UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

WESTROCK SERVICES, LLC

and

TEAMSTERS LOCAL 856

Cases 32-CA-329521
32-CA-329812
32-CA-330242
32-CA-330282

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DECISION

STATEMENT OF THE CASE

JOHN T. GIANNOPOULOS, Administrative Law Judge. On September 12, 2024, an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (Complaint) issued alleging that WestRock Services LLC, (WestRock or Respondent) violated Sections 8(a)(1), (3) and (5) of the National Labor Relations Act (the Act). The Complaint, which was subsequently amended, was based upon charges filed by Teamsters Local 856 (Union or Teamsters Local 856) and alleges that Respondent fired two employees in violation of Sections 8(a)(3) and (1) of the Act.[1] The Complaint also alleges that WestRock violated Section 8(a)(5) and (1) of the Act by changing the employee healthcare plan and imposing a new and different plan on employees, without affording the Union an opportunity to engage in good-faith bargaining and without first bargaining with the Union to an overall good-faith impasse for an initial collective bargaining agreement. The Complaint's allegations involve a unit of Respondent's employees working in Salinas, California, and occur against the backdrop of employees voting to replace their existing union with Teamsters Local 856.

[1] As discussed herein, on the last day of the hearing Respondent and the Union reached agreement on the terms of a non-Board settlement in Cases 32-CA-329521, 32-CA-329812, and 32-CA-330242, resolving the allegations involving the two discharges.

The hearing in this matter occurred in Seaside, California, on May 13–16, 2025. Based upon the entire record, including my observation of witness demeanor, and after considering the briefs filed by the General Counsel, the Union, and Respondent, I make the following findings of fact and conclusions of law.

I. JURISDICTION AND LABOR ORGANIZATION

WestRock Services, LLC, is a Georgia limited liability company, with a facility located in Salinas, California, that manufactures and distributes containerboard and paperboard products. During a representative twelve month period, in conducting its business operations, Respondent provides services, and sells and ships goods, valued in excess of $50,000 directly to customers outside the State of California. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act. Respondent also admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act. Accordingly, I find that this dispute affects commerce and the National Labor Relations Board (NLRB or the Board) has jurisdiction pursuant to Section 10(a) of the Act.[2] (GC. 1(n); J. 1, 20)

II. FACTS

A. Background

Respondent is a subsidiary of Smurfit Westrock PLC (Smurfit Westrock),[3] a public limited holding company registered in Ireland that was created in July 2024 as a "strategic combination between Smurfit Kappa Group . . . one of the leading integrated corrugated packaging manufacturers in Europe" and "WestRock Company . . . one of the leaders in North America in corrugated and consumer packaging solutions."[4] The company has around 270 manufacturing plants in the United States, as well as various pulp and paper mills. (Tr. 160)

In Salinas, Respondent operates a converting facility—which was described as a "box plant" that makes corrugated cardboard boxes and related packaging that is primarily used in the agricultural industry. (Tr. 160) David Wride (Wride) is the Salinas plant manager and Greg Louter (Louter) is the plant superintendent. Wride reported to area vice president Don Tinkoff (Tinkoff), who in turn reported to Gregg Lapidus (Lapidus) the senior vice president of operations. Jennifer Colucci (Colucci) was Respondent's human resources manager overseeing

[2] Citations to the General Counsel, Respondent, Joint, and Administrative Law Judge exhibits are denoted by "GC," "R," "J," and "ALJ" respectively. Transcript citations are denoted by "Tr." with the appropriate page number. Transcript and exhibit citations are intended as an aid only. Factual findings are based upon the entire record and may include parts of the record that are not specifically cited. Testimony contrary to my findings has been specifically considered and discredited. Unless otherwise noted, witness demeanor was considered in making all credibility resolutions.

[3] See https://www.sec.gov/Archives/edgar/data/2005951/000200595125000005/exh21-subsidiariesofthereg.htm (Exhibit 21 to the Smurfit Westrock PLC 10K Report filed on March 7, 2025). *Pacific Greyhound Lines*, 4 NLRB 520, 522 fn. 2 (1937) (Board takes judicial notice of facts stated in company's annual report filed with the Security and Exchange Commission); Fed. R. Evid. 201(b).

[4] See https://www.sec.gov/Archives/edgar/data/2005951/000162828026012555/smur-20251231.htm (Smurfit WestRock form 10(k) filed on February 27, 2026). Exhibit 21 to the 10(K) lists WestRock Services LLC as a subsidiary of Smurfit Westrock. *Pacific Greyhound Lines*, supra.

the region that included the Salinas plant, while Anjanette Niemi (Niemi) was the local human resources representative in Salinas; Caitlan Soto (Soto) was the facility's environmental and safety manager. Overseeing labor relations was Matthew Gaston (Gaston), Respondent's senior manager of labor relations. Gaston was responsible for labor relations at about 40 different facilities, of which fifteen were unionized, including the Salinas plant; the company has collective-bargaining relationships with multiple different labor unions. Gaston's duties include serving as chief spokesperson during negotiations, overseeing arbitrations, and conducting training. Gaston reports to Tony Thomas (Thomas), the senior director of labor relations. (Tr. 61–62, 68, 159–162, 188, 210, 248, 327, 333, 337, 363, 635)

Since at least 2014, Respondent's Salinas employees had been represented by District Council No. 2, which was a District Council of the Graphic Communications Conference of the International Brotherhood of Teamsters (GCC). The GCC was formed in 2005 via a merger agreement between the International Brotherhood of Teamsters (IBT) and the Graphic Communications International Union (GCIU). See *Printing Packaging & Prod. Workers Union of N. Am. et. al. v. Int'l Bhd. of Teamsters*, No. CV 23-1872, 2024 WL 3835353, (D.D.C. Aug. 15, 2024). The two unions maintained this relationship for seventeen years. Id. (J. 4; J. 20)

The proposed business combination that created Smurfit Westrock was announced in mid-September 2023,[5] at a time when the GCIU, the GCC, and the IBT, were immersed in litigation over the dissolution of the merger creating the GCC.[6] Dissatisfied with the relationship the IBT announced that it was terminating the merger agreement with the GCIU at the end of 2022. The GCC sued to compel arbitration and in December 2022 a preliminary injunction issued preventing the IBT from terminating the merger agreement until arbitration proceedings were completed. In May 2023, on the last day of the hearing, the GCC voluntarily dismissed its lawsuit against the IBT. The parties agreed that the merger agreement was terminated, and the GCC changed its name to the Printing Packaging & Production Workers of North America (PPPWU).

Once the PPPWU came into existence, the IBT claimed authority over organization, including former local unions and District Counsels. In June 2023, the PPPWU and two of its District Councils, including District Council 2, filed a lawsuit in Federal District Court against the IBT seeking a declaratory judgment stating that the PPPWU (along with its District Councils) were "a distinct, standalone union with no affiliation with the IBT and that the IBT's rules do not apply" to them.[7] *PPPWU*, 2024 WL 3835353, at *3. On August 15, 2024, the District Court issued a memorandum opinion and related order declaring that the PPPWU (as successor to the GCC) was a distinct international union having no affiliation with the IBT, and that the IBT's constitution, bylaws, and related orders have no application to the PPPWU, its local unions or District Councils, including District Council 2. Id. see also Order on Motion for Preliminary Injunction, *PPPWU v. IBT*, No. CV 23-1872-TJK (D.D.C. Aug. 15, 2024), ECF No. 30.

[5] See https://www.sec.gov/Archives/edgar/data/1732845/000119312523293896/d862309ddef14a.htm (WestRock Company Schedule 14A Proxy Statement filed on December 13, 2023). *Pacific Greyhound Lines*, supra.

[6] Facts regarding the merger, creation, and subsequent dissolution of the GCC are taken from the District Court's Memorandum Opinion in *Printing Packaging & Prod. Workers Union of N. Am. et. al. v. Int'l Bhd. of Teamsters*, No. CV 23-1872, 2024 WL 3835353, (D.D.C. Aug. 15, 2024).

[7] See Complaint, *PPPWU v. IBT*, No. CV 23-1872-TJK (D.D.C. June 27, 2023), ECF No. 1.

B. Teamsters Local 856 files a petition to represent Salinas employees

The most recent contract between Respondent and District Council 2 covering Salinas employees ran from June 16, 2018 through June 15, 2023 (DC 2 CBA). Respondent and District Council 2 had been bargaining for a successor agreement since around mid-2023, however as of September 2023 no successor agreement had been finalized. On September 19, 2023,[8] Teamsters Local 856 filed a petition in Case 32-RC-326077 to represent the bargaining unit of Salinas employees that were being represented by District Council 2. District Council 2 intervened and on September 28, a Stipulated Election Agreement was signed setting the date of the election for October 26; Salinas employees would vote on whether they wanted to be represented by Teamsters Local 856, District Council 2, or neither union. (Tr. 163–165, 183–184; J. 1, 4, 20)

On the same day the petition was filed, employees presented a letter to Wride demanding that Respondent recognize Teamsters Local 856. The letter was signed by the Union's Secretary-Treasurer. A group of Salinas employees from the day and graveyard shifts, including Frank Pulido (Pulido) and Adam Flores (Flores), went to Wride's office. Pulido handed the letter to Flores, who handed it to Wride saying that the Salinas workers wanted to be represented and recognized as "Teamsters." (Tr. 326) Both Flores and Pulido were supporters of Teamsters Local 856. Even though he was the plant's chief steward for District Council 2, Pulido was organizing support in the plant for the Teamsters. On October 3, District Council 2 removed Pulido from his position as steward. (Tr. 313–326, 344–346, 391, 414, 610, 614–615; GC. 23–25)

At the time of the election petition, Salinas employees knew that District Council 2 was no longer affiliated with the Teamsters, but it is unclear what role this played in the decision to seek representation by Teamsters Local 856. Various employees testified that they wanted to replace District Council 2 because employees had lost benefits under their representation and were dissatisfied with their negotiating tactics. In fact, in November 2022, about 21 Salinas employees signed a letter to District Council 2 leadership expressing dissatisfaction with the representatives that were assigned to service the Salinas contract, accusing them of neglect. (Tr. 310–312, 412–413, 472, 610; GC. 22)

C. Workers present Respondent with a petition supporting Teamsters Local 856

On October 11, a group of about 10 to 12 day shift employees stopped Louter as he was coming out of his office and presented him with a petition. The petition was signed by 83 Salinas plant employees and reads as follows:

> We the Workers at Westrock-Salinas want a real voice and a real Union. We want to improve our wages and benefits. We know that the only way we can achieve that is through collective action with a democratic union.

[8] All subsequent dates herein are in 2023 unless otherwise noted.

> Therefore, through this petition, we notify our employer, Westrock-Salinas, that we do not support the Printing Package Production Workers Union (PPPWU) or GCC District Council 2 to represent us in collective bargaining.
>
> Through this petition, we further authorize the International Brotherhood of Teamsters (IBT) and Teamsters Local 856 to represent us in negotiations for better wages, hours, and working conditions. We demand that Westrock recognize our Union, the IBT, and Teamsters Local 856.

Jesus Felix (Felix), who had worked at the Salinas plant for 29 years, presented the petition to Louter, as the two had a good relationship. A video of the interaction shows Felix reading the petition to Louter, while other workers formed a type of circle around them. Felix told Louter that the employees no longer wanted District Council 2 representatives on the premises, and asked the company to respect their wishes. Louter responded by saying "okay" and thanked the employees. After Felix went home for the day, Louter telephoned him and asked "what was that all about?" (Tr. 479) Felix told Louter that employees did not want District Council 2 to represent them anymore as they had been losing benefits under their representation. He also told Louter that they no longer wanted District Council 2 representatives present on the shop floor, and asked Louter to let Wride know. (Tr. 474–479, 564–564; GC. 26, 27, 28)

D. Pulido tells Wride to keep District Council 2 representatives out of the plant

Section 31 of the DC 2 CBA has a union access clause permitting business agents or "other duly authorized representatives" to visit the Salinas plant for purposes of administering the agreement, provided that they first notify Respondent before entering the facility. (J. 4) According to Gaston, WestRock's position regarding the upcoming election was to remain neutral and to not engage in campaign activity. (Tr. 165–166) As such, Respondent abided by the access clause, and continued allowing representatives of District Council 2 to visit the plant in the weeks preceding the election.

Sometime in mid-October, Pulido saw District Council 2 representatives in the Salinas plant trying to speak with a machine operator, but the operator waved them away. A few minutes later, Pulido spoke with the employee and then went to Wride's office. Pulido told Wride that District Council 2 representatives were harassing employees, that it could escalate, and if something happened nobody should be disciplined. Wride told Pulido that the District Council 2 representatives had a right to be there, and were allowed in the plant. Pulido responded to Wride by saying "yeah," but told him that they did not have a right to harass people. (Tr. 341) Pulido believed that, after the petition was filed, District Council 2 representatives were campaigning, as opposed to conducting a normal plant walkthrough. (Tr. 339–341, 394–395, 419–420, 423)

In the run-up to the election, Felix testified that he saw District Council 2 representatives passing out flyers on the shop floor, which had not previously occurred at the plant. Felix also said that sometimes WestRock supervisors walked around with the representatives, "escorting them from machine to machine," while they passed out leaflets. (Tr. 487) According to Felix, he complained to Louter and Wride at various times about the presence of District Council 2

representatives at the plant, and the fact that the workers did not want them there, but said it was to no avail. (Tr. 394-395, 423, 486–488, 491–494)

One such flier was introduced into evidence. Felix testified that the day after he presented Louter with the employee petition, District Council 2 representatives were passing out leaflets around the plant and in the employee break room. Felix said he was in the breakroom when District Council 2 representatives came in and handed out the flier. (Tr. 480) The leaflet is titled "DC2 WESTROCK MULTIPLE RATIFIED," and said "Don't believe the TEAMSTER LIES—Here are the FACTS." (GC. 38) The document goes on to discuss how District Council 2 "members of the WestRock multiple" had overwhelmingly ratified a contract and stayed in the "DC2 Union Insurance Plan," when given two options: (1) the "DC 2 Union Insurance Plan" with 0% increases in the first 3 years of the agreement, and a $6.00 per month increase in the fourth year; and (2) the "Company Plan" which included an "opt out" from the union plan with up to a $12,000 buyout. The flier said that under both options, the District Council 2 contract included a 14% general wage increase over the term of the four year agreement. The flier ended by asking Salinas employees to have the Teamsters "GUARANTEE YOU THIS OR BETTER!" and to "GET IT IN WRITING!!" (Tr. 479–480, 544–546; GC. 38)

E. Felix gets suspended

On October 25, Flores was in the general break room when he saw a District Council 2 representative named Joe passing out election related leaflets. (Tr. 624) Flores told Joe that he could not pass out the leaflets and Joe responded saying "fuck you; I can do whatever the fuck I want to do." (Tr. 617) Flores left the room and went directly to Wride's office. (Tr. 618) Flores asked Wride to tell Joe to stop passing out leaflets as it was within 48 hours of the upcoming representation election. Flores was under the mistaken belief that union representatives were prohibited from campaigning 48 hours before the election.[9] Wride responded by saying that he would take care of it. (Tr. 617–619, 624)

After his conversation with Wride, Flores went to the maintenance break room to speak with Pulido about what happened. There were a number of employees present in the break rook at the time including Felix. Flores told Pulido what had occurred with Joe, and that he had reported the incident to Wride. Pulido testified that after this conversation, he also reported the matter to Wride, telling him that if something were to escalate nobody should be disciplined because Wride was allowing this to occur. (Tr. 344–345, 423, 495, 467, 606–607, 621–622, 627)

According to Felix, after he heard Flores explain what had occurred, he went to the shipping department office where he found Joe, along with another District Council 2 representative and a number of other coworkers and supervisors. Felix testified that he told Joe,

[9] In *Peerless Plywood Co.*, 107 NLRB 427, 429 (1953) the Board established an election rule prohibiting employers and unions from making election speeches on company time to massed assemblies of employees within 24 hours before an election. However, the Board specifically held that this "rule will not interfere with the rights of unions or employers to circulate campaign literature on or off the premises at any time prior to an election," or prohibit any other legitimate campaign propaganda or media. Id. at 430. See also *Chicopee Mfg. Corp.*, 116 NLRB 196, 197–98 (1956) (noting that the Board in *Peerless Plywood* specifically exempted the circulation of campaign literature from the 24-hour rule).

"you're not supposed to be here on the premises 24 hours before voting."[10] (Tr. 501) Joe replied saying that he could do what he wanted, and that Felix was a nobody. Felix said that he then grabbed the cuff of Joe's sleeve with his forefinger and thumb, told Joe to "get the fuck out of here," (Tr. 581) and that he was going to try to escort him out. According to Felix, a supervisor named Brandon Flemming (Flemming) stood up from his seat in a panic, lost his balance, and knocked Joe down; Flemming then stepped between the two of them. Felix said Flemming proceeded to walk him out of the office, saying "it's not worth it;" Felix replied saying that he "just wanted to escort the man out." (Tr. 516) After leaving the shipping department office, Felix testified that he went back to work until he was paged through the company intercom system and told to report to Louter. When he went to Louter's office, Felix said that Louter sent him to see safety manager Soto. Felix did so, and Soto asked him to write a statement about what had occurred. Felix was suspended from work on October 25. (Tr. 495, 497, 501, 507–519; GC. 40, 42, 43; R. 9)

Flemming testified that he was in the shipping office with his back to the door when he heard someone say "get the fuck out . . . of here." (Tr. 652) When he turned around, Flemming said he saw Felix "kind of grabbing" Joe. (Tr. 642) According to Flemming, he then walked between Felix and Joe, hugged Felix, and escorted him to Soto's office; Soto told Flemming to write a statement. (Tr. 642–643, 650–652, 655; GC. 40)

F. The election results and the Union's information request

The NLRB representation election occurred on October 26, as scheduled. A total of 99 ballots were cast. Of these, Teamsters Local 856 received 88 votes, District Council 2 received three votes, and one person voted against representation by either union; seven ballots were challenged.[11] No objections to the election were filed, and on November 8, a Certification of Representative issued certifying Teamsters Local 856 as the collective-bargaining representative of Respondent's Salinas employees.[12]

Richie Andazola (Andazola), a business agent for Teamsters Local 856, was assigned to represent the bargaining unit at the Salinas plant. On October 30, Andazola sent Wride an email notifying him that Teamsters Local 856 was seeking to start negotiations for a collective-

[10] Felix also believed that union representatives could not be on the premises electioneering within 24 hours of the election. (Tr. 495, 588)

[11] I take administrative notice of the Corrected Tally of Ballots dated October 26, 2023. *Rockwell Automation/Dodge*, 330 NLRB 547, fn. 4 (2000) (Board takes administrative notice of the case number and tally of ballots in a related representation proceeding).

[12] The bargaining unit description in the certification reads as follows: All full-time and regular part-time employees in the classifications of 1021 Corrugator, Singlefacer Operator, Knife Operator, Doubleback Operator, Stacker Operator, 3122 & 3132 Flexo Folder Gluer, Operator, Assistant Operator, Continuous Run Operator, Order Readiness Operator, Die Repair/Die Mounter, 4561 Rotary Die Cut Operator, Assistant Operator, Continuous Run Operator, Order Readiness Operator, 5411 & 5412 Andax (Wetlock) Operator, Assistant Operator, Starch/Baler/Waste Starch Maker/Baler, Roll Clamp Operator, Forklift Operator, Shipping Clerk, Strapper (Bander) Operator, Production Worker Miscellaneous-New Hire, Maintenance "E" Mechanic, MCT-1 Mechanic, Mechanic, Helper, Oiler/Greaser, Janitor, Converting & Corrugator Working Foreman, [and] Shipping Working Foreman employed by the Employer at its facility located at 1078 Merrill Street, Salinas, CA 93901; excluding all other employees, confidential employees, office clerical employees, guards, and supervisors as defined by the Act.

bargaining agreement. The email included nine separate information requests, including the following:

> 9. The specific demographics of all employees in the bargaining unit specifying the medical benefits they receive and specific coverage (employee only, plus one, spouse, employee plus dependents, etc.).

The email further cautioned Respondent against making any unilateral changes without providing the Union an opportunity to bargain, and asked Wride to please provide dates when Respondent can begin bargaining. Wride forwarded the email to Gaston, who replied to Wride on November 1, with a copy to Colucci, saying that he was going to set up a meeting to discuss Andazola's email. During his testimony, when asked what he did in response to Andazola's email, Gaston replied "at the time nothing." (Tr. 167) On October 30, Andazola also sent a separate email to Wride informing Respondent that the Union had appointed Pulido to be the chief shop steward at the Salinas plant. (Tr. 29, 61, 166–167, 348; GC. 7; J. 5)

G. Respondent offers to lift Felix's suspension

Although there was no contract in place between Respondent and Teamsters Local 856, the Union submitted a grievance over Felix's suspension. On October 31, a meeting was held between Wride, Felix, and Pulido; shipping clerk supervisor Oscar Robles (Robles) was also present. Respondent presented Pulido, as the chief union steward, with a letter agreement offering to lift Felix's suspension. Under the terms of the agreement, in lieu of discharge, Felix would receive a disciplinary suspension and return to work on November 1. Pulido refused to sign the agreement on behalf of the Union because it was non-precedential and could not be used in future arbitrations. Pulido also advised Felix to reject the agreement. Felix agreed and the agreement was rejected. At the meeting, Felix gave Wride a supplemental written statement about what had occurred on October 25. (Tr. 353, 423–425, 461, 487, 525–526, 560–561, 590–592; R. 9; GC. 30–31, 43)

H. Employees walk off the job—both Pulido and Felix are fired

Pulido was suspended over an incident that occurred in safety manager Soto's office on November 1. On that day, Pulido went to Soto's office with a coworker who had complained about having back problems. The worker had brought a chair to work so he could sit down while hand-tying items on a low-slung conveyor belt; a supervisor removed the chair. Respondent accused Pulido of disorderly conduct during his meeting with Soto by exhibiting aggressive and intimidating behavior towards her including yelling, misrepresenting Soto's statements, making demeaning remarks, and becoming increasingly combative. Pulido denied the allegations. Later that day Pulido was called into a meeting and was suspended; Wride escorted him out of the Salinas plant. (Tr. 354, 358–362; GC. 32)

On November 2, Andazola went to the plant and met with Pulido who was outside the building. As the morning shift arrived for work, Andazola updated them regarding Pulido's suspension. While he was on Respondent's property Andazola also spoke with Wride. He told Wride that employees were upset about the way Pulido was treated and wanted him to return to

work. Wride declined to lift Pulido's suspension. Andazola discussed Wride's response with the workers and they refused to start working without Pulido. Other employees who were working inside the plant learned about what was happening; they turned off their equipment and walked off the job. Later that day Wride issued a memorandum addressed to "Union Hourly Employees," with the subject matter that read "Union Employee Work Stoppage." (GC. 10) The memo contains the five following bullet points:

- Yesterday, an employee was placed on a temporary suspension pending investigation. This was due to his behavior and the investigation is ongoing.
- Employees who are currently protesting the described temporary suspension are welcome to come back to work at this time.
- The Company will not be paying employees for time not worked.
- Employees choosing not to return to work are directed to exit the plant and its property and will be considered as engaged in a work stoppage.
- Employees engaged in a work stoppage are not entitled to compensation.

Andazola and the Salinas employees had been congregating near a bench that was on company property, but outside the plant. After Wride's memo, they moved to the street and set up a picket line. (Tr. 68–70, 75–79, 84–86, 141–143, 153, 527; GC. 10)

The morning of November 3, Andazola went to the Salinas facility; Pulido was there when he arrived. Andazola told Pulido that he had filed a charge with the NLRB over what had occurred. Pulido replied saying that he did not want the strike to continue, as he believed it might have a negative impact on his coworkers. Pulido then asked Andazola to have the workers return to work, and said they would pursue the matter through the NLRB process. Everyone agreed and the picket line ended. When Wride arrived at the plant Andazola told him that everyone would be returning to work. Andazola then asked Wride if they could speak about other issues, specifically Felix's suspension. (Tr. 87, 141)

Felix, who had been participating in the picketing, was standing on the street the morning of November 3. He testified that Andazola had called him the night before and told him to be at the plant that day; both of them believed that Felix's suspension would be rescinded. After the Salinas employees ended the picket and returned to work, Andazola told Felix they would be meeting with Wride; both of them walked into the plant. As they entered, Felix said that he clocked-in and spoke with a supervisor named Josh who greeted Felix with a smile and said "hey, are you getting your job back;" Felix replied saying, "I hope it goes the way you said it." (Tr. 528–529) Eventually Andazola and Felix went upstairs to a conference room and met with Wride and Robles. Wride handed Felix a termination letter. The letter said that Felix was fired for violating Respondent's workplace violence policy and the company's rules on fighting and disorderly conduct. Felix testified that he read the letter and told Wride "all this happened because you allowed District Council 2—to be on the premises when we asked you [not to], and you did not respect our wishes." (Tr. 531) Felix then told Wride that he would get legal counsel and sue him personally. After Felix and Andazola walked back downstairs, Josh asked Felix if he got his job back. Felix said he had been terminated and testified that Josh replied saying, "I'm sorry . . . I thought you were getting your job back." (Tr. 533) (Tr. 87, 91, 526–528, 530–533, 562, 593–594; GC. 44)

Pulido learned about his termination via a letter he received in the mail dated November 7. The letter says that Pulido was terminated for the incident that occurred in Soto's office on November 1. (Tr. 367–368; GC. 32)

Gaston was aware of the walkout at the Salinas plant, and he participated in the decision to terminate Pulido. Gaston said that Pulido's termination was treated with a high degree of sensitivity because he was the chief shop steward and because of the employee walkout. According to Gaston, multiple individuals were also involved in the decision making process. He described the final decision as "a consensus" but said that ultimately deference is paid to Wride's position on the subject, as he is the plant manager. (224–228, 241–244, 249–251)

Gaston was also involved in the decision to fire Felix. Gaston testified he was part of the group that reviewed the overall situation and was part of the "consensus" process, which he said was similar to Pulido's. (Tr. 252–255)

I. DC 2 cancels Salinas employee health insurance

1. Salinas employees health insurance coverage under the DC 2 CBA

Section 22 of the DC 2 CBA discusses employee health and welfare. Section 22.1 calls for Respondent and District Council 2 to participate "in the Printing Specialties and Paper Products Joint Employer and Union Health and Welfare Fund" (DC 2 Insurance Plan), with WestRock making monthly contributions to the plan to be paid "by the 15th of the month following the month in which they" were earned, for "each employee who works for 80 or more hours;" the contributions are for the purpose of providing medical, dental, drug, and vision, health and welfare benefits for employees and their dependents. Under the Section 22.2 of the DC 2 CBA, the specific benefits provided under the DC 2 Insurance Plan, and the rules of eligibility, were to be decided by "the Board of Trustees" of the plan and "described in the summary plan description booklets and other materials published by the Trustees of the Fund" (Summary Plan). The Summary Plan, including amendments and addenda, is over 500 pages long. Gaston testified that he believed the DC 2 Insurance Plan had been in place at the Salinas plant for decades. (Tr. 184; J. 3, 4)

The DC 2 Insurance Plan included health, dental, vision, and prescription drug coverage under one premium. It was described as a "composite plan," in that every employee paid the same premium regardless of the number of dependents that were enrolled in the plan. This contrasts to a "tiered plan," where employees pay a different premium amount depending upon the number of dependents that are covered by the plan; each different contribution tier covers a different number of covered dependents. Under the terms of the DC 2 CBA employees became eligible for medical benefits 90 days from the date of hire. (Tr. 43–44, 262, 264; J. 4, 7)

The insurance premium sharing formula, split between Respondent and employees, is specifically set forth in Section 22.3 of the DC 2 CBA. This section, which is bolded in the contract, reads as follows:

Effective January 1, 2021, the Premium Sharing formula shall be modified to provide 80% paid by the Company and 20% paid by the Employee.

In practice, under the DC 2 Insurance Plan premiums were deducted weekly from employee paychecks. Each Salinas employee paid $325.91 per month in premiums, and Respondent paid $1,303.64 per employee, per month. The total monthly premium for each worker under the DC 2 Insurance Plan was $1,629.55. Finally, Section 22.4 of the DC 2 CBA states that, if the plan's trustees establish a new tiered structure during the term of the contract, the company and employee contributions to the new tiered structure will be restructured so "that the total annual Company cost sharing amount remains the same." (J. 4, p. 14) (Tr. 262–263, 675–676)

The Summary Plan contains a section titled Loss of Eligibility–Employer Withdrawal. This section states that "if your employer withdraws from the [DC 2 Insurance Plan] for any reason, including . . . its failure to have a signed collective bargaining agreement in place with the participating Union, your eligibility will terminate on the final day of the month in which you last worked 80 or more hours before the date of the employer withdrawal." (J. 3, p. 8)

2. DC 2 informs Respondent that insurance coverage is being cancelled

Gaston testified that during the morning of November 6, he received a "courtesy call" from an executive officer at District Council 2 informing him that Salinas employee insurance coverage was cancelled, retroactive to November 1, because of the election outcome.[13] Gaston said that the District Council 2 was adamant that the plan documents required cancellation. According to Gaston, he was surprised about the immediate cancellation, as he thought employees would continue to receive coverage for up to three months; he also believed they would be eligible for COBRA coverage. Later that afternoon, Respondent received a letter from the DC 2 Insurance Plan saying that, as a result of the decertification election, insurance coverage for employees terminated on October 31, without eligibility for COBRA coverage as a "withdrawal" was not a COBRA qualifying event. (Tr. 167–169, 185, 264–265; J. 6)

It appears that the letter saying employee benefits ended on October 31 was first sent to Colucci, who then emailed it to Gaston. Gaston responded to Colucci's email saying he "will set up a meeting for tomorrow" and inform corporate benefits. After receiving the notification from Colucci, Gaston said that he had various discussions with corporate benefits, which is "the group that sets the bargaining parameters around benefits . . . even in an interim situation." (Tr. 170–171) Gaston testified that he also spoke with Thomas and Lapidus, and that he prepared a written proposal for the Union. (Tr. 170–171; J. 1, 7; R. 1)

J. Negotiations between Respondent and the Union for an insurance plan

1. Gaston's November 7 email to Andazola

[13] The fact that the representation election had not yet been certified by the Board did not come up in this conversation. (Tr. 266–267) Nor does it seem to have been raised by any party at any point. See *Presbyterian Hospital in the City of New York*, 241 NLRB 996, 998 (1979) (violation for not remitting employee dues to union during the period between the decertification election and the certification of results, as the Board's general rule is that election results are not effective until certification.).

On November 7, Gaston sent Andazola an email with the subject "Union Employee Medical, Dental, and Vision," where he proposed that Salinas employees move into a WestRock company insurance plan (Consumer Choice Plan) which had four distinct tiers. Each tier came with a different premium and the employer/employee cost sharing percentage differed from the 80/20 split set forth in the DC 2 CBA. In the email Gaston wrote:

> Please see the attached letter concerning Union employee medical, dental and vision coverage. The second attachment contains key information specific to the Company plan. Please contact me directly if you have any questions or would like to discuss further.

The letter Gaston attached to the email is dated November 7, and is addressed to Andazola as the Union's representative. It reads as follows:

> As you probably know, the medical, dental, vision and prescription drug plan has been cancelled for the union hourly employees at the Salinas plant. This was a union controlled benefit plan, and the Company had no ability to influence the timing of the cancellation. We received notification on November 6, 2023, and understand that this change was effective on October 31, 2023. In addition, this cancellation is not an event covered by COBRA, so the former union plan is not required to offer continuation of insurance coverage.
>
> Recognizing the bargaining process takes time and the Union may have proposals relative to health and welfare, the Company proposes the following:
>
> > 1. Effective as soon as administratively practicable, the Company will place our employees in the Company's medical, dental and vision plan. Please see the attached documents that are intended to reflect the key elements of our plans inclusive of our 2024 rates.
> >
> > 2. The Company understands that the Union maintains its right to present any type of proposal during the upcoming bargaining process inclusive of medical, dental and vision proposals.
>
> The Company is concerned about employees not having access to health and welfare coverage and would like to provide such coverage as soon as possible. Please advise if this is an acceptable course of action.

(Tr. 31, 109–110, 171, 267–269; J. 7; J. 20)

The letter included three separate attachments. The first is titled "WestRock Medical, Dental and Vision Proposal Salinas Container," and contains summaries of Respondent's medical, dental, and vision proposal. The "medical" section contains the following bullet points:

- Offer the Consumer Choice and Consumer Choice II Plans in the same plan design offered to Salaried/non-union Hourly employees in four (4) enrollment tiers.
- The Consumer Choice II Plan will only be offered during Annual Enrollment.
- Implement the spousal surcharge for the Consumer Choice Plans as follows.
  - $125 per month
- Implement the following employee cost share for the Consumer Choice Plan.
  - 20% + wellness
- The Company's annual HSA/HRA contribution for the Consumer Choice Plan shall be 25% of the deductible.
- The same Company Wellness Program that exists for salaried/non-union locations will be implemented effective for employees enrolled in the Consumer Choice and Consumer Choice II Plans. In connection with the Wellness Program, employee contributions to the Consumer Choice Plan and Consumer Choice Plan II will increase by $600 annually.[14]

Regarding the employee dental plan, according to the attachment, Respondent proposed implementing "the WestRock dental plan which will be offered in four (4) enrollment tiers," with employees sharing 50% of the premium cost and the benefit levels adjusting annually "as long as the adjustments are identical to salaried/non-union plans." For vision benefits, the attachment states that the "Company vision plan will be available, and employees pay the full cost," which would be subject to change annually during open enrollment; the vision plan had four enrollment tiers, and any discount programs offered by "vision carriers" under the plan were to "be available to employees." (J. 7)

For all plans, the November 7 attachment says that employees would be eligible for benefits "two months from [the] date of hire." As for the termination of benefits, in the event of a layoff, benefits would remain available for the "remainder of the month of layoff plus up to one month," if the employee pays the applicable benefit costs, at the same rate as active employees. If an employee became disabled, benefits continued "for the remainder of the month of disability plus up to 12 months," assuming the employee continued to pay the active employee insurance premium rate. As for any "union" leave of absences greater than 30 days, the employee would not be eligible to remain on the WestRock benefit plan, and insurance coverage would continue for the remainder of the month, plus one month, if the employee paid the applicable active employee premium. (J. 7)

The second attachment to Gaston's November 7 letter is titled "2024 Medical Plan Design" and includes a summary of the 2024 Consumer Choice Plan costs/payments for the following: Respondent's contribution to an employee health savings account; deductible; out of pocket maximum; lifetime maximum; spousal surcharge; coinsurance; office visits; preventative care; emergency room visits; hospital inpatient; generic drugs; and brand name drugs. (J. 7)

[14] According to Gaston, the Consumer Choice and Consumer Choice II plan were identical except under the Consumer Choice II plan each year employees could borrow double the amount of the annual Health Savings Account contribution and pay the amount back over 12 months, plus interest, via a payroll deduction. (Tr. 268) For ease of reference, both plans will be referred to as the Consumer Choice Plan.

The last attachment delineates the 2024 monthly premium costs for health, dental, and vision benefits under the Consumer Choice plan, as summarized below:[15]

Health Insurance

				Employee			Annual
	Total	Employee	%	w/Wellness*	%	Employer	HSA $*
Employee (EE)	$646.53	$179.31	28%	$129.31	20%	$483.20	$400.00
EE+ Spouse	$1,551.67	$360.33	23%	$310.33	20%	$1,228.62	$800.00
EE+ Children	$1,163.78	$282.76	24%	$232.76	20%	$910.26	$800.00
Full Family	$2,165.88	$483.18	22%	$433.18	20%	$1,732.70	$800.00
* Assumes employee earns full $600 annual wellness amount and redeems for premium reduction.							
**Company contribution to employee health savings account = 25% of in-network deductible.							

Dental Insurance

	Total	Employee	%	Employer	%
Employee (EE)	$30.56	$15.28	50%	$15.28	50%
EE+ Spouse	$64.47	$32.24	50%	$32.24	50%
EE+ Children	$65.79	$32.90	50%	$32.90	50%
Full Family	$104.40	$52.20	50%	$52.20	50%

Vision Insurance

	Total	Employee	%	Employer	%
Employee (EE)	$7.89	$7.89	100%	$0.00	0
EE+ Spouse	$15.78	$15.78	100%	$0.00	0
EE+ Children	$16.87	$16.87	100%	$0.00	0
Full Family	$26.99	$26.99	100%	$0.00	0

(J. 7; J. 20; Tr. 274–275)

During his testimony, Gaston explained that the Consumer Choice Plan included a "wellness component," through a third-party provider called Castlight. Under this component, employees use an app on their phone and accumulate points for engaging in various wellness related activities, like enrolling in a smoking cessation program. Gastons said that employees

[15] Except for the employee plus wellness percentage, the attachment to Gaston's November 7 letter does not delineate the employee payment percentage for the health, dental, and vision columns. They have been included here for ease of reference.

can use the accumulated points to reduce their insurance premium by about $50 per month, or they can choose to redeem the points for other options including Amazon gift cards. This was a new feature for Salinas employees, as the DC 2 Insurance Plan did not include a wellness component. Participation in the Castlight wellness program was not mandatory, but employees who did not participate in the program would not be eligible for the potential $600 annual insurance premium reduction. (Tr. 271–272)

The Consumer Choice Plan also included a "spousal surcharge" of $125 per month. According to Gaston, this surcharge applied if an employee chose spousal coverage, the spouse had access to their own insurance, but refused coverage and instead chose to be covered by the WestRock Consumer Choice Plan. In such circumstances, the WestRock employee would pay an extra $125 per month as a spousal surcharge. The DC 2 Insurance Plan did not include a spousal surcharge. (Tr. 269–270)

Andazola responded to Gaston's email on November 7, in the late afternoon. Andazola's email reads as follows:

> Matthew, I left you a voicemail. I need further explanation on this notice. Does the company intend to maintain status quo in medical coverage for this bargaining unit? How exactly do members access the new proposed plan? Is coverage retroactive to November 1 to ensure no interruption in benefit?

Gaston replied by email asking about Andazola's availability, and the two agreed to speak the next day at 9:00 a.m. (Tr. 32–33, 53; GC. 3)

Andazola testified that when he received Gaston's November 7 communication, he understood that Respondent was proposing a replacement insurance plan for Salinas employees, and said that he was having discussions with the Union's counsel in an attempt to determine the process going forward, given the situation. According to Andazola, as of November 7, although the situation was "confusing and complicated," he understood that District Council 2 had cancelled the insurance for Salinas employees, whose coverage ended on October 31, and said they were trying to figure out what plan employees would go into as a result. (Tr. 107–110, 124)

2. The November 8, 2023 telephone calls

Gaston and Andazola held two telephone calls on November 8 to discuss replacement insurance for Salinas employees. Both understood that negotiations were for an interim solution until WestRock and Teamsters 856 had an opportunity to negotiate a complete collective bargaining agreement. (Tr. 114–115, 125–126, 171–172, 215)

a. Andazola's testimony

Andazola testified that the first call with Gaston happened around 9:00 a.m. Andazola said that during the call Gaston explained that Respondent intended to move employees into the

Consumer Choice Plan.[16] According to Andazola, he asked Gaston questions to understand the proposed coverage, benefits, and costs to both WestRock and the employees, which Gaston explained. During the call they discussed the fact that under the DC 2 Insurance Plan insurance coverage was mandatory, as employees could not opt-out. They also discussed the over $1,600 per employe monthly premium under the DC 2 Insurance Plan, of which Respondent paid 80% and employees paid 20%. Finally, Andazola said they spoke about the fact that coverage under the "full family tier," of the Consumer Choice Plan was more expensive than what Salinas employees were paying "under the 80/20 split" of the DC 2 Insurance Plan. Andazola said that both he and Gaston said they needed to speak with other people within their organizations and get more information, so they agreed to have another call at 2:00 p.m. (Tr. 33–35)

As for their 2:00 p.m. call, Andazola testified they discussed in more detail the differences between the Consumer Choice Plan and the DC 2 Insurance Plan. Andazola conveyed to Gaston the Union's view that the status quo required Respondent to provide comparable benefits with comparable employee out-of-pocket costs, and his belief that WestRock was obligated to make the same contribution amount to insurance premiums as required under the DC 2 CBA, as this contribution was a type of deferred wages to employees and should remain in place. (Tr. 36)

During the 2:00 p.m. call Gaston said that the majority of the company's 5,500 unionized employees across the country are on the Consumer Choice Plan, which is included in collective-bargaining agreements the company has in other states with other unions. Gaston acknowledged the higher out-of-pocket cost for benefits, and that employees would pay a higher cost if they selected the "full family" tier. They further discussed the different tiers along with their associated costs. Andazola mentioned that another local union, Teamsters Local 853, had a collective-bargaining agreement with Respondent at a plant in Milpitas, California, where employees were covered by a Teamsters insurance plan, which he referred to as "TBT Plan VI;"[17] Gaston also oversees labor relations at the Milpitas plant. Andazola told Gaston that the TBT Plan VI was almost identical to the DC 2 Insurance Plan, but was $8 per month cheaper and said this plan would be an option since it was administered by the same company, Northwest Administrators. Therefore, Andazola said that Northwest Administrators could import the demographics from the DC 2 Insurance Plan and the benefits would be comparable; this would also prohibit the need for a special enrollment, which the Consumer Choice Plan required. (Tr. 36–38) (Tr. 128, 130–131) (Tr. 148–149, 175)

According to Andazola, during the 2:00 p.m. call Gaston was "pretty consistently . . . concerned with a union plan" and explained that Respondent was not interested in a union plan because "companies have no say over the union plan." (Tr. 39) Andazola replied that his understanding of such plans was that a trust consisting of company and union officials have an equal say in the operation of the plan. Andazola testified that Gaston responded saying "that the company is not interested in the union plan." (Tr. 40) (Tr. 39–40)

[16] At times during the hearing the Consumer Choice Plan was also referred to as the "HSA plan" or "HSA proposal." The acronym "HSA" refers to "health savings account." (Tr. 34–35, 40, 147–148, 176)

[17] "TBT" stands for Teamsters Benefit Trust. (Tr. 44)

Andazola summarized the 2:00 p.m. call by testifying that he made three separate proposals during the call. The first was the TBT Plan VI proposal with 80/20 cost sharing. The second proposal was for Respondent to make the same contribution amount per employee as they made under the DC 2 Insurance Plan and apply this amount to the Consumer Choice Plan to reduce employee out of pocket cost. The third proposal involved WestRock taking whatever cost savings it incurred from the lower tiers of the Consumer Choice Plan and applying those savings to the full-family tier so that employees who selected full-family coverage would not have to pay more for coverage than they did under the DC 2 Insurance Plan. Andazola testified that the Union's second and third proposals were unique applications of the Consumer Choice Plan specifically for the Salinas employees, to try and create a situation where Respondent was making the same economic contributions on behalf of employees as they were under the DC 2 Insurance Plan, as an attempt to maintain the status quo, or alleviate the extra cost that Salinas employees faced under the Consumer Choice Plan family tier. (Tr. 40–43, 128, 130–131, 151–152)

According to Andazola, after the 2:00 p.m. call ended he was left with the belief that Respondent was going to move forward with Consumer Choice Plan. When asked what Gaston said that left him with this understanding, Andazola testified:

> [j]ust that, that they were not interested in the alternatives. They're not interested in crafting a different pay model for the Salinas building only, because all the other employees in WestRock have the same contribution model, so they're not going to make any other changes. They'd just move forward with the special enrollment and then applying the plan. (Tr. 41)

Andazola said that the 2:00 p.m. call lasted about 20 minutes. (Tr. 41, 124–125)

b. Gaston's testimony

Gaston confirmed that he and Andazola had two telephone calls on November 8, with the first call occurring at about 9:00 a.m. and lasting around 20 to 30 minutes. Gaston testified that during the first call he and Andazola primarily discussed the proposal Gaston had emailed on November 7. Gaston said that he wanted to make sure Andazola fully understood what Respondent was proposing, so they walked through how the Consumer Choice Plan worked. At some point during one of their conversations that day, Gaston testified that Andazola set forth his position that Respondent had to maintain the status quo on health benefits which he described as providing the same level of benefits at the same cost to employees. (Tr. 171–172, 277)

Gaston's testimony about the 2:00 p.m. call primarily consisted of confirming the accuracy of a November 8 email he wrote to Andazola recapping their conversation. His testimony without the aid of the email was limited to saying that it was probably during the 2:00 p.m. call that Andazola mentioned having a Teamsters health and welfare plan for the Salinas employees. Otherwise, he confirmed the accuracy of what was written in his email. When asked about Andazola's first proposal to the company, Gaston testified that he remembered Andazola being fairly general, saying that the Union was looking for the same type of medical benefits for employees and if there is any savings, then give it back to the workers. During his discussions

and emails with the Union on November 8, Gaston denied that Andazola ever proposed having the Salinas employees covered by the same health and welfare plan being used by Teamsters Local 853 at the Milpitas plant. Gaston also denied telling Andazola that Respondent was going to implement the Consumer Choice Plan. (Tr. 172–175, 279; J. 10)

3. Gaston's email recapping the November 8 conversation and the Union's response

At 3:15 p.m. on November 8, Gaston sent Andazola the following email:

> Hi Richie—
>
> Although we have yet to reach agreement on the medical situation, I appreciate our phone conversations today. The following is your proposal for which I will respond to below. Please advise if I have misquoted you.
>
> > "The Union proposes WestRock maintain current total amount of employer contributions to H&W and provide a comparable benefit.
> >
> > Employees suffer no reduction to status quo in compensation. Any cost savings the employer may experience by moving employees into the employer's medical plan, will be given back to employees to offset increase cost and deductibles".
>
> As stated in our phone conversation this morning, we are aware of our obligation to maintain status quo pending negotiations with you. However, that obligation is excused when it is not possible to maintain. The Company had no control over District Council 2's decision to cancel its insurance covering bargaining unit members, inclusive of timing.
>
> We received notification that insurance was cancelled on Monday, November 6, 2023. This notification included guidance that our last payment was due by November 15th. We had already sent the payment on November 1st.
>
> Regarding our Consumer Choice Plan (CCP) that we are offering to implement as soon as possible, it is the only Company plan that we have. All employees that are on this plan have the same cost sharing format that I included in my previous email.
>
> Although we considered your proposal, we are not interested or obligated to create a separate and unique Company medical, dental and vision plan for a singular location. Additionally, we are not interested in creating a separate and unique cost sharing format for a singular location.
>
> The Company continues to propose the following and believes it to be a reasonable interim solution given the time sensitive circumstances:

> 1. Effective as soon as administratively practicable, the Company will place our employees in the Company's medical, dental and vision plans.
>
> 2. If the Union is agreeable to this, the Company understands that the Union maintains its right to present any type of proposal during the upcoming bargaining process inclusive of medical, dental and vision proposals.
>
> It is apparent that both parties seem to be concerned about employees not having access to health and welfare coverage and we would like to see that change very quickly.
>
> Regarding your question about whether the Company could make its medical plan retroactive to November 1, 2023, I am still working on getting an answer for you. I hope to have an answer by tomorrow.
>
> Regards,
> Matt

According to Gaston, there was nothing within the Consumer Choice Plan that precluded Respondent from having a different cost sharing structure for premiums. He said the company could, in fact, create a different structure for Salinas employees, but they were not "willing to do that," so he rejected any of those types of ideas. (Tr. 278–279; J. 9, 20)

During his testimony Andazola acknowledged making the statements attributed to him by Gaston in the November 8 recap email. However, Andazola said that the email did not include everything that was discussed or proposed that day. Andazola never replied to Gaston saying that he disagreed with what was stated in the email. (Tr. 45–46, 127, 146–147, 173; J. 9)

Andazola responded to Gaston on November 8 by email at 3:57 p.m., thanking Gaston for "your counter proposal," but telling him that "the plan you are proposing to move our members into does not meet the criteria of status quo," because the "benefit level and employer contribution are significantly lesser than the negotiated health and welfare plan our members are currently covered by under the [DC 2] CBA." In his email, Andazola further wrote that the union "counter proposes" moving the Salinas employees "into a Teamsters health and welfare plan, similar in benefits," and with WestRock making the same employer contribution as it made under the DC 2 Insurance Plan. (J. 10) Andazola ended the email by asking Gaston to "[p]lease respond to the union's counter proposal." (J. 10) (Tr. 45. 174, J. 10, J. 20)

4. Gaston rejects the Union's proposed insurance plan

At 4:14 p.m. on November 8, Andazola sent Gaston another email saying that "Northwest Administrators will be sending you the subscriber agreement shortly," and asking Gaston to "[p]lease complete the form and send it back to the plan administrator." (J. 11) At 4:35 p.m. a Northwest Administrators client services manager named Leslie sent Gaston, Colucci, and Niemi,

an email with the subject that read, "Teamsters Local Union No. 856 Health and Welfare Fund." (J. 12) The email reads as follows:

> Good afternoon,
>
> Attached please find information related to the Teamsters Local Union No. 856 Health and Welfare Fund:
>
> - Trust Agreement
> - Subscriber Agreement–REQUIRES SIGNATURE
> - Summary Plan Description (SPD)
> - Direct Pay PPO and Kaiser HMO Summaries of Benefits and Coverage (SBCs)
> - Dental SPD
> - Vision Brochure
>
> In order to move forward with moving the employees into the Teamsters Local Union No. 856 Health and Welfare Fund, we will need to receive a signed Subscriber Agreement, and it will need to be approved by the Board of Trustees.
>
> Please let us know if you have any questions.

All of the documents referenced were attached to the email. It is clear from the documents that the Union was proposing that Salinas employees be covered by the Teamsters Local 856 health and welfare fund insurance plan; Gaston understood the email as such. And, the attached subscriber agreement shows that the Union's proposed insurance plan would be effective retroactively, and commence on November 1. Gaston testified that he never responded to Northwest Administrators with any questions about the plan. (Tr. 47, 177, 282; J. 11, 12, 20)

Gaston replied to the Union's proposal on November 9, by sending an email to Andazola. The email reads as follows:

> Hi Richie -
>
> We have given your proposal consideration. Adopting another Union controlled health and welfare plan is not something the Company is willing to do. Nevertheless and as I have previously communicated, we would obviously consider anything you propose during the upcoming negotiations process. When I was expressing my disappointment in the sudden and immediate cancellation of our employees' healthcare, I communicated to you that this would be one of several reasons why WestRock has resisted new Union plans. With plans such as what you proposed, we have no control over managing the plan, its design, cancellation timing, etc.
>
> Secondarily and not unlike other employers across industry, WestRock desires to have as many employees as possible in the same Plan. Over time, this results in a

positive impact to our healthcare risk pool, which enables us to provide sustainable, quality healthcare that is affordable for our employees.

Our proposal still stands as is. I did receive confirmation that it can be retroactive back to November 1, 2023. We would hold a special enrollment for the Salinas plant, which would likely happen early December. In order to be covered, employees must go through this enrollment process. Once the enrollment period ends, there will not be a second chance for employees to enroll. However, employees that have access to healthcare through other means would not be forced to enroll. Benefit ID cards would be distributed approximately 2-3 weeks after the enrollment period ends and the Company would provide support to employees who need to submit claims once they receive their card.

If the Union's position has changed regarding our proposal, please advise. However, I would appreciate a response even if your position has not changed.

Regards,
Matt

Regarding the "consideration" given to the Union's proposal, when asked what analysis he engaged in to determining whether to accept or reject the Union's proposed plan, Gaston testified that he spoke with corporate benefits about it, and reviewed the subscriber agreement, which he said "is our main reason for not wanting to enroll in another union medical plan." (Tr. 178) Gaston said that Respondent's objections to the subscriber agreement was that it gave "all control over to a board of trustees," and therefore WestRock has "no control over managing the plan, the plan design, or cancellation timing." (Tr. 178) Also, Gaston testified that Respondent's "overall strategy . . . is to place everybody in a singular plan to manage, to the extent, we can the largest risk pool possible, which over time helps with controlling costs for everyone." (Tr. 178)

Gaston testified that out of the company's 270 facilities, only three have a union multi-employer insurance plan; this includes the company's Milpitas plant. For two locations, the union plan is closed and new hires are covered by the Consumer Choice Plan. For two other facilities, Respondent offers both a union insurance plan and the Consumer Choice Plan, but employees choosing the union plan must pay the cost difference. (Tr. 289) As for the costs associated with the proposed Teamsters Local 856 insurance plan, Gaston testified that it cost "exactly the same in terms of the DC 2 plan," and that the monthly premium was "exactly the same." (Tr. 181–182, 280; J. 13)

Regarding Gaston's November 9 email, Andazola testified that Respondent's position had not changed from its initial offer on November 7. Andazola said that he understood the email to be "Gaston formally restating what he had said verbally at the end of our phone call prior." (Tr. 50)

Andazola replied to Gaston with an email a few hours later writing that the "Union's proposal is for the company to fulfill its obligation to maintain the status quo." (J. 14) Andazola further wrote that the Union's proposal did not require WestRock to pay any more in medical

contributions than what the company "was required to contribute under the existing agreement," and that WestRock's proposal to move Salinas employees into a company plan "is not status quo," as they were covered "by a union plan." In the email Andazola said that Respondent was "free to propose any plan it chooses in negotiations, however until we reach a successor agreement, WestRock must continue to make the same contributions to a union plan." Andazola ended the email by asking Gaston to complete and return "the forms sent to you yesterday," and stated that he hoped Respondent was not trying to "capitalize on this unfortunate situation." Finally, Andazola wrote that the livelihood of employes and their families "is not a bargaining chip," that the parties needed "to act quickly and do the right thing," and that "WestRock needs to do the right thing for their employees." (J. 14; Tr. 50, 135)

5. Gaston's November 10 emails to Andazola

Gaston responded to Andazola at 6:52 a.m. on November 10. Gaston's email reads as follows:

> Thanks for the response. I do want to correct one of your statements—our obligation to maintain the status quo is not a requirement to maintain the same contributions to a "union plan". Maintaining the status quo would mean continuing to contribute to the District Council 2 plan—which as we both know is not possible and we are therefore fulfilling our obligation to bargain with you over a replacement plan.
>
> That said, it is apparent that both the Union and the Company are unwilling to move from their positions on how to handle this difficult situation. Please correct me if you disagree. Given the urgency of the situation and the logistics involved, it is our intent to proceed with the implementation of our medical, dental and vision plan. As communicated, we will ensure that coverage will be retroactive to 11/1/23 and we will work towards a special enrollment that will hopefully occur in early December. I will share more information as it becomes available.
>
> Regarding your information requests, Jennifer Colucci (Regional Human Resources) will be providing you a response specific to both Jesus Felix and Frank Pulido today. I will also be able to provide a partial response specific to your bargaining related request. (J. 15)

At 6:56 a.m. on November 10, Gaston forwarded to Lapidus, Tinkoff, Thomas, Wride, and Colucci, the email he sent to Andazola writing, "Info–We can discuss this and next steps during our 9:00 a.m. call." (GC. 15) At 7:03 a.m. Gaston emailed the same company officials a "Draft Medical Update Communication," and wrote "we can also discuss the attached during our 9 am. call. However, we may not be able to post this until Monday. I can explain during our call." (GC. 14) The document attached to this email was a draft of an announcement to employees saying that the WestRock was implementing the Consumer Choice Plan. (Tr. 209–212, 217–218; GC. 14, 15; J. 17)

Regarding the status of negotiations as of November 10, Gaston testified that his understanding was that once the Union "modified their proposal to this Teamsters union plan, that's where they were at . . . and they didn't move off that position." (Tr. 179) And, Gaston said WestRock's position as of November 10 was that they wanted the Consumer Choice Plan, which was the "only company plan that we have." (Tr. 179)

Gaston had a telephone call with Respondent's officials the morning of November 10. Gaston testified that he relayed to them his belief that the parties were at impasse, but told them he had not yet communicated this to Salinas employees because he wanted to give Andazola "an opportunity to disagree with me." (Tr. 214–215) Regarding the statement in his November 10 email that "both the Union and the Company are unwilling to move from their positions," Gaston testified that Andazola never disputed this characterization. (Tr. 179) Gaston said that he believed the parties were at impasse because they were "stuck on our positions." (Tr. 180) According to Gaston, during his November 10 call with company officials, he recommended that they wait until Monday, November 13, to see if Andazola expressed any movement in the Union's position. (Tr. 215) As it turns out, Friday, November 10 was the public holiday for Veterans Day,[18] which was on Saturday, November 11.[19] Gaston admitted that he never considered the Veterans Day holiday, nor did he consider whether the Union's offices were closed for Veterans Day. Other than his November 10 email, Gaston did not reach out to Andazola between November 10 and November 13. (Tr. 179–180, 214–215, 283)

Andazola confirmed that he never responded to Gaston's November 10 email. However, Andazola testified that he did not agree with Gaston's characterization that the parties were unwilling to move. According to Gaston, the Union was willing to move, but their concern was "that employees have as close to status quo as we can reach for level of benefit and cost of coverage." (Tr. 51) Andazola also said that, as of November 10, "[t]he company had their proposal, and that was our proposal," referring to the Teamsters Local 856 insurance plan, and "[t]hat's it." (Tr. 136) However, he further testified that the Union never withdrew its proposals that involved altering the Consumer Choice Plan by having WestRock make the same economic contribution on behalf of employees as it did under the DC 2 Insurance Plan, or by taking cost savings from the lower tiers of the Consumer Choice Plan and applying them to the family tier. (Tr. 50–51, 137–138, 152–153)

6. Gaston responds to the Union's information request

On November 10, at 5:05 p.m., Gaston sent Andazola an email partially responding to the Union's October 30 information request. Gaston attached to the email corrective actions Respondent had issued in the previous year, and said that WestRock did not have any wage/salary plans or job descriptions to provide. Gaston also wrote in the email that Collucci had requested fringe benefit information from the corporate benefits department, but they had yet to receive the documents. (J. 5, 16, 20)

[18] See *Parke v. Delta Air Lines, Inc.*, No. 6:23-CV-2221-JSS-UAM, 2025 WL 487806, at *4 (M.D. Fla. Feb. 13, 2025) (noting that in 2023, Veterans' Day was observed on Friday, November 10).

[19] See 5 U.S.C § 6103 (a), (b)(1)(A) (stating that Veterans Day is a legal public holiday that falls on November 11, and that if a holiday falls on a Saturday, the Friday immediately before is considered the legal public holiday).

Regarding employee health insurance, in the Union's October 30 information request it asked for, "[t]he specific demographics of all employees in the bargaining unit specifying the medical benefits they receive and specific coverage (employee only, plus one, spouse, employee plus dependents, etc.)." (J. 5) In his November 10 email, Gaston stated that "[r]egarding medical demographics, we did receive the following information sometime in 2023: (1). Single: 46; (2). Two Party Enrollment: 22; (3). Family: 37." (J. 5, 16, 20)

7. Respondent implements the Consumer Choice Plan

On November 13, Wride issued a memorandum to Salinas bargaining unit employees notifying them that WestRock was implementing the Consumer Choice Plan.[20] The subject line of the memo, which was posted at the Salinas plant, reads "Medical, Dental and Vision Update." The memo says that Respondent and the Union "have been making a good-faith effort to negotiate an interim health and welfare solution," but that after "numerous attempts by both parties, it became apparent that we would not be able to reach agreement." Therefore, because of "the urgent circumstances, the Company has elected to proceed with the implementation of its medical, dental and vision plan," which requires a special enrollment for everyone who wants coverage. The memo states that coverage will be retroactive to November 1, and that the timing of the change was not ideal as neither the company nor the Union had any control over the cancellation of the previous insurance plan. The memo also notes that the parties had yet to start negotiation for a new collective bargaining agreement, and that both Respondent and the Union "have the legal right to make proposals during that process, including health and welfare proposals." (J. 17) (Tr 219–221, 283)

Gaston testified that it was important to proceed with the implementation of the Consumer Choice Plan on November 13, because "[t]here was a sense of urgency." He said that employees did not have health insurance, and they were asking "what's going on with healthcare. I need to know what's going on. We don't have it . . . what's the solution?" (Tr. 180)

On November 14, the Union filed a charge with the NLRB regarding the interim employee insurance bargaining. (GC. 1(g)). On the same day,Teamsters Local 856 issued its own memorandum to Salinas employees. In the memo, the Union wrote that, upon notification that District Council 2 had terminated the insurance plan for Salinas employees, the Union provided a proposed resolution to seamlessly move workers into a Teamsters Local 856 medical plan that provided comparable coverage, but WestRock rejected that proposal, along with all other Union proposals and "unilaterally decided to move all WestRock Salinas employees into a WestRock company medical plan, retroactive to November 1." The memo informs employees that the Union has filed an unfair labor practice charge with the NLRB over the implementation, which it believed was "a violation of the employer's obligation to maintain status quo after an NLRB election." In the memo the Union asked employees to follow all enrollment guidelines provided by Respondent and to save their receipts for all medical expenses, while the union pursued "charges to maintain status quo and bargain for better benefits in our successor agreement." (J. 18)

[20] The memorandum refers to "the company's insurance plan." (J. 17) There is no dispute that Respondent was referring to the Consumer Choice Plan.

Throughout the entirety of their negotiations, the only proposal WestRock presented was the Consumer Choice Plan, which Gaston confirmed resulted in cost savings for the company, as the total premium paid by WestRock was less than what it was paying under the DC 2 Insurance Plan. And, as of the date of the hearing, the Consumer Choice Plan was still in place at the Salinas plant. (Tr. 148) As for employee participation in the plan, out of 102 employees, 40 chose to forego insurance in 2024, and 35 chose no insurance coverage in 2025.[21] Under the DC 2 Insurance Plan coverage was mandatory. Thus, the fact employees chose to forego insurance coverage resulted in additional cost savings.[22] (Tr. 148, 153, 280, 292)

II. ANALYSIS

A. The discharges of Pulido and Felix

The Complaint alleges that Felix and Pulido were terminated in violation of Section 8(a)(3) and (1) of the Act. On the last day of the hearing, Respondent and the Union reached agreement on terms of a non-Board settlement resolving these allegations, which both Pulido and Felix supported. Applying *Independent Stave*, 287 NLRB 740 (1987), the non-Board settlement agreement was approved at the hearing, over the government's objections, and Cases 32-CA-329521, 32-CA-329812, and 32-CA-330242 were remanded to the Regional Director of NLRB Region 32 to monitor compliance with the terms of the agreement and to take all other appropriate action. (R. 11, 12; ALJ. 1)

B. Bargaining over the interim employee insurance plan

1. Legal Standard

a. The DC 2 CBA as the status quo

With limited exceptions not applicable here, a "collective bargaining agreement survives its expiration date for purposes of marking the status quo as to wages and working conditions." *NLRB v. Carilli*, 648 F.2d 1206, 1212 (9th Cir. 1981). And, an "employer is required to maintain that status quo following the expiration of the collective bargaining agreement until the parties negotiate a new agreement or bargain to good-faith impasse." Id. See also *Altorfer Machinery Co.*, 332 NLRB 130, 162 (2000). The duty to maintain the status quo is statutory, not contractual. *Pittsburgh Post-Gazette*, 368 NLRB No. 41, slip op. at 2–3 (2019); *Wilkes-Barre Hosp. Co., LLC v. NLRB*, 857 F.3d 364, 369 (D.C. Cir. 2017) (obligation to maintain the status quo is statutory).

In situations where an incumbent union is challenged by another labor organization, and the challenging union prevails and is certified, the contract with the incumbent union becomes

[21] In both 2024 and 2025 there were 3 employees who were "pending new hire enrollment," that are not included in these numbers.

[22] Considering that the monthly insurance premium under the DC 2 Insurance Plan was $1,629.55, the fact some employees chose to forego coverage under the Consumer Choice Plan resulted in a monthly premium savings of $65,182 in 2024 (40 x $1,629.55) and $57,034.25 in 2025 (35 x $1,629.55). Based upon the premium sharing formula in the DC 2 CBA, 80% of the monthly savings ($52,145.60 in 2024 and $45,627.40 in 2025) benefited Respondent directly.

"void" in the sense that the successful intervening union must be afforded an opportunity to negotiate a new contract; however "the employer must abide by the then existing terms of employment until such time as it reaches an agreement with the new union or a lawful impasse occurs." *More Truck Lines, Inc.*, 336 NLRB 772, 773 (2001) enfd. 324 F. 3d 735 (2003) (citing *NLRB v. Katz*, 369 U.S. 736 (1962)). This is the case because an employer's obligation to continue existing wage rates and other terms of employment "is not derived from the contract, but is imposed by the Act." *More Truck Lines, Inc. v. NLRB*, 324 F.3d 735 (2003). Therefore, here, after Teamsters Local 856 was certified, WestRock was generally required to maintain the status quo, as established in the expired DC 2 CBA, until such time as it reached a new agreement with the Union or it bargained to a good-faith impasse. A*ltorfer Machinery Co.*, 332 NLRB at 162; *More Truck Lines, Inc.*, 336 NLRB at 773.

b. Bargaining when a party asserts exigent circumstances

Because bargaining "does not take place in isolation and a proposal on one point serves as leverage for positions in other areas," the Board frowns upon piecemeal bargaining. *Sacramento Union*, 291 NLRB 552, 556 (1988), enfd. sub. nom. *Sierra Pub. Co. v. NLRB*, 888 F.2d 1394 (9th Cir. 1989). Accordingly, when parties are engaged in negotiations for a collective-bargaining agreement, an employer must refrain from making unilateral changes and also refrain from implementing proposals on individual subjects absent an overall impasse for an agreement as a whole. *Bottom Line Enterprises*, 302 NLRB 373, 374 (1991). However, the Board makes an exception to this rule "when economic exigencies compel prompt action." Id. An extraordinary and unforeseen "dire financial emergency" can excuse bargaining altogether. *RBE Electronics of S.D.*, 320 NLRB 80, 81 (1995). There are also certain less compelling "economic exigencies," that while "not sufficiently compelling to excuse bargaining altogether," also fall within the *Bottom Line* exception. Id. at 81–82. In these less compelling circumstances, "the employer will satisfy its statutory obligations by providing adequate notice and an opportunity to bargain over the changes it proposes to respond to the exigency and by bargaining to impasse over the particular matter." Id. at 82. The type of situation that qualifies as an "economic exigency susceptible to bargaining" is "limited only to those exigencies in which time is of the essence, and which demand prompt action." Id. And, it is the employer's burden to prove that it's proposed changes were "compelled," and "that the exigency was caused by external events, was beyond the employer's control, or was not reasonably foreseeable." Id.

Regarding impasse, the Board analyzes claims of impasse using the five-factor test established in *Taft Broadcasting Co.*, 163 NLRB 475, 478 (1967), enforced sub. nom., *Am. Fed'n Television & Radio Artists v. NLRB,* 395 F.2d 622 (D.C.Cir.1968). "These factors are (1) the parties' bargaining history; (2) the parties' good faith; (3) the duration of negotiations; (4) the importance of issues generating disagreement; and (5) the parties' contemporaneous understanding of the state of negotiations." *Carey Salt Co. v. NLRB*, 736 F.3d 405, 412 (5th Cir. 2013) (citing *Taft Broadcasting Co.*). Good-faith bargaining is a necessary precondition to a finding of impasse, and it requires "more than the 'mere meeting' of the parties; negotiations must grow out of a 'serious intent to adjust differences and to reach an acceptable common ground.'" Id. at 412 (quoting *NLRB v. Ins. Agents' Int'l Union, AFL–CIO*, 361 U.S. 477, 485 (1960)). As such, "lack of good faith" is a central factor in determining whether impasse occurred. Id at 412 (noting that in *Taft Broadcasting* "good faith was the central factor in the

Board's analysis."); *NLRB v. Noah's Ark Processors*, LLC, 98 F.4th 896, 899 (8th Cir. 2024) (An "impasse presupposes a reasonable effort at good-faith bargaining" as it is a "prerequisite" to impasse.); *Corporation for General Trade (WKJG-TV 33)*, 330 NLRB 617, 627 (2000) ("good-faith bargaining is a prerequisite to reaching bona fide impasse.").

2. The November 8 telephone calls

Other than the November 8 telephone conversations between Andazola and Gaston, the bargaining between the parties about an interim employee insurance plan occurred via written correspondence. The testimony of Andazola and Gaston differed in certain respects regarding what was discussed during their two November 8 telephone calls, both of which lasted about 20 minutes. Assessing the demeanor of the witnesses at the hearing, and considering the documentary and other evidence introduced into the record, set forth below is my finding as to what occurred during these two conversations.

Both Gaston and Andazola agreed that during the 9:00 a.m. call they discussed the aspects and workings of the Consumer Choice Plan. I credit Andazola, whose testimony about both calls was much more detailed than Gaston's, that during the 9:00 a.m. call they also discussed the fact that under the DC 2 Insurance Plan the $1,600 + per employee premium cost was split 80/20 between WestRock and the workers, who could not opt out of coverage. I note that Andazola generally had better recall about both telephone calls, and unlike Gaston, Andazola's initial testimony about their discussions was provided without him looking at, or reading from, Gaston's November 8 email recap. For these reasons I also credit Andazola's testimony that during the 9:00 a.m. call they discussed the fact that the full family tier of the Consumer Choice Plan was more expensive than what Salinas employees were paying under DC 2 Insurance Plan with the 80/20 premium split. And, In Gaston's November 8 recap email, he states that during the morning conversation they discussed the Respondent's status quo obligations; I find that this topic was discussed during both the 9:00 a.m. call, as per the email, and the 2:00 p.m. call, as Andazola testified.

Andazola further testified that during the 9:00 a.m. call Gaston explained "that the company intended to move" the Salinas employees into the Consumer Choice Plan. (Tr. 33) I find that these words were used by Gaston only in relation to his explanation of Respondent's proposal set forth in his November 7 email—meaning that under Respondent's proposal the company intended to move the Salinas employees into the Consumer Choice Plan.

As for the 2:00 p.m. call, Andazola's testimony was again much more detailed, with better recall, than Gaston's. And, Andazola's testimony was primarily provided without the aid of Gaston's recap email. Therefore, I credit Andazola's testimony that during this call: Gaston said that the majority of the company's unionized employees were under the Consumer Choice Plan; the parties discussed the higher out-of-pocket cost for benefits under this plan; and they talked about the fact employees would pay a higher cost under the Consumer Choice Plan for the full family tier. Gaston testified that during the 2:00 p.m. call Andazola probably mentioned having a Teamster health and welfare plan for the Salinas employees. (Tr. 174) I credit Gaston's testimony, and find that, as Andazola testified, during the 2:00 p.m. call he mentioned that Teamsters Local 853 has a health plan, the TBT Plan VI, that covers some of Respondent's

employees in the Milpitas plant, that this plan was almost identical (but slightly cheaper) than the DC 2 Insurance Plan, has an 80/20 premium cost sharing, and is administered by the same company that administered the DC 2 plan—Northwest Administrators.

Gaston denied that Andazola specifically proposed having Salinas employees covered by the Milpitas plant Teamsters Local 853 plan; I credit Gaston's testimony. I find that when Andazola mentioned the TBT Plan VI used in Milpitas during the 2:00 p.m. call, he did so as an example of the type of plan the Union wanted, as opposed to specifically requesting that Salinas employees move into the Milpitas plant insurance plan. This comports with the email that Andazola sent Gaston later that same day saying that the Union "counter proposes" moving Salinas employees "into a Teamsters health and welfare plan, similar in benefits." (J. 10) It also comports with the specific terms of the plan forwarded to Gaston by Northwest Administrators on November 8. (J. 10, 11, 12) Therefore, I find that during the 2:00 p.m. call, Andazola proposed a type of Teamster insurance plan, using the TBT Plan VI as an example, that would have similar benefits as the DC 2 Insurance Plan and which maintain the 80/20 premium split.

I credit Andazola testimony that during the 2:00 p.m. call Gaston explained that Respondent was not interested in a union plan because they would have no say over such a plan. This comports generally with Respondent's position throughout negotiations as shown in the record. I further credit Andazola's testimony that during the 2:00 p.m. call the Union proposed that Respondent, under the Consumer Choice Plan, make the same contribution amount per employee, as they did under the DC 2 Insurance Plan, in order to reduce employee out of pocket costs. Finally, I credit Andazola that during this call he also proposed WestRock take whatever cost savings it would incur under the lower tiers of the Consumer Choice Plan and apply these savings to the full-family tier. Both of these proposals are either explicitly, or implicitly, included in Gaston's email recap.

Gaston denied that, at any point before sending his November 8 recap email, he told Andazola that the company was going to implement the Consumer Choice Plan. I credit Gaston; his testimony comports with the various emails exchanged between the parties on November 7 and November 8. I believe Andazola's testimony that Gaston said Respondent was not interested in a union plan and was not interested in crafting a plan with a different pay model just for Salinas employees. While Andazola may have left the 2:00 p.m. call thinking Respondent wanted to move forward with the Consumer Choice Plan, in accordance with Gaston's testimony, I find that during the November 8 telephone calls at no point did Gaston explicitly say that Respondent was going to implement the Consumer Choice Plan.

3. The Consumer Choice Plan was implemented without a valid impasse

a. Bargaining was not conducted in good faith
(Taft Broadcasting factor 2*)*

In their respective briefs, the General Counsel and Respondent dispute whether WestRock has met its burden to show that the cancellation of the DC 2 Insurance Plan constituted exigent circumstances which would allow it to implement a new employee insurance plan absent impasse for an entire agreement. (GC. Br. at 26–30) (Resp't. Br. at 15–18)

Ultimately, the resolution of this issue does not alter the outcome, as I find Respondent did not bargain in good faith over the interim insurance plan, and that there was no valid impasse when the Consumer Choice Plan was implemented on November 13.

Starting with Respondent's good faith, which is the "central factor" in determining whether impasse occurred, *Carey Salt Co.*, 736 F.3d at 412, considering the totality of the circumstances I find that WestRock's bargaining over the interim employee insurance plan was not conducted in good faith. Upon the certification of Teamsters 856, Respondent was required to maintain the status quo, as established in the DC 2 CBA. A*ltorfer Machinery Co.*, 332 NLRB at 162; *More Truck Lines, Inc.*, 336 NLRB at 773. This obligation is statutory. *Pittsburgh Post-Gazette*, 368 NLRB No. 41, slip op. at 2–3. Section 22.3 of DC 2 CBA specifically mandates that employee insurance premiums be shared with "80% paid by the Company and 20% paid by the Employee." This was a separate subsection of the contract, without any limiting language.[23] *Intermountain Rural Electric Assn*., 305 NLRB 783, 785 (1991), enfd. 984 F.2d 1562 (10th Cir. 1993) (where expired contract stated that the employer would pay 100% of dental premiums, maintaining the status quo "means that the Respondent pays the entire premium regardless of the cost."). While Respondent could no longer participate in the DC 2 Insurance Plan, no evidence was presented that it was somehow impossible for WestRock to comply with Section 22.3 of the DC 2 CBA requiring an 80/20 premium sharing formula for employee health, dental, and vision insurance going forward. *StaffCo of Brooklyn, LLC v. NLRB*, 888 F.3d 1297, 1305 (D.C. Cir. 2018) (company did not meet its burden of establishing an impossibility defense where the employer presented no evidence that it attempted, but was unable to achieve, substantial compliance). Instead, Gaston agreed that nothing in the Consumer Choice Plan precluded Respondent from having a different premium cost sharing formula, but that Respondent was not "not willing to do that." (Tr. 279)

The Consumer Choice Plan, the only proposal that Respondent proffered throughout bargaining, did not meet the 80/20 insurance premium sharing formula mandated by the DC 2 CBA. Instead, under the Consumer Choice Plan, employees paid 100% of their vision insurance premium, 50% of the premium for dental care, and anywhere between 22% to 28% of their health insurance premium.[24] As such, Respondent's only proposal during the entire course of bargaining was one that required the union to effectively waive Respondent's statutory obligation to maintain the status quo. "A proposal to, in effect, waive that statutory obligation deprives the union of 'purchase' in pursuing future negotiations, thereby disparaging it, as well as disparaging the statutory process of collective-bargaining." *Altorfer Mach. Co.*, 332 NLRB 130, 162 (2000) (cleaned up) (citing *McClatchy Newspapers, Inc. v. NLRB*, 131 F.3d 1026, 1033 (D.C. Cir. 1997)). Such a proposal is "no less than a refusal to honor the statutory obligation to preserve existing terms upon contract expiration, and amounts to a declaration that not only the Union, but the process of collective bargaining itself may be dispensed with." Id. (cleaned up) (citing *NLRB v. General Electric Co.*, 418 F.2d 736, 748 (2d Cir. 1969)). Accordingly, I find the

[23] See *Wilkes-Barre Hosp. Co.*, 362 NLRB 1212, 1216 (2015), enfd. 857 F. 3d 364 (DC. Cir. 2017) ("Absent language specifically limiting the applicability of the [contract] provision . . . that provision survives the term of the contract," and becomes part of the continuing statutory obligation to maintain the status quo.).

[24] Only by participating in a "wellness plan," something that was not required by the DC 2 CBA, could employees possibly decrease their health insurance premium contribution level to 20%. The wellness plan did not change employee vision or dental premiums.

fact that Respondent's only bargaining proposal, which the company ultimately implemented, was one that required the Union to waive the Respondent's statutory obligation to maintain the status quo with respect to the 80/20 premium sharing formula is evidence of Respondent's bad faith. This supports a finding that there was no impasse when Respondent implemented the Consumer Choice Plan which changed the 80/20 premium sharing formula required under the DC 2 CBA.[25]

I believe the evidence further supports a finding that Respondent entered into negotiations with a closed mind. While Section 8(d) of the Act does not compel either party to agree to a proposal or require the making of a concession, it does require that the parties meet and bargain in good faith. See 29 U.S.C. § 158(d). "In other words, while the Board cannot force an employer to make a 'concession' on any specific issue or to adopt any particular position, the employer is obliged to make some reasonable effort in some direction to compose his differences with the union, if §8(a)(5) is to be read as imposing any substantial obligation at all." *NLRB v. Reed & Prince Mfg. Co.*, 205 F.2d 131, 134–35 (1st Cir. 1953); *Atlanta Hilton & Tower*, 271 NLRB 1600, 1603 (1984). Here, the record shows that Respondent made no "reasonable effort in some direction to compose [its] differences with the union." Id.

Respondent's initial November 7 proposal was to implement the Consumer Choice Plan. The parties discussed the proposal, and the Union provided Respondent with three different counterproposals, two of which involved agreeing to the Consumer Choice Plan, but with some modifications so that employees were closer to what the Union believed was the status-quo. All of the Union's proposals were dismissed outright by WestRock, and throughout its course of bargaining, the only insurance plan Respondent proposed was the Consumer Choice Plan, which the company then implemented on November 13. An employer may insist on a proposal, however unacceptable to the union; indeed, if the "insistence is genuinely and sincerely held it may be maintained forever though it produce a stalemate." *Pease Co. v. NLRB*, 666 F.2d 1044, 1049 (6th Cir. 1981) (cleaned up). However, these rights may not be used as a "cloak." *NLRB v. Herman Sausage Co.*, 275 F.2d 229, 232 (5th Cir. 1960). "Bad faith is prohibited though done with sophistication and finesse." Id.

Here, under the circumstances, I find that Respondent's insistence on the Consumer Choice Plan as its only proposal was not genuinely and sincerely held, as it required the Union to surrender the requirement that WestRock maintain the status quo with respect to the 80/20 premium sharing formula. Cf. *Hydrotherm, Inc.*, 302 NLRB 990, 994 (1991), (Board finds that the employer engaged in bad faith bargaining by submitting proposals on key issues which amounted to little more than the surrender of certain statutory rights.). As such, I find that Respondent came "to the bargaining table with a closed mind, i.e., a predetermined disposition not to bargain," *NLRB v. SW. Porcelain Steel Corp.*, 317 F.2d 527, 528 (10th Cir. 1963), and with the intent to force a stalemate in order to implement the Consumer Choice Plan at the Salinas facility. This further evidences Respondent's bad faith.

[25] At various points in their respective briefs, the General Counsel and the Union argue that the status-quo also included having the same specific level of healthcare benefits that were provided under the DC 2 Insurance Plan. Regardless, the 80/20 insurance premium sharing formula, which is specifically required under the DC 2 CBA, is dispositive of the issue at hand.

b. Bargaining history and duration of negotiations
(Taft Broadcasting factors 1 and 3*)*

Regarding *Taft Broadcasting* factor one (the parties' bargaining history) and factor 3 (the duration of negotiations) I believe both weigh against a finding of impasse given that Respondent did not respond to the Union's information request involving the demographics of unit employee insurance choices until the evening of November 10, *after* it had already asserted that the parties were at a stalemate. See e.g. *Royal Motor Sales*, 329 NLRB 760, 763 fn. 14 (1999) (citing *Dependable Maintenance Co.*, 274 NLRB 216, 219 (1985) (insufficient time between provision of requested information and declaration of impasse to warrant a finding that genuine impasse was reached)); *Decker Coal Co.*, 301 NLRB 729, 740 (1991) (genuine impasse cannot be declared, and a final offer implemented, before the union has had a reasonable time to review and analyze the impact the information it received would have on any potential counteroffers); Cf. *E.I. du Pont & Co.*, 346 NLRB 553, 558 (2006) enfd. 489 F.3d 1310, 1315 (D.C. Cir. 2007) (affirming that "[i]t is well settled that a party's failure to provide requested information that is necessary for the other party to create counterproposals and, as a result, engage in meaningful bargaining, will preclude a lawful impasse").

Here, on October 30, a few days after the election, the Union made an information request for purposes of bargaining that included a request for the "specific demographics of all employees in the bargaining unit specifying the medical benefits they receive and specific coverage (employee only, plus one, spouse, employee plus dependents, etc.)." (J. 5) This request was clearly relevant in general, and after the DC 2 Insurance Plan was canceled, this request became particularly relevant to the bargaining for an interim insurance plan, especially considering the fact that under the tiered Consumer Choice Plan the cost of premiums differed based upon the specific coverage tier. Under the DC 2 Insurance Plan, the total premium cost (which was split 80/20 between Respondent and employees) was $1,629.55 per month. With the Consumer Choice Plan, the total monthly premium cost differed by tier, and varied from a total premium of $646, for the employee only tier, to $2,165.88 for the full family coverage tier. (J. 7) WestRock did not respond to this information request until after 5:00 p.m. on November 10, which was a public holiday, informing the Union that in 2023: 46 employees had single coverage; 22 employees had coverage for two people; and 37 employees (over a third of the workforce) had family coverage. (J. 16) This response came ten hours *after* Respondent's 6:52 a.m. email to the Union stating Respondent's belief that the parties were at a stalemate and saying the company intended to proceed with the implementation of the Consumer Choice Plan. (J. 15) No evidence was presented showing that this information was somehow difficult for Respondent to gather, or explaining why it was not sent to the Union until after WestRock claimed there was a stalemate. And, considering the fact that employees would get retroactive coverage under both the Consumer Choice Plan and the Union's proposed Teamsters Local 856 plan, no compelling need existed that would override the Union's right to have sufficient time to review the information Respondent provided, and answer accordingly. *Decker Coal Co.*, 301 NLRB 729, 744 (1991) (Respondent has shown no compelling need to have made a last and final offer, and then to implement its terms, before the Union had been furnished with, and been allowed sufficient time to evaluate, the requested information.). Given the fact the information requested by the Union goes to one of the core issues, the total employee premium costs associated with the interim healthcare plan being bargained, the Union was entitled to have

sufficient time to digest the information it received and respond appropriately. *Dependable Maintenance Co.*, 274 NLRB at 219; *Decker Coal Co.*, 301 NLRB at 740.

Finally, the timing of WestRock's response, sent on a public holiday—which was the start of a three-day weekend meant to recognize the service of America's veterans—warrants a finding that the Union was not given sufficient time to review the relevant information and respond before Respondent implemented the Consumer Choice Plan on November 13. Cf. *Southwest Forest Industries, Inc., v. NLRB*, 841 F.2d 270, 273 (9th Cir. 1988) (citing *M.A. Harrison Mfg. Co.*, 253 NLRB 675, 676 (1980), enfd. 682 F.2d 580 (6th Cir.1982) (three-day interval between announcement and institution of unilateral change provided an inadequate opportunity to bargain)). Accordingly, I find that *Taft Broadcasting* factors one and three support a finding that no legal impasse existed.

c. Issues at hand and the contemporaneous understanding of the parties *(Taft Broadcasting* factors 4 and 5*)*

With respect to the fourth *Taft Broadcasting* factor, the importance of the issues generating disagreement, in its brief the General Counsel argues this factor is neutral (G.C. Br. at 37), while the Union argues that it favors a finding that no impasse existed (Union Br. at 20–22). Although Respondent identifies this factor (Resp't. Br. at 22), it does not specifically analyze the "importance of the issues" as part of its argument that a valid impasse was reached, other than noting that interim employee insurance was the only item being bargained.

The fact that interim employee insurance was the only issue on the bargaining table, and that it was important to all parties, might weigh in favor of finding a valid impasse. However, at the time of Respondent's impasse declaration, the Union had not indicated that it would never agree to the Consumer Choice Plan, and had in fact made previous proposals based upon the Consumer Choice Plan. Moreover, at the time the Consumer Choice Plan was implemented, the Union did not have an opportunity to formulate a counterproposal based upon the relevant information it had received from Respondent a few days earlier. As such, this factor supports a finding that the parties were not at impasse. *Stein Industries, Inc.*, 365 NLRB 227, 230 (2017) (no impasse under *Taft Broadcasting* factor 4 where the evidence fails to establish that "the parties had exhausted the prospects of reaching agreement on these admittedly important issues" at the time the employer declared impasse.); see also *Zeigler North Riverside, LLC.*, 370 NLRB No. 41 (2020) (judge finds that the "importance of the issues" factor supports a finding of no impasse where the issues being bargained were important to both sides, but at the time of the employer's impasse declaration the union: (1) had not said it would never agree to the company's proposal; (2) did not have an opportunity to formulate a position on one proposal because it had not received relevant information that had been requested; and (3) had made its own proposal agreeing to part of the employer's proposals.).[26]

The final *Taft Broadcasting* factor is the parties' contemporaneous understanding of the state of negotiations. Gaston testified about his belief that the parties were at impasse as of the date of his November 10 email to Andazola. In the email Gaston wrote it "is apparent that both

[26] The judge's findings on impasse in *Zeigler North Riverside* were not before the Board on exceptions. Therefore this case is cited for purposes of persuasive authority only.

the Union and the Company are unwilling to move from their positions on how to handle this difficult situation," and asked Andazola to "[p]lease correct me if you disagree." (J. 15; Tr. 179–180)

Andazola testified that, as of November 10, Respondent had the Consumer Choice Plan as their proposal, the Union had the Teamsters Local 856 health plan as its proposal, and "[t]hat's it." (Tr. 136) However, he also testified the Union never withdrew its proposals regarding the alteration of the Consumer Choice Plan, or applying the savings from that plan to the full family tier. And, he testified to the Union's willingness "to move" but said its concern was that employees have "as close to status quo" as possible "for level of benefit and cost of coverage." (Tr. 51) While Andazola never replied to Gaston's November 10 email, neither he nor anyone from the Union ever made any statements during bargaining evidencing a belief that the parties were at impasse.[27] (Tr. 51, 136, 152–153)

Ultimately I find that the record evidence is insufficient to find that both Respondent and the Union independently believed, in good faith, that they were "at the end of [their] rope," when the Consumer Choice Plan was implemented. *TruServ Corp. v. NLRB*, 254 F.3d 1105, 1116–17 (D.C. Cir. 2001), (internal quotations omitted) (contemporaneous understanding as to impasse does not require the parties to reach a mutual agreement as to the state of the negotiations; rather, each party must independently, and in good faith, believe that it is at the end of its rope). Regarding Andazola's testimony that, as of November 10, Respondent had their proposal, the Union had its proposal and "that's it," I find this testimony describes the two outstanding proposals at the time, but does not indicate that the Union was unwilling to move off of its position. Indeed, Andazola testified about the Union's willingness to "to move," and the Union had already made proposals that included modified versions of the Consumer Choice Plan. Also, there is no evidence the Union was unwilling to make any other proposals, particularly after having received the information it had requested about employee insurance demographics. As for the fact that Andazola never responded to Gaston's November 10 email before Respondent implemented the Consumer Choice Plan on November 13, Gaston sent the email to Andazola on a public holiday, over the three-day Veterans Day weekend. As such, I find that Andazola's inaction is not dispositive as to whether the Union believed that an impasse existed. Cf. *Southwest Forest Industries, Inc.,* 841 F.2d at 273; *M.A. Harrison Mfg. Co.*, 253 NLRB at 676.

Accordingly, based upon the totality of the circumstances, and applying the factors set forth in *Taft Broadcasting*, I find that there was no valid impasse when WestRock implemented the Consumer Choice Plan on November 13. As such, Respondent's conduct violated Section 8(a)(5) and (1) of the Act.[28]

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[27] See *Chemung Contracting Corp*., 291 NLRB 773, 784 fn. 9 (1988) (Use of the term "impasse" in the union's newsletter by the union's business manager shows that the union concurred with the employer's evaluation of the state of negotiations).

[28] Citing *Cofire Paving Corp.*, 359 NLRB 180, 184–185 (2012), in its brief the General Counsel asserts that Respondent also had a duty to set aside the total funds it had been paying for the DC 2 Insurance Plan and bargain with the Union over how such funds would be safeguarded and preserved. (GC. Br. at 25–26) However, *Cofire Paving Corp.*, was decided by a Board that included a member whose appointment was deemed to be invalid pursuant to *NLRB v. Noel Canning*, 573 U.S. 513 (2014). See *Midwest Operating Eng'rs v. Dredge*, 147 F. Supp. 3d 724, 745 fn. 11 (N.D. Ill. 2015). Because the totality of the circumstances show that there was no lawful impasse

CONCLUSIONS OF LAW

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

2. Teamsters Local 856 (Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. At all material times the Union has been the exclusive collective-bargaining representative of the following unit of Respondent's employees (unit):

> All full-time and regular part-time employees in the classifications of 1021 Corrugator, Singlefacer Operator, Knife Operator, Doubleback Operator, Stacker Operator, 3122 & 3132 Flexo Folder Gluer, Operator, Assistant Operator, Continuous Run Operator, Order Readiness Operator, Die Repair/Die Mounter, 4561 Rotary Die Cut Operator, Assistant Operator, Continuous Run Operator, Order Readiness Operator, 5411 & 5412 Andax (Wetlock) Operator, Assistant Operator, Starch/Baler/Waste Starch Maker/Baler, Roll Clamp Operator, Forklift Operator, Shipping Clerk, Strapper (Bander) Operator, Production Worker Miscellaneous-New Hire, Maintenance "E" Mechanic, MCT-1 Mechanic, Mechanic, Helper, Oiler/Greaser, Janitor, Converting & Corrugator Working Foreman, [and] Shipping Working Foreman employed by the Employer at its facility located at 1078 Merrill Street, Salinas, CA 93901; excluding all other employees, confidential employees, office clerical employees, guards, and supervisors as defined by the Act.

4. By implementing an employee insurance plan for unit employees (including health, vision and dental insurance) without first bargaining with the Union in good faith to impasse or agreement, Respondent violated Section 8(a)(5) and (1)

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

REMEDY

Having found Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative actions, as further set forth in the Order below, designated to effectuate the policies of the Act.

Because Respondent has violated Section 8(a)(5) and (1) of the Act by making unilateral changes to the terms and conditions of employment of unit employees by implementing an employee insurance plan on November 13, 2023, I shall order Respondent to rescind that change, at the Union's request, and restore the status quo ante. *Larry Geweke Ford*, 344 NLRB 628

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at the time Respondent implemented the Consumer Choice Plan, I find that it unnecessary to apply, or make findings based upon, *Cofire Paving Corp.*

(2005). Respondent shall make unit employees whole for any losses sustained as a result of its unlawful unilateral change,[29] in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as outlined in *Kentucky River Medical Center*, 356 NLRB 6 (2010).[30]

In accordance with the Board's decision in *Thryv Inc.*, 372 NLRB No. 22 (2022), Respondent shall also compensate affected employees for any other direct or foreseeable pecuniary harms incurred as a result of the unfair labor practices found herein.[31] Compensation for these harms shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as outlined in *Kentucky River Medical Center*, 356 NLRB 6 (2010). To the extent Respondent's backpay obligations result in adverse tax consequences for affected employees due to receiving lump-sum payments, Respondent is ordered to compensate those employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 32, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016). In accordance with the Board's decision in *Cascades Containerboard Packaging–Niagara*, 370 NLRB No. 76 (2021), as modified in 371 NLRB No. 25 (2021), the Respondent shall also be required to file with the Regional Director for Region 32 a copy of each backpay recipient's corresponding W-2 form reflecting the backpay award. The Respondent shall also be required to post the attached notice marked as "Appendix" in accordance with *J. Picini Flooring*, 356 NLRB 11 (2010) and *Durham School Services*, 360 NLRB 694 (2014).

In the Complaint, the General Counsel seeks additional remedies including the posting and electronic distribution to employees of an Explanation of Rights, and an order that Respondent bargain with the Union in good faith, on request, for a period required by *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962). (GC. 1(q). In its brief, the General Counsel also asks for a notice reading remedy. A *Mar-Jac Poultry* remedy exists to ensure that a union has "ample time for carrying out its mandate" at the peak of its strength, which is "the 1 year period immediately following the certification." *Mar-Jac Poultry Co.*, 136 NLRB 785, 786–787 (1962). Although the circumstances here, involving the cancellation of the DC 2 Insurance Plan, were outside of Respondent's control, and WestRock promptly notified the Union and started bargaining for an interim plan, it implemented the Consumer Choice Plan at a time when there was no impasse and insisted at all times that the Union abandon the requirement in the DC 2 CBA that Respondent pay 80% of employee health, dental, and vision premiums. Respondent's actions here involving employee insurance premiums affected the entire bargaining unit "adversely in the most

[29] Respondent is obligated to make employees whole for losses they sustained as a result of the company's unlawful conduct "even if the employees' union representatives do not demand restoration of the status quo." *American National Red Cross*, 364 NLRB 1390, 1394 (2016).

[30] Issues relating to impossibility or burdensomeness may be litigated in compliance. *Larry Geweke Ford*, 344 NLRB at 628–629 (Ordering Respondent to make available the health and medical coverage benefits that were previously provided and allowing Respondent to litigate in compliance whether it would be impossible or unduly or unfairly burdensome to restore previous insurance plan).

[31] The Board applies *Thryv Inc.* where employees suffered losses due to unilateral changes made in violation to Section 8(a)(5) and (1) of the Act. See *Rieth-Riley Construction Co.*, 374 NLRB No. 13 (2024) enfd. 172 4th 492 (6th Cir. 2026).

fundamental way—in their paychecks." *Covanta Energy Corp.*, 356 NLRB 706, 730 (2011) (internal quotation omitted). And, even though it was only meant to be an interim solution, the Consumer Choice Plan was still in place at the time of the hearing. Accordingly, I find that Respondent's conduct here "would likely place the union at a serious bargaining disadvantage in terms of maintaining the support and trust of the employees" and would "serve to undercut the Union's authority at the bargaining table." Id. Because the Consumer Choice Plan was implemented within a week of the Union's certification, I find that a full year extension of the certification period is warranted to ensure that employees and the Union have adequate time to bargain free of the influence of unfair labor practices. I decline to order any of the other additional remedies sought by the government, because the General Counsel has not shown that, under the circumstances presented, such further remedies are needed to properly address the unfair labor practices found herein.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended[32]

ORDER

Respondent WestRock Services, LLC, its officers, agents, successors, and assigns, shall:

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith Teamsters Local 856, as the collective-bargaining representative in the following appropriate unit, by unilaterally implementing an employee insurance plan (including health, dental, and vision insurance) at a time when no lawful impasse existed:

> All full-time and regular part-time employees in the classifications of 1021 Corrugator, Singlefacer Operator, Knife Operator, Doubleback Operator, Stacker Operator, 3122 & 3132 Flexo Folder Gluer, Operator, Assistant Operator, Continuous Run Operator, Order Readiness Operator, Die Repair/Die Mounter, 4561 Rotary Die Cut Operator, Assistant Operator, Continuous Run Operator, Order Readiness Operator, 5411 & 5412 Andax (Wetlock) Operator, Assistant Operator, Starch/Baler/Waste Starch Maker/Baler, Roll Clamp Operator, Forklift Operator, Shipping Clerk, Strapper (Bander) Operator, Production Worker Miscellaneous-New Hire, Maintenance "E" Mechanic, MCT-1 Mechanic, Mechanic, Helper, Oiler/Greaser, Janitor, Converting & Corrugator Working Foreman, [and] Shipping Working Foreman employed by the Employer at its facility located at 1078 Merrill Street, Salinas, CA 93901; excluding all other employees, confidential employees, office clerical employees, guards, and supervisors as defined by the Act.

[32] 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.

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

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

(a) Before implementing any changes in wages, hours, or other terms and conditions of employment, including employee insurance, notify and, on request, bargain collectively and in good faith with the Union as the exclusive representative of its employees in the above unit.

(b) On request by the Union, rescind the implementation of the Consumer Choice Plan, and maintain the status quo as it existed before implementation of the Consumer Choice Plan, including but not limited to the 80/20 premium sharing formula.

(c) On request, bargain in good faith with the Union as the exclusive collective-bargaining representative of employees in the above bargaining unit concerning changes in wages, benefits, and other terms and conditions of employment. The certification year shall extend 1 year from the date that such good-faith bargaining begins.

(d) Make employees whole, as further set forth in the Remedy section of the decision, by reimbursing them for any losses and additional expenses they incurred as a result of the unilateral implementation of the Consumer Choice Plan on November 13, 2023.

(e) Compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 32, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(f) File with the Regional Director for Region 32, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of each backpay recipient's corresponding W-2 form reflecting the backpay award.

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

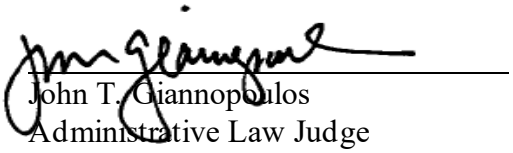
(h) Within 14 days after service by the Region, post at its Salinas, California, facility copies of the attached notice marked "Appendix."[33] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive

[33] 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."

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, text message, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at its Salinas, California, facility since May 14, 2023.

(i) Within 21 days after service by the Region, file with the Regional Director for Region 32 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. May 12, 2026



John T. Giannopoulos
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose a representative 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 refuse to bargain collectively and in good faith with Teamsters Local 856 (Union), as the collective-bargaining representative of employees in the following unit by unilaterally implementing an employee insurance plan (including health, dental, and vision insurance), at a time when no lawful impasse existed:

> All full-time and regular part-time employees in the classifications of 1021 Corrugator, Singlefacer Operator, Knife Operator, Doubleback Operator, Stacker Operator, 3122 & 3132 Flexo Folder Gluer, Operator, Assistant Operator, Continuous Run Operator, Order Readiness Operator, Die Repair/Die Mounter, 4561 Rotary Die Cut Operator, Assistant Operator, Continuous Run Operator, Order Readiness Operator, 5411 & 5412 Andax (Wetlock) Operator, Assistant Operator, Starch/Baler/Waste Starch Maker/Baler, Roll Clamp Operator, Forklift Operator, Shipping Clerk, Strapper (Bander) Operator, Production Worker Miscellaneous-New Hire, Maintenance "E" Mechanic, MCT-1 Mechanic, Mechanic, Helper, Oiler/Greaser, Janitor, Converting & Corrugator Working Foreman, [and] Shipping Working Foreman employed by the Employer at its facility located at 1078 Merrill Street, Salinas, CA 93901; excluding all other employees, confidential employees, office clerical employees, guards, and supervisors as defined by the Act.

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

WE WILL make whole all bargaining unit employees for any loss of earnings and other benefits suffered as a result of our unlawful conduct, plus interest.

WE WILL, upon request by the Union, rescind the implementation of the Consumer Choice Plan, and maintain the status quo ante as it existed before implementation of the Consumer Choice Plan, including but not limited to the 80/20 premium sharing formula.

WE WILL, upon request, bargain in good faith with the Union as the exclusive collective-bargaining representative of employees in the above unit concerning changes in wages, benefits, and other terms and conditions of employment. The certification year shall extend 1 year from the date that such good-faith bargaining begins.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 32, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a report allocating the backpay awards to the appropriate calendar years for each employee, and a copy of each backpay recipient's corresponding W-2 form reflecting the backpay award.

WestRock Services, LLC
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov

1301 Clay Street, Suite 1510N
Oakland, CA 94612-5224
Tel: (510) 637-3300; Hours: 8:30am-5:00 p.m. (PT)

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/32-CA-330282 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (510) 637-3300.