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**Atlantic American Fire Protection Company, Inc. and  
Sprinkler Fitters Local 281.** Case 13–CA–309518

May 21, 2026

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY  
AND MAYER

On May 9, 2024, Administrative Law Judge Michael P. Silverstein issued the attached decision. The Charging Party filed partial exceptions and a supporting brief. The General Counsel filed limited exceptions and a supporting brief.<sup>1</sup>

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,

findings, and conclusions and to adopt the recommended Order as modified<sup>2</sup> and set forth in full below.

The judge found that the Respondent engaged in numerous unfair labor practices during the course of a union organizing campaign among its employees. In the absence of exceptions, we adopt many of these findings.<sup>3</sup> The judge also dismissed several unfair labor practice allegations. The General Counsel filed exceptions to the judge's dismissal of three unfair labor practice allegations.<sup>4</sup> We adopt the judge's dismissal of the allegations that the Respondent violated Section 8(a)(1) of the Act by making threats of futility of unionizing on or about December 20, 2022, and by creating the impression of surveillance of union activity on or about December 13, 2022.<sup>5</sup>

AMENDED REMEDY

In light of the Respondent's serious and widespread unfair labor practices, we agree with the judge that a notice-reading remedy is appropriate in this case.<sup>6</sup> We further find that the Respondent's unlawful conduct, which

<sup>1</sup> We grant the General Counsel's March 21, 2025 motion to withdraw exceptions 4, 5, and 6.

<sup>2</sup> We shall modify the judge's recommended Order to conform to the Board's standard remedial language and to our amended remedy, and we shall substitute a new notice to conform to the Order as modified. The judge ordered remedies consistent with the Board's decision in *Thryv, Inc.*, 372 NLRB No. 22 (2022), vacated in part on other grounds 102 F.4th 727 (5th Cir. 2024). As stated in *Performance Plumbing, LLC*, 374 NLRB No. 48, slip op. at 2 fn. 2 (2026), and *Lodi Volunteer Ambulance Rescue Squad, Inc.*, 374 NLRB No. 26, slip op. at 3 fn. 3 (2026), Chairman Murphy and Member Mayer find no need at this time to express an opinion whether the novel remedies announced by the Board majority in *Thryv* are permissible under the Act. They would be open to reconsideration of that precedent in a future proceeding, but in the absence of a three-member majority to overrule it at this time, they agree to apply *Thryv*.

<sup>3</sup> We adopt the judge's findings that the Respondent violated Sec. 8(a)(1) of the National Labor Relations Act by: (1) coercively interrogating employees about their union activity; (2) threatening employees that it would sell the company if employees selected the Union; (3) informing employees that it is closing because the employees selected the Union as their collective-bargaining representative; (4) informing employees that they would not receive a Christmas bonus because they selected the Union; and (5) informing employees that they were terminated because they selected the Union.

We further adopt, absent exceptions, the judge's findings that the Respondent violated Sec. 8(a)(3) and (1) of the Act by: (1) withholding Thanksgiving and Christmas turkeys, hams, and rib roasts in order to discourage union support; (2) withholding Christmas bonuses from employees in order to discourage union support; and (3) terminating 10 employees because they engaged in union organizing activities.

Finally, we adopt, absent exceptions, the judge's findings that the Respondent violated Sec. 8(a)(5) and (1) of the Act by (1) withholding Christmas bonuses from employees without notifying and bargaining with the Union; (2) terminating 10 employees without notifying and bargaining with the Union; (3) failing and refusing to recognize and bargain with the Union for a first contract; (4) unlawfully withdrawing recognition from the Union; and (5) refusing to furnish to the Union relevant information.

<sup>4</sup> In the absence of exceptions, we adopt the judge's dismissal of the complaint allegations that the Respondent violated Sec. 8(a)(1) by: (1) interrogating employees in early December 2022 (complaint par. 5(a)); (2) impliedly threatening to reduce employee pay (complaint par. 5(b)(3)); (3) making threats of futility on December 13, 2022 (complaint par. 5(b)(4)); (4) creating the impression of surveillance between December 13 and 20, 2022 (complaint par. 5(c)); (5) threatening to call police on employees (complaint par. 5(d)(4)). We also adopt, in the absence of exceptions, the judge's dismissal of the allegation that the Respondent violated Sec. 8(a)(3) and (1) by taking away company debit cards used to purchase gas/materials (complaint par. 6(b)). Finally, in the absence of exceptions, we adopt the judge's dismissal of the complaint allegations that the Respondent violated Sec. 8(a)(5) and (1) by: (1) closing its doors and ceasing operations without bargaining (complaint par. 8(a)) and (2) failing to provide the information requested in par. 12 of the Union's January 20, 2023 information request (complaint pars. 8(f) and (h)).

<sup>5</sup> In adopting the judge's dismissal of the allegation that the Respondent violated Sec. 8(a)(1) of the Act on or about December 13, 2022, by creating the impression of surveillance of union activity by employee Abel Diaz, we rely only on the judge's finding that Diaz acknowledged his union activity to Respondent's President Walschot before the latter responded to Diaz, "I knew it." In light of Diaz' explicit acknowledgment to Walschot of his union activity, we agree that Diaz would not reasonably conclude based on Walschot's response that the Respondent had been surveilling his union activity.

In addition to the judge's dismissals of the threat and surveillance allegations, the General Counsel also filed exceptions to the judge's dismissal of the allegation that the Respondent violated Sec. 8(a)(5) and (1) of the Act by discontinuing its practice of providing Christmas meats to employees. We find it unnecessary to pass on this exception, because it would not materially affect the remedy in this case, in light of the judge's finding (to which there are no exceptions) that the discontinuance of this practice violated Sec. 8(a)(3) and (1) of the Act.

<sup>6</sup> For the reasons expressed in his concurrence in *CP Anchorage 2 d/b/a Hilton Anchorage*, 371 NLRB No. 151, slip op. at 9–5 (2022), enfd. 98 F.4th 314 (D.C. Cir. 2024), Member Prouty would make a reading of the notice, accompanied by distribution of the notice at the meeting, a standard remedy for all unfair labor practices found by the Board.

demonstrates a proclivity by the Respondent to violate the Act, warrants a broad cease-and-desist order pursuant to *Hickmott Foods*, 242 NLRB 1357, 1357 (1979).

Based on the propriety of a broad cease-and-desist provision here, we have considered additional remedies, and we find that the following are appropriate. See *Noah's Ark Processors, LLC d/b/a WR Reserve*, 372 NLRB No. 80, slip op. at 5 (2023), enfd. 98 F.4th 896 (8th Cir. 2024).<sup>7</sup> We shall order the Respondent to post an explanation of employee rights under the Act, as set forth in Appendix B to the Order below. See *David Saxe Productions, LLC and V Theater Group, LLC*, 370 NLRB No. 103, slip op. at 6 (2021). We shall additionally order the Respondent to read the Explanation of Rights, along with reading the Board's notice, to assembled employees; to simultaneously distribute a copy of the notice and Explanation of Rights to the assembled employees to facilitate employee comprehension of both documents as they hear them read; and to mail the notice and Explanation of Rights to employees.<sup>8</sup> See *Amerinox Processing, Inc.*, 371 NLRB No. 105, slip op. at 6 (2022), enfd. 2023 WL 2818503 (D.C. Cir. 2023). We shall additionally order the Respondent to post the Board's notice and the Explanation of Rights for an extended period of 120 days. See *HTH Corp.*, supra, 361 NLRB at 713-714.

Finally, we shall order the Respondent, upon the Union's request, to bargain for a minimum of 24 hours per calendar month, for at least 6 hours per session, until an agreement or lawful impasse is reached or the parties agree to a respite in bargaining. We shall also require the Respondent to submit written bargaining progress reports every 15 days from the beginning of good-faith bargaining

<sup>7</sup> In agreeing that the extraordinary remedies ordered here are appropriate to remedy the numerous violations found, Chairman Murphy finds it unnecessary to rely on *Noah's Ark*. Member Mayer did not participate in *Noah's Ark* and takes no position on whether it was correctly decided, but he agrees to apply it here for institutional reasons.

<sup>8</sup> The Respondent shall retain a copy of the notice and the Explanation of Rights provided to each individual in their personnel records for the 120-day posting period, discussed below, along with receipts, proofs of mailing, and documentation evidencing the date and manner of distribution. See *HTH Corp.*, 361 NLRB 709, 715 (2014), enfd. in rel. part 823 F.3d 668 (D.C. Cir. 2016).

<sup>9</sup> We deny the Union's request that the Respondent be ordered to hire qualified replacement employees selected by the Union should the discriminatees elect not to accept reinstatement, and issue letters of apology to the terminated discriminatees.

The Union also asks the Board to overrule *Ex-Cell-O Corp.*, 185 NLRB 107 (1970), and impose a compensatory remedy to "make whole all of its employees for their lost opportunity to bargain." We deny the Union's request for the same reasons articulated in *Longmont United Hospital*, 374 NLRB No. 52, slip op. at 1 (2026). For the reasons stated in his dissent in *Longmont United Hospital*, Member Prouty would overrule *Ex-Cell-O Corp.*, and would be open to considering in a future case whether to award make-whole relief to remedy the harms caused by an employer's refusal to bargain in cases, such as this one, that do not arise

until a complete collective-bargaining agreement or lawful impasse is reached, or the parties agree to a respite in bargaining, to the compliance officer for Region 13 and to serve copies of those reports on the Union. See *Omni Excavators, Inc.*, 373 NLRB No. 18, slip op. at 2 (2024), enfd. 2024 WL 4594715 (D.C. Cir. 2024).<sup>9</sup>

#### ORDER

The National Labor Relations Board orders that the Respondent, Atlantic American Fire Protection Company, Inc., Elgin, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating employees about their union activity.

(b) Threatening to sell the company if employees selected a union as their collective-bargaining representative.

(c) Telling employees that they will not receive a Christmas bonus because they engaged in union organizing activities.

(d) Telling employees that they were fired because they engaged in union organizing activities.

(e) Telling employee that Respondent will close its doors because they engaged in union organizing activities.

(f) Discharging or otherwise discriminating against employees for supporting Sprinkler Fitters, Local 281 or any other labor organization.

(g) Discontinuing a practice of providing Thanksgiving turkeys and hams to its employees because they engaged in union organizing activities.

in the context of a test of certification. In addition, to remedy the Respondent's failure and refusal to bargain, Member Prouty would authorize, at the Union's request, the Regional Director for Region 13 to ask that the Federal Mediation and Conciliation Service appoint an appropriately qualified mediator to assist the bargaining parties. In Member Prouty's view, the affirmative bargaining order and progress report remedy "may be insufficient to cause [the] Respondent to genuinely change its mind and view concerning the efficacy of union representation and bargaining," and a mediator would perhaps "cause [the] Respondent to alter its conduct. It would also provide the Board with a window through which to observe the negotiations and to receive a firsthand neutral report of the bargaining." *Altorfer Machinery Co.*, 332 NLRB 130, 131 (2000) (Member Hurtgen, concurring in part) (emphasis in original). The mediator would be authorized to attend bargaining sessions and meet with the parties (together or separately) as often as the mediator deems appropriate. If, after a time decided by the mediator, the mediation efforts fail, Member Prouty would "direct the mediator to render a report to the parties and to the Regional Director as to the status of negotiations and his or her recommendations concerning the resolution of the non-agreed-upon matters." *Mid-Continent Concrete*, 336 NLRB 258, 263 (2001) (Chairman Hurtgen, concurring in part).

(h) Discontinuing a practice of providing Christmas hams, turkeys, and rib roasts to its employees because they engaged in union organizing activities.

(i) Discontinuing a practice of providing a holiday bonus to employees because they engaged in union organizing activities.

(j) Withdrawing recognition from Sprinkler Fitters, Local 281 (the Union) and failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of Respondent's employees in the following bargaining unit:

All full-time and regular part-time sprinkler fitter journeypersons and apprentices employed by the Employer out of its 18 North State Street, Elgin, Illinois facility, excluding all confidential employees, office clerical employees, professional employees, managerial employees, guards and supervisors as defined by the Act.

(k) Failing and refusing to bargain for a first contract with the Union.

(l) Discharging its employees without giving the Union notice and an opportunity to bargain.

(m) Discontinuing a practice of providing a holiday bonus to employees without giving the Union notice and an opportunity to bargain.

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

(o) In any other 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) Within 14 days from the date of this Order, offer Daniel Colon, Daniel Falco, James Piccolo, Alfredo Torres, Mike Salup, Juan Zamora, Abel Diaz, Jonathan Diaz, Alexander Gonzalez, and Kevin Lipp full reinstatement to their former jobs or, if those jobs no longer exist, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Daniel Colon, Daniel Falco, James Piccolo, Alfredo Torres, Mike Salup, Juan Zamora, Abel Diaz, Jonathan Diaz, Alexander Gonzalez, and Kevin Lipp whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms, suffered as a result of their unlawful discharges, in the manner set forth in the remedy section of the judge's decision as amended in this decision.

(c) Compensate Daniel Colon, Daniel Falco, James Piccolo, Alfredo Torres, Mike Salup, Juan Zamora, Abel

Diaz, Jonathan Diaz, Alexander Gonzalez, and Kevin Lipp for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 13, 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.

(d) File with the Regional Director for Region 13, within 21 days of the date the amount of backpay is fixed by a agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of Daniel Colon, Daniel Falco, James Piccolo, Alfredo Torres, Mike Salup, Juan Zamora, Abel Diaz, Jonathan Diaz, Alexander Gonzalez, and Kevin Lipp, and within 3 days thereafter, notify the employees in writing that this has been done and that the discharge will not be used against them in any way.

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

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

All full-time and regular part-time sprinkler fitter journeypersons and apprentices employed by the Employer out of its 18 North State Street, Elgin, Illinois facility, excluding all confidential employees, office clerical employees, professional employees, managerial employees, guards and supervisors as defined by the Act.

(h) Upon the Union's request, such bargaining sessions shall be held for a minimum of 24 hours per calendar month, for at least 6 hours per session, until an agreement or lawful impasse is reached or the parties agree to a respite in bargaining. The Respondent shall submit written bargaining progress reports every 15 days to the Regional Director for Region 13, serving copies thereof on the Union.

(i) Furnish to the Union in a timely manner the information it requested on December 21, 2022, and January 20, 2023.

(j) Within 14 days after service by the Region, post at its facility in Elgin, Illinois, copies of the attached notice marked "Appendix A" and the attached Explanation of Rights marked "Appendix B."<sup>10</sup> Copies of the notice and Explanation of Rights, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 120 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notice and Explanation of Rights shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notice and Explanation of Rights are not altered, defaced, or covered by any other material.

(k) Hold a meeting or meetings during working hours at its facility in Elgin, Illinois, scheduled to ensure the widest possible attendance of employees, at which time the attached notice marked "Appendix A" and attached Explanation of Rights marked "Appendix B" will be read to employees by a high-ranking responsible management official of the Respondent in the presence of a Board agent and, if the Union so desires, a union representative, or, at the Respondent's option, by a Board agent in the presence of a high-ranking responsible management official and, if the Union so desires, a union representative. A copy of the notice and the Explanation of Rights shall be distributed by a Board agent to each employee attending such meetings before the notice and Explanation of Rights are read.

(l) Within 14 days after service by the Region, duplicate and mail, at its own expense, after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix A" and the attached Explanation of Rights marked "Appendix B" to all current and former unit employees employed by the Respondent at its Elgin, Illinois facility at any time since November 15, 2022, at their home addresses. The Respondent shall maintain proofs of mailings as set forth in the Amended Remedy section of this decision.

(m) Within 21 days after service by the Region, file with the Regional Director for Region 13 a sworn certification of a responsible official on a form provided by the

Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 21, 2026

\_\_\_\_\_  
James R. Murphy, Chairman

\_\_\_\_\_  
David M. Prouty, Member

\_\_\_\_\_  
Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO EMPLOYEES  
POSTED, READ, MAILED AND DISTRIBUTED  
BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT coercively interrogate you about your union activity.

WE WILL NOT threaten to sell the company because you selected a union as your collective-bargaining representative.

WE WILL NOT tell you that you will not receive a Christmas bonus because you engaged in union organizing activities.

WE WILL NOT tell you that you were fired because you engaged in union organizing activities.

<sup>10</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice and Explanation of Rights reading "Posted, Read, Mailed, and Distributed by Order of the National Labor

Relations Board" shall read "Posted, Read, Mailed, and Distributed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT tell you that the company will close its doors because you engaged in union organizing activities.

WE WILL NOT discharge or otherwise discriminate against you for supporting Sprinkler Fitters, Local 281 or any other labor organization.

WE WILL NOT discontinue our practice of providing Thanksgiving turkeys and hams to you because you engaged in union organizing activities.

WE WILL NOT discontinue our practice of providing Christmas hams, turkeys, and rib roasts to you because you engaged in union organizing activities.

WE WILL NOT discontinue our practice of providing a holiday bonus to you because you engaged in union organizing activities.

WE WILL NOT withdraw recognition from Sprinkler Fitters, Local 281 (the Union) and fail and refuse to bargain with the Union as the exclusive collective-bargaining representative of our employees in the following bargaining unit:

All full-time and regular part-time sprinkler fitter journeypersons and apprentices employed by the Employer out of its 18 North State Street, Elgin, Illinois facility, excluding all confidential employees, office clerical employees, professional employees, managerial employees, guards and supervisors as defined by the Act.

WE WILL NOT fail and refuse to bargain for a first contract with the Union.

WE WILL NOT discharge you without giving the Union notice and an opportunity to bargain.

WE WILL NOT discontinue our practice of providing a holiday bonus to you without giving the Union notice and an opportunity to bargain.

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

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

WE WILL, within 14 days from the date of the Board's Order, offer Daniel Colon, Daniel Falco, James Piccolo, Alfredo Torres, Mike Salup, Juan Zamora, Abel Diaz, Jonathan Diaz, Alexander Gonzalez, and Kevin Lipp full reinstatement to their former jobs or, if those jobs no longer exist, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Daniel Colon, Daniel Falco, James Piccolo, Alfredo Torres, Mike Salup, Juan Zamora, Abel Diaz, Jonathan Diaz, Alexander Gonzalez, and Kevin Lipp whole for any loss of earnings and other benefits

resulting from their unlawful discharges, less any net interim earnings, plus interest, and WE WILL also make such employees whole for any other direct or foreseeable pecuniary harms, suffered as a result of their unlawful discharges, including reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Daniel Colon, Daniel Falco, James Piccolo, Alfredo Torres, Mike Salup, Juan Zamora, Abel Diaz, Jonathan Diaz, Alexander Gonzalez, and Kevin Lipp for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 13, 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 for each employee.

WE WILL file with the Regional Director for Region 13, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.

WE WILL post this notice and an Explanation of Rights at our facility in Elgin, Illinois, for a period of 120 days. In addition, WE WILL post the notice and the Explanation of Rights electronically, including email, and by any such means as we generally use to communicate with you.

WE WILL, within 14 days from the date of the Board's order, mail a copy of this notice and the Explanation of Rights to the last known home address of all current and former employees employed by us at any time since November 15, 2022. WE WILL maintain proofs of mailing as required by the Board.

WE WILL hold a meeting or meetings during working hours at our facility in Elgin, Illinois and have this notice and the Board's Explanation of Rights read to you and your fellow employees by a high-ranking responsible management official in the presence of a Board agent and, if the Union so desires, a union representative, or, at our option, by a Board agent in the presence of a high-ranking responsible management office and, if the Union so desires, a union representative. A copy of the notice and Explanation of Rights will be distributed by a Board agent to each employee attending these meetings before the notice and Explanation of Rights are read.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Daniel Colon, Daniel Falco, James Piccolo, Alfredo Torres, Mike Salup, Juan Zamora, Abel Diaz, Jonathan Diaz, Alexander Gonzalez, and Kevin Lipp, and WE WILL, within 3 days thereafter, notify them in writing

that this has been done and that the discharge will not be used against them in any way.

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

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

All full-time and regular part-time sprinkler fitter journeymen and apprentices employed by the Employer out of its 18 North State Street, Elgin, Illinois facility, excluding all confidential employees, office clerical employees, professional employees, managerial employees, guards and supervisors as defined by the Act.

Upon the Union's request, such bargaining sessions shall be held for a minimum of 24 hours per calendar month, for at least 6 hours per session, until an agreement or lawful impasse is reached or the parties agree to a respite in bargaining.

WE WILL submit written bargaining progress reports every 15 days to the compliance officer for Region 13, serving copies thereof on the Union.

WE WILL furnish to the Union in a timely manner the information it requested on December 21, 2022, and January 20, 2023.

ATLANTIC AMERICAN FIRE PROTECTION  
COMPANY, INC.

The Board's decision can be found at <https://www.nlr.gov/case/13-CA-309518> 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



APPENDIX B  
EXPLANATION OF RIGHTS  
POSTED, READ, MAILED AND DISTRIBUTED  
BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

Employees covered by the National Labor Relations Act have the right to join together to improve their wages and working conditions, including by organizing a union and bargaining collectively with their employer, and also the right to choose not to do so. This Explanation of Rights contains important information about your rights under this Federal law.

The National Labor Relations Board has ordered your employer, Atlantic American Fire Protection Company, Inc., to provide you with this Explanation of Rights to describe your rights and to provide examples of illegal behavior.

Under the National Labor Relations Act, you have the right to:

- Form, join, or assist a union to negotiate with your employer concerning your wages, hours, and working conditions.
- Discuss your wages, benefits, other terms and conditions of employment with your coworkers or Union representatives.
- Take action with one or more coworkers to improve your working conditions.
- Choose not to do any of these activities.

**It is illegal for your employer** to take any adverse action against you because you formed, joined, assisted, or supported the Union or any other labor organization, expressed support for unions in general, or took action with one or more coworkers to improve your working conditions, or to

discourage you from doing so. Prohibited adverse actions include

- Discharging you for supporting Sprinkler Fitters, Local 281 or any other labor organization.

It is also illegal for your employer to:

- Threaten to sell the company because you selected a union as your collective-bargaining representative.
- Tell you that you will not receive a Christmas bonus because you engaged in union organizing activities.
- Tell you that you were fired because you engaged in union organizing activities.
- Tell you that the company will close its doors because you engaged in union organizing activities.
- Discontinue its practice of providing Thanksgiving turkeys and hams, Christmas hams, turkeys, and a holiday bonus because you engaged in union organizing activities.
- Coercively interrogate you about your union activities.

There are rules that govern your employer's conduct during collective bargaining with your union:

- Your employer must meet with your Union at reasonable times to bargain in good faith about wages, hours, vacation time, insurance, safety practices and other mandatory subjects.
- Your employer must participate actively in the negotiations with a sincere intent to reach an agreement for a first contract.
- Your employer must not withdraw recognition from Sprinkler Fitters, Local 281 and fail and refuse to bargain with it as your representative.
- Upon a request by the Union, your employer is required to provide information to the Union that it needs to do its job as your representative.
- Your employer must give the Union notice and an opportunity to bargain before it takes action like discharging you, and discontinuing practices like providing a holiday bonus, and Thanksgiving and Christmas turkeys and hams.

**Illegal conduct will not be permitted.** The National Labor Relations Board enforces the Act by prosecuting violations. If you believe your rights or the rights of others have been violated, **you should contact the NLRB promptly to**

**protect your rights, generally within 6 months of the unlawful activity.** You may contact the NLRB about a possible violation without your employer or anyone else being informed that you have done so. The NLRB will conduct an investigation of possible violations if a charge is filed. Charges may be filed by any person and need not be filed by the employee directly affected by the violation.

You can contact the NLRB's regional office, located at Dirksen Federal Building 219 South Dearborn Street, Suite 808, Chicago, Illinois 60604-2027.

The Board's decision can be found at <https://www.nlr.gov/case/13-CA-309518> 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



*Elizabeth S. Cortez and Francis C. Wellin, Esqs.*, for the General Counsel.

*Keith R. Bolek, Esq.*, for the Charging Party.

*Kenneth J. Walschot (pro se)*, for the Respondent.

*Cynthia A. Sauter (on the brief)*, for the Respondent.

## DECISION

### STATEMENT OF THE CASE

MICHAEL P. SILVERSTEIN, Administrative Law Judge. In this case, Atlantic American Fire Protection Company, Inc. (Respondent) swiftly retaliated against its bargaining unit employees for exercising their right to organize under the National Labor Relations Act. Within weeks of watching its employees overwhelmingly vote for union representation, Respondent told employees that it was closing its doors, terminated most of its bargaining unit employees, refused to bargain with the Union, and effectively withdrew recognition. The Complaint alleges a panoply of Section 8(a)(1), (3), and (5) violations and for the reasons described below, I find that Respondent has violated the Act as alleged in most, but not all, circumstances.

Sprinkler Fitters Local 281 (the Union or Charging Party) filed the original charge in this case on December 27, 2022, and filed amended charges on May 1, 2023, and August 24, 2023. The complaint issued on October 13, 2023, and Respondent filed its answer on November 27, 2023.

This case was tried in Chicago, Illinois, on February 13 and 14, 2024. At trial, all parties were afforded the right to call,

examine, and cross-examine witnesses,<sup>11</sup> to present any relevant documentary evidence, and to argue their respective legal positions orally. Counsel for the General Counsel, the Charging Party, and Respondent filed posthearing briefs.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by all three parties, I make the following:

#### FINDINGS OF FACT

##### JURISDICTION

Respondent admits, and I find, that it is an Illinois corporation with an office and place of business in Elgin, Illinois, and is engaged in the installation, repair, and service of fire sprinkler systems. In conducting its business operations during the calendar year ending December 31, 2022, Respondent purchased and received goods valued in excess of \$50,000 from points outside the State of Illinois. Respondent also admits, and I find, that Respondent is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

Based on the foregoing, I find that this dispute affects commerce and that the National Labor Relations Board (the Board) has jurisdiction over this case pursuant to Section 10(a) of the Act.

##### ALLEGED UNFAIR LABOR PRACTICES<sup>12</sup>

Respondent is engaged in the installation, inspection, repair, and service of fire sprinkler systems throughout the State of Illinois. Kenneth J. Walschot is Respondent's owner and president, and Brad Nolan is the sales manager. Respondent admits that Walschot and Nolan are supervisors within the definition of Section 2(11) of the Act. (GC Exh. 12; Tr. 11, 385.) Jill Kahle and Michele Barrett worked as secretaries for this outfit. (Tr. 18, 387.) During prime business years (2017 through 2019), Respondent employed about 23 foremen, fitters, and apprentices. (Tr. 386.) Due to health reasons, Walschot stepped back from the business in November 2019<sup>13</sup> and Nolan took over day-to-day operations.<sup>14</sup> (Tr. 384-385.) By late 2022, Respondent employed about 11 or 12 field workers.

##### *Employee Communications with the Union in Fall 2022*

In about early October 2022, Sprinkler Fitters Local 281 (the Union) Organizer and Vice-President William Hincks called and left messages for several of Respondent's employees, but none of them returned his calls. (Tr. 81.) Then on October 25, Daniel Colon called Hincks. Colon worked as a foreman for Respondent and was one of its most senior employees. Colon told Hincks that he was not satisfied with his career progression with Respondent and said that several other co-workers shared his frustrations with their terms and conditions of employment. (Tr. 81-82, 263-264.) Hincks and Colon agreed to meet in person 4 days

later at the Union's hall in Alsip, Illinois. (Tr. 83.)

On October 29, Respondent employees Daniel Colon, Abel Diaz, Alfredo Torres, and Michael Salup met with Hincks, Union business manager Brian LaRoche, and several other Union officials. The parties discussed rates of pay, career progression, and whether joining the Union would lead to the employees organizing their workplace or leaving Respondent for a Union contractor. By the end of this meeting, all four employees signed Union authorization cards. (GC Exh. 2, Tr. 83-85, 264-265.) The employees agreed to another meeting the following week and said they would bring more interested coworkers to the next meeting. (Tr. 85.)

Colon testified that he drove Respondent's vehicle to one of his meetings with the Union. (Tr. 321.) At the hearing, Walschot volunteered that Respondent uses a California-based company that monitors the rate of speed and manner in which Respondent's vehicles are being driven. Walschot said that this monitoring system notified him that several company vehicles were driven to the union hall on about October 29. (Tr. 31.)

On November 1, Hincks and LaRoche met with Respondent employees Abel Diaz, Michael Salup, James Piccolo, Alexander Gonzalez, Jonathan Diaz, and Daniel Falco at an IBEW hall in Warrenville, Illinois. Daniel Colon participated in this meeting via telephone. (Tr. 85-86.) The employees decided that they wanted to be open with Respondent about their intentions to unionize their workplace. (Tr. 88.) To this end, Piccolo, Gonzalez, Diaz, and Falco signed Union authorization cards and all employees in attendance signed the following petition:

"We, the undersigned Fire Sprinkler Fitter employees of Atlantic American Fire Protection Co. Inc. in Elgin, Illinois hereby authorize the United Association of Sprinkler Fitters Local 281 to represent us in collective bargaining negotiations on all matters pertaining to rates of pay, hours of work or any other condition of employment with Atlantic American Fire Protection Co. Inc.

We demand that Atlantic American Fire Protection Co. Inc. recognize The United Association of Sprinkler Fitters Local 281 as our exclusive collective bargaining representative."<sup>15</sup> (GC Exh. 2, Tr. 88.)

##### *The Union Presents a Demand for Recognition to Respondent*

On November 3, Hincks and LaRoche went to Respondent's shop in Elgin to deliver copies of the petition, signed authorization cards, and a cover letter stating the following:

"Please be advised that eight (8) employees of Atlantic American Fire Protection Company - Michael Salup, Abel Diaz, Alfredo Torres, Daniel Colon, Daniel Falco, Alexander

(Tr. 202, 283.) Whether Walschot had been retired for 2 or 3 years when the Union filed its representation petition will not impact any aspect of my decision.

<sup>14</sup> Walschot remained Respondent's president even during his semi-retirement. (Tr. 385.)

<sup>15</sup> Daniel Colon signed the petition the next day, November 2, 2022. (GC Exh. 2, Tr. 89, 270-271.)

<sup>11</sup> The General Counsel called four witnesses—William Hincks, Abel Diaz, Daniel Colon, and Joshua Hanks—while the Respondent called one witness—Kenneth J. Walschot.

<sup>12</sup> The record on p. 142, line 25 is hereby corrected from "Joshua Hincks" to "Joshua Hanks." The record on page 382, line 6 is hereby corrected from "State Farm" to "State Fire."

<sup>13</sup> Daniel Colon testified that Walschot retired in 2021 and Abel Diaz testified that Walschot had stepped away from the job for about 2 years.

Gonzalez, Jonathan Diaz and James Piccolo – out of fourteen (14) eligible employees have voluntarily signed authorization cards designating Sprinkler Fitters Local 281 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (“Local 281” or “Union”) as their exclusive bargaining representative to bargain collectively over wages, hours and other terms and conditions of employment with their employer. These eight employees represent a majority of the employees who work for Atlantic American Fire Protection Company.

Therefore, Local 281 demands that Atlantic American Fire Protection Company recognize the Union as the exclusive bargaining representative of all full-time and regular part-time journeyman and apprentice Fire Sprinkler Fitters employed by Atlantic American Fire Protection. The Union is prepared, with the presentation of this letter, to show the signed authorization cards to the Employer, as well as a separate petition signed by all eight employees, establishing that a majority of its employees have designated Local 281 as their exclusive bargaining representative.

Furthermore, please be advised that all eight employees identified above have formed a voluntary organizing committee and will continue to work with their co-workers to engage in protected, concerted activities under the National Labor Relations Act...” (GC Exh. 2).

Respondent employee Joshua Hanks greeted Hincks and LaRoche at the shop door. Hincks and LaRoche introduced themselves as Union representatives and asked to speak with either Walschot or Nolan. Neither Walschot nor Nolan was available at that time and so the union representatives left copies of the demand letter, employee petition, and signed authorization cards with Hanks. (Tr. 89–91.) Hanks testified that he called Nolan to ask him what to do with the papers that the Union just delivered. Nolan instructed Hanks to leave the papers in Respondent’s meeting room. (Tr. 341–342.)

About 30 minutes later, Hincks called both Walschot and Nolan, but neither man answered his phone. (Tr. 91–92.) At 1:06pm on November 3, Hincks emailed Walschot (at Respondent’s atlanticfire@sbcglobal.net email address) copies of the demand for recognition letter, employee petition, signed authorization cards, and a proposed voluntary recognition agreement. Hincks wrote in his email that he looked forward to Respondent’s reply. (GC Exh. 2; Tr. 92–93.)

Having received no response from Respondent to its demand for voluntary recognition, the Union on November 4, 2022, filed a representation petition with Region 13 of the Board seeking to represent Respondent’s foremen, journeymen, and apprentice pipe fitters. (GC Exh. 4; Tr. 100.)

#### *Walschot Asks Abel Diaz and Daniel Colon to Return Their*

<sup>16</sup> Both Colon and Diaz drove company vehicles to and from their jobs. They took these vehicles home after work and did not return them to Respondent’s Elgin facility. The record reflects that all four company

#### *Company Debit Cards*

In late 2020, Walschot gave Daniel Colon a company debit card (which had both Respondent and Walschot’s names on the card) to purchase work materials from Home Depot as well as gasoline for his company vehicle. Colon kept this card on his person and the only time he was asked to return it was during the summer of 2022 when Walschot lost his personal debit card and needed to use Colon’s card for a few days until a new one arrived. (Tr. 280–281, 335.) Similarly, in about the Spring 2022, Walschot gave Abel Diaz a debit card of his own, told him to hold on to the card, and use it to purchase gasoline and materials for the job.<sup>16</sup> (Tr. 194–195.)

In about the end of November 2022, Walschot called Diaz and asked him to return the gas (debit) card by that Friday because Walschot was going to cancel the card. Diaz asked how he was supposed to pay for gas for the company vehicle. Walschot directed him to pay for gas with his own money and said Respondent would reimburse him. (Tr. 195.) Diaz returned the debit card to Walschot. Walschot then gave Diaz a different debit card and instructed him to return the card at the end of each day along with his gas receipts. (Tr. 197–198.)

In late November, Colon arrived at Respondent’s shop to retrieve materials for a job. Walschot gruffly asked Colon for his debit card, Colon handed him the card and said, “here’s your broke-ass card.” Walschot did not explain why he asked Colon to return the debit card. (Tr. 282–283/) Going forward, whenever Colon needed the debit card, he retrieved it from either Walschot or from the office secretary (Jill Kahle) (Tr. 288).

Both Diaz and Colon noted that between the time the Union filed the representation petition and the December 6th election, Walschot went from semi-retirement to being a regular presence at Respondent’s Elgin facility. (Tr. 202–203, 283–284.)

In about the 1st week of December, Diaz drove to Walschot’s home (about 10 minutes away from Respondent’s shop) to collect the debit card. During their conversation, Walschot told Diaz that “you guys don’t know what you’re doing.” Walschot said that the Union is going to fuck you guys over like the Union fucked him over. Walschot asked Diaz if he knew that Walschot had been in a union. Diaz said he heard that, but he didn’t know why Walschot was so against the union now. (Tr. 199, 201–202.)

#### *Respondent Ends Tradition of Providing Employees with Free Thanksgiving*

##### *Turkeys and Hams*

In about mid-November 2022, Colon called Walschot to ask him if employees would be receiving free Thanksgiving turkeys or hams. Colon testified that per tradition, on the Monday before Thanksgiving week, Walschot would call Colon and ask him to put together employees’ Thanksgiving wish list. Employees would choose either a turkey or a ham and Colon and Walschot would shop for these items at the Jewel/Osco supermarket. Then on the Tuesday before Thanksgiving, when employees would come to Respondent’s Elgin shop to pick up their weekly

foremen and two journeymen received company vehicles to drive. (Tr. 198, 226, 280, 318–320.)

paychecks, employees would claim either the turkey or the ham that they requested. This tradition dated back to 2011. But when Colon asked Walschot about the Thanksgiving turkeys/hams in November 2022, Walschot said that Respondent could not afford to continue the tradition that year. Thus, no employees received a free Thanksgiving turkey or ham in 2022. (Tr. 273–277.)

Walschot testified at the hearing that after he retired in 2019, he believed that Nolan and Jill Kahle carried on the tradition of Thanksgiving turkeys/hams. But as to why Respondent did not hand out turkeys and hams for Thanksgiving in 2022, Walschot bluntly said: “I felt betrayed. I felt backstabbed. It was because of my health. And here I am 30...years in the ballgame and everything’s got to fall apart.” (Tr. 388.)

*The Union Wins the December 6th Representation Election*

On December 6<sup>th</sup>, Respondent’s employees voted 10-1 in favor of Union representation. Colon served as the Union’s election observer and Walschot attended the pre-election conference and counting of ballots. (GC Exh. 4; Tr. 107–108, 289.) Immediately after the ballot count, Walschot invited Union representative William Hincks to his office to talk about next steps. Hincks declined the invitation, explaining he had other obligations that day, but told Walschot that he would reach out to set up bargaining dates. (Tr. 111.)

Joshua Hanks testified that less than a week after the election, Walschot asked him to change the locks at Respondent’s Elgin facility. Walschot did not explain why he wanted this done and Hanks testified that Walschot had never previously asked him to change the locks. (Tr. 346.)

Daniel Colon also testified that around the 1st week of December 2022, he and Abel Diaz walked into Respondent’s shop to grab work materials for the next day. They encountered Walschot, who walked towards them and asked “what’s up with all this union stuff?” Colon replied that Walschot received the Union’s letter which explained everything. Diaz said that they were just at the shop to retrieve the work materials and gas cards and the conversation ended. (Tr. 286–287.)

*Walschot Confronts Diaz and Colon on December 13*

On December 13, Walschot called Diaz and said that they needed to talk. Diaz reported to the Elgin shop a few minutes later. In Respondent’s break room, Diaz handed Walschot the company debit card and a receipt for gas. Walschot directed Diaz to sit down and asked him who started the union organizing campaign. Walschot told Diaz that he better tell him the truth because he (Walschot) would find out. Diaz acknowledged that he and Colon had talked about joining the Union. Walschot labeled them “ringleaders” and said he knew it was them. Diaz then said that just about all of the employees wanted to join and told Walschot that this was his fault. Walschot asked him at what wage level the Union was going to start him off. Diaz said journeyman level. Walschot then said that he was going to sell the company once employees joined the union and that he just wanted to retire and be left alone. (Tr. 203–205.)

<sup>17</sup> Colon testified that from about 2011 through 2014 or 2015, all employees received a 40-hour check for a Christmas bonus. From about 2015 through either 2019 or 2020, employees received equivalent values in gift cards (e.g. Home Depot, Visa) or gas cards, and then in 2020 and

Diaz asked Walschot if employees were going to receive a Christmas bonus that year and Walschot said no, attributing the reason to the fact that “we are union now.” (Tr. 205.) According to both Diaz and Colon, employees annually received a Christmas bonus (usually paid out 1–2 weeks before Christmas) in the form of either a 40-hour extra paycheck or an equivalent value in gift cards.<sup>17</sup> (Tr. 206–207, 314–316.) All employees received the Christmas bonus each year, with no eligibility requirements other than working for Respondent. But no employees received a Christmas bonus in 2022. (Tr. 207, 314.)

Walschot provided limited testimony regarding the Christmas bonuses. He said that he decided each year whether to give out the bonuses in the form of either the 40-hour checks or gift cards because some employees preferred the former while others preferred the latter. (Tr. 395.) Although his testimony offered no insight into the reason why the Christmas bonus ceased in 2022, Respondent’s answer to the complaint stated that the Christmas bonus policy was changed due to “economic hardships.” (GC Exh. 1(i)).

Diaz then testified that later that week, Colon and Diaz encountered Walschot at Respondent’s Elgin facility where Walschot greeted them with “what’s up ringleaders?” Diaz went to speak with Nolan while Colon stayed in the breakroom with Walschot. When Diaz returned to the breakroom, he heard Walschot tell Colon that he wasn’t going to pay them \$57/hour. Colon said that was what the Union was offering the employees and Colon said that he could quit right then and go union instead of helping the company during this transition. In response, Walschot told Colon that he could leave. (Tr. 209.) In Colon’s version, Diaz and Colon walked into Respondent’s shop together, greeted Walschot, and Walschot in return labeled them “ringleaders.” Colon asked Walschot what he meant and Walschot said that you guys are the ones that started all of this. Colon said that they just wanted to do what was best for their families and themselves. Walschot said that he couldn’t afford to pay them \$57/hour and he couldn’t believe that Diaz and Colon would do this to him. (Tr. 296.)

Walschot testified that he asked Diaz and Colon why they decided to join the Union. Diaz answered that his wife was going to have a baby and the Union said that it would be able to secure enough work for Diaz to obtain medical insurance. Walschot said that he had no problem with that.<sup>18</sup> (Tr. 398.) In that same vein, Respondent’s answer, filed by Walschot, indicated that “I simply asked one employee, Abel Diaz, why he decided after 10 years to go Union. His response was that his wife is having a baby in May and the Union told him they would cover the full expense of the birth.” (GC Exh. 1(i).)

*Walschot Meets with the Union on December 15*

Hincks and Walschot exchanged text messages and eventually agreed to meet at Respondent’s shop on December 15. (Tr. 111.) According to Hincks’ testimony, the parties made small talk about their mutual acquaintances in the industry and Walschot asked something to the effect of what kind of wage package will

2021, all employees received a 40-hour check for their Christmas bonus. (Tr. 315–317.)

<sup>18</sup> It is unclear from Walschot’s testimony as to whether this conversation took place on December 13 or 20.

it take to reach an agreement. Hincks then supplied Walschot with the current wage sheet contractors were obligated to pay under the Union's collective bargaining agreement and said that wage and benefit rates are subject to collective bargaining. (Tr. 112-113, 179-180.) Walschot said that Nolan didn't want anything to do with the Union and that he (Walschot) wanted to sell the company, retire, and hoped that the Union could facilitate a sale to a Union contractor.<sup>19</sup> LaRoche said that he would happily make introductions to potential buyers. (Tr. 113, 177.) Although the parties discussed setting up bargaining dates, the Union did not offer any specific dates for bargaining, and Walschot never said that he wasn't going to bargain with the Union. (Tr. 112, 114.)

The next day, December 16, the Region issued a certificate of representative for the following bargaining unit:

"all full-time and regular part-time sprinkler fitter journeypersons and apprentices employed by the Employer out of its 18 North State Street, Elgin, Illinois facility; Excluding all confidential employees, office clerical employees, professional employees, managerial employees, guards and supervisors as defined by the Act." (GC Exh. 4).

Walschot Informs Diaz and Colon That They are Fired, He is Closing the Business, and the Police are Called to Respondent's Shop

*Abel Diaz' Testimony*

Diaz testified that he and Colon arrived at Respondent's shop sometime between 12:00pm and 2:00pm on December 20.<sup>20</sup> Walschot approached them and demanded their keys. Colon asked Walschot if he was talking about the shop keys,<sup>21</sup> but Walschot said that he wanted the keys to their work vehicles. (Tr. 210-211, 226.) Walschot then told Diaz and Colon that they were fired and he (Walschot) was closing the company. (Tr. 211.) Colon told Walschot that he was going to retrieve his personal belongings from the work truck before giving Walschot the keys. Walschot told Colon that he could not touch anything in the work vehicle. Colon said that these were his personal belongings, and he was going to get them from the truck. Walschot then rushed in front of Colon and bumped him with his chest. Walschot, who has a distinct height advantage over Colon, told Colon not to fucking play with him or grab anything from that truck. Colon reiterated that he wasn't taking anything from the company—he was taking back his own stuff. Colon and Diaz proceeded towards their work vehicles and Walschot said you guys gave me no choice—the Union gave me no choice. Diaz

<sup>19</sup> Walschot's testimony regarding this portion of the meeting mirrors Hincks' testimony. In this regard, Walschot testified that he told Hincks and LaRoche that he was physically and mentally exhausted, he could not run the company anymore, and he asked the Union to help him sell the company to a union outfit. (Tr. 396.)

<sup>20</sup> December 20, 2022, was a Tuesday. (Tr. 209.) Tuesdays are pay-days for Respondent and so Diaz and Colon came to Respondent's facility to retrieve their paychecks.

<sup>21</sup> Colon had a set of keys to Respondent's Elgin facility, but Diaz did not. (Tr. 226.)

said that this was BS and that the Union tried setting up a meeting with Walschot, but Walschot never showed up. Diaz told Walschot that he couldn't fire them and Walschot said that "this is America – I can do whatever the fuck I want." (Tr. 211-213.)

Colon then called Hincks to let him know what was happening. Via speakerphone, Hincks suggested that Walschot talk with his lawyer before going through with the terminations/closing. Walschot then screamed out to someone on the property that they should call the police. A few minutes later, a police officer arrived. Colon retrieved his belongings, the employees received their paychecks, and left the property without incident. Nobody was arrested. (Tr. 213-215.)

At the time of his termination, Diaz was working on a job at Ravenswood Life Storage in Chicago. Diaz had worked on this job for several months and estimated that at the time of his termination, he had about 2-3 more days of work remaining on this project. (Tr. 223-224.)

*Daniel Colon's Testimony*<sup>22</sup>

Diaz and Colon arrived at Respondent's shop on Tuesday, December 20 to collect their paychecks. Walschot walked towards them and said that "we're closing the company. We can't afford to do this. I can't afford to pay you guys \$57/hour." (Tr. 297-298.) Walschot said that to get your checks, he needed their keys to the company vehicles. Colon told Walschot that he was going to collect his personal belongings from his work truck before handing Walschot the keys to the vehicle. Walschot told Colon that he wasn't taking anything out of the truck. Colon ignored Walschot's directive and walked towards his work truck, telling Walschot that he would be taking all of his fucking personal belongings out of the truck. Walschot said "who the fuck do you think you are?" Colon said that he just wanted to get his belongings out of the truck and Walschot proceeded to bump Colon's chest. Colon told Walschot to back away from him before he "dropped him." Walschot backed up and Colon walked to his work vehicle. (Tr. 298-299.)

Diaz and Walschot were yelling at each other while Colon opened the door to his vehicle. Colon retrieved his jacket, shoes, hand tools, holster, ammunition,<sup>23</sup> and a portable stereo. Walschot approached Colon from behind, grabbed the stereo from Colon, and said "that's not yours." Colon then ripped the stereo out of Walschot's hands and told Walschot that he had given Jill (Kahle) the receipt for the radio. At some point during this fracas, Walschot called out to someone named Bill to call the police. At the same time, Colon called Hincks to let him know what was happening. (Tr. 299-304.)

When the police arrived, Colon told the officer that "this piece

<sup>22</sup> Diaz testified before Colon. Colon was not in the hearing room when Diaz testified.

<sup>23</sup> Colon testified that he had carried a firearm in his work vehicle for about 1 year prior to his termination and that Walschot endorsed this move, believing that carrying the firearm helped keep Respondent's property and employees safe. (Tr. 300-301.) Walschot implied through his cross examination of Colon that he did not condone keeping weapons in a company-owned vehicle. (Tr. 327.) Colon denied that he was ever told not to keep his weapon in a work vehicle. (Tr. 327.) Respondent never disciplined Colon for keeping the firearm in Respondent's vehicle. (Tr. 336.)

of shit is firing us 5 days before Christmas because we wanted to better our lives and our family by joining the local union.” (Tr. 306.) The officer indicated that he was there to keep the peace while Hincks, on speakerphone, told Walschot that what he was doing was illegal. Colon told Walschot that he couldn’t close the company without first talking with Hincks and the Union. Walschot in response said, “this is America—I can do whatever the fuck I want.” Colon replied that there was a special place in hell for Walschot for firing them 5 days before Christmas. Colon asked Walschot what kind of Catholic he was and Walschot said “the kind that just fired your ass.” Diaz and Colon then left Respondent’s property. Nobody was arrested. (Tr. 306–310.)

Colon acknowledged in his testimony that during the entire confrontation with Walschot, Colon had his firearm concealed right behind his kidney. Colon did not reference the firearm during his argument with Walschot and Walschot did not mention this either. Colon did not display his firearm to Walschot at any time on December 20. (Tr. 301, 305.)

At the time of his termination, Colon had been working on the construction of a Lifetime Fitness in Lake Zurich, Illinois. Colon had been on this job for about a year and estimated that there was about 6 or 7 hours of work remaining on this job at the time of his termination. Colon also noted that he was working on a separate job in Naperville, which had about a day’s worth of work remaining as of December 20. (Tr. 322–324.)

*William Hincks’ Testimony*<sup>24</sup>

Hincks testified that Daniel Colon called him on December 20 to say that he went to the shop with Diaz and Walschot told them that they were all fired and Respondent was ceasing its operations. A few minutes later, Colon called Hincks back to say that Walschot had called the police on them while Colon was trying to retrieve his belongings from the work truck. Via speakerphone, Hincks told Walschot that he was violating federal labor law and should let the employees get their stuff. Walschot said that it was his truck and he could do what he wanted with it. Hincks told Colon to stay with the police officer, retrieve your stuff, and don’t engage with Walschot. (Tr. 114–116.)

*Kenneth Walschot’s Testimony*

Walschot testified that he asked the Union on December 15 to help him sell the business to a union outfit. Walschot said that he did not hear back from the Union and believed that if he was not going to go union, the Union was going to destroy him. (Tr. 397.)

Walschot denies using the words fired or terminated with Diaz and Colon on December 20. Walschot just told them to “go and prosper and move on with your lives. The Union will take care of you forever and you are probably going to be better off in the long run.” (Tr. 401.) Walschot also told them that he (Walschot) was done and closing the company down. He then directed Diaz and Colon to take their personal belongings and leave. (Tr. 400.)

<sup>24</sup> Neither Colon nor Diaz was in the hearing room when Hincks testified.

<sup>25</sup> In his Answer to the complaint, Walschot wrote: “The reason the Elgin Police Department was involved was due to the fact several of my employees are known to carry weapons on them, and in company vehicles. For the safety of all parties involved, I contacted Elgin Police

Walschot said that Colon verbally attacked him and screamed about his daughter’s medical condition. Walschot knew that Colon and Diaz carried weapons in their work van and Walschot asked an employee named Joe to call the police. Walschot told Joe that “this is getting nasty. These guys got guns out there. I don’t think they are going to do anything, but just to be on the safe side, I need you to call the police.”<sup>25</sup> (Tr. 399–400.)

At the outset of the hearing, Walschot, as a pro se litigant, explained his side of the story. Walschot said that the 10 individuals named in the complaint were not fired. Walschot said that there was an election in his shop, which he didn’t appreciate. Walschot was very upset because one of the employees tried to put in for overtime for (presumably voting) in the election. “They voted to go union, so I just set them free.” Walschot said that he wanted them to go on with their lives to a better place with better pay and better benefits. Walschot then told the employees that he needed all of his equipment and tools turned in by the end of the day. When the employees came in, Walschot said goodbye to them. He did not send out letters informing them of Respondent’s decision. (Tr. 43–45.)

*The Union Responds to Reports of Employee Terminations and Respondent’s Closure*

Several employees called Hincks on December 20 to report their understanding that they were terminated, and that Respondent was closing its doors. Since Respondent did not notify the Union in advance of these announcements, Hincks reached out to Walschot via email:

“Local 281 has learned that Atlantic American Fire Protection have advised its employees that the paycheck they picked today will be their last because the Company has decided to close its doors permanently. This announcement comes less than one week after the National Labor Relations Board certified Local 281 as the exclusive bargaining representative of all journey-person and apprentice sprinkler fitters employed by Atlantic American Fire Protection. Please confirm that Atlantic American Fire Protection is terminating its operations.

If the Company is truly closing its doors, Local 281 demands to bargain over all negotiable aspects of the Company’s decision to terminate its operations, as well as the effects of that decision. Please contact me as soon as possible to set bargaining dates.” (GC Ex. 7; Tr. 125–126.)

About 30 minutes after Hincks sent this email, Walschot called him. Walschot acknowledged receiving Hincks’ email and asserted that he was going to bring charges against the Union and the NLRB because the Union had forced his hand. Hincks noted that they only had one meeting and were trying to set up bargaining dates before Respondent terminated everybody. Hincks said that the Union still looked forward to bargaining

Department to ensure there were no issues. As an American of the United States, I believe it is my constitutional right to call the police department for protection of all parties involved. I felt this was the wisest decision to make, as there were employees who are known to be armed. I did not think I had to have permission to contact the police.” (GC Exh. 1(i).)

with Respondent. Walschot said he was told he had to pay his guys “full freight.” Hincks said that the Union never told him this and the Union had given him the current wage sheet because Walschot had asked for it. Walschot then said he might have made a big mistake. (Tr. 130–131.)

Hincks then asked Walschot what he was going to do with the business. Walschot said that he didn’t know if he could undo what he had done, but Walschot did not specify what “he had done.” Walschot said that he just wanted everything to be over and he wanted this all to go away. Walschot said he wanted to retire and wanted this to end.<sup>26</sup> Hincks told Walschot that they could continue to talk and bargain over the effects of the closing and that the parties should try to set up bargaining dates. The parties did not set up any specific bargaining dates by the end of this phone call. (Tr. 132–133.)

The next day, the Union emailed an information request to Respondent at the atlanticfire@sbcglobal.net email address. The email stated that:

“In light of Atlantic American Fire Protection (AAFP) having closed its doors permanently, and based on our understanding that AAFP will no longer engage in sprinkler fitter work, Local 281 repeats its demand to bargain over the effects of the Company’s decision to terminate its business. Local 281 further requests the following information to assist it in preparing bargaining proposals.”

The Union then requested the following nine paragraphs of information:

1. A list of all of the bargaining unit employees employed by AAFP as of the date the Company terminated its operations, along with their classification, wage rate, and contact information (including but not limited to home address and home phone number, as well as personal cell phone number and personal e-mail address if in AAFP’s possession);
2. A copy of all employment handbooks or other documents setting forth company policies and procedures, including but not limited to policies relating to severance pay and payout of wages and benefits upon termination;
3. A copy of all payroll records from January 1, 2022 to the present, including but not limited to paystubs and other documentation that would show wage rates, hours worked, benefits paid, deductions and other payroll information;
4. A copy of the governing documents for all employee benefit plans, including but not limited to pension, 401(k), health and welfare, workers compensation, disability and other benefits;
5. A copy of all documents showing which bargaining unit employees participate in which employee benefit plans,

<sup>26</sup> Hincks clarified that Walschot never said that he was closing the business and never said that Respondent would no longer perform sprinkler fitter work. (Tr. 136–137.)

<sup>27</sup> Hincks’ January 2, 2023 text messages with Walschot confirmed that Hincks and LaRoche would meet with Walschot in-person at Respondent’s Elgin facility and the Union’s counsel would join the meeting

as well as the amounts paid by the employees or contributed by the employer to such plans;

6. A copy of all timesheets or other documents reflecting the number of hours worked from January 1, 2022 to the present by pay period by bargaining unit employees;

7. A copy of all documents showing bargaining unit employees’ accrued vacation hours/days or other accrued paid time off, as well as the payment of any such benefits since January 1, 2022;

8. A copy of all documents showing any other accrued benefit given to bargaining unit employees, as well as the payment of any such benefits since January 1, 2022;

9. A list of all outstanding projects, jobs and/or work as of the date the Company terminated its operations, as well as documents showing how the work will be performed after the termination of operations, including but not limited to subcontractors or other employers who have been retained to complete the work.

The email ended with Hincks writing that “if AAFP reopens its doors and performs sprinkler fitter work, Local 281 will reassert its rights as the exclusive bargaining representative of the employees and will bargain an initial collective bargaining agreement setting forth the employees’ wages, hours and other terms and conditions of employment...” (GC Exh. 8; Tr. 133–135.)

Respondent did not answer the Union’s information request. (Tr. 137.)

On December 27, Hincks and Walschot exchanged text messages regarding the retrieval of employees’ last paychecks. Hincks and LaRoche went to Respondent’s Elgin shop later that day and Walschot invited them in. During their chat, Walschot spoke of selling the company along with all of its tools. Walschot said that he was winding up the projects he has, Kahle and Nolan would be gone as of the end of the year, and then the company would shut down. Hincks said that they could still talk and set up bargaining dates. Hincks also encouraged Walschot to maintain lines of communication during this process. The Union then suggested January 6, 2023, for a bargaining date and Walschot eventually agreed.<sup>27</sup> (Tr. 138–41.)

#### *Walschot No-Shows the January 6, 2023 Meeting*

On January 6, 2023, Hincks and LaRoche arrived at Respondent’s Elgin facility and texted Walschot to let him know they had arrived. Walschot did not respond. Hincks then knocked on the back door of the facility and Joshua Hanks let them in. Hincks explained to Hanks why he and LaRoche were there, and Hanks said that he would call Walschot. Hincks says he stood about 2 feet away from Hanks when Hanks called Walschot and could hear Walschot say that he wasn’t fucking coming down there and would not meet with the Union. Hincks then texted Walschot again regarding the meeting, but Walschot did not respond.<sup>28</sup>

via Zoom link. Walschot indicated via text that he was available from 11 a.m. to 2 p.m. to meet with the Union that day. (GC Exh. 10; Tr. 142, 151.)

<sup>28</sup> In his testimony, Hanks corroborated Hincks’ account of their interaction on January 6. To this end, Hanks said that he opened the door for Hincks and LaRoche and they told him that they had a meeting

(Tr. 142–144.)

In his limited testimony regarding this subject, Walschot offered that he was very bitter about everything that had happened, and he was drinking heavily during this time. Walschot acknowledged setting up the January 6 meeting and not showing up. Walschot said that he didn't want to talk to Hincks and LaRoche that day because he was upset and emotionally distraught. Walschot then admitted that he did not try to reschedule this meeting. (Tr. 397, 411–412.)

*The Union Submits a Second Information Request and Reiterates*

*Its Demand to Bargain with Respondent*

On January 20, 2023, Hincks emailed Walschot to reiterate the Union's demand for the information initially requested on December 21, 2022, request additional information, and renew its demand to bargain over employees' terms and conditions of employment. The email begins:

“Sprinkler Fitters Local 281 (Union) sent an information request to Atlantic American Fire Protection (AAFP or Employer) on December 21, 2022. To this date, the Employer has failed to provide a response to the Union. This failure violates Section 8(a)(5) of the National Labor Relations Act. The Union is reiterating its request for the requested information to be provided as soon as possible given the Employer has had nearly a month to provide it...”

The email went on to list the nine previously requested paragraphs of information. The email then continued as follows:

“Furthermore, it appears that the Employer remains in business despite the supposed decision to terminate operations. As the Employer continues to operate, it continues to have a duty to bargain with the Union. Therefore, the Union repeats its demand to bargain over all negotiable subjects and conditions of employment. The Union further requests the following additional information in connection with this demand to bargain:

- A list of all employees hired by AAFP after the date that the Company allegedly terminated its operations, along with their classification, wage rate, and contact information (including but not limited to home address and home phone number, as well as personal cell phone number and personal e-mail address if in AAFP's possession)
- All documents relating to any benefits (wage increases, hourly premiums, allowances, etc.) provided

scheduled with Walschot. Hanks told them that Walschot wasn't around, but said he would give Walschot a call. Hanks called Walschot to remind him of the meeting and Walschot said “I ain't having no fucking meeting.” Walschot then hung up on Hanks. (Tr. 349–352.)

<sup>29</sup> Hincks testified that to be a licensed fire sprinkler contractor in the State of Illinois, you must be licensed through the Office of the State Fire Marshal. Contractors in business before 2004 require a responsible managing employee to have worked in the industry for a minimum of 4 years.

by AAFP to any employee who has continued to work for the Employer after the date that the Employer allegedly terminated its operations, including documents that establish the amount, frequency of payment and other terms. If there are no documents, then list the benefits along with the information requested herein.

- A list of any new work or projects obtained by the Employer since the date that AAFP allegedly terminated its operations, as well as documents showing how the work will be performed after the termination of operations, including but not limited to subcontractors or other employers who have been retained to complete the work.
- A copy of all licenses of AAFP, its owner, managers, supervisors and employees, including but not limited to contractor licenses and employee trade licenses (NICET, ASSE, etc.).<sup>29</sup>
- A copy of all documentation and correspondence with companies regarding the potential or actual sale of AAFP, including but not limited to its business, assets, equipment, customer lists, and other property or other things of value.

The Union requests this additional information as soon as possible. The Union specifically requests the information in paragraph 14 (the last bullet point) to ascertain the truth in the Employer's claim that it has or will be terminating operations.

Finally, please provide dates on which the Employer is available to bargain. If you have any questions, please let me know...” (GC Exh. 9.)

About 2 hours after sending this email, Hincks sent Walschot a text message to let him know to check his email because Hincks had sent him an important email and was looking for Walschot's response. (GC Exh. 10; Tr. 150.)

Later that afternoon, Walschot responded to Hincks via text message indicating that he was getting the requested information together and hoped to have it by Monday morning (this text message was sent on a Friday). Walschot then wrote that he didn't understand why the Union was harassing him when the Union had taken all of his top guys, the company was crippled, and closing its doors. Walschot asked the Union to leave him alone and stated that no work had been sold since the end of November

Other entities must have a designated certified individual on staff who possesses a NICET Level 3 license in design, engineering, or systems layout. Employees performing sprinkler fitter work do not need a license from the State of Illinois to perform this work, but employees performing inspections or testing work must either be a graduate of a Department of Labor 5-year certified sprinkler fitter apprenticeship program, possess an ASSE 15010 license, or have a NICET Level 3 certificate in the inspection and testing of water-based systems. (Tr. 147–148.)

or beginning of December, he has not obtained or bid on any new jobs, and Respondent was just closing out the jobs that were 95% or 99% complete. Walschot asked Hincks to call him and reiterated that he just wanted this to go away, and Walschot wanted to retire and be left alone. (GC Exh. 10.)

Hincks did not respond to Walschot's text message. (Tr. 152.) The parties had no further communications and no bargaining sessions. (Tr. 153.)

*Respondent Continues to Perform Sprinkler Fitter Work*

Walschot acknowledges that Respondent did not cease operations on December 20, 2022. (Tr. 35.) Joshua Hanks testified that after December 20, he worked exclusively in the field as a sprinkler fitter along with foreman Michael Brannan and apprentice Caleb Hanks (Joshua Hanks' brother). From January 2023 until his termination in April 2023, Joshua Hanks performed sprinkler fitter work at a storage facility in Glenview, Illinois, a job on which Joshua Hanks had not worked on previously.<sup>30</sup> (Tr. 354–358.)

On two separate occasions after December 20, 2022, Hincks spotted Respondent employees performing sprinkler fitter work. First, in the summer of 2023, Hincks spotted Respondent employees working at an Itasca Self Storage in Itasca, Illinois. Then, about 2 weeks before this hearing, Hincks observed Michael Brannan, Caleb Hanks, and a third man working at a strip mall in Naperville, Illinois. (Tr. 153–155.) Furthermore, in response to the General Counsel's subpoena duces tecum in this case, Walschot produced a list of nine jobsites where Respondent performed work in 2023. (GC Exh. 14, Tr. 415.)

*Respondent's Position Re: Terminations and Closure*

In its Answer to paragraph 6(e) of the instant complaint, Respondent admitted that on December 20, 2022, it terminated Colon, Diaz, Daniel Falco, James Piccolo, Alfredo Torres, Mike Salup, Juan Zamora, Jonathan Diaz, Alexander Gonzalez, and Kevin Lipp. (GC Exh. 1(i).)

At the outset of the hearing, Walschot volunteered that he was in a state of shock and didn't know what to do (about the Union's request for recognition). Walschot said that his management advised him in early November to cease all operations. Knowing that he had a lot of open contracts, Walschot decided to hold on and try to finish up as much work as he could to get his guys paid through the holidays. (Tr. 46.)

Walschot also said that his statements regarding the closure of the company were made because it was a frightening time, it was a transitional period, and "we did not know what our future was going to be." (Tr. 129.) Walschot said that he crunched numbers, Respondent could at most afford a \$5/hour raise for employees' wages and a \$5/hour increase in benefit payments, but that the employees had not even given him the common courtesy of approaching him first and asking Walschot what he could do for them. (Tr. 389–390.) Walschot next said that there was no money whatsoever to go Union, unidentified individuals had misappropriated company funds, the company was a "sewer" and a "cancer," and "it was my job as president to quell that

insurrection and put that rebellion down." (Tr. 394, 402.) Walschot added that there were guys that he wanted to keep, but the people who want to go should then go. "Because of my actions, Atlantic did pay a heavy, heavy price. We lost a good customer base. I'm out \$280,000..." (Tr. 402.) Walschot then verbally informed his customers that Respondent would no longer be able to do their jobs in the future because he didn't have the personnel. (Tr. 64.)

*Analysis*

*General Counsel's Motion for Partial Default Judgment*

On the 1st first day of the hearing, counsel for the General Counsel filed a Motion for Partial Default Judgment seeking default judgment on paragraphs 7, 8, 9(c), 10, and 11 of the Complaint due to Respondent's failure to file an answer regarding these specific paragraphs. For the reasons below, I deny the General Counsel's motion.

Counsel for the General Counsel correctly notes in its Motion that Kenneth Walschot is representing Respondent pro se and the Board affords certain latitude to pro se litigants. Earlier this year, the Board reaffirmed these principles in *Valladares Landscaping Artists*, 373 NLRB No. 29 (2024), where the General Counsel filed a motion for default judgment on the basis that the employer, who filed an answer to the complaint without counsel, had failed to file an appropriate answer. The Board noted that it "will generally not preclude a determination on the merits of a complaint if it finds that a pro se respondent has filed a timely answer, which can reasonably be construed as denying the substance of the complaint allegations." Id. quoting *Clearwater Sprinkler System*, 340 NLRB 435, 435 (2003). In *Valladares*, the Board found that although the respondent's letter answer did not respond to each and every allegation in the complaint and was not in a form that comports with the Board's Rules and Regulations, the letter answer adequately denied the unfair labor practice allegations enough to cause the Board to deny the General Counsel's Motion for Default Judgment.

Of note, Respondent's Answer to the instant complaint did not address paragraphs 1 through 4. But counsel for the General Counsel did not seek default judgment concerning those paragraphs. Instead, at the outset of the hearing, counsel for the General Counsel, Respondent, and Charging Party entered into a stipulation to resolve the deficiencies in Respondent's answer regarding filing and service of the charge, commerce and jurisdiction, labor organization status, and supervisory status of Walschot and Nolan. (GC Exh. 12, Tr. 11–18.)

Furthermore, Section 102.23 of the Board's Rules and Regulations states that:

"...Whether or not the complaint has been amended, the answer may, in the discretion of the Administrative Law Judge or the Board, upon motion, be amended upon such terms and within such periods as may be fixed by the Administrative Law Judge or the Board."

<sup>30</sup> Hanks testified that he received a \$3/hour raise in about January 2023 as well as a bonus. (Tr. 352.)

I exercised my discretion at the hearing under Section 102.23 of the Board's Rules and Regulations to permit Respondent to make a Motion to Amend its Answer to either admit or deny the paragraphs subject to General Counsel's Motion for Partial Default Judgment. (Tr. 370–374.) I did so in light of counsel for the General Counsel's willingness to enter into a stipulation at the beginning of the trial to resolve other portions of Respondent's Answer that were arguably deficient and the Board's preference for merit determinations if the answer can reasonably be construed as denying the substance of the complaint allegations<sup>31</sup>.

Respondent then offered the following amended answer to paragraphs 8, 9(c), and 10:

- 8(a) Admit
- 8(b) Admit
- 8(c) Deny
- 8(d) Neither Admit nor Deny
- 8(e) Admit
- 8(f) Admit
- 8(g) Admit
- 8(h) Admit
- 8(i) Deny
- 8(j) Deny
- 9(c) Deny
- 10 Deny<sup>32</sup>

Counsel for the General Counsel did not object to Respondent's Motion to amend its answer, but indicated that it was not withdrawing its Motion for Partial Default Judgment. (Tr. 378.) I then received Respondent's Motion over the Charging Party's objection. (Tr. 378–379.)

Based on my receipt of Respondent's amended answer as well as the Board's teachings that pro se litigants are afforded latitude in the way their answers to complaints are interpreted, I deny counsel for the General Counsel's Motion for Partial Default Judgment.

#### The 8(a)(1) Allegations

Paragraph 5(a): About the first week of December 2022, Walschot, at Respondent's Elgin facility, interrogated employees about their union activities.

Paragraph 5(b)(1): About December 13, 2022, Walschot, at Respondent's Elgin facility, interrogated employees about their union activities.

#### Relevant Caselaw

To determine the lawfulness of an employer's interrogation, the Board evaluates whether, under all the circumstances, the interrogation reasonably tended to interfere with, restrain, or

coerce employees in the exercise of their Section 7 rights. *Quickway Transportation, Inc.*, 372 NLRB No. 127, slip op. at 25 (2023); *Rossmore House*, 269 NLRB 1176, 1177 (1984), affd. Sub nom. *Hotel & Restaurant Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). “Factors relevant to the analysis include the background against which the questioning occurred, the nature of the information sought, the identity of the questioner, the place and method of interrogation, the truthfulness of the employee's reply, and whether the employee involved was an open and active union supporter.” *Kumho Tires Georgia*, 370 NLRB No. 32, slip op. at 5 fn. 14 (2020); See also *Bannum Place of Saginaw, LLC*, 370 NLRB No. 117, slip op. at 2 (2021), enf. 41 F.4th 518 (6th Cir. 2022) (the interrogator was the highest-ranking individual at the facility involved, which weighed in favor of finding the interrogation was unlawful).

#### Paragraph 5(a)

Daniel Colon testified that in the 1st week of December 2022, he and Diaz walked into Respondent's shop around midday. As they picked up supplies, Walschot walked towards them and said “what's up guys? What's up with all this Union stuff?” Colon replied that you got the letter—you know what's up.<sup>33</sup>

Weighing the *Rossmore House* factors, it is clear that since Walschot was the highest-ranking official in the company, the identity of the questioner factor weighs in favor of a violation. Other factors, however, weigh against a finding of unlawful coercion. To this end, the Union had previously provided Walschot with copies of Colon and Diaz' signed union authorization cards, as well as their names on a petition requesting that Respondent voluntarily recognize the Union. Thus, Diaz and Colon's support for the Union was no secret.<sup>34</sup> Additionally, Walschot only asked a generic question about the Union and did not ask a follow-up, or say anything in response to Colon's remark that he got the letter and knew what was up. Furthermore, Colon's reply that everything Walschot needed to know was in the Union's letter (including the authorization cards and petition) does not signal apprehension and runs counter to counsel for the General Counsel's assertion in their posthearing brief that Colon and Diaz were clearly reluctant to answer Walschot's questions. Based on the above, these three factors weigh against a finding of unlawful coercion.

I further find that the remaining two factors are neutral as it relates to the *Rossmore House* analysis. In this regard, Walschot's questions occurred at Respondent's shop. Counsel for the General Counsel correctly points out that nobody was around for the questioning, but this fact does not make Walschot's questions any more or less coercive. Walschot did not take Colon and Diaz to a private office and shut the door, nor did he yell at them in full view of their coworkers. Based on the testimony, it seems that the lack of employees milling about Respondent's facility was a common occurrence. Thus, I read nothing coercive into the place and method of the questioning. Furthermore, when

<sup>31</sup> On p. 2 of Respondent's answer, Walschot wrote: “In Conclusion, I believe these accusations are invalid.” Such a denial could arguably be applied to the paragraphs that Walschot failed to specifically answer.

<sup>32</sup> Par. 11 is the request for a remedy for the alleged violations of the Act. Respondent is not required to admit or deny this paragraph.

<sup>33</sup> Abel Diaz did not testify about this conversation even though Daniel Colon's testimony noted that Diaz was also present for this conversation.

<sup>34</sup> The Board notes that even if the employee was an open union supporter, that is but one factor and is not dispositive in the context of the multi-factor test. See *Bozzuto's Inc.*, 365 NLRB No. 146, fn. 11 (2017),

Walschot made the allegedly unlawful remarks, the only other unfair labor practice that had occurred was the 8(a)(3) discontinuation of the Thanksgiving turkey tradition. There are no other allegations of unlawful 8(a)(1) statements made in the runup to the December 6th election and all of the numerous other unfair labor practices postdated Walschot's question about the "union stuff." While the future unfair labor practices could lend additional context to Walschot's questions about the "union stuff," Walschot's remark was so innocuous, and I conclude that the background against which the questioning occurred neither weighs in favor of or against a finding of a violation here.

Several Board cases have found similar comments uttered by Walschot to violate the Act. See *Bozzuto's, Inc.*, 365 NLRB No. 146, slip op. at 1 (company vice-president asked union-supporting employee what was going on with this "union stuff"); *President Riverboat Casinos of Missouri, Inc.*, 329 NLRB 77, 78 (1999) (employer's executive sous chef asked employee, "what do you think of this union stuff?"). But in other cases, the Board has declined to find a violation based on similarly worded remarks. See *Rossmore House*, 269 NLRB at 1176 (manager asks employee "what is this about a union?"). What is consistent is that the Board applies the multifactor test and no one factor is dispositive. In weighing all of the above factors, I find insufficient evidence of coercion to establish a violation here. Therefore, I recommend dismissal of the interrogation allegation in paragraph 5(a) of the complaint.

Paragraph 5(b)(1)

Abel Diaz testified that on about December 13, 2022, Walschot asked him who started the union and said he better tell Walschot the truth because Walschot would find out. Such a direct inquiry about the origins of the organizing campaign is clearly coercive in violation of Section 8(a)(1). To this end, Walschot was the highest-ranking company official who only reappeared on the scene upon the filing of the representation petition. Furthermore, this interrogation took place 1 week after the employees overwhelmingly voted in favor of the Union and during this same conversation, Walschot committed numerous other unfair labor practices, e.g. threatening to sell the company if employees unionize, telling employees they would not get a holiday bonus because they selected the Union. *Quickway Transportation, Inc.*, 372 NLRB No. 127, slip op. at 26; *Seton Co.*, 332 NLRB 979, 982 (2000), enfd. mem. 276 F.3d 579 (3rd Cir. 2001). That Diaz truthfully responded to Walschot by stating that he and Colon spearheaded the organizing campaign does not diminish the coerciveness of Walschot's statements, especially since Walschot pejoratively labeled Diaz a "ringleader" going forward.

Diaz' account of this conversation was detailed, forthright, and eminently credible, especially since Walschot only offered a blanket denial in response to this allegation. Therefore, based on the totality of the circumstances, Walschot's comments constituted a coercive interrogation in violation of Section 8(a)(1) of the Act.

<sup>35</sup> Counsel for the General Counsel further argues that by calling Diaz and Colon "ringleaders," Walschot hammered home Respondent's impression of surveillance. But Diaz told Walschot that he and Colon helped organize the union activity and Diaz and Colon's signed

Paragraph 5(b)(2): About December 13, 2022, Walschot, at Respondent's facility, created an impression among its employees that their union activities were under surveillance by Respondent.

*Relevant Case Law*

The test for determining if an employer has unlawfully created the impression of surveillance is "whether, under all the circumstances, the employer's statements or other conduct has placed their union activities under surveillance." *Stern Produce Co.*, 372 NLRB No. 74, slip op. at 2 (2023); *Charter Communications, LLC*, 366 NLRB No. 46, slip op. at 4 (2018), enfd. 939 F.3d 798 (9th Cir. 2019). An unlawful impression is created when an employer informs an employee that it knows of his/her protected activity without disclosing the source of this information. *Dignity Health d/b/a Mercy Gilbert Medical Center*, 370 NLRB No. 67 slip op. at 9 (2021); *Conley Trucking*, 349 NLRB 308, 315 (2007).

Counsel for the General Counsel asserts that Respondent created an unlawful impression of surveillance in violation of Section 8(a)(1) of the Act when Ken Walschot told Abel Diaz that if Diaz did not tell him who was behind the organizing campaign, he would "find out." Counsel for the General Counsel cites to Respondent's admission that it was able to track the movements of employees' trucks as support for a finding of a violation here. I do not agree. In this regard, Walschot's statements that he could track company vehicles via a California-based monitoring company don't establish a violation. There is no record evidence as to when this monitoring began—only that Walschot wished to protect his investment in company vehicles and tools and the monitoring service could tell him if his employees were speeding, making hard turns and stops, and where the vehicles were at any given time. Neither Diaz, Colon, nor Hanks testified about the monitoring service and without evidence establishing that this service was turned on in response to union activity, it is just as likely that Respondent initiated this monitoring well before the organizing activity and has accessed this data at all times – not just when Diaz and Colon parked their vehicles at the union hall.<sup>35</sup> Since counsel for the General Counsel has failed to establish that Walschot's monitoring of his employees' movements was tied to the organizing activities, counsel for the General Counsel has failed to establish a violation of Section 8(a)(1) here. Thus, I recommend dismissal of complaint paragraph 5(b)(2).

Paragraph 5(b)(3): About December 13, 2022, Walschot, at Respondent's facility, impliedly threatened to reduce employees' pay because they selected the Union as their bargaining representative.

Paragraph 5(b)(4): About December 13, 2022, Walschot, at Respondent's facility, informed employees that representation by the Union was futile by telling them their pay would be reduced

authorization cards were two of the four earliest signed cards submitted to Respondent. Since Diaz and the Union were the sources of this information, Walschot's remarks did not constitute an unlawful impression of surveillance.

because they chose the Union as their bargaining representative.

Counsel for the General Counsel asserts that 1 week after the representation election, Walschot told Abel Diaz that Respondent would considerably reduce employees' wages due to the employees' selection of the Union as their bargaining representative. While I find Diaz to be a generally credible witness, for the following reasons, I do not believe that the General Counsel has established a violation here.

Diaz testified that after Walschot accused him and Colon of being the "ringleaders" of the organizing campaign, Walschot asked him at what wage the Union would be starting him off. Diaz relayed Hincks' representation that Diaz would be earning journeyman wages in the Union. But according to Diaz, Walschot next said "I'm starting you guys off day one apprentice because you guys have none of the schooling." (Tr. 204.) Diaz opined that it was Walschot's fault for not providing formal training akin to an apprenticeship program. Walschot then pivoted to sharing with Diaz his desire to sell the company, retire, and be left alone. Later in his testimony, counsel for the General Counsel asked about the then-current apprentice wage rate as compared to Diaz' wage rate. Diaz said that as of December 2022, he was earning \$35/hour and he believed that apprentices earned \$23-\$25/hour. (Tr. 205–206.)

In listening to Diaz' testimony and scrutinizing the context in which Walschot's remarks were allegedly made, I do not believe that the General Counsel has established by a preponderance of the evidence that Walschot either impliedly threatened to reduce employee pay or informed employees that Union representation would be futile because he was going to reduce their pay. In this regard, I believe that when Walschot asked Diaz his starting wage with the Union and Diaz responded journeyman wages, Walschot actually said that he believed the Union would start Diaz off at day 1 apprentice wages due to the lack of requisite schooling. This makes more sense because at the time of this conversation, Walschot did not yet know what the Union paid its apprentices and journeymen – Walschot first received the Union wage sheet 2 days later during his December 15 conversation with Hincks and LaRoche. And in his testimony about the December 15 conversation, Hincks confirmed that Walschot asked the Union to help him sell his company to a Union contractor. It makes no sense that Walschot would tell his foreman that his wages would be reduced by over \$10/hour (based on Diaz' assessment of the difference between his current wages and 1st-year apprentice wages) when Walschot didn't know the union wage scale. But Walschot did know that the Union places new recruits into apprenticeship or journeyman slots based on assessments of employees' skill sets, experience, and knowledge. (Tr. 171–172.) And so the more logical import of Walschot's remarks was that he believed the Union would assess Diaz as a 1st year apprentice due to his lack of formal training. Because I find that this version of Walschot's remarks is more plausible than Diaz' testimony on this specific issue, I recommend dismissal of these two allegations.

Paragraph 5(b)(5): About December 13, 2022, Walschot, at Respondent's facility, Threatened to Sell the Company if Employees Unionized

As part of his conversation with Abel Diaz on December 13, 2022, Walschot said that he was going to sell the company once employees joined the Union and that once the company was sold, Walschot wished to retire and be left alone. Hincks, Colon, and even Walschot himself corroborated Walschot's desire to sell Respondent and move on with his life. Thus, I credit this portion of Diaz' testimony as accurate.

In *NLRB v. Gissel Packing Co., Inc.*, 395 U.S. 575, 618–620 (1969), the Supreme Court addressed the line between a lawful prediction and an unlawful threat:

"...an employer is free to communicate to his employees any of his general views about unionism or any of his specific views about a particular union, so long as the communications do not contain a 'threat of reprisal or force or promise of benefit.' He may even make a prediction as to the precise effect he believes unionization will have on his company. In such a case, however, the prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control or to convey a management decision already arrived at to close the plant in case of unionization. See *Textile Workers v. Darlington Mfg. Co.*, 380 U.S. 263, 274, fn. 20 (1965). If there is any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based on available facts but a threat of retaliation based on misrepresentation and coercion, and as such without the protection of the First Amendment."

In the instant case, Walschot had not met with the Union prior to his December 13, 2022 conversation with Abel Diaz and had no objective evidence as to the Union's wage demands. Without such information, Walschot's statement that he intended to sell the business simply because his employees exercised their legal right to organize is coercive and unlawful under Section 8(a)(1) of the Act. See *Anderson Cottonwood Concrete Products, Inc.*, 246 NLRB 1090 (1979) (employer violated Section 8(a)(1) of the Act when its owner informed employees about 1 week before the representation election that a union victory would cause the sale or closing of the business).

Paragraph 5(b)(6): About December 13, 2022, Walschot, at Respondent's facility, coerced employees by telling them they would not get a holiday bonus because they selected the Union as their bargaining representative.

For the previous 10 years, Respondent provided all of its employees a Christmas bonus in the form of either an extra 40-hours pay or an equivalent amount in gift cards. But about a week after Respondent's employees voted in favor of union representation, Walschot informed Abel Diaz that employees would not receive Christmas bonuses in 2022 "since we are union now." By linking the loss of the Christmas bonus to employees' union organizing activities, Walschot's coercive statement violated Section 8(a)(1) of the Act. See *Ishikawa Gasket America, Inc.*, 337

NLRB 175, 183 (2001) (linking reduction of bonus to renewed union organizing efforts violates Section 8(a)(1) of the Act).

Paragraph 5(c): Between December 13 and 20, 2022, Walschot, at Respondent's facility, created an impression among its employees that their union activities were under surveillance by Respondent.

Sometime between December 13 and December 20, 2022, Diaz and Colon came to Respondent's Elgin facility, where they encountered Walschot. Walschot said something to the effect of "what's up ringleaders." Counsel for the General Counsel asserts that this statement constitutes an unlawful impression of surveillance. I do not agree.

When Walschot coercively interrogated Diaz earlier that week, Diaz revealed that he and Colon were responsible for the Union organizing campaign. In response, Walschot labeled them "ringleaders." But one of the central tenets of an impression of surveillance allegation is that a respondent remarks about an employee's protected activity without disclosing the source of this information. In this case, however, the source of the information was Diaz himself. Thus, Walschot's "ringleader" comments, which certainly can be used as evidence of anti-union animus, did not create an unlawful impression of surveillance. Based on the above, I recommend dismissal of this allegation.

Paragraph 5(d)(1): About December 20, 2022, Walschot, at Respondent's facility, coerced employees by telling them they were all fired because the employees selected the Union as their bargaining representative.

Paragraph 5(d)(2): About December 20, 2022, Walschot, at Respondent's facility, coerced employees by telling them it was closing the business because the employees selected the Union as their bargaining representative.

The uncontroverted evidence shows that on December 20, 2022, Walschot told Colon and Diaz that they no longer had jobs and that Respondent was closing because Respondent could not afford the Union's wage scale. Given that the landslide representation election and issuance of the certification of representative had occurred shortly before Walschot made these remarks, such a statement was clearly coercive and violated Section 8(a)(1) of the Act. See *Capstone Logistics, LLC*, 372 NLRB No. 124, slip op. at 10 (2023) (employer violated Section 8(a)(1) of the Act by telling employee that they were fired for the protected concerted activity that formed the basis of the discharge).

As for the allegation that Walschot told Diaz and Colon that they were "fired," the testimony is a little muddled. In Colon's account, Walschot said that he was closing the company, but did not specifically say the words "you are all fired." In Diaz' testimony, Walschot told them that they were fired, he was closing the company, and he needed their keys. On the other hand, Walschot said that he never uttered the words "fired" or "terminated" and that instead, he told the employees that he was closing the facility, and they could go on with their lives.

Setting Walschot's wordsmithing aside, the import of Walschot's words were clear – because of the union vote, employees no longer had a job. Colon communicated this understanding to the police officer who arrived at the scene, telling him that Walschot "is firing us 5 days before Christmas because we wanted

to better our lives and our family by joining the local union." Therefore, by linking employees' loss of jobs to their union activities, Walschot's comments, which communicated to Diaz and Colon that they were no longer employed by Respondent, were coercive in violation of Section 8(a)(1) of the Act.

Paragraph 5(d)(3): About December 20, 2022, Walschot, at Respondent's facility, informed employees that representation by the Union was futile by telling them it did not have to bargain with the Union.

The totality of the evidence does not support a violation of the Act as alleged. Colon testified that after the police officer arrived to try to keep the peace, Colon told Walschot that he couldn't close the company without first talking with the Union. Walschot responded that "this is America – I can do whatever the fuck I want." But this alleged statement of futility regarding bargaining was not corroborated by either Hincks or Diaz. In this regard, Hincks testified that Colon called him and said that Walschot had just let him know that he was fired, and that Respondent was closing the business. And when Colon told Hincks that Walschot had called the police on them and was refusing to let Colon and Diaz retrieve their belongings, Hincks told Walschot that he was violating federal labor law and to let the employees get their stuff out of their truck. Walschot said in response that it was his truck and he can do what he wants. Furthermore, in Diaz' account of this conversation, Diaz and Colon were walking towards their truck, Diaz told Walschot that his actions were illegal, and he (Walschot) couldn't fire them. Walschot said that this is America – he can do whatever the fuck he wants. And when Colon put Walschot in touch with Hincks, Hincks told Walschot to talk to his (Walschot's) lawyer before going through with his plan to close the company. Thus, two of the three General Counsel witnesses failed to corroborate the allegation that Walschot said that he did not have to bargain with the Union. Based on the above, I recommend dismissal of Paragraph 5(d)(3).

Paragraph 5(d)(4): About December 20, 2022, Walschot, at Respondent's facility, coerced employees by calling the police on them because of their union activities.

Counsel for the General Counsel proffers that Respondent called the police on Diaz and Colon because of their union activities. I disagree, finding that Respondent called the police on December 20, 2022, based on Walschot's knowledge that Colon carried a firearm in his work truck. Therefore, I recommend dismissal of this allegation.

A number of Board cases has found 8(a)(1) violations when a respondent summons the police without justification, even after discharging an employee. See *Bristol Industrial Corp.*, 366 NLRB No. 101, slip op. at fn. 2 (2018); *W.T. Grant Co.*, 195 NLRB 1000, 1008 (1972). In *Bristol Industries*, the asserted basis for summoning the police was that the employee uttered some unspecified profanities as he was informed of his discharge. And in *W.T. Grant*, a previously discharged employee came into the store on personal business and without provocation, the respondent's proprietor called the police to escort this individual off the premises. Each of these factual patterns yielded a finding of a

violation.

The facts in our case are easily distinguishable from *Bristol Industrial* and *W.T. Grant*. To this end, Colon testified that had been carrying his firearm in his company vehicle for a year, he told Walschot this and Walschot endorsed this practice. And Colon testified that on December 20, 2022, Walschot had just informed him and Diaz that they were fired, Diaz and Walschot were arguing, Walschot bumped into Colon (while Colon wore his concealed firearm right behind his kidney) when Colon wanted to retrieve his holster, ammunition, stereo, and other items from the work truck, and then Walschot called the police.

To be clear, I find Colon to be a very credible witness. He did not embellish or sugarcoat his testimony. Colon testified with conviction and freely admitted facts that were not always the most sympathetic for his case, e.g. cursing out Walschot and carrying his firearm on his person on December 20, 2022.<sup>36</sup> And although he testified over a year after his termination, Colon's testimony captured the strong, raw emotions he experienced on December 20, 2022. But as Colon credibly testified about the heated conversation between himself, Walschot, and Diaz on that day, it reinforced just how combustible things were between the three men. As such, I also credit Walschot's testimony regarding his mindset for calling the police. In this regard, Walschot testified that he knew that Colon carried a weapon in his work vehicle, he told the employees that he was closing the facility, and Colon was screaming at him. Thus, Walschot's observations that "this is getting nasty," these guys have guns, I don't think they are going to do anything," but just to be on the safe side, he asked his colleague to call the police certainly seems the result of genuine concern for his wellbeing and not to coerce these employees because of their union activities. Based on the above, I recommend dismissal of paragraph 5(d)(4).

#### The 8(a)(3) Allegations

##### *Relevant Case Law*

Where it is alleged that an employer has violated the Act by taking adverse action against an employee, and the critical question is whether the adverse action was motivated by animus or hostility toward union or other protected activity, the Board applies the *Wright Line* framework. *Intertape Polymer Corp.*, 372 NLRB No. 133, slip op. at 7 (2023); *Wright Line*, 251 NLRB 1083 (1980). In *Wright Line*, the Board set forth a two-part causation test to determine the relationship, if any, between "employees' protected activities and actions on the part of the employer which detrimentally affect their employment." *Wright Line*, 251 NLRB at 1083. Under this framework, the General Counsel must first "make a prima facie showing sufficient to support the inference that protected conduct was a 'motivating factor' in the employer's decision. Once this is established, the burden...shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected

<sup>36</sup> In his cross-examination of Colon, Walschot intimated that Colon had previously assaulted a company vice-president and had a propensity for violence. Colon denied assaulting the company vice-president and Respondent provided no witness testimony to corroborate such an allegation. Therefore, Respondent has not established such an incident took place.

conduct." *Id.* at 1089. If the employer fails to meet its burden, the Board will conclude that a causal relationship exists between the protected activity and the adverse action and a violation will be found. *Intertape Polymer Corp.*, 372 NLRB at slip op. 7.

The elements required to sustain the General Counsel's initial burden under *Wright Line* are 1) union or other protected activity by the employee; 2) employer knowledge of that activity; and 3) employer animus against the union or other protected activity.<sup>37</sup> Motivation may be inferred from both direct and circumstantial evidence. Circumstantial evidence of discriminatory motive may include: 1) timing of the action in relation to the union or other protected conduct; 2) contemporaneous unfair labor practices; 3) shifting, false or exaggerated reasons offered for the action; and 4) departures from past practices. *Id.* The General Counsel may also use the employer's own response to the charges to establish animus and discriminatory motive. *Id.*

If the General Counsel satisfies its initial burden, the burden of persuasion shifts to the employer to establish that it would have taken the same action for a legitimate reason. The employer must demonstrate that it would have taken the same action even in the absence of the protected conduct. *Id.* at slip op. 8. Furthermore, the employer's burden cannot be satisfied by reasons found to be pretextual. If the employer is unable to carry its burden, the Board will find that a causal relationship exists between the protected activity and the adverse action and it will find a violation of the Act. *Id.* at slip op. 11.

##### *Evidence of Respondent Animus Towards Employees' Union Activities*

The record is replete with evidence of Respondent's anti-union animus, with much of that evidence coming from Walschot's own testimony and/or representations on the record. In this regard, at the outset of the hearing, Walschot stated:

"They had an election in my shop area, which I didn't appreciate. And I was highly upset because the union had one of my employees, somebody on their side...that...tried to turn in overtime for the election...they voted to go union, so I just set them free."

Then during his testimony, in reference to why Respondent did not give out turkeys or hams for Thanksgiving in 2022, Walschot said:

"I felt betrayed. I felt backstabbed."

Later in his testimony, Walschot characterized his workplace after the filing of the representation petition as a "cancer" and stated that "it was my job as the president to quell that insurrection and put that rebellion down."

Additional evidence of animus comes from Abel Diaz'

<sup>37</sup> The General Counsel may also prevail by showing that an employer took adverse action against one or more employee with the intent of discouraging or punishing union activity in its workforce generally. In such a case, the General Counsel is not required to establish that the employer harbored animus as to a specific employee's union or other protected activity. *Intertape Polymer Corp.*, 372 NLRB at slip op. 13.

testimony. To this end, Diaz testified without contradiction that in about early December 2022, Diaz went to Walschot's house to retrieve the company gas card. In Walschot's kitchen, Walschot told Diaz that "the Union is going to fuck you guys over" like the Union fucked him over. Then about a week later, when Diaz asked Walschot if employees would be receiving Christmas bonuses that year, Walschot said employees were not receiving bonuses because they selected the Union as their bargaining representative.

Paragraph 6(a): About November 15, 2022, Respondent discontinued its practice of providing employees with a turkey or ham at Thanksgiving because its employees assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

Walschot's own testimony established his animus and retaliatory motive for discontinuing Respondent's Thanksgiving turkey/ham tradition. Specifically, Walschot told the Court that he did not provide Thanksgiving turkeys and hams because he felt betrayed and stabbed in the back. This bold admission stands in contrast to Walschot's representation to Colon that economics drove the decision to stop providing Thanksgiving delicacies as well as Walschot's Answer to the Complaint, which attributed the cessation of this practice to Walschot's retirement in 2019.

Colon credibly testified that the Respondent had distributed Thanksgiving turkeys and hams to its employees every year since 2011. Colon's strong, detailed testimony on this subject revealed that Walschot called Colon each year to initiate the Thanksgiving collection and once Colon learned employees' food preferences, Colon and Walschot went to the local supermarket to purchase the turkeys and hams. This process continued even after Walschot retired in 2019.

The record evidence is also clear that by the time that Colon reached out to Walschot in mid-November 2022 regarding the continuation of the Thanksgiving tradition, Respondent was on notice of employees' union organizing activities. Specifically, on November 3, 2022, Hincks hand-delivered to Joshua Hanks at Respondent's facility copies of employees' signed authorization cards as well as their petition seeking voluntary recognition. And later that same day, Hincks emailed Walschot copies of the same representation documents that he had dropped off at the Elgin facility. Thus, Respondent had knowledge of employees' organizing activities by the time Walschot decided not to supply his workforce with Thanksgiving proteins.

Based on the above, counsel for the General Counsel has convincingly established that Respondent discontinued its provision of Thanksgiving turkeys and hams due to employees' union organizing activities in violation of Section 8(a)(3) of the Act. See *Domsey Trading Co.*, 310 NLRB 777, 791 (1993); *Harowe Servo Controls, Inc.*, 250 NLRB 958, 1039 (1980).

Paragraph 6(b): About late November 2022, Respondent took away company debit cards used for purchasing gas and work materials from certain employees because its employees

assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

Unlike the Thanksgiving turkey issue, there is no direct record evidence linking Walschot's modification of the company debit card policy to employees' protected union activities. Walschot's only explanation offered at the hearing was a vague reference to embezzlement and misappropriation of funds. (Tr. 402.) And thus, counsel for the General Counsel asks that I infer a causal connection between the antiunion animus permeating Respondent's workplace and the change in debit card protocol to satisfy its burden to establish the former as the motivating factor behind the latter. This I am unwilling to do.

To pay for gas and materials, the record evidence shows that from about 2011 through late 2020, Colon came to Respondent's Elgin facility and borrowed a company debit card from either Walschot or Respondent's secretary. Then in late 2020, Walschot gave Colon a company debit card (which had Respondent and Walschot's name on the card) to keep in his wallet, directing Colon to only purchase gasoline and work materials using this card. In about the summer 2022, Walschot told Colon that he lost his debit card and needed to use Colon's until his new card arrived. Colon turned the debit card over to Walschot and a few days later, Walschot returned it to Colon. And about this same time, Walschot gave Diaz his own debit card to hold onto with the specific instruction that Diaz should only use the card for gas and materials from Home Depot.

In about November 2022, Walschot called Diaz and asked him to return the gas card ostensibly because Walschot was going to cancel the card. Walschot then told Diaz to pay for gas and supplies with his own money and Respondent would reimburse him. The following week, Walschot handed Diaz a new debit card and told him to turn the card in at the end of each day along with his receipts. Similarly, in about the end of November 2022, Walschot asked Colon to turn in his debit card, with the understanding that going forward, Colon would have to ask either Respondent's secretary or Walschot to borrow the card each day. Walschot did not explain to either Colon or Diaz as to why they could no longer hold on to their respective debit cards.<sup>38</sup>

There is no evidence that Respondent denied Colon and Diaz permission to borrow the company debit card. What changed was the extra step of requesting the card from either Walschot or Respondent's secretary. This had been the policy from 2011 through 2020, a time that pre-dated union organizing activity. But Walschot issued Diaz his own debit card in the summer of 2022, a time that also predated the organizing drive. The record is equally unclear as to why Walschot gave Diaz and Colon the debit cards in the first place as well as why Walschot took their cards back in November 2022. Relying on nothing more than the timing of Walschot's actions vis-à-vis the filing of the representation petition, counsel for the General Counsel has failed to establish that Respondent returning to the pre-2020 method for purchasing fuel and work materials was motivated by anti-union animus. Thus, I recommend dismissal of paragraph 6(b).

<sup>38</sup> Walschot still permitted Colon and Diaz to take their company vehicles home each evening.

Paragraph 6(c): About December 13, 2022, Respondent discontinued its practice of providing employees with a turkey, ham, or rib roast at Christmas because its employees assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

Colon and Diaz credibly testified that similar to Thanksgiving, each year Walschot purchased turkeys and hams for employees at Christmas.<sup>39</sup> About 2 weeks before the holiday, Colon collected employees' wish list, passed this information on to Walschot, and the two men would head to the local supermarket, where Walschot purchased all of the Christmas delicacies. This tradition had been in place since at least 2011 and ended abruptly in 2022. (Tr. 278–280.)

Walschot testified that he felt betrayed and stabbed in the back by his employees, motivating him to end the Thanksgiving tradition. This same motivation can easily be applied to Christmas as well.<sup>40</sup> By mid-December, employees had resoundingly voted in favor of the Union and the Union was certified on December 16. And when the Union did not get back to Walschot after December 15 with leads on the sale of his company, Walschot believed that the Union was going to destroy to him. Thus, Respondent's Christmas tradition of providing turkeys, hams, and rib roasts to employees became one more casualty of Walschot's shock and awe campaign to rid himself of the Union. Based on the above, I find that Respondent violated Section 8(a)(3) of the Act by discontinuing its provision of free Christmas hams and turkeys to its employees.

Paragraph 6(d): About December 13, 2022, Respondent discontinued its practice of providing employees with a holiday bonus in the form of an additional 40 hours of pay because its employees assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

Abel Diaz credibly testified that when he asked Walschot on December 13, 2022 if employees would be receiving Christmas bonuses that year, Walschot said no and attributed this decision to the fact that they are "union" now.<sup>41</sup> Thus, counsel for the General Counsel has clearly established that Respondent stopped providing employees with a Christmas bonus in 2022 in retaliation for employees' union organizing activities.

Daniel Colon testified without contradiction that employees annually received a Christmas bonus in the form of either an extra 40-hour paycheck or gift cards of an equivalent value.<sup>42</sup> Colon credibly testified that this practice had been in place since at least 2011 and stopped without warning in 2022. Although

<sup>39</sup> Walschot purchased a rib roast for Colon, his most senior employee. (Tr. 277–278.)

<sup>40</sup> Walschot did not specifically testify about the Christmas ham/turkey tradition.

<sup>41</sup> Walschot did not address this comment in his own testimony.

<sup>42</sup> In the previous two years, Respondent provided employees with a bonus in the form of an extra 40-hour paycheck.

<sup>43</sup> Eight of these employees—Colon, Piccolo, Gonzalez, Jonathan Diaz, Falco, Abel Diaz, Torres, and Salup—signed the petition and authorization cards that were provided to the Respondent in early November 2022. But ten employees voted in favor of the Union in the December 6 election. Neither side presented evidence showing why Respondent discharged Zamora and Lipp in addition to the eight card signers. But

Respondent attributed this change to economic hardships in its Answer to the Complaint, Walschot's brazen admission means that Respondent's defense is clearly pretextual. Therefore, I find that Respondent has violated Section 8(a)(3) of the Act by discontinuing its practice of providing employees with a holiday bonus.

Paragraph 6(e): About December 20, 2022, Respondent terminated employees Daniel Colon, Daniel Falco, James Piccolo, Alfredo Torres, Mike Salup, Juan Zamora, Abel Diaz, Jonathan Diaz, Alexander Gonzalez, and Kevin Lipp because these employees assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

Respondent admitted in its Answer to the Complaint that it terminated these ten employees<sup>43</sup> on December 20, 2022. The next question is why Respondent took this action. The answer is strikingly clear – because these employees engaged in union organizing activities. To this end, it is rare that an evidentiary record contains such an unequivocal admission. But Walschot's comment at the outset of the hearing supplies the cause and effect required to establish a violation: "They voted to go union, so I just set them free."

Additional record evidence solidifies my conclusion. In this regard, Walschot told the Court that he didn't appreciate holding a union election in his shop and testified that it was "my job as the president to quell that insurrection and put that rebellion down."<sup>44</sup> Walschot also testified that he asked the Union to try to sell his company to a union outfit and when he never heard back from the Union, he believed that the Union was going to destroy him. Hincks also testified that in his December 15, 2022 meeting with Walschot, Walschot said that Brad Nolan didn't want anything to do with the Union. Hincks also credibly testified that Walschot called him after receiving Hincks' December 20, 2022 email. In this conversation, Walschot told Hincks that he was thinking about bringing charges against the Union (and the NLRB) because the Union was forcing him into his current predicament. And in this same vein, Diaz testified that on December 20, 2022, Walschot repeatedly told him that the employees and the Union gave him no choice. All of the above evidence compellingly establishes Respondent's union animus as the driving motivation for its decision to terminate the ten-named employees on December 20, 2022. Thus, I find that Respondent has violated Section 8(a)(3) of the Act as alleged in Paragraph 6(e).

in the case of mass discharges or layoffs for the unlawful purpose of discouraging union membership, it is not necessary for the General Counsel to prove that each employee's individual union activity was the reason for that employee's discharge. See *Davis Supermarkets, Inc.*, 306 NLRB 426 (1992).

<sup>44</sup> Respondent's posthearing brief detailed a myriad of health conditions that led Walschot into semiretirement in 2019. (Resp. post-hearing brief page 2). But Respondent's post-hearing brief failed to state a reason as to why Walschot resumed his regular presence at Respondent's facility in November 2022. The answer, however, is clear—Walschot only returned upon receipt of the representation petition—to "quell the insurrection."

## The 8(a)(5) Allegations

*Relevant Case Law*

Section 8(a)(5) of the Act provides that it is an unfair labor practice for an employer “to refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9(a). 29 U.S.C. ¶ 158(a)(5). Wages, hours, and other terms and conditions of employment are mandatory subjects of bargaining over which an employer has an obligation to bargain with its employees’ exclusive collective-bargaining representative. *NLRB v. Katz*, 369 U.S. 736, 742–743 (1962). A unilateral change is “a circumvention of the duty to negotiate which frustrates the objectives of Section 8(a)(5) much as does a flat refusal” to bargain. *Wendt Corp.*, 375 NLRB No. 135, slip op. at 6 (2023), citing *NLRB v. Katz*, 369 U.S. 736, 743 (1962).

An employer violates Section 8(a)(5) and (1) if it makes a material, substantial, and significant change regarding a mandatory subject of bargaining without first providing the union notice and a meaningful opportunity to bargain about the change to agreement or impasse, absent a valid defense.” *MV Transportation, Inc.*, 368 NLRB No. 66, slip op. at 3 (2019). *Katz* permits unilateral conduct only when the employer has shown that the conduct is consistent with a longstanding past practice and is not informed by a large measure of discretion. *Wendt*, 372 NLRB at slip op. 9. When determining whether there was an established past practice, the Board will make a commonsense determination by comparing the challenged action to the employer’s past actions. *ABF Freight System, Inc.*, 369 NLRB No. 107, slip op. at 2 (2020).

An employer’s obligation to bargain begins as of the date of a representation election in which the union prevails, regardless of when the union is certified. *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130, slip op. at fn. 145 (2023). An employer “acts at its peril in making changes in terms and conditions of employment” once its bargaining obligation attaches. *Mike O’Connor Chevrolet Buick-GMC Co.*, 209 NLRB 701, 703–704 (1974).

In determining whether a bonus constitutes a mandatory subject of bargaining, the Board considers whether the payment of the bonus was tied to work performance, earnings, seniority, production, or other employment-related factors. *Alaris Health at Boulevard East*, 372 NLRB No. 6, slip op. at 2 (2022); *Bob’s Tire Co., Inc.*, 368 NLRB No. 33, slip op. at 1 (2019); *Benchmark Industries*, 270 NLRB 22, 22 (1984). The Board generally distinguishes between gifts and terms and conditions of employment. An employer may lawfully discontinue gifts unilaterally without violating Section 8(a)(5) of the Act. *General Clay Products Corp.*, 306 NLRB 1046 (1992); *Benchmark Industries*, 270 NLRB 22 (1984); *Harvstone Mfg. Corp.*, 272 NLRB 939, fn. 1 (1984).

Paragraph 6(c): About December 13, 2022, Respondent discontinued its practice of providing employees with a turkey, ham, or rib roast at Christmas without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

Counsel for the General Counsel asserts that Respondent’s

discontinuation of the provision of Christmas turkeys and hams also violated Section 8(a)(5) of the Act because Respondent ceased this practice without first notifying and bargaining with the Union. I disagree, finding that Respondent had no obligation to bargain with the Union over the cessation of the Christmas dinners because the Christmas hams and turkeys are properly characterized as a gift instead of a bargainable term and condition of employment.

It is undisputed that Respondent provided employees with either a turkey, ham, or rib roast at Christmas and that Respondent offered this kind gesture to all employees, related in no way to seniority, job performance, or hours worked, with no eligibility criteria other than being employed by Respondent. It is also undisputed that Respondent did not notify or bargain with the Union concerning its cessation of its Christmas protein practice. But a long line of Board cases has found holiday goodwill gestures, like the Christmas hams in this case, to be gifts to employees that are not terms and conditions of employment, and thus, not subject to the obligation to bargain over their changes. See *Tote Systems Division, Hoover Ball and Bearing Co.*, 187 NLRB 428 (1970) (\$15 Christmas gift certificates); *Michigan Power Co.*, 192 NLRB 830 (1971) (turkey or ham during the Christmas season); *Stone Container Corp.*, 313 NLRB 336 (1993) (discontinuation of Christmas gift certificate and Thanksgiving dinner); *Benchmark Industries*, 270 NLRB at 22 (discontinuation of Christmas hams/dinners); *Dura-Line Corp.*, 366 NLRB No. 126, slip op. at 4 (2018) (unilateral reduction of Thanksgiving gift by \$9). Based on the above line of cases, I recommend dismissal of the 8(a)(5) allegation contained in paragraph 6(c) of the complaint.

Paragraph 6(d): About December 13, 2022, Respondent discontinued its practice of providing employees with a holiday bonus in the form of an additional 40 hours of pay without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

In determining whether a bonus constitutes a term and condition of employment over which an employer must bargain, the Board considers both the regularity of the bonus and whether payment of the bonus was tied to employment-related factors. *Bob’s Tire Co.*, 368 NLRB No. 33, slip op. at 1 (2019); *North American Pipe Corp.*, 347 NLRB 837 (2006). A holiday bonus is a mandatory subject if the employer’s conduct raises the employees’ reasonable expectation that the bonus will be paid. *Waxie Sanitary Supply*, 337 NLRB 303, 304 (2001); *Sykel Enterprises, Inc.*, 324 NLRB 1123, 1124-1125 (1997).

In *Bob’s Tire*, the Board found no obligation for the employer to bargain over Christmas bonuses where the bonus had been paid for 7 years, but there was no evidence that the bonus was tied in any way to employment-related factors. The Board also found that the record evidence was unclear as to the amount paid in any particular year, and in the absence of additional and more specific evidence about the amount and nature of the bonuses, there was no basis to find that these payments were anything more than gifts over which the employer was not required to bargain. *Bob’s Tire Co.*, 368 NLRB No. 33, slip op. at 1; *Harvstone Mfg. Corp.*, 272 NLRB 939, 939 fn. 1 (1984) (employer did not

violate the Act by discontinuing Christmas bonus given for 10 years where bonuses were in the nature of gifts rather than terms and conditions of employment).

The Board has reached the opposite conclusion in similar, yet distinguishable fact patterns. In *Waxie Sanitary Supply*, the Board found that a bonus paid for at least three consecutive years, determined pursuant to a specific formula and described in detail in a handout distributed to new employees was a term and condition of employment subject to a bargaining obligation. In *E.C. Waste, Inc.*, 348 NLRB 565 (2006), the Board upheld the ALJ's finding that supplemental bonuses of approximately \$900 that had been given for several years in a row constituted a bargainable term and condition of employment. And in *Gas Machinery Co.*, 221 NLRB 862 (1975), the Board affirmed an ALJ's conclusion that a Christmas bonus paid out for seven years in a row, whereby the amount each employee received was determined by management on a subjective basis, constituted wages triggering an obligation for the employer to bargain with its union over the discontinuation of this bonus.

In analyzing the above cases, I conclude that Respondent has violated Section 8(a)(5) of the Act by discontinuing its Christmas bonus tradition without first notifying and bargaining with the Union. To this end, the Christmas bonuses had been paid out every year since at least 2011 with specific record evidence from Colon and Walschot as to the amount of the bonuses as well as the nature of the bonuses. Thus, I find that counsel for the General Counsel has carried its burden to establish that Respondent's Christmas bonuses were a bargainable term and condition of employment and Respondent's discontinuation of this tradition in 2022 without first notifying and bargaining with the Union violated Section 8(a)(5) of the Act.

Paragraph 6(e): About December 20, 2022, Respondent terminated employees Daniel Colon, Daniel Falco, James Piccolo, Alfredo Torres, Mike Salup, Juan Zamora, Abel Diaz, Jonathan Diaz, Alexander Gonzalez, and Kevin Lipp without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

Respondent indicated to the Union and its employees on December 20, 2022 that it was closing the entire business and all employees would be terminated or laid off. But Respondent then turned around and only fired 10 employees, keeping the business open, and servicing its remaining customers. No specific department was closed per se – Respondent just slimmed down its operation considerably by weeding out all employees it believed voted for the Union. An argument can be made that Respondent laid off 10 of its employees – another argument is that Respondent terminated its employees. Regardless of how you label Respondent's actions, Respondent failed to notify and bargain with the Union prior to its unlawful actions and as such, violated Section 8(a)(5) of the Act.

Where employees are represented by a union, an employer violates Section 8(a)(5) of the Act by making unilateral changes with respect to mandatory subjects of bargaining, absent bargaining to impasse. *NLRB v. Katz*, 369 U.S. 736 (1962). The layoff of bargaining unit employees constitutes a mandatory subject of bargaining. See e.g. *Atlantic Veal and Lamb, LLC*, 373 NLRB

No. 19 (2024); *Thesis Painting, Inc.*, 365 NLRB No. 142, slip op. at 1 (2017); *Pan American Grain Co.*, 351 NLRB 1412, 1414 (2007). If the General Counsel satisfies its initial burden showing that the employer made a material and substantial change in a term and condition of employment without negotiating with the union, the burden shifts to the employer to show that its layoff decision was exempt from obligatory bargaining under *First National Maintenance. Pan American Grain Co.*, 351 NLRB at fn. 9. It is undisputed that the Respondent did not provide the Union with advanced notice of its layoff of the majority of the bargaining unit. And it is undisputed that Respondent did not bargain with the Union over this subject. Most certainly, Walschot's speculative concerns about the financial burden of paying his employees union scale does not satisfy the financial exigency exception to bargaining laid out in *RBE Electronics*, 320 NLRB 80 (1995). After all, the parties had not yet held their first bargaining session and the Union's response on December 15 to Walschot's economic concerns were that they could be addressed at the bargaining table. Based on the above, Respondent's layoff of the majority of its bargaining unit employees violated Section 8(a)(5) of the Act.

Counsel for the General Counsel has interchangeably referred to Respondent's actions as terminations and layoffs. But labeling Respondent's misconduct as terminations or discharges still yields an 8(a)(5) violation. In *800 River Road Operating Co. d/b/a Care One at Milford*, 369 NLRB No. 109 (2020), the Board overruled *Total Security Management Illinois*, 364 NLRB No. 106 (2016), returning to a standard whereby in most situations, employers are not obligated to bargain prior to imposing discipline upon commencement of a collective-bargaining relationship. But the Board in *800 River Road* specifically noted that the correct analysis under *Katz* must focus on whether an employer's individual disciplinary action is similar in kind and degree to what the employer did in the past within the structure of established policy or practice. Thus, in order to maintain the status quo, an employer must continue to make decisions materially consistent with its established policy or practice, including its use of discretion, after the certification or recognition of a union. To do otherwise would constitute a change from its preexisting policy or practice, which is prohibited by *Katz*. 369 NLRB No. 109, slip op. at 8-9.

In this case, Respondent has provided no evidence of its established disciplinary policies or practices. To this end, no employee handbook, disciplinary records, or testimony was offered to show how the terminations of 10 employees in December 2022 was consistent with Respondent's past practice. Without this evidence, Respondent was not privileged to terminate these employees without first bargaining with the Union. Thus, Respondent violated Section 8(a)(5) of the Act by terminating 10 of its bargaining unit employees.

Paragraph 8(a): About December 20, 2022, Respondent closed its doors and ceased operations without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

Although Respondent admitted in its amended answer to the complaint that it engaged in the conduct alleged in Paragraph

8(a) of the complaint, the proofs adduced at the hearing make clear that Respondent did not close its doors and did not cease operations. (Tr. 371.) To this end, Joshua Hanks testified that he and two other employees exclusively worked in the field from December 2022 through April 2023. (Tr. 355.) And William Hincks testified that he observed Respondent's employees working at a job in Itasca, Illinois in the summer of 2023 and working a separate job in Naperville, Illinois in February 2024. Plus, GC Exh. 14 detailed all of the jobs that Respondent had worked on since December 2022. Therefore, it is clear from the General Counsel's evidence that Respondent did not close its doors and did not cease operations. Based on the above, I recommend dismissal of paragraph 8(a).

Paragraph 8(c): Since about January 6, 2023, Respondent has failed and refused to bargain a first collective-bargaining agreement.

Section 8(a)(5) and (d) of the Act requires the Respondent to meet at reasonable times and bargain in good faith with the Union regarding wages, hours, and other terms and conditions of employment of bargaining unit employees. *Professional Transportation, Inc.*, 362 NLRB 534, 534 (2019); See *NLRB v. Borg-Warner Corp.*, 356 U.S. 342, 349 (1958). The obligation to bargain commenced at the latest, on December 16, 2022, when the Region issued the certification of representative in the instant matter. See *Beaird Industries*, 313 NLRB 735, 736 (1994).

A request for bargaining subsumes a request for recognition. A request for information also constitutes a request for bargaining, as does a letter requesting to set dates for negotiations. *Eldorado, Inc.*, 335 NLRB 952, 954 (2001); *Biewer Wisconsin Sawmill, Inc.*, 306 NLRB 732, 733 fn. 4 (1992); *Money Radio*, 297 NLRB 705 (1990); See also *Washington Beef, Inc.*, 332 NLRB 398 fn. 1 (1996) (information request subsumes request for recognition).

A request to bargain does not have to be in any specific form if the communication's meaning is clear that the request is to negotiate and bargain over wages, hours and terms and conditions of employment. *Midwest Terminals of Toledo Int'l, Inc.*, 365 NLRB No. 158, slip op. at 2 (2017); *Eldorado, Inc.* 335 NLRB at 954. A union carries the burden to make its wish known with specificity. A lack of specificity would mean a failure to state topics for discussion or when or where the union would want the discussions to take place. *Prime Service, Inc. v. NLRB*, 266 F.3d 1233, 1238 (D.C. Cir. 2001).

In this case, the Union repeatedly requested to meet and bargain with Respondent after its landslide election victory. The parties met briefly in person on December 15, 2022, but very little of substance was discussed and no specific future bargaining dates were agreed to. Then when the Union learned of Respondent's intention to terminate all employees and close the facility, Hincks emailed Walschot seeking to bargain over all negotiable aspects of Respondent's decision to terminate its operations as well as the effects of that decision. Walschot called Hincks shortly after receiving this email and Hincks let him know that the parties should set up bargaining dates to bargain over the effects of the closing. No specific dates for bargaining were set up during this call.

The next day, Hincks emailed Walschot an information

request and repeated the Union's demand to bargain over the effects of Respondent's decision to terminate its business. Hincks concluded his email as follows:

"Please be advised that if AAFP reopens its doors and performs sprinkler fitter work, Local 281 will reassert its rights as the exclusive bargaining representative of the employees and will bargain an initial collective bargaining agreement setting forth the employees' wages, hours and other terms and conditions of employment."

The parties spoke briefly in person on December 27 and later agreed to meet again on January 6, 2023. But Walschot failed to appear at his own shop for the January 6 meeting. Two weeks later, Hincks emailed Walschot another information request. In the body of this information request, Hincks wrote:

". . . It appears that the Employer remains in business despite the supposed decision to terminate operations. As the Employer continues to operate, it continues to have a duty to bargain with the Union. Therefore, the Union repeats its demand to bargain over all negotiable subjects and conditions of employment. The Union further requests the following additional information in connection with this demand to bargain... Finally, please provide dates on which the Employer is available to bargain. . ."

Walschot replied via text message later that same day, but no bargaining sessions were scheduled, and the parties have not held a formal bargaining session since the Union was certified as the bargaining unit employees' exclusive collective-bargaining representative on December 16, 2022. Yet despite Walschot's initial insistence that Respondent was closing its doors, Respondent continues to operate in a diminished, yet essentially unchanged form.

Based on the above, it is without question that the Union has made numerous requests to bargain a first contract and Respondent has refused to participate in first contract bargaining. Therefore, Respondent has failed and refused to bargain with the Union in violation of Section 8(a)(5) of the Act.

Paragraph 8(d): About January 6, 2023, Respondent withdrew its recognition of the Union as the exclusive collective-bargaining representative of the Unit.

The Board has recognized that "a withdrawal of recognition need not be explicitly stated to run afoul of the Act; rather, the Board will examine an employer's statements and actions in context to determine whether a violation has occurred." *Arbah Hotel Corp. d/b/a Meadowlands View Hotel*, 371 NLRB No. 126, slip op. at 6 (2022) quoting *Lou's Produce, Inc.*, 308 NLRB 1194, 1196 (1992).

Applying this standard, it is clear that Respondent has unlawfully withdrawn recognition from the Union. In this regard, Respondent terminated almost its entire workforce just days after the Region issued a certification of representative and informed the Union that it was closing its doors. The Union requested to

bargain over these changes and requested information to help it prepare bargaining proposals. In its correspondence to Respondent, the Union noted that it was continuing to assert its rights as the exclusive collective bargaining representative of the unit employees should Respondent continue to perform sprinkler fitter work.

About a week later, Walschot spoke with Hincks and agreed to a bargaining session on January 6, 2023. But Walschot no-showed this meeting at Respondent's own facility. Two weeks later, the Union sent a supplemental information request to Respondent and asked Respondent for bargaining dates. Walschot responded via text message later that day confirming he had received the information request and indicating that he would be providing the requested information in a few days. But other than indicating that Respondent was not seeking new work and had not obtained any new work, Respondent did not provide the requested information and did not schedule any bargaining dates. Yet Respondent continued to perform bargaining unit sprinkler fitter work in the Chicagoland area throughout 2023 and into early 2024. In doing so, Respondent essentially pretended that the representation election had not occurred and that the Union had no claim to the bargaining unit work Respondent's employees continued to perform. Based on Respondent's words and actions, the evidence clearly shows that Respondent has withdrawn recognition from the Union in violation of Section 8(a)(5) of the Act.<sup>45</sup>

Paragraphs 8(e) and (g): About December 21, 2022, by the email from William Hincks to Kenneth Walschot attached as Exhibit 1, the Union requested that Respondent furnish the Union with information. Since about December 21, 2022, Respondent has failed and refused to furnish the Union with the information requested by it as described above in paragraph 8(e).

Section 8(a)(5) of the Act imposes on an employer the duty to bargain collectively and includes a duty to supply a union, upon request, information that will enable the union to perform its duties as the bargaining representative of unit employees. *Atlantic Veal and Lamb, LLC*, 373 NLRB No. 19, slip op. at 2 (2024); *Permanente Med. Group, Inc.*, 372 NLRB No. 51, slip op. at 6 (2023) (citing *New York & Presbyterian Hospital v. NLRB*, 649 F.3d 723, 729 (D.C. Cir. 2011); see also *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967)). This duty is statutory and exists regardless of whether there is a collective-bargaining agreement between the parties. *American Standard*, 203 NLRB 1132 (1973). Where the union's request is for information pertaining to employees in the bargaining unit, that information is presumptively relevant, and the employer must provide it. *Palace Station Hotel & Casino*, 368 NLRB No. 148, slip op. at 4 (2019). In contrast, "information that does not directly concern wages, hours, and terms and conditions of employment does not enjoy a presumption of relevance, and a specific need for it must

<sup>45</sup> *Douglas Autotech Corp.*, 357 NLRB 1336 (2011) is distinguishable from our case because in *Douglas*, the Respondent continued to respond to the Union's information requests and offered to bargain over the effects of the discharges relevant to that case. Thus, the Board in *Douglas* found insufficient evidence that the employer intended to completely sever its relationship with the union by withdrawing recognition. In our

case, however, Respondent cancelled their January 6 bargaining session, ignored the Union's requests to bargain, and refused to respond to almost all facets of the Union's information requests.

be established." *F.A. Bartlett Tree Expert Co.*, 316 NLRB 1312, 1313 (1995).  
The information requested in paragraphs 1 through 8 of the Union's December 21, 2022 information request is presumptively relevant (bargaining unit contact information, employer handbooks, employee payroll records, benefit plan information, timesheets for bargaining unit employees, accrued vacation and other accrued benefits for bargaining unit employees) and Respondent violated Section 8(a)(5) of the Act by failing to furnish this requested information.<sup>46</sup> See *Transit Connection, Inc.*, 365 NLRB No. 143 (2017).

Paragraph 9 of the December 21 information request, which sought the lists of outstanding work projects and documents showing how Respondent intended to perform its work, including documents relating to subcontractors, in light of Respondent's declaration that it was terminating operations, is not presumptively relevant. Where the information requested concerns non-unit employees, the union bears the burden of establishing relevancy. *Public Service Electric & Gas Co.*, 323 NLRB 1182, 1186 (1997). This includes requests for subcontracting information. *Sunrise Health and Rehabilitation Center*, 322 NLRB 1304, 1305 fn. 1 (2000). To demonstrate the relevance of non-unit information, the General Counsel must show that either: 1) the union demonstrated relevance of the non-unit information; or 2) the relevance of the information should have been apparent to the employer under the circumstances. *Disneyland Park*, 350 NLRB 1256, 1258 (2007) (citing *Allison Co.*, 330 NLRB 1363, 1367 fn. 23 (2000)). The burden of establishing relevance for non-unit information, however, is not "an exceptionally heavy one," rather, the Board uses a "liberal, discovery-type standard." *A-1 Door & Building Solutions*, 356 NLRB 499, 500 (2011).

The record evidence here establishes that the relevance of the request in paragraph 9 should have been apparent to the employer under the circumstances. To this end, Respondent terminated almost all of its bargaining unit employees and informed the Union that it was closing the business. Yet, the Union knew that Respondent still had several jobs in progress when Respondent abruptly announced its closure, and the requested information would assist in the preparation of effects bargaining proposals.

The facts here are similar to the Board's recent *Atlantic Veal and Lamb* decision. 373 NLRB No. 19 (2024). In *Atlantic Veal*, the employer notified the union several times during first-contract negotiations that it intended to close its production and processing operations and layoff a majority of unit employees. In response to the employer's announcements, the union made information requests seeking information regarding where the employer's products would be produced and who would be producing it if operations shut down. The Board found the information requests to be relevant so that the union could formulate proposals and responses in the face of substantial looming

case, however, Respondent cancelled their January 6 bargaining session, ignored the Union's requests to bargain, and refused to respond to almost all facets of the Union's information requests.

<sup>46</sup> In its amended answer offered during the hearing, Respondent admitted receiving the information request referenced in par. 8(e) of the complaint. (Tr. 372.)

threatened changes to the employer's overall operations and unit work. *Id.* at slip op. 4. The Board also found the requested information to be relevant to aid the Union in its efforts to effectively preserve bargaining unit work. Knowing the identity and location of the entities that would be performing such work would allow the union to bargain over the transfer of the impacted unit employees to a new location. *Id.* at slip op. 5.

Like in *Atlantic Veal*, the Union in our case wanted to know what work was still being performed and by whom. And on the face of the information request, the Union indicated that it was requesting this information to assist in the preparation of effects bargaining proposals. Thus, the relevance of the information should have been apparent to the Respondent under the circumstances and Respondent's refusal to provide the above-requested information violated Section 8(a)(5) of the Act.

Paragraphs 8(f) and (h): About January 20, 2023, by the email from William Hincks to Kenneth Walschot attached as Exhibit 2, the Union requested that Respondent furnish the Union with information. Since about January 20, 2023, Respondent has failed and refused to furnish the Union with the information requested by it as described above in paragraph 8(f).

The Union's January 20, 2023 information request renewed its demand for information initially sought on December 21, 2022 and added several additional paragraphs of information. As outlined below, I find all of the requested information either presumptively relevant or the Union has established relevance of the requested documentation. I further find that the Respondent failed to produce all of the requested information, with the exception of paragraph 12.

In paragraph 12 of its January 21, 2023 information request, the Union requested:

"A list of any new work or projects obtained by the Employer since the date that AAFP allegedly terminated its operations, as well as documents showing how the work will be performed after the termination of operations, including but not limited to subcontractors or other employers who have been retained to complete the work."

Several hours after the Union sent the above-referenced information request, Walschot texted Hincks to let him know, among other things, that Respondent is not selling any work and hasn't sold new work since either the last week in November or December 1, 2022. Walschot also wrote that Respondent had no new current jobs and was just closing out jobs that were 95-99% complete. Thus, Respondent did respond to paragraph 12 of the Union's information request and counsel for the General Counsel has failed to establish a violation of the Act regarding this requested paragraph.

On the other hand, paragraph 10 of the January 20 information request sought presumptively relevant information—a list of employees hired after December 20, 2022, along with their wage rate and contact information—that Respondent failed to provide to the Union. Similarly, paragraph 11 of the January 20 information request asked for benefit information concerning any remaining bargaining unit employees. Joshua Hanks testified that he was one of the few employees Respondent retained, along

with Caleb Hanks (Joshua's brother) and Michael Brannan. Hanks further testified that he received a bonus in early January 2023 as well as a \$3/hour raise around this time. (Tr. 352–353.) Although the information requested was presumptively relevant because it pertained to unit employees' terms and conditions of employment, it took on greater urgency when the Union learned that Respondent remained open for business and Respondent rewarded its few remaining bargaining unit employees with bonuses and raises. Since Respondent failed to respond to paragraph 11 of the Union's January 20 information request, I find that Respondent has violated Section 8(a)(5) of the Act.

In this same vein, the Union requested the following information in paragraph 13 of its January 20, 2023 information request:

"A copy of all licenses of AAFP, its owner, managers, supervisors and employees, including but not limited to contractor licenses and employee trade licenses (NICET, ASSE, etc.)"

Hincks' testimony established the relevancy of this information request. To this end, Hincks testified without contradiction that in the State of Illinois, fire sprinkler contractors must be licensed through the Illinois Office of the State Fire Marshal. Hincks further explained that Walschot's long-time standing as Respondent principal could have qualified him as the "responsible managing employee" required for licensing by the State Fire Marshal. Alternatively, a designated certified person would need a licensing credential from NICET in either design, engineering, or systems layout and to perform inspection or testing work, employees would need either an ASSE 15010 license or a NICET Level 3 certificate in the inspection and testing of water-based systems. Given Walschot's knowledge of the industry, the Union's inquiry regarding licensing information in paragraph 13 of its information request should have been readily apparent to him and satisfies the liberal, discovery-type threshold necessary to establish the relevancy of this requested information. Having failed to provide this information, Respondent violated the Act as alleged.

Finally, in paragraph 14 of its January 20, 2023, information request, the Union sought the following:

"A copy of all documentation and correspondence with companies regarding the potential or actual sale of AAFP, including but not limited to its business, assets, equipment, customer lists, and other property or other things of value."

The Union explained in its January 20 letter that it was specifically requesting this information to "ascertain the truth in the Employer's claim that it has or will be terminating operations."

In several Board cases, the Board has held that an employer who has sold its assets or business to another employer violates the Act by failing or refusing to provide the union representing its employees with a copy of the contract of sale between the employer and the asset purchaser. *Daniel J. Burk Enterprises*, 313 NLRB 1263, 1269 (1994); *Westwood Import Co.*, 251 NLRB 1213 (1980). The Board reasons that this requested information would allow the union to determine if the employer and purchaser were a single employer or another form of

interrelated operation that would aid the union in deciding whether to file an appropriate action against the employer. *Compact Video Services, Inc.*, 319 NLRB 131, 143 (1995). Thus, the requested information is relevant to the Union's representational responsibilities and Respondent's refusal to provide information in paragraph 14 of the Union's January 20, 2023 information request violated Section 8(a)(5) of the Act.

#### CONCLUSIONS OF LAW

1. The Respondent, Atlantic American Fire Protection Company, Inc., is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Charging Party, Sprinkler Fitters Local 281, is a labor organization within the meaning of Section 2(5) of the Act.

3. By engaging in the following acts and conduct, Respondent has violated Section 8(a)(1) of the Act.

(a) Coercively interrogating employees about their union activity;

(b) Informing employees that they were discharged for engaging in union organizing activities.

(c) Informing employees that Kenneth Walschot will sell Respondent because employees selected the Union as their collective-bargaining representative.

(d) Informing employees that they would not receive a Christmas bonus because they selected the Union as their collective-bargaining representative.

(e) Informing employees that they were fired because they selected the Union as their collective-bargaining representative.

(f) Informing employees that Respondent is closing because they selected the Union as their collective-bargaining representative.

4. By engaging in the following acts and conduct, Respondent has violated Section 8(a)(3) of the Act.

(a) Withholding from employees Thanksgiving and Christmas turkeys and hams in order to discourage them from joining, supporting, or assisting the Union.

(b) Withholding Christmas bonuses from employees in order to discourage them from joining, supporting, or assisting the Union.

(c) Terminating employees Daniel Colon, Daniel Falco, James Piccolo, Alfredo Torres, Mike Salup, Juan Zamora, Abel Diaz, Jonathan Diaz, Alexander Gonzalez, and Kevin Lipp because they engaged in union organizing activities.

5. By engaging in the following acts and conduct, Respondent has violated Section 8(a)(5) of the Act:

(a) Withholding Christmas bonuses from employees without first notifying and bargaining with the Union;

(b) Terminating employees Daniel Colon, Daniel Falco, James Piccolo, Alfredo Torres, Mike Salup, Juan Zamora, Abel Diaz, Jonathan Diaz, Alexander Gonzalez, and Kevin Lipp without first notifying and bargaining with the Union.

(c) Failing and refusing to recognize and bargain with Sprinkler Fitters Local 281 (the Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit;

(d) Withdrawing recognition from the Union;

(e) Refusing to furnish necessary and relevant information to the Union.

6. All other allegations of the complaint are dismissed.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that Respondent violated Section 8(a)(3) and (1) by terminating Daniel Colon, Daniel Falco, James Piccolo, Alfredo Torres, Mike Salup, Juan Zamora, Abel Diaz, Jonathan Diaz, Alexander Gonzalez, and Kevin Lipp, I order the Respondent to rescind the terminations and notify the 10 employees this has been done. Respondent must also remove the ten employees' terminations from their records and shall notify them in writing that this has been done and that the terminations will not be used against them in any way. Respondent must offer the above-named employees full reinstatement to their former jobs or, if the job no longer exists, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make each employee whole for any loss of earnings and other benefits suffered as a result of the discrimination against them<sup>47</sup>. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

In accordance with *Thryv, Inc.*, 372 NLRB No. 22 (2022), Respondent shall compensate each of the ten employees for any other direct or foreseeable pecuniary harms incurred as a result of the unlawful termination of their employment, including reasonable search-for-work and interim employment expenses, if any, regardless of whether these expenses exceed interim earnings. Compensation for these harms shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

In accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014), Respondent shall compensate each of the ten employees for the adverse tax consequences, if any, of receiving a lump-sum backpay awards, and, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016), Respondent shall, within 21 days of the date the amount of backpay is fixed, either by agreement or Board Order, file with the Regional Director for Region 13 a report allocating backpay to the appropriate calendar year(s) for each of the ten employees.

I will order Respondent to post a notice at the Elgin, Illinois facility in the usual manner, including electronically to the extent mandated in *J. Picini Flooring*, 356 NLRB 11, 15-16 (2010). In accordance with *J. Picini Flooring*, the question as to whether an electronic notice is appropriate should be resolved at the compliance phase. Id. at 13.

In addition, in accordance with *Containerboard Packaging-* holiday bonus program and the Thanksgiving and Christmas turkey/ham/rib roast benefit.

<sup>47</sup> The named employees must also be made whole for the loss of wages and benefits incurred from the unlawful discontinuation of the

*Niagara*, 370 NLRB No. 76, as modified in 371 NLRB No. 25 (2021), Respondent is ordered to file, with the Regional Director for Region 13, a copy of the W-2 form reflecting the backpay award for each of the ten employees.

Respondent must also restore recognition of the Union as its employees' exclusive collective-bargaining representative. Respondent must also bargain in good faith with the Union and if an understanding is reached, embody the understanding in a signed agreement. Additionally, because Respondent terminated almost all bargaining unit employees before appropriate bargaining occurred with the newly certified Union and in order to ensure that the unit employees will be accorded the statutorily prescribed services of their selected bargaining agent for the period provided by law, I shall order a 12-month extension of the certification year<sup>48</sup> from the time that the Respondent begins to bargain in good faith pursuant to *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962). See *Quickway Transportation, Inc.*, 372 NLRB No. 127, slip op. at 29 (2023). An extension of the certification year is warranted where an employer has refused to bargain with the elected bargaining representative during part or all of the year immediately following the certification and as a result "has taken from the Union the opportunity to bargain during the period when unions are generally at their greatest strength." *Kitsap Tenant Support Services, Inc.*, 366 NLRB No. 98, slip op. at 23 (2018), quoting *Northwest Graphics, Inc.*, 342 NLRB 1288, 1289 (2004).

Having found that the Respondent failed and refused to provide requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of Respondent's unit employees, I order the Respondent to timely provide this information, as specified in the Order below.

Additionally, I order a notice-reading remedy because the unfair labor practices noted above were serious and widespread. See *Serta Simmons Bedding, LLC*, 372 NLRB No. 115, slip op. at 8 (2023). Respondent discharged nearly the entire bargaining unit. Discharges are among the most serious unfair labor practices, as they are the "industrial equivalent of capital punishment." *Metz v. Transit Mix, Inc.*, 828 F.2d 1202, 1209 (7<sup>th</sup> Cir. 1987), and telling employees that they are fired because of their union organizing activities is a blatant unfair labor practice as well. See *United States Service Industries, Inc.*, 319 NLRB 231, 231-232 (1995). Furthermore, Respondent's serious unfair labor practices were committed by the highest-ranking company official—Respondent owner and president Kenneth Walschot. In these circumstances, a notice reading is necessary to dissipate the lingering effects of the Respondent's serious and widespread unlawful conduct and to ensure the further protection of employees' Section 7 rights. As the Board has observed, "the public reading of the notice is an effective but moderate way to let in a warming wind of information and, more important, reassurance." *United States Service Industries, Inc.*, 319 NLRB at 232.

<sup>48</sup> Along with the 12-month extension of the certification year is an accompanying 12-month decertification bar, which affords the Union the same protection it should have rightfully enjoyed during its 1st year following certification. *Quickway Transportation, Inc.*, 372 NLRB No. 127, slip op. at 31.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>49</sup>

#### ORDER

Respondent, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating employees about their union activity.

(b) Telling employees that they were discharged because they engaged in union organizing activities.

(c) Telling employees that Kenneth Walschot will sell Respondent because employees selected a union as their collective-bargaining representative.

(d) Telling employees that they will not receive a Christmas bonus because they engaged in union organizing activities.

(e) Telling employees that they were fired because they engaged in union organizing activities.

(f) Telling employee that Respondent will close its doors because they engaged in union organizing activities.

(g) Discharging or otherwise discriminating against employees for supporting Sprinkler Fitters, Local 281 or any other labor organization.

(h) Discontinuing a practice of providing Thanksgiving turkeys and hams to its employees because they engaged in union organizing activities.

(i) Discontinuing a practice of providing Christmas hams, turkeys, and rib roasts to its employees because they engaged in union organizing activities.

(j) Discontinuing a practice of providing a holiday bonus to employees because they engaged in union organizing activities.

(k) Withdrawing recognition from Sprinkler Fitters, Local 281 (the Union) and failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of Respondent's employees in the following bargaining unit:

All full-time and regular part-time sprinkler fitter journeymen and apprentices employed by the Employer out of its 18 North State Street, Elgin, Illinois facility, excluding all confidential employees, office clerical employees, professional employees, managerial employees, guards and supervisors as defined by the Act.

(l) Failing and refusing to bargain a first contract with the Union.

(m) Discharging its employees without first notifying and bargaining with the Union.

(n) Discontinuing a practice of providing a holiday bonus to employees without first notifying and bargaining with the Union.

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

<sup>49</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

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

(a) Offer Daniel Colon, Daniel Falco, James Piccolo, Alfredo Torres, Mike Salup, Juan Zamora, Abel Diaz, Jonathan Diaz, Alexander Gonzalez, and Kevin Lipp full reinstatement to their former jobs or, if those jobs no longer exist, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Daniel Colon, Daniel Falco, James Piccolo, Alfredo Torres, Mike Salup, Juan Zamora, Abel Diaz, Jonathan Diaz, Alexander Gonzalez, and Kevin Lipp whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms, suffered as a result of their unlawful discharges, and other unlawful conduct committed by Respondent.

(c) Compensate the affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 13, 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.

(d) File with the Regional Director for Region 13, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of Daniel Colon, Daniel Falco, James Piccolo, Alfredo Torres, Mike Salup, Juan Zamora, Abel Diaz, Jonathan Diaz, Alexander Gonzalez, and Kevin Lipp, and within 3 days thereafter, notify the employees in writing that this has been done and that the discharge will not be used against them in any way.

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

(g) On request, recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment, bargain in good faith with the Union for the period required by *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962), and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time sprinkler fitter journeymen and apprentices employed by the Employer out of its 18 North State Street, Elgin, Illinois facility, excluding all

confidential employees, office clerical employees, professional employees, managerial employees, guards and supervisors as defined by the Act.

(h) Furnish to the Union in a timely manner the information it requested on December 21, 2022, and January 20, 2023.

(i) Post at its Elgin, Illinois facility copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. The Respondent shall take reasonable steps 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 any time since December 6, 2022.

(j) Hold a meeting or meetings during working hours at its facility in Elgin, Illinois, scheduled to ensure the widest possible attendance of employees, at which time the attached notice will be read to employees in English by a responsible management official in the presence of a Board agent or, at the Respondent's option, by a Board agent in the presence of a responsible management official.

(k) Within 21 days after service by the Region, file with the Regional Director for Region 13 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.<sup>50</sup>

Dated, Washington, D.C. May 9, 2024

#### APPENDIX

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

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

#### FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT interfere with, restrain, or coerce you in the

<sup>50</sup> As part of its requested relief, Counsel for the General Counsel seeks a make-whole remedy to compensate bargaining unit employees for the time in which they were deprived the opportunity to bargain a first contract. Because current Board remedies do not provide for such a

remedy, I decline to recommend one here. Similarly, I decline to grant Counsel for the General Counsel's request that Respondent issue a letter of apology to the ten employees terminated by Respondent on December 20, 2022.

exercise of the above rights.

WE WILL NOT interrogate you about your union organizing activities.

WE WILL NOT tell you that you were discharged because you engaged in union organizing activities.

WE WILL NOT tell you that we will sell the company because you selected a union to represent you.

WE WILL NOT tell you that you did not receive a Christmas bonus because you engaged in union organizing activities.

WE WILL NOT tell you that we fired you because you selected the Union as your collective-bargaining representative.

WE WILL NOT tell you that we will close the company because you selected a union to represent you.

WE WILL NOT withhold from you Thanksgiving and Christmas turkeys and hams to discourage you from joining, supporting, or assisting the Union and WE WILL make you whole for the benefits lost due to our unlawful conduct.

WE WILL NOT withhold from you Christmas bonuses to discourage you from joining, supporting, or assisting the Union and WE WILL make you whole for the wages and benefits lost due to our unlawful conduct.

WE WILL NOT discontinue our holiday bonus program without first notifying and bargaining in good faith with the Union and WE WILL make you whole for the wages and benefits lost due to our unlawful conduct.

WE WILL NOT terminate or otherwise discriminate against any of you for supporting Sprinkler Fitters Local 281 or any other labor organization and WE WILL make you whole for the wages and benefits lost due to our unlawful conduct.

WE WILL NOT deviate from our established discipline procedures to discharge you without first notifying and bargaining with the Union in good faith.

WE WILL NOT withdraw recognition from Sprinkler Fitters, Local 281 (the Union) and fail and refuse to bargain with the Union as the exclusive collective-bargaining representative of our employees in the bargaining unit.

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

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

WE WILL offer Daniel Colon, Daniel Falco, James Piccolo, Alfredo Torres, Mike Salup, Juan Zamora, Abel Diaz, Jonathan Diaz, Alexander Gonzalez, and Kevin Lipp full reinstatement to their former jobs or, if those jobs no longer exist, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Daniel Colon, Daniel Falco, James Piccolo, Alfredo Torres, Mike Salup, Juan Zamora, Abel Diaz, Jonathan Diaz, Alexander Gonzalez, and Kevin Lipp whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest, and WE WILL also make them whole for any other direct or foreseeable pecuniary harms suffered as a result of the unlawful discharges, including reasonable search-for-work and interim employment expenses, plus

interest.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 13, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year(s) for each employee.

WE WILL file with the Regional Director for Region 13 within 21 days of the date the amount of backpay is fixed by agreement or Board order, or such additional time as the Regional Director may allow for good cause shown, a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.

WE WILL, within 14 days from the date of the Judge's Order, remove from our files any reference to the unlawful discharges of Daniel Colon, Daniel Falco, James Piccolo, Alfredo Torres, Mike Salup, Juan Zamora, Abel Diaz, Jonathan Diaz, Alexander Gonzalez, and Kevin Lipp and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following appropriate bargaining unit:

All full-time and regular part-time sprinkler fitter journeymen and apprentices employed by the Employer out of its 18 North State Street, Elgin, Illinois facility, excluding all confidential employees, office clerical employees, professional employees, managerial employees, guards and supervisors as defined by the Act.

ATLANTIC AMERICAN FIRE PROTECTION COMPANY,  
INC.

The Administrative Law Judge's decision can be found at [www.nlrb.gov/case/13-CA-309518](http://www.nlrb.gov/case/13-CA-309518) 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.



## SUMMARY OF ADMINISTRATIVE LAW JUDGE FINDINGS

Complaint ¶	Allegation	Section of the Act	ALJ Finding	Page # in Decision
5(a)	Interrogation – first week of December	8(a)(1)	No Violation	21
5(b)(1)	Interrogation (12/13/22)	8(a)(1)	Violation	22
5(b)(2)	Impression of Surveillance (12/13/22)	8(a)(1)	No violation	22
5(b)(3)	Implied Threat to Reduce Pay	8(a)(1)	No Violation	23
5(b)(4)	Informed employees that Union representation was futile	8(a)(1)	No Violation	23
5(b)(5)	Threat to sell Company if employees unionize	8(a)(1)	Violation	24
5(b)(6)	Told employees they would not get a holiday bonus because they selected the Union	8(a)(1)	Violation	25
5(c)	Impression of Surveillance (between 12/13 and 12/20/22)	8(a)(1)	No Violation	25
5(d)(1)	Told employees they were fired because employees selected the Union (12/20/22)	8(a)(1)	Violation	26
5(d)(2)	Told employees that the company was closing because employees selected the Union (12/20/22)	(8)(a)(1)	Violation	26
5(d)(3)	Informed employees that union representation was futile	8(a)(1)	No Violation	26
5(d)(4)	Called police on employees (12/20/22)	8(a)(1)	No Violation	27
6(a)	Discontinued Thanksgiving ham/turkey practice	8(a)(3)	Violation	29
6(b)	Took away company debit cards used to purchase gas/materials	8(a)(3)	No violation	30
6(c)	Discontinued Christmas rib roast/ham/turkey practice	8(a)(3) and 8(a)(5)	Violation for 8(a)(3); No violation for 8(a)(5)	31, 34

6(d)	Discontinued holiday bonus practice	8(a)(3) and 8(a)(5)	Violation for 8(a)(3) and 8(a)(5)	31, 34
6(e)	Terminated 10 employees	8(a)(3) and 8(a)(5)	Violation for 8(a)(3) and 8(a)(5)	32, 35
8(a)	Employer closed doors and ceased operations	8(a)(5)	No Violation	36
8(c)	Employer failed and refused to bargain a first contract	8(a)(5)	Violation	37
8(d)	Employer withdrew recognition	8(a)(5)	Violation	38
8(e and g)	Employer failed to provide requested info (12/21/22)	8(a)(5)	Violation	39
8(f and h)	Employer failed to provide requested info (1/20/23)	8(a)(5)	Violation except for paragraph 12 of information request	40