to bargain must be "clear and unmistakable"), or the Board's former standard set forth in *MV Transportation Inc.*, 368 NLRB No. 66 (2019) (applying "contract coverage" to find that the respondent

did not violate the Act by taking unilateral action consistent with the parties' agreement).[6]

Consistent with the provisions of the Recognition Clause, union representatives visited the Respondent's facilities prior to 2020 without advance notice and were afforded unescorted access to work floors. Beginning in 2020, the Respondent unilaterally changed that practice by imposing a series of increasingly stringent access restrictions. The complaint only alleges that the Respondent unlawfully restricted access on June 17 at Belzano, in early September at Belzano, and on September 15, 2021, at Belzano and Johnstown. The question of whether the other restrictions imposed by the Respondent were lawful therefore is not before us and we express no view on whether those changes to the Union's contractual access rights and past practice were lawful. Rather, even assuming that those changes lawfully established new access procedures, we find that the Respondent unlawfully changed those procedures on the dates in question and thereby violated Section 8(a)(5) and (1) of the Act.

1. The June 17 restriction

We find that the Respondent unlawfully restricted union access on June 17, 2021. Vick's request for access on that date complied with the requirements specified in the Recognition Clause, inasmuch as she received approval from a "duly authorized person." Vick's request for access also complied with the Respondent's practice, beginning January 2021, of sending new unit employees to the Belzano breakroom to visit their union representatives and sign dues checkoff authorization cards. As noted above, Vick explicitly requested that the Respondent do as much prior to her visit. Human Resources Generalist Austin's refusal to send new employees to the breakroom on June 17 was a unilateral departure from that practice that impaired Vick's ability to carry out her representative duties; Vick only met 2 out of 20 new unit employees that day. We find that this unilateral change violated Section 8(a)(5) and (1) of the Act.

2. The two September 2021 restrictions

Applying the principles expressed in *CPL Linwood* and *Turtle Bay Resorts*, we find that the Respondent's September 2021 unilateral restrictions also violated Section 8(a)(5). Beginning in April 2021, the Respondent's practice was to permit Union Steward Hickock to meet with unit employees, during their breaks, at picnic tables outside the Belzano facility. In early September 2021, however, supervisor Page departed from this practice by prohibiting Hickok from meeting unit employees outside the facility. Likewise, the Respondent's mid-September refusal to permit Union Agent Vick to meet with employees at Belzano and Johnstown was a departure from its practice at that time of permitting access at those facilities subject to notice and location restrictions. These unilateral changes plainly impaired the union representatives' ability to meet with unit employees.

As noted above, the parties extended their 2017–2020 collective-bargaining agreement until June 30, 2021. The Respondent's September unilateral changes additionally violated Section 8(a)(5) and (1) because they were made a time when the Respondent was under a duty to refrain from implementing any unilateral changes during the pendency of bargaining for a successor collective-bargaining agreement. See *Bottom Line Enterprises*, 302 NLRB 373, 374 (1991) (finding that "when . . . the parties are engaged in negotiations, an employer's obligation to refrain from unilateral changes extends beyond the mere duty to give notice and an opportunity to bargain; it encompasses a duty to refrain from implementation at all, unless and until an overall impasse has been reached on bargaining for the agreement as a whole."), enfd. mem. sub. nom. *Master Window Cleaning, Inc. v. NLRB*, 15 F.3d 1087 (9th Cir. 1994). The Respondent has not argued that the parties had reached overall impasse or that any exception to *Bottom Line Enterprises* applies here. That these changes occurred after the Respondent withdrew recognition from the Union did not excuse the Respondent's conduct; its withdrawal of recognition was unlawful and the Respondent had a duty to recognize and bargain with the Union, including complying with its obligations under *Bottom Line Enterprises*. Accordingly, we find that the Respondent violated Section 8(a)(5) and (1) in early September 2021, by refusing to permit a union representative to meet with unit employees outside the Belzano facility, and in mid-September 2021, by refusing to permit a union representative access to its Belzano and Johnstown facilities to meet with unit employees.[7]

[6] Chairman Murphy and Member Mayer did not participate in *Endurance Environmental* and do not pass on whether it was correctly decided. They apply it here for institutional reasons and would be willing to reconsider it in a future appropriate case.

Any claim that the management-rights clause permitted the two mid-September access denials fails for the additional reason that the parties' collective-bargaining agreement had expired by that time. *Nexstar Broadcasting, Inc. d/b/a KOIN-TV*, 369 NLRB No. 61, slip op. at 2 (2020) ("provisions in an expired collective-bargaining agreement do not cover post-expiration unilateral changes unless [as not asserted here] the agreement contained language explicitly providing that the relevant provision would survive contract expiration"), enfd. 4 F.4th 801 (9th Cir. 2021).

[7] Contrary to the Respondent, the relevant complaint allegations are not time-barred under Sec. 10(b) of the Act. On November 5, 2021, less than 6 months after all three instances of the Respondent's disputed access restrictions, the Union timely filed its first amended charge, which

III. WAGE INCREASE

In August 2021, after the contract had expired, the Respondent hired part-time employees to work a Saturday shift at a starting rate of $20 per hour. The Respondent soon realized that these new part-time employees would earn a higher hourly rate than the overtime rate earned by existing unit employees who also worked Saturday shifts. Accordingly, on August 22, 2021, the Respondent increased the wage rate of 16 existing unit employees from $13 to $13.55 per hour so that they would earn no less than $20 per hour when working overtime on Saturdays. The record shows that the Respondent hired 11 of these 16 unit employees before June 1, 2017. The Respondent does not dispute that it implemented this wage increase without providing the Union notice and before the parties reached agreement for a successor contract or overall impasse. The judge found that this unilateral wage increase violated Section 8(a)(5) and (1), and we agree.

The Respondent's sole defense on exceptions is that the contract granted it the discretion to unilaterally increase unit employees' wages. In support, the Respondent cites a wage provision in the parties' contract, which provided, "[b]argaining unit employees hired on or after June 1, 2017, shall be paid at minimum wage rate or above at the discretion of the Employer, and shall then be eligible for future wage changes afforded to other members of the bargaining unit who are paid at minimum wage." The Respondent also cites language in the contract's management-rights clause, which provided, "except as limited by the provisions of this Agreement, the Employer is vested with and reserves and retains all rights to manage and operate its business and the plants. All decision on such rights and/or any other matters not defined in this Agreement are reserved solely and exclusively to the Employer's jurisdiction and discretion."

We reject the Respondent's defense. The parties' contract expired prior to the wage increase, the provisions in question did not specify that they would survive after the contract's expiration, and the Respondent has not argued as much. See *Nexstar Broadcasting, Inc. d/b/a KOIN-TV*, 369 NLRB No. 61, slip op. at 2. We therefore adopt the judge's finding that the Respondent violated Section 8(a)(5) and (1) by unilaterally increasing unit employees' wages on August 22, 2021.[8]

IV. SURVEILLANCE OF EMPLOYEES' UNION ACTIVITY

Although the judge failed to make any factual findings, the parties do not dispute the relevant facts, as established by the testimony of Union Agent Vick and employee Candice Rowe. The Respondent provides a bus service to take employees from a public gas station to the Respondent's facilities. On September 28, 2021 (after the Respondent had withdrawn recognition from the Union), supervisor Sean Gamble drove the Respondent's bus, which Rowe testified he typically did. That same day, Rowe observed Vick at the Gloversville bus stop talking to her coworkers. Rowe testified that she spoke with Vick, who was there to see how employees were doing and keep them updated on what was going on. Vick confirmed that she met unit employees and that she and Gamble "kind of locked eyes, saw each other."

Rowe testified that the next day, her direct supervisor, Tanya Page, approached her at her machine on the work floor, "lowered her voice and asked had I heard that the [U]nion rep[resentative] was there and what was she there for." Rowe answered, "I told her that she was there checking up on us." Page responded that "she didn't know how it was going to work without the [U]nion being there" and that she did not understand the process of getting rid of a union by signing a paper.

The complaint alleges that "[a]bout September 28, 2021, Respondent, by Sean Gamble, at [the Gloversville facility] engaged in surveillance of employees' Union activities." In her opening statement at the hearing, Counsel for the General Counsel broadly asserted that the "Respondent surveilled employees speaking with a Union representative at their bus stop . . . ." In her posthearing and exceptions briefs, Counsel for the General Counsel has specified that "[t]aken together, Gamble and Page's conduct created a clear impression of surveillance that employees' union activities were under surveillance." The judge dismissed this surveillance allegation without analysis.

"The test for determining whether an employer engages in unlawful surveillance or whether it creates the impression of surveillance is an objective one and involves the determination of whether the employer's conduct, under the circumstances, . . . would tend to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed under Section 7 of the Act." *Grill Concepts*

alleged that the Respondent violated the Act by "denying and restricting Union representatives' access to employees at the Employer's facilities."

[8] Accordingly, we find it unnecessary to reach the issue of whether the Respondent could have established that the wage provision would have authorized the Respondent's unilateral implementation of a wage increase had it been in force. However, we observe that any discretionary authority established in the provision was specifically limited to "employees hired on or after June 1, 2017." The Respondent does not dispute that 11 of the 16 existing unit employees who received wage increases were hired before June 1, 2017. Accordingly, we agree with the General Counsel that the language of the wage provision was facially inapplicable to the wage increase granted to those 11 employees in any event.

Services, 364 NLRB 385, 385, 400 (2016), enfd. in relevant part 722 Fed. Appx. 1 (D.C. Cir. 2018). The Board has held that an employer's mere observation of open union or other protected activity on or near its property does not constitute unlawful surveillance. See *Fred'k Wallace & Son*, 331 NLRB 914, 915 (2000). An employer, however, "may not do something out of the ordinary to give employees the impression that it is engaging in surveillance of their protected activities." *Sprain Brook Manor Nursing Home, LLC*, 351 NLRB 1190, 1191 (2007).

We affirm the judge's dismissal of the surveillance allegation. Vick and employees met openly at a public gas station. Gamble's presence at the gas station was consistent with his typical work schedule. Moreover, there is no record evidence that Gamble engaged in any atypical conduct to suggest he was taking particular note of employees' interactions with Vick. Rather, the record simply shows that Gamble and Vick "kind of locked eyes." Page's subsequent comment to Rowe—that she heard that Vick was at the bus stop—confirmed Gamble's passive observation of Vick's presence at an open, public site during the ordinary course of Gamble's job duties. Under these circumstances, we find that the Respondent's conduct did not constitute unlawful surveillance and would not have given employees the impression that the Respondent had placed their union activities under surveillance. See *Metal Industries, Inc.*, 251 NLRB 1523, 1523 (1980) (finding no unlawful surveillance where management officials were present in an employee parking lot during union leafletting because "long before . . . [that] organizational activity" the officials "regularly stationed themselves in the parking lot at the end of the day to bid the employees goodbye and answer any questions they might have"). Cf. *Sprain Brook*, 351 NLRB at 1191 (finding unlawful surveillance where a manager visited a workplace on a Saturday, a day she did not normally work, and stood in a doorway where she observed a union meeting with employees in a parking lot).[9]

V. INTERROGATION OF EMPLOYEES ABOUT THEIR UNION ACTIVITIES

Although the judge also failed to make any factual findings concerning this issue, the parties do not dispute the relevant facts, as established by the testimony of employee Kathy Ryle and her supervisor, Karen Havlicek-Dwyer. Ryle testified that after the Respondent's withdrawal of recognition, employees received a mailing from the Union, which characterized the Respondent's actions as "shady" and reported that "we still had the Union." Ryle further testified that at some later date, Havlicek-Dwyer "asked us if we got a letter with a tear-off secret ballot about the Union, because we had talked to her about thinking that we should be able to do a secret ballot . . . so she came and asked us, did we hear anything like that? Or did we receive anything like that?" Ryle testified that she responded no and subsequently confirmed with the Union that it had not mailed employees a secret ballot. Havlicek-Dwyer testified that "at some point in the fall of 2021," she asked her, "team members if they received the paperwork . . . to vote." She explained that she asked this question because her team members "were among each other talking . . . and I just happened to hear and I said, did you guys get a paper to vote." She further testified that her team members did not answer her question.

The complaint alleges that "[a]bout mid-October 2021 . . . Respondent, by Karen Havlicek, at Respondent's Belzano facility, interrogated employees about their Union activities." The judge dismissed this interrogation allegation without analysis.

"[I]it is well settled that an employer violates Section 8(a)(1) of the Act by interrogating an employee about other unnamed employees' union activity or sentiments." *Observer & Eccentric Newspapers*, 340 NLRB 124, 125 (2003), affd. 136 Fed.Appx. 720 (6th Cir. 2005). An employer's questioning of an employee constitutes an unlawful interrogation if it reasonably tended to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. In determining whether questioning is coercive, the Board considers the totality of the circumstances,

[9] Member Prouty joins in dismissing the surveillance allegation. However, contrary to his colleagues, he would find an impression-of-surveillance violation. The Board's test for determining whether an employer has created an unlawful impression of surveillance is "whether, under all of the relevant circumstances, the employer's statements or other conduct would lead reasonable employees to assume that the employer has placed their union activities under surveillance." *Charter Communications*, 366 NLRB No. 46, slip op. at 4 (2018), enfd. 939 F.3d 798 (9th Cir. 2019). The Board has emphasized that employees should feel free to participate in union activity "without the fear that members of management are peering over their shoulders, taking note of who is involved in union activities, and in what particular ways." *Flexsteel Industries*, 311 NLRB 257, 257 (1993). An impression-of-surveillance violation does not "require evidence that the employee intended his involvement to be covert or that management is actively engaged in spying or surveillance." Ibid. Here, the day after Vick was present at the bus stop talking to employees, Page made a point of approaching Rowe at her machine on the work floor, stating she had heard about Vick's presence at the bus stop, and asking what Vick had been doing there. An employee would reasonably assume from Page's remarks that Gamble had reported Vick's presence and that the Respondent was "not merely observing" employees' open union activities," but was "taking particular note of them, thereby creating the impression of surveillance." *Fred'k Wallace & Son*, 331 NLRB 914, 915 (2000) (finding unlawful impression of surveillance where managers asked employee about his openly visible conversations with union representatives on the roof earlier in the day).

including the: (1) background against which the questioning occurred, i.e., whether there is a history of employer hostility and discrimination; (2) nature of the information sought; (3) identity and rank of the questioner; (4) place and method of the interrogation; and (5) truthfulness of the reply. See *Rossmore House*, 269 NLRB 1176, 1178 & fn. 20 (1984), affd. sub nom. *HERE, Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985); *Bourne v. NLRB*, 332 F.2d 47, 48 (2d Cir. 1964).

We reverse the judge and find an interrogation violation. Havlicek-Dwyer, Ryle's direct supervisor, admitted that she overheard an employee discussion about "paperwork . . . to vote" or, as described by Ryle, a "secret ballot." Havlicek-Dwyer further admitted that she approached Ryle and questioned her one-on-one to confirm whether employees had in fact received that paperwork. It is reasonable to infer from the relevant testimony and the timing of Ryle's questioning, which took place roughly 1 month after the Respondent relied on the decertification petition to withdraw recognition, that Ryle's reference to "paperwork . . . to vote" involved some union procedure intended to show continued employee support for the Union. We agree with the General Counsel's assertion that the purpose of Havlicek-Dwyer's question was to learn of union activity, which supports a finding that her questioning was coercive. See, e.g., *Lippincott Industries, Inc.*, 251 NLRB 262, 268–269 (1980) (finding unlawful interrogation where supervisors told an employee they "were aware" of a union meeting and "attempt[ed] to . . . find out what was said" at that meeting), enfd. 661 F.2d 112 (9th Cir. 1981); *Howard Dan Mfg. Co.*, 158 NLRB 805, 806 (1966) (in the context of an employer's unlawful antiunion campaign, a foreman violated Section 8(a)(1) by interrogating an employee "as to what a union organizer wanted and what he said"), enfd. in pertinent part 390 F.2d 304 (7th Cir. 1968). Accordingly, based on a consideration of the totality of the circumstances, we find that the Respondent's interrogation of Ryle violated Section 8(a)(1).[10]

VI. STATEMENTS ABOUT THE UNION'S STATUS

Although the judge did not cite the specific statements at issue here, the parties do not dispute them, as established by the testimony of employees Kretser and Rowe. Kretser testified that manager Tonia Smith held an employee meeting on September 9, 2021 (the same day the Respondent withdrew recognition), where she told employees that "because Donna [Persse] got enough signatures [] the Union is gone, and that the Union dues won't be taken out of our paycheck." Rowe testified that in mid-September 2021, supervisor Tanya Page told her and two other employees "that we no longer had a union." Finally, Rowe testified that at an employee meeting in mid-September 2021, Vice President Fuller told employees that "we had no more union and union dues would no longer be taken out of our paycheck."

The complaint alleges that Smith (on September 9) and Page (in mid-September) violated Section 8(a)(1) by "announcing to employees that the Union is gone or is not coming back at a time when Respondent was obligated to recognize the Union as its bargaining representative." Although the complaint did not specifically allege that Fuller's mid-September statement also violated Section 8(a)(1), Counsel for the General Counsel broadly asserted in her opening statement at the hearing that after the Respondent withdrew recognition, it "repeatedly announced to bargaining unit employees that the Union was gone." And, in her posthearing and exceptions briefs, Counsel for the General Counsel specifically cites Fuller's statement as evidence of the Respondent's unlawful conduct.[11] Without explanation, the judge observed that he "need not address statements made by supervisors after September 9 about the Union's status" and dismissed all relevant complaint allegations as "duplicative and unnecessary." But the judge also found that "[i]f the Respondent illegal[ly] withdrew recognition of the Union, many of those statements were illegal."

We reverse the judge and find that the Respondent violated Section 8(a)(1) as alleged. The statements by Smith, Page, and Fuller that the Union was gone and that

[10] We find it unnecessary to pass on whether the Respondent, by Tanya Page at the Respondent's Belzano facility, also interrogated an employee about their Union activities as such a finding would be cumulative and would not materially affect the remedy.

Member Prouty would find that the Respondent, through Page, unlawfully interrogated employee Rowe. As described in Sec. IV above, Page approached Rowe at her machine on the work floor, "lowered her voice," said she had "heard the union rep was there," and asked, "what was she there for." Under the totality of the circumstances, Member Prouty would find that Page's questioning was coercive. On the one hand, the conversation took place in an open area and Rowe answered honestly. On the other hand, the questioning occurred against a backdrop of multiple other violations in the preceding weeks and months, Page initiated the conversation, approaching Rowe at her machine and lowering her voice for privacy; she was Rowe's direct supervisor, and her question explicitly sought to elicit information from Rowe about employees' potential protected interactions with Vick. Namely, Page hoped to learn about the reason for Vick's visit by asking "what was she there for." Considering all the circumstances, Member Prouty would find the interrogation unlawful. *Howard Dan Mfg. Co.*, supra at 806 (foreman violated 8(a)(1) by interrogating an employee "as to what a union organizer wanted and what he said").

[11] The complaint also alleges that Human Resources Generalist Austin (on September 24, 2021) and Angel Hickok (on December 13, 2021) made comparable unlawful statements. The General Counsel withdrew the allegation concerning Austin and did not litigate the Hickock allegation.

employees were no longer required to pay union dues were wrong as a matter of law. The Respondent made those statements after its unlawful withdrawal of recognition and accordingly, the Union remained unit employees' bargaining representative and the Respondent had a continuing obligation to recognize and bargain with the Union. Moreover, these statements had a coercive impact on employees because they amplified the Respondent's unlawful withdrawal of recognition, further negating the Union's representative role in the eyes of employees. See *Venture Industries*, 330 NLRB 1133, 1133–1134 (2000) (manager's comment that "as far as he was concerned the plant would never be a union shop" was an unlawful Section 8(a)(1) threat that union representation "was futile and that the [employer] would not recognize and bargain with the [u]nion").

VII. THREATENING AN EMPLOYEE WITH RETALIATION FOR COMPLYING WITH A BOARD SUBPOENA

The underlying facts are established by employee Wilson's uncontradicted testimony. The Union subpoenaed Wilson to testify at the hearing in this case, which began on December 12, 2022. On December 7, 2022, Plant Manager Hathaway approached Wilson four times at his work area to discuss that subpoena. First, Hathaway asked if the Union had contacted Wilson and Wilson responded that he had received a subpoena. Hathaway asked why and Wilson explained, "because of the shady stuff." A half hour later, Hathaway returned and told Wilson that "if it was her that she wouldn't go because Dick's got lawyers." No party disputes that "Dick" was a reference to CEO Richard Smith. Hathaway returned, asked to see the subpoena (which Wilson had accessible on his phone), took a picture of the subpoena using her own phone, and went into a management office. Hathaway returned for the final time, Wilson told her it was a "legit subpoena," and Hathaway responded, "yeah, you got to go."

At the hearing, the judge granted the General Counsel's request to amend the complaint to allege that the Respondent violated Section 8(a)(1) on the basis that Hathaway "threatened an employee about participating in a court proceeding."[12] In her briefing before the judge and the Board, Counsel for the General Counsel argues that Hathaway's statements to Wilson—in particular, her statement that "if it was her [] she wouldn't go because Dick's got lawyers"—constituted "a threat meant to interfere with his [Wilson's] right to participate in Board processes." For the following reasons, we adopt the judge's conclusion that Hathaway's statements to Wilson violated Section 8(a)(1).

"[I]t is well settled that when an employer informs an employee that [they] need not comply with a Board subp[o]ena," such a statement constitutes unlawful interference with Section 7 rights and violates 8(a)(1). *Bobs Motors, Inc.*, 241 NLRB 1236, 1236 (1979). And, "[a]ny threat of retaliation for how a person testifies at an NLRB proceeding to which that person has been subpoenaed is a clear cut violation of Section 8(a)(1)." *Beverly Enterprises*, 310 NLRB 222, 242 (1993), enfd. in relevant part 17 F.3d 580 (2d Cir. 1994). These statements interfere with employees' Section 7 right to participate in Board proceedings, impede the Board's ability to compel witness attendance, obstruct the Board in its investigations, and thus have "the tendency to deprive employees of vindication by the Board of their statutory rights." See *Winn-Dixie Stores, Inc.*, 128 NLRB 574, 579 (1960).

Applying these principles, we find that the record supports finding a violation. Hathaway essentially informed Wilson that he should not comply with the Board's subpoena when she told him, "if it was her [] she wouldn't go." Her explanation that she would not testify "because Dick's got lawyers" was a veiled or implied threat that the Respondent might retaliate against Wilson should he attend the Board hearing in this case. Hathaway's statements had the tendency to deprive Wilson of vindication by the Board of his statutory rights and thus violated Section 8(a)(1). See id. at 578–579 (employer's statement to employees, "they didn't have to appear pursuant to" Board subpoenas, but if they did so, "they were on their own," was unlawful because it was "intended to, and did, convey to employees the idea that they might be penalized in some manner if they honored the Board's subp[o]enas.").

We reject the Respondent's argument that Hathaway repudiated her unlawful conduct by telling Wilson "yeah, you got to go." An employer may effectively repudiate unlawful conduct if the repudiation is "timely, unambiguous, specific in nature to the coercive conduct, and free from other prescribed illegal conduct." *Passavant Memorial Area Hospital*, 237 NLRB 138, 138 (1978). Although Hathaway told Wilson that he needed to go to the Board hearing, she did not address her threat that Wilson might suffer retaliation if he did, much less offer any assurance that the Respondent would not do so. Accordingly, the Respondent's argument fails because Hathaway's purported repudiation was not sufficiently specific in nature to her coercive conduct. See *MPG Transport, Ltd.*, 315 NLRB 489, 489 fn. 1 (1994) (finding employer failed to

[12] At the hearing, the General Counsel alleged Hathaway's unlawful conduct occurred on December 8, 2021, but no party disputes the judge's finding that the conduct occurred on December 7, 2021.

repudiate its unlawful threat to "close the plant or to subcontract the employees' work" by later telling employees it "would not close the terminal or cancel its order" because that alleged repudiation "did not refer to the initial threat and specifically deny its substance"), enfd. 91 F.3d 144 (6th Cir. 1996).

AMENDED CONCLUSIONS OF LAW

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

2. Rochester Regional Joint Board, Local 368 (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

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

> All production employees, maintenance employees, mechanics, drivers, and route salesmen employed by the Respondent at its Fulton and Montgomery, New York County facilities excluding, executive, supervisory, office, front-end dry-cleaning, and clerical employees.

4. The Respondent violated Section 8(a)(1) of the Act by directly soliciting employees to sign the decertification petition.

5. The Respondent violated Section 8(a)(5) and (1) of the Act, on September 9, 2021, by relying on the decertification petition to withdraw recognition from the Union and thereafter by failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of unit employees.

6. The Respondent violated Section 8(a)(5) and (1) of the Act, since mid-September 2021, by failing and refusing to furnish the Union with a list of new unit employees, including their start dates, jobs, and shifts worked.

7. The Respondent violated Section 8(a)(5) and (1) of the Act on June 17, 2021, by refusing to send new unit employees to the Belzano breakroom to meet with a Union representative without first notifying the Union and giving it an opportunity to bargain.

8. The Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally changing the following terms and conditions of employment of its unit employees at a time when it had not reached a valid overall impasse in negotiations with the Union for a successor collective-bargaining agreement:

> (a) On August 22, 2021, by granting unit employees a wage increase,
>
> (b) Since early September 2021, by refusing to permit a Union representative to meet with unit employees outside the Belzano facility, and
>
> (c) Since mid-September 2021, by refusing to permit a Union representative access to its Belzano and Johnstown facilities to meet with unit employees.

9. The Respondent violated Section 8(a)(1) of the Act, in mid-October 2021, by interrogating a unit employee about their union activities.

10. The Respondent violated Section 8(a)(1) of the Act, on September 9, 2021, and in mid-September 2021, by telling unit employees that the Union was gone or not coming back at a time when the Respondent was obligated to recognize the Union as the exclusive collective-bargaining representative of unit employees.

11. The Respondent violated Section 8(a)(1) of the Act, on December 7, 2021, by threatening a unit employee with retaliation for complying with a Board subpoena to testify in the Board hearing in this proceeding.

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

AMENDED 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, we amend the judge's remedy in the following respects.

Having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to provide relevant and necessary information requested by the Union in mid-September 2021, we shall order the Respondent to provide the Union with the requested information. Having found that the Respondent also violated Section 8(a)(5) and (1) by making unilateral changes to unit employees' terms and conditions of employment, we shall order the Respondent to rescind the unlawful changes upon the Union's request.[13]

Having found that the Respondent violated Section 8(a)(5) and (1) by withdrawing recognition from, and thereafter failing and refusing to bargain with, the Union, we shall order the Respondent to bargain on request with the Union as the exclusive collective-bargaining

[13] The Board's settled practice is to order rescission of unlawful changes detrimental to employees, but to order rescission of beneficial changes only at the request of the bargaining representative. *Ardit Co.*, 364 NLRB 1836, 1841 fn. 12 (2016). Because one or more of the Respondent's unlawful unilateral changes here improved employees' terms and conditions of employment, we will order the Respondent to rescind only those changes the Union asks it to rescind. *Children's Hospital*, 312 NLRB 920, 931 (1993), enfd. sub nom. *California Pacific Medical Center v. NLRB*, 87 F.3d 304 (9th Cir. 1996).

representative of employees in the appropriate bargaining unit and embody any understanding reached in a signed agreement.[14]

ORDER

The National Labor Relations Board orders that the Respondent, Century Linen & Uniform, Inc., Johnstown and Gloversville, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Directly soliciting unit employees to sign a decertification petition.

(b) Withdrawing recognition from Rochester Regional Joint Board, Local 368 (the Union) and failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of unit employees.

(c) Refusing to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

(d) Unilaterally changing the terms and conditions of employment of its unit employees by refusing to send new unit employees to the Belzano breakroom to meet with a union representative without first notifying the Union and giving it an opportunity to bargain.

(e) Unilaterally changing the terms and conditions of employment of its unit employees by granting unit employees a wage increase; refusing to permit a union representative to meet with unit employees outside its Belzano facility; and refusing to permit a union representative access to its Belzano and Johnstown facilities to meet with unit employees, at a time when it has not reached a valid overall impasse in negotiations with the Union for a successor collective-bargaining agreement.

(f) Coercively interrogating unit employees about their union activities.

(g) Telling unit employees that the Union is gone or not coming back at a time when it is obligated to recognize the Union as the exclusive collective-bargaining representative of unit employees.

(h) Threatening unit employees with retaliation for complying with a Board subpoena to testify in a Board hearing.

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

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

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

> All production employees, maintenance employees, mechanics, drivers, and route salesmen employed by the Respondent at its Fulton and Montgomery, New York County facilities excluding, executive, supervisory, office, front-end dry-cleaning, and clerical employees.

(b) Furnish to the Union the information requested by the Union in mid-September 2021.

(c) On request by the Union, rescind the changes in the terms and conditions of employment for its unit employees that were unilaterally implemented, including:

> (1) granting them a wage increase,
>
> (2) refusing to send new unit employees to the Belzano breakroom to meet with their Union representative,
>
> (3) refusing to permit a Union representative to meet with unit employees outside the Belzano facility, and
>
> (4) refusing to permit a Union representative access to the Belzano and Johnstown facilities to meet with unit employees.

(d) Within 14 days after service by the Region, post at its Johnstown and Gloversville, New York facilities, copies of the attached notice marked "Appendix."[15] Copies

[14] Because the Respondent failed to raise particularized exceptions to the judge's recommended affirmative bargaining order, we find it unnecessary to provide further justification for that remedy. See *Scepter, Inc. v. NLRB*, 280 F.3d 1053, 1057 (D.C. Cir. 2002) (stating that in the absence of a "particularized" exception, a party has not preserved for appeal an objection to the imposition of an affirmative bargaining order); *Exxel/Atmos, Inc. v. NLRB*, 147 F.3d 972, 978 (D.C. Cir. 1998), cert. denied 525 U.S. 1067 (1999); *SKC Electric, Inc.*, 350 NLRB 857, 862 fn. 15 (2007); *Heritage Container, Inc.*, 334 NLRB 455, 455 fn. 4 (2001).

In addition to an affirmative bargaining order to remedy the Respondent's unlawful withdrawal of recognition, the judge recommended a limited bargaining order to remedy its unlawful unilateral changes. However, "when . . . the parties are engaged in negotiations, an employer's obligation to refrain from unilateral changes extends beyond the mere duty to give notice and an opportunity to bargain" and "encompasses a duty to refrain from implementation at all, unless and until an overall impasse has been reached on bargaining for the agreement as a whole." *Bottom Line Enterprises*, 302 NLRB 373, 374 (1991), enfd. mem. sub nom. *Master Window Cleaning, Inc. v. NLRB*, 15 F.3d 1087 (9th Cir. 1994). In light of our affirmative bargaining order requiring the Respondent to bargain for a successor agreement, we will dispense with a limited bargaining order, which might be interpreted to "imply a right of unilateral action—once notice and opportunity to bargain have been given—inconsistent with *Bottom Line Enterprises*." *Valley Health System, LLC, d/b/a Desert Springs Hospital Medical Center*, 369 NLRB No. 16, slip op. at 6 fn. 18 (2020).

[15] 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."

of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the 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 June 17, 2021.

(e) Within 21 days after service by the Region, file with the Regional Director for Region 3 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. April 7, 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 directly solicit you to sign a decertification petition.

WE WILL NOT withdraw recognition from Rochester Regional Joint Board, Local 368 (the Union) and fail and refuse to bargain with the Union as your exclusive collective-bargaining representative.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as your collective-bargaining representative.

WE WILL NOT unilaterally change the terms and conditions of your employment by refusing to send new unit employees to the Belzano breakroom to meet with their union representative without first notifying the Union and giving it an opportunity to bargain.

WE WILL NOT unilaterally change the terms and conditions of your employment at a time when we have not reached a valid overall impasse in negotiations with the Union for a successor collective-bargaining agreement, including by granting you a wage increase; refusing to permit a union representative to meet with you outside the Belzano facility; and refusing to permit a union representative access to the Belzano and Johnstown facilities to meet with you.

WE WILL NOT coercively interrogate you about your union activities.

WE WILL NOT tell you that the Union is gone or not coming back at a time when we are obligated to recognize the Union as your exclusive collective-bargaining representative.

WE WILL NOT threaten you with retaliation for complying with a Board subpoena to testify in a Board hearing.

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

All production employees, maintenance employees, mechanics, drivers, and route salesmen employed by the Respondent at its Fulton and Montgomery, New York County facilities excluding, executive, supervisory, office, front-end dry-cleaning, and clerical employees.

WE WILL furnish to the Union the information it requested in mid-September 2021.

WE WILL, on request by the Union, rescind the changes in the terms and conditions of your employment that were unilaterally implemented, including:

(1) granting you a wage increase,

(2) refusing to send new unit employees to the Belzano breakroom to meet with their union representative,

(3) refusing to permit a union representative to meet with you outside the Belzano facility, and

(4) refusing to permit a union representative access to the Belzano and Johnstown facilities to meet with you.

CENTURY LINEN & UNIFORM, INC.

The Board's decision can be found at https://www.nlrb.gov/case/03-CA-283806 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

Carolyn Wolkoff and *Desmond Metzger, Esqs.,* for the General Counsel.
Scott V. Kamins, Esq. (Offit Kurman), of Columbia, Maryland, for Respondent.
Ian Hayes, Esq. (Hayes Dolce), of Buffalo, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

FINDINGS OF FACT

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried via Zoom virtual technology from December 12 through December 14, 2022. The Union, Rochester Regional Joint Board, Local 368, filed the initial charges on October 1, 2021 and January 18, 2022. The General Counsel issued a consolidated complaint on September 13, 2022.

JURISDICTION

Respondent is a commercial laundry and linen rental business. Its facilities that are involved in this matter are 2 in Johnstown, New York, one of which is on Belzano Drive (often referred to as the Belzano facility)[1] and the other is on North Perry Street, most often referred to as the Johnstown facility. It has another facility relevant to this case on North Main Street in Gloversville, New York. Respondent annually purchases and receives goods valued in excess of $50,000 directly from points outside of New York State.

Respondent is an employer engaged in commerce within the meaning of the Act and the Charging Party Union, Rochester Regional Joint Board, Local 368 is a labor organization within the meaning of the Act.

On about September 9, 2021, Respondent withdrew recognition of the Charging Party Union as the exclusive bargaining representative of its production and maintenance employees, mechanics, drivers and route salesmen. The General Counsel alleges the Respondent violated Section 8(a)(5) and (1) of the Act in doing so.

The General Counsel alleges that the withdrawal was illegal for several reasons:

Unlawful assistance by managers and supervisors in employee efforts to remove the Union.

Allowing employee Donna Persse[2] to solicit employees to sign a decertification while she was on work time.

Promising Persse a benefit if she solicited other employees to sign a decertification petition.

Shortly before withdrawing recognition, granting bargaining unit employees a wage increase without notifying the Union or offering it the opportunity to bargain over this increase.[3]

The General Counsel also alleges the Respondent violated the Act by making coercive statements to employees, engaging in surveillance of employees' union activities, interrogating employees about their union activities, announcing to employees that the Union no longer represented them, when it had not

[1] Belzano opened in 2019. Most employees were then transferred from Gloversville to Belzano. Currently about 110-unit employees work at Belzano and 8 at Gloversville.

[2] Although this employee's name is at times rendered as Persser in the transcript, Respondent's records establish that her last name is Persse, e.g. GC Exh. 23.

[3] Respondent states at p. 28 of its brief that the complaint does not allege an illegal wage increase. That is incorrect. Pars. 9 (d) and 14 of the complaint allege that Respondent violated Sec. 8(a)(5) and (1) in granting a wage increase to bargaining unit employees in about September 2021. Tr. 364–365.

legally withdrawn recognition, assigning employees to the Belzano facility in order to facilitate their signing of a decertification petition, restricting and denying union access to the Belzano facility. After considering the record[4] and the parties' briefs I make the following:

FINDINGS OF FACT

Century Linen was founded over 100 years ago by the grandfather of the current CEO Richard Smith. Smith sold his majority stake in the company in 2021, a few months before Respondent withdrew recognition of the Union. [5]

This Union has represented Respondent's production and maintenance employees, mechanics, drivers and route salesmen for a number of years not reflected in this record. Between 2014 and mid 2020 union business agent Eduardo Jofre was assigned to Respondent's facilities. Then he retired. Jofre was replaced temporarily by business agent Vanessa Patterson and then by Emily Vick, the Union's District Director in Albany. The most recent collective-bargaining agreement between Respondent and the Union ran from June 2017 until May 2020. It was then extended and was still in effect when Respondent withdrew recognition on September 9, 2021. Respondent and the Union were bargaining on another extension as late as August 17, 2021.

Union Access to Respondent's facilities

On September 2, 2020, Emily Vick went to Respondent's Belzano facility after sending Respondent an email the day before informing it of her visit. Vick inquired as to COVID procedures at the plant. Respondent's counsel responded that evening, telling Vick she could not visit the facility on September 2 and that Respondent would require at least 48 hours advance notice of such a visit and a statement regarding the purpose of the visit. When Eduardo Jofre was the Union's business representative for Respondent, he was not required to give advance notice of his visit to its facilities.[6]In the spring of 2020, Jofre and business agent Vanessa Patterson walked through the Belzano plant unescorted with one day's notice.

When Vick arrived, Respondent's Executive Vice President, Gary Fuller,[7] at the direction of CEO Richard Smith told her that neither she nor second shift union steward Sue Hickok had a right to be at the facility and that Vick must meet with union stewards off the company's property. Vick agreed to provide Respondent 48 hours advance notice in the future. She testified that she did so on account of the access restrictions she encountered at several facilities due to COVID concerns.

In about April 2021, Vick informed Respondent that she would soon be fully vaccinated against COVID and was thus requesting permission to enter the plant.[8]

On June 4, 2021, Scott Kamins, Respondent's counsel, informed Vick that the Union must provide at least 48 hours advance notice to access Respondent's facilities and a statement of the visit's purpose. He also wrote that the Union is not permitted on the work floor or to meet with employees while they are working. He told Vick that she could only meet with employees in the employee break room during meal and rest breaks.[9]

The parties' collective-bargaining agreement provides as follows:

> Recognition
> (b) The Employer shall recognize and deal only with such representative of all its employees in its production facilities at reasonable hours of the day as the Union may elect or appoint. There shall be no interference with the Employer's production. The Union representative will be permitted to enter the establishment during working hours, provided he first reports to the office an receives permission from a duly authorized person. In no event shall such permission be unreasonably withheld.

(GC Exh. 2(a) p. 4.)[10]

Kamins asserted that these requirements were consistent with the parties' past practices, a matter which is in dispute, and also necessitated by COVID concerns. However, General Counsel Exhibit 26 indicates that the changes to the access policy were instituted in conjunction with the sale of Richard Smith's majority interest in Century Linen, which occurred at about this time.

On June 17, 2021, Vick went to the plant and asked Tami Austin, a human resources generalist, to send new employees to the breakroom so that she could get them to sign union authorization cards. Austin told Vick she could not do that. 2 of the approximately 20 new employees came to the breakroom to meet Vick.

Unilateral wage increase

In the summer of 2021, Respondent hired a number of employees to work only on Saturdays at a rate of $20 an hour. Some of its full-time employees earned less than that for overtime work. In July 2021, Respondent raised the wage rate of a number of full-time or regular part-time employees from $13 to $13.35 per hour so that they would not be earning less than $20 per hour

[4] The transcript contains a number of errors. Some of the most important are as follows: at
Tr. 322, line 21, and elsewhere Donna Smith should read Tonia Smith.
Tr. 365 lines 10-11 should read Donna Persse and guy should read day.

[5] Gary Fuller testified that the sale occurred in March 2021. GC Exh. 26 indicates that the sale occurred sometime after June 4, 2021.

[6] I credit Jofre's testimony in this regard. VP Gary Fuller did not contradict him, rather he testified that Jofre would "typically" email, text or call to make an appointment, not that Jofre was required to do so, Tr. 338–339. Then Fuller testified that he "believed" Jofre set up his meetings in advance. Also, Jofre's testimony is more consistent with the terms of the collective-bargaining agreement. It is unlikely that Jofre agreed to conditions beyond those set forth in the recognition clause.

[7] Fuller was promoted to President of Respondent on about January 1, 2021.

[8] Respondent objected to my receipt of Vick's April email but did not present testimony that it did not receive Vick's email or that it was not aware that she was requesting access in light of her vaccination status. COVID vaccinations were not generally available until early 2021.

[9] Kamins' email also directs Vick to notify Gary Fuller in advance to see an employee in the work areas. His email is ambiguous as to whether she could see an employee during non-break/lunch hours by doing so.

[10] Respondent argues that this provision is modified by the managements rights clause of the Agreement. I reject that argument. The management rights clause reserves to Respondent matters not defined in the Agreement. The recognition clause specifically defines the parties' rights regarding union access to Respondent's production facilities.

when they worked overtime.[11] Respondent did so without notifying the Union or offering the Union an opportunity to bargain about this increase.

Withdrawal of recognition

On September 9, 2021, Attorney Kamins informed Vick that Respondent had a decertification petition with the signatures of a majority of unit employees and that Respondent was withdrawing recognition of the Union. There is no dispute that Respondent had a decertification petition signed by a majority of unit employees.

Evidence and findings regarding alleged company assistance in procuring the signatures on the decertification petition

Three employees, Kathy Ryle, Jessy Wilson and Kelly Kretser, who still work for Respondent, testified that Donna Persse openly and repeatedly solicited signatures for the decertification petition on work time in work areas. I credit this testimony and find this to be an established fact. I find the testimony of Ryle and Wilson to be completely credible.

Although, I have some degree of skepticism about some parts of Kelly Kretser's testimony, I am not required to, and do not reject, this testimony just because I may not credit other portions of her testimony, *Maximum Precision Metal Products,, Renault Stamping Ltd*., 236 NLRB 1417 (1978); *Edwards Transportation Co.,* 187 NLRB 3, 3–4 (1970).[12] The testimony of all 3 witnesses about Persse's solicitation of signatures is consistent and far more plausible than Donna Persse's denials. I am also influenced that these are current employees of Respondent who are testifying contrary to their pecuniary interest, *Flexsteel Industries,* 316 NLRB 745 (1995).

Kathy Ryle, who usually works at Gloversville, testified that she was working at the Belzano plant on Labor Day, September 6, 2021.[13] While both were on the clock, Persse approached Ryle and asked her if she wanted to keep the Union. Ryle said she did and Persse went back to her workstation (Tr. 132–136). Ryle further testified that Persse left her workstation that day several times for 3-5 minutes at a time. Ryle observed Persse talking to other employees while holding a piece of paper in her hand. She saw employees sign this paper. Supervisors were on the work floor while Persse was doing this. Ryle later heard Persse tell another employee that Persse had 3 full sheets of paper with signatures.

Jessy Wilson, also a current employee, testified that Persse approached him at his workstation on September 4, 2021, and asked him if he wanted to sign a petition to get rid of the Union.[14] Wilson also testified that Laura Hathaway, a plant manager, was with Persse and that Hathaway and Persse asked other employees to sign the petition (Tr. 152. 160–162). Persee collected about 30 signatures that day (Jt. Exh. 2).

I consider Wilson's testimony about Hathaway relevant only with respect to whether Respondent was aware of what Persee was doing. I do not consider it with respect to whether management participated in the solicitation of the decertification petition. The General Counsel did not allege that Respondent, by Hathaway, violated the Act by assisting with the decertification petition, nor did it amend to allege unfair labor practices by Hathaway at trial-other than by threatening Wilson or discouraging him from testifying within a week of the instant hearing.[15].

Another current employee, Kelly Kretser, testified that she observed Persse leave her workstation on "quite a few" occasions for about 10 minutes at a time to get employees to sign the decertification petition on multiple days (Tr. 171–172, 196–197).[16]. Several supervisors were present while Persse was collecting signatures. Kretser also testified that Persse approached her with the petition several times while she was working on September 6. Kretser ended up signing the petition (Tr. 170, Jt. Exh. 2). Although, I do not necessarily credit all of Kretser's testimony, I credit her with regard to observing Persse soliciting signatures on work time in the presence of supervisors. For one thing, her testimony is consistent with other credible evidence.

I specifically credit Kretser's testimony that Persse collected signatures in the presence of her immediate supervisor. Angel

[11] Gary Fuller testified that only 15 out of 300 employees were affected. However, the bargaining unit consisted of about 130 employees, not 300, in September 2021 Tr. 353–354, 375.

[12] I decline to credit Kelly Kretser's account of overhearing Donna Persse talking to Gary Fuller; and overhearing Tonia Smith promise Persse a reward for collecting signatures for the decertification petition,

[13] I need not address the General Counsel's allegation that Ryle and other Gloversville employees were assigned to Belzano by Respondent so they could sign the decertification petition.

I also need not address statements made by supervisors after September 9 about the Union's status. If Respondent illegally withdrew recognition of the Union, many of those statements were illegal.

[14] Wilson testified that occurred about the time of employees' first break. However, Persse approached him in the wash aisle where he worked, not in a break area, Tr. 148, 152.

[15] At p. 31 of its brief, Respondent states that Hathaway suffers from a severe and chronic illness thus necessitating advance notice to arrange for her participation in the hearing. Respondent did not raise this at trial, e.g., Tr. 363–364. Wilson testified on the first day of trial, December 12, 2022. The record does not reflect why Respondent could not have called her to testify on December 13 or 14. This is particularly true since Hathaway would have testified virtually and could have done so from her home if necessary.

At the outset of the hearing, the General Counsel moved to allege that Hathaway was a statutory supervisor and agent of Respondent. Respondent admitted that Hathaway was a plant manager, a supervisor and its agent, Tr. 5-7, 31. Thus, Respondent was on notice from the outset of the hearing that Hathaway's conduct was in some way an issue in this matter. The General Counsel then amended the complaint to allege that Respondent, by Hathaway, threatened an employee about participating in a court proceeding. Respondent objected on the ground that this had nothing to do with the instant case. Counsel did not contend Hathaway was unavailable. I granted the amendment on condition that Respondent did not establish that it was prejudiced by the amendment, which it did not do at trial.

I would also note that Respondent did not object when Wilson testified that Hathaway assisted Donna Persse in gathering signatures for the decertification petition, Tr 151–153. Its counsel also cross-examined Wilson about his testimony concerning Hathaway and Persse, Tr 155–161.

[16] Persse started collecting the signatures on September 4, 2021. Kertser signed on September 6. Signatures were collected as late as September 10, but most were collected by September 9, when Respondent informed the Union that it had a decertification petition with a majority of unit members' signatures, Jt. Exh. 2.

Hickok, production manager Jordan Calderwood and Robert Powell, Respondent's Director of Operations (Tr. 172). Like Persse, Hickok and Calderwood responded to leading questions from Respondent as opposed to testifying about where they were and what they were doing between September 4 and 9, 2021. It is particularly hard to believe that Hickok, Persse's immediate supervisor, was not aware of what Persse was doing on September 4 and 6. I find Angel Hickok's testimony to be incredible and infer that she was well aware of what Persse was doing and did nothing to stop her. Since Robert Powell did not testify, I credit Kretzer that Persse collected signatures for the decertification petition in his presence.

Donna Persse testified in response to leading questions from Respondent's counsel that Laura Hathaway did not discuss the decertification petition with her, that Hathaway did not help her with the petition or walk around with her to try to get employee signatures (Tr. 408). Hathaway, however, did not testify. I find Wilson's testimony credible and find Persse's incredible. The credibility of Persse's testimony on this point is significantly undercut by the fact that, unlike Wilson's testimony at Transcript 151–153, Persse testified in response to leading questions from Respondent's counsel, Tr. 408, *H. C. Thomson,* 230 NLRB 808, 809 fn. 2 (1977); *Liberty Coach Co., Inc.,* 128 NLRB 160, 162 and fn. 7 (1960).

I find Persse not to be a credible witness generally. For one thing, Respondent's examination of Persse (Tr. 404–410) was largely leading on some of the most important issues in this case, e.g., who was aware of her signature gathering.[17] Moreover, her testimony avoided the critical issue as to whether or not she gathered the signatures in work areas on working time. She did not specifically contradict Wilson, Kelly Kretser or Ryle's testimony, i.e. that she solicited them for their signatures at their work stations on work time or that she solicited Wilson on work time with Hathaway close by. Persee obviously solicited Kretser, who signed the petition on September 6 (Jt. Exh. 2). She obtained 20 signatures that day. I conclude that she collected all in work areas on work time and that Respondent's supervision could not possibly have been unaware of what she was doing.

Moreover, while Persse contradicted much of the General Counsel's evidence, she did not contradict the testimony that she solicited signatures for the decertification petition on work time in the presence of supervisors. Persse did not testify that she collected the signatures on break or other nonwork times, or that she was told or understood that she was required to do so.[18] There is no evidence that any of Respondent's supervisors or managers knew that a decertification petition could not be circulated on worktime, or that Laura Hathaway knew that she was prohibited from assisting in the collection of signatures.

There is also no evidence that anyone other than Persse circulated the petition. This and the fact that Persse collected 30 signatures on September 4 and another 20 on September 6 also supports the credibility of the General Counsel's witnesses that Persse collected signatures on work time in work areas in open view of Respondent's managers and supervisors.

Alleged Threat by Laura Hathaway

On Wednesday, December 7, 2022, 5 days before the start of the instant hearing, Plant Manager Laura Hathaway approached Jessy Wilson several times at his workstation. The first time Hathaway asked Wilson if the Union had contacted him. Wilson replied that he had received a subpoena. A half hour later, she returned and told him that if it was her, she would not go (I assume to this hearing) because Dick (I assume Richard Smith) has lawyers. A third time, Hathaway returned and asked for a copy of the subpoena. Hathaway had Wilson copy the subpoena from his phone, took it to a management office, then returned and told Wilson that he had to go to the hearing.[19]

At the outset of the hearing, the General Counsel moved to amend the complaint to allege that Respondent, by Hathaway, violated Section 8(a)(1) in threatening Wilson about participating in this proceeding. Respondent objected to the amendment. I said I would grant it on condition that Respondent was not prejudiced by the amendment. I find no prejudice in that there was no reason Respondent could not have called Hathaway to testify.

Analysis

Withdrawal of recognition
Reliance on the decertification petition

An employer may not participate in or support in any manner that is more than ministerial, the circulation of a petition to decertify an incumbent union, *Process Supply,* 300 NLRB 756, 758

[17] Wilson texted Emily Vick about Hathaway's involvement with the petition on September 9, 2021, five days after observing her and Persse. I credit his testimony that he did not tell Vick about this earlier because he feared for his job. GC Exh. 26.

As to Persse's credibility: she denied attempting to talk to Richard Smith about his wife Tonia's departure from Respondent until shown a document establishing that she did so. Tr. 321-22, GC Exh. 21. GC Exh. 21 indicates that Tonia Smith's role in the management of the company ceased in June 2022. Persse was very upset by that fact.

GC Exh. 21, particularly Darci Oathout's (formerly Darci Luci) email of June 7, 2022, suggests that Respondent's management knew more about the efforts to get rid of the Union than the testimony of its witnesses indicates. This also supports my conclusion that Respondent knew that Persse was circulating the decertification petition on working time and allowed her to do so.

Based on Persee's testimony, I also find that Tonia Smith, CEO Richard Smith's wife, who was formerly Respondent's executive operations administrator, was less than candid about her relationship with Persse at Tr. 329–330. However, on its face, her testimony and this record establishes a relationship out of the norm for a high-level manager and a rank-and-file employee. Tonia Smith testified to giving gifts to employees other than Persse and Persse's son. However, her testimony indicates that only a few rank-and-file employees received such gifts from Smith, who was equal to Gary Fuller in Respondent's chain of command and subordinate only to her husband, GC Exh. 12. I glean that Persse was management's eyes and ears with regard to what was going on with respect to bargaining unit employees, if not actually its agent.

[18] Given the disciplinary warning Persse received in 2012, I infer that she would not leave her workstation during working time unless she had some assurance she would not be disciplined for doing so, GC Exh. 23.

[19] Since Hathaway did not testify, Wilson's testimony is uncontradicted and credited.

(1990). I find that by allowing Donna Persse to circulate the decertification petition on worktime in work areas in full view of its supervisors and on at least one occasion with the knowledge of supervisor Hathaway, Respondent illegally assisted and encourage the circulation and adoption of this petition, *Central Washington Hospital,* 279 NLRB 60 (1986), enfd. 815 F 2d. 1493 (9th Cir. 1987). I therefore find that Respondent was not entitled to withdraw recognition of the Union in reliance on this petition. At least some employees considered Persee to be very close to certain members of management. Thus, the freedom allowed her by Respondent in circulating the petition on worktime would reasonably be understood by those employees to constitute approval of her conduct.

While the record establishes plant manager Hathaway's direct involvement in gathering the decertification petition, I do not rely on that fact in finding Respondent's withdrawal of recognition illegal. The General Counsel did not allege a violation in this regard on the basis of Hathaway's conduct. However, I do rely on Jessy Wilson's testimony in part for my finding that Respondent's managers and supervisors were well aware that Donna Persse was gathering signatures for a decertification petition on work time in violation of company work rules and did nothing to stop her. Thus, in finding that Respondent violated the Act in providing more than ministerial assistance in the circulation of the petition I rely solely on Persse's conduct, Respondent's awareness of what she was doing and employee's reasonable perception that Respondent sanctioned Persse's activities, *Ernst Home Centers,* 308 NLRB 848, 848–849 (1992).[20]

Unlawful assistance with the decertification petition

I find Respondent, by Jordan Calderwood and Angel Hickok as alleged in complaint paragraph 6(c), and very likely other management personnel including Robert Powell, allowed Donna Persse to solicit employees in work areas while she and the employees were on work time. Respondent violated Section 8(a)(1) of the Act in doing so.

Restriction of union access to the facility

I find that Respondent changed its practice in regard to allowing the Union access to its facility in 2020. Although, the COVID pandemic started in about March 2020, Respondent contends there was no change and that it had required advance notice of union visits for years. I find this is not so. Moreover, Respondent has not established that its 48-hour advance notice requirement was necessitated by the pandemic. A Union's access to an employer's premises is a subject of mandatory bargaining. Respondent's unilateral modification of contractual access provisions violates Section 8(a)(5) and (1). I conclude that the Union did not waive its contractual access rights by its past practices or otherwise.

The unilateral wage increase in the summer of 2021

It is uncontroverted that effective August 22, 2021, 2 weeks before the decertification petition was circulated by Donna Persse, that Respondent granted some employees a 35 cents per hour wage increase without notifying the Union beforehand or offering to negotiate with it. For example, Respondent could have, but did not negotiate as to which employees would receive this increase.

Respondent contends it did not violate Section 8(a)(5) and (1) in doing so. It contends that the following provisions of the collective-bargaining agreement gave it authority to implement this increase:

> PRODUCTION EMPLOYEES WAGES AND BONUSES
>
> Bargaining unit employees hired on or after June 1, 2017, shall be paid at minimum wage rate or above at the discretion of the Employer, and shall then be eligible for future wage changes afforded to other members of the bargaining unit who are paid at minimum wage.
>
> The Employer reserves the right to modify any and all aspects of Minimum Standards including, but not limited to, pounds per hour or pieces by hour, at its sole discretion following notice to Union and affected employees of such changes, provided that any such standard must be established by an independent consultant with industry-specific experience.

(GC Exh. 2a at page 7).

GC Exh 16 establishes that most (about 11 out of 16) of the employees receiving the 2021 wage increase were hired before June 1, 2017, Tr. 387–388. Thus, the terms of the collective-bargaining agreement did not permit Respondent to unilaterally increase the wages of the employees as effectuated in August 2021.

Laura Hathaway's counseling Jessy Wilson not to comply with the Board's subpoena

Laura Hathaway clearly violated the Act in advising Wilson not to comply with the Board subpoena, *Bob's Motors,* 241 NLRB 1236 (1979). Hathaway's subsequent statement to Wilson that he was required to attend the hearing is not a sufficient

[20] The decision in *Ernst Home Centers* is predicated in part on a finding that the anti-union employee was granted access to employees which was denied to the Union. I conclude that the disparate treatment element of *Ernst* does not detract from reliance of that decision in this case. Moreover, this record in fact suggests an effort by Respondent to inhibit the Union's contact with bargaining unit employees during the period leading up to and including Persse's solicitation activities.

Respondent at page 8 of its brief relies on *Wallace Murray Corp.,* 170 NLRB 536, 537–538 (1968) for the proposition that unless the General Counsel proves the Respondent allowed Persse to violate a no-solicitation rule, the decertification cannot be deemed invalid. While there is no evidence that Respondent had a non-solicitation rule, it is clear that employees generally were not allowed to engage in non-work activities in work areas while on the clock. Respondent knowingly allowed Persse to do so because it knew she was circulating a decertification petition.

Furthermore, Respondent's defense in this case was not that pro-union employees could have done the same thing as Persse. Its defense was that it had no knowledge of what Persse was up to—which I find to be false.

Finally, the record establishes that Respondent's employees are not allowed, as was Persse, to leave their work area during working hours without permission, GC Exhs. 22, p. 21, #6, 23–25.

repudiation or disavowal of her coercive conduct, *Passavant Memorial Area Hospital,* 237 NLRB 138 (1978). At a minimum Hathaway was required to tell Wilson that he need not fear retaliation from Respondent or "Dick's lawyers" if he complied with the subpoena. She also would be required to assure Wilson that Respondent would not interfere with his complying with a Board subpoena in the future. Thus, I find that Respondent, by Hathaway, violated Section 8(a)(1) as alleged.

Information Request

I find that Respondent violated the Act in failing and refusing to furnish the Union a list of new employees including starting dates, job and shifts worked as alleged in complaint paragraph 11. Respondent's only defense to this allegation is that the Union was no longer the bargaining representative of these employees. I have found to the contrary.

Other Complaint Allegations

I dismiss the allegation in complaint paragraph 6(a) in that the General Counsel's evidence that Gary Fuller unlawfully assisted in the decertification effort is not more persuasive than Mr. Fuller's denials.

I dismiss the allegation in 6(d) because the General Counsel's evidence is not more persuasive than Tonia Smith's denials that she promised Donna Persse benefits if she solicited other employees to sign the decertification petition. I dismiss the allegations regarding Sean Gamble in paragraph 6(g) and Tanya Page in paragraph 6(h). I dismiss paragraph 6(i) because I find that questions asked of employees by Karen Havlicek do not rise to the level of an illegal interrogation.[21]

I find the allegation in paragraph 6(j) to be duplicative and unnecessary.

I dismiss the *Johnny's Poultry* allegation with regard to assurances given to Donna Persse about her testimony. It strikes me as inconsistent for the General Counsel to allege that Persse was acting as Respondent's agent and also required to give her the assurances mandated by *Johnny's Poultry* that she would not suffer retaliation on account of her testimony.

I dismiss the allegations in paragraph 7 in that the preponderance of the evidence does not establish that Respondent required the named employees to work at Belzano so that they would be present to sign the decertification petition.

CONCLUSIONS OF LAW

1. Respondent violated Sections 8(a)(5) and 8(a)(1) by unilaterally giving employees a wage increase in August 2021.

2. Respondent violated Section 8(a)(5) and 8(a)(1) by withdrawing recognition of the Union on September 9, 2021.

3. Respondent violated Section 8(a)(5) and (1) in making a unilateral change to the Union's access rights to its Johnstown, Belzano and Gloversville facilities.

4. Respondent violated Section 8(a)(5) and (1) of the Act in failing and refusing to furnish the Union a list of new employees including starting dates, job and shifts worked.

5. Respondent violated Section 8(a)(1) in advising Jessy Wilson not to comply with a Board subpoena.

REMEDY

I recommend that Respondent be ordered to recognize and on request bargain with the Union as the exclusive collective-bargaining representative of Respondent's bargaining unit employees for a period of not less than 6 months. If an understanding is reached, Respondent must sign an agreement concerning the terms and conditions of employment. I recommend a bargaining order because it is necessary to fully remedy the violations in this case for the following reasons:

(1) To vindicate the Section 7 rights of a majority of unit employees who have been denied the benefits of collective bargaining since September 9, 2021, it is only by restoring the status quo and requiring the Respondent to bargain with the Union for a reasonable period of time that the employees will be able to fairly assess the effectiveness of the Union in an atmosphere free of the Respondent's unlawful conduct.

(2) An affirmative bargaining order also serves the policies of the Act by fostering meaningful collective bargaining and industrial peace. It removes the Respondent's incentives to delay bargaining in the hope of further discouraging support for the Union. It also ensures that the Union will not be pressured by the possibility of a decertification petition or by the prospect of imminent withdrawal of recognition to achieve immediate results at the bargaining table following the Board's resolution of its unfair labor practice charges and the issuance of a bargaining order.

(3) A cease-and-desist order without a temporary decertification bar would be inadequate to remedy Respondent's withdrawal of recognition and refusal to bargain. It would permit another challenge to the Union's majority status before the taint of Respondent's previous unlawful withdrawal of recognition has dissipated. Allowing another challenge to the Union's majority status without a reasonable period for bargaining would be unjust also because the Union needs to re-establish its relationship with unit employees, who have already been without the benefits of union representation for over a year. Permitting another decertification petition may likely allow Respondent to profit from its unlawful conduct.

These aforesaid circumstances outweigh the temporary impact the affirmative bargaining order will have on the rights of unit employees who continue to oppose union representation.

Respondent shall also return its Johnstown, Belzano and Gloversville facilities to the status quo ante as of September 9. 2021.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[22]

ORDER

Respondent, Century Linen and Uniform, Johnstown and Gloversville, New York, is ordered to

1. Cease and desist from

(a) Withdrawing recognition from Rochester Regional Joint

[21] Allegations regarding Tammi Austin in complaint paragraph 6(f) were withdrawn at Tr. 3.

[22] 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.

Board, Local 368 and failing and refusing to bargain with the Union as the collective-bargaining representative of its bargaining unit employees.

(b) Changing wages, benefits, or other terms and conditions of employment without first notifying the Union and giving it an opportunity to bargain.

(c) Pressuring an employee not to honor a subpoena to appear in an NLRB proceeding.

(d) Unilaterally restricting the access of union representatives in a manner not consistent with the union's access rights to its facilities prior to April 1, 2001.

(e) Failing and refusing to furnish the Union a list of new employees including starting dates, job and shifts worked.

(f) 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) Recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of its full-time and regular part-time production and maintenance employees, mechanics, drivers and route salesmen concerning terms and conditions of employment for a period of not less than 6 months, and, if an understanding is reached, embody the understanding in a signed agreement.

(b) On request by the Union, rescind any changes in its unit employees' terms and conditions of employment that were unilaterally implemented since September 9, 2021.

(c) Furnish the Union a list of new employees including starting dates, job and shifts worked as the Union requested in September 2021.

(d) Within 14 days after service by the Region, post at its Johnstown and Gloversville, New York (including the Belzano facility) copies of the attached notice marked "Appendix."[23] Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 22, 2021.

(e) 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 attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 30, 2023

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 withdraw recognition from Rochester Regional Joint Board, Local 368 and fail and refuse to recognize and bargain with Rochester Regional Joint Board, Local 368 as the exclusive collective-bargaining representative of our full-time and regular part-time production and maintenance employees, mechanics, drivers and route salesmen.

WE WILL NOT change your wages, benefits, or other terms and conditions of employment without first notifying the Union and giving it an opportunity to bargain.

WE WILL NOT coerce you with respect to participating in an NLRB proceeding, including suggesting that you fail to honor a subpoena.

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 Act.

WE WILL recognize and, on request, bargain for a period of not less than 6 months with, Rochester Regional Joint Board, Local 368 as the exclusive collective-bargaining representative of our production and maintenance employees, mechanics, drivers and route salesmen and if an understanding is reached, embody the understanding in a signed agreement.

WE WILL, upon the Union's request, rescind the changes in the terms and conditions of employment that were unilaterally implemented since August 22, 2021.

CENTURY LINEN & UNIFORM, INC.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/ 03-CA-283806 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.

[23] 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."