Stericycle, Inc. *and* Teamsters Union Local No. 628.
Case 04–CA–277775

June 1, 2026

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY AND MAYER

On September 30, 2022, Administrative Law Judge Michael A. Rosas issued the attached decision, and on October 25, 2022, he issued an errata. The Respondent filed exceptions and a supporting brief, the General Counsel and the Charging Party each filed an answering brief, and the Respondent filed a reply brief. The General Counsel and the Charging Party each filed cross-exceptions and a supporting brief, the Respondent filed an answering brief, and the General Counsel and the Charging Party each filed a reply brief.

On August 25, 2023, the National Labor Relations Board issued a Decision and Order in which it resolved most of the issues in this case. 372 NLRB No. 131 (2023). The Board also severed and retained for further consideration the complaint allegation that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act by failing and refusing to provide bargaining notes in response to the Union's information request. Id., slip op. at 1 fn. 2.

Upon further consideration of this matter, the Board declines the General Counsel's and Charging Party's requests to reconsider *Stericycle, Inc.*, 370 NLRB No. 89 (2021), and affirms the judge's dismissal of this allegation for the reasons given by the judge.[1]

ORDER

The remaining complaint allegation is dismissed.

Dated, Washington, D.C. June 1, 2026

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James R. Murphy, Chairman

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Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER PROUTY, dissenting.

This case illustrates the flaws of treating bargaining notes as generally exempt from disclosure under the Act, a standard unfortunately adopted by the Board in *Stericycle, Inc*., 370 NLRB No. 89, slip op. at 1 fns. 5 & 6 (2021) (*Stericycle I*). Applying that flawed standard today, my colleagues utilize it to find that the Respondent had no obligation to disclose bargaining notes that were both presumptively relevant and essential to resolving a dispute over the parties' differing interpretations of a new attendance policy. In doing so, they ignore, in my view, the realities of how bargaining works and diminish the Board's ability to determine the truth of what was said and what was meant in such meetings.

In this instance, the Union requested "bargaining notes concerning, or relating to discussions about administration of attendance discipline during negotiations." Bargaining notes is a broad term but generally, and here, the request would squarely cover notes recounting "discussions" *between* the parties that occurred at the bargaining table. Such exchanges—i.e., what the parties stated to each other during negotiating sessions—are the *sine qua non* of collective bargaining, and contemporaneous notes describing those exchanges are obviously nonconfidential and often highly relevant to the resolution of both contractual grievances and Board litigation. Because contemporaneous bargaining notes are often the best evidence of what occurs during negotiations, the blanket rule of *Stericycle I* not only conflicts with real-world bargaining experience but also deprives the parties—and the Board—of an important tool in uncovering the truth. I would overrule *Stericycle I* to the extent it held that bargaining notes are generally privileged. Instead, I would return to the Board's well-established and broadly applicable law governing the general statutory duty to produce requested relevant information, including the standard for identifying and protecting confidential material or otherwise privileged information that may be lawfully, and rightfully, withheld from production.

An employer has a statutory obligation under Section 8(a)(5) of the Act to furnish a union, on request, with relevant information necessary to the union's proper performance of its duties as the collective-bargaining representative of its employees. *NLRB v. Acme Industrial Co.,* 385 U.S. 432, 435–436 (1967); accord *E.I Du Pont de Nemours & Co.*, 366 NLRB No. 178, slip op. at 4 (2018). Information pertaining to employees within the bargaining

[1] We find our dissenting colleague's position unpersuasive for the reasons set forth in the majority opinion in *Stericycle, Inc.*, 370 NLRB No. 89, slip op. at 1 fns. 5 & 6.

unit is presumptively relevant. *E.I. Du Pont de Nemours*, above.

However, even with relevance established, the inquiry must still account for potential claims of confidentiality. Thus, if a party asserts that requested information is confidential, "the Board is required to balance a union's need for the information against any 'legitimate and substantial' confidentiality interests established by the employer." *Pennsylvania Power Co.*, 301 NLRB 1104, 1105 (1991). The party asserting confidentiality bears the burden of proof "of coming forward with evidence to back its position." *Lasher Service Corp.*, 332 NLRB 834, 834 (2000). However, even if the Board finds that the confidentiality interest outweighs the requester's need, the party asserting confidentiality still has a duty to seek an accommodation. *Pennsylvania Power*, supra at 1105–1106. In short, the Board's well-established law governing the statutory duty to provide relevant information already provides adequate protection for a party's "'legitimate and substantial' confidentiality interests." Id.

By creating a new rule, the *Stericycle I* majority set out to solve a problem that did not exist and undermined an effective tool used by the Board for decades for uncovering the parties' interactions with each other during bargaining. Citing *Berbiglia, Inc.*, 233 NLRB 1476 (1977), the majority argued that bargaining notes must be generally exempt from disclosure under the Act because a rule requiring disclosure would frustrate the purposes of collective bargaining. This formulation, however, relies on a specious foundation. *Berbiglia* involved a broad subpoena that, in order to determine the reasons for a strike, sought "a wide-ranging examination of the Union's records, including communications between the Union and its members and with other organizations." Id. at 1495. In revoking the subpoena, the administrative law judge, affirmed by the Board, stated that "[i]f collective bargaining is to work, the parties must be able to formulate their positions and devise their strategies without fear of exposure." Id. I agree. But it does not at all follow from that notion of confidentiality in the formulation of proposals that bargaining notes of the sessions themselves generally must be exempt from disclosure. Notes reporting what was said by one party to the other, when it was said, and by whom, at a bargaining meeting where both sides were present, do not implicate the concerns expressed in *Berbiglia* about exposing a party's formulation of bargaining positions and strategy. To the extent that portions of the requested bargaining notes reflect a party's internal thinking, strategy, impressions, or caucus discussions, those portions can be redacted consistent with *Berbiglia*.[1]

Bargaining notes are a critical tool in the real world of collective bargaining and in Board litigation that often turns on statements and conduct in negotiations. They allow parties to review what was said in each session, helping them prepare for subsequent meetings and refine their proposals or counterproposals. They allow NLRB judges and the Board to more accurately assess allegations and defenses that implicate negotiations.[2] Given the numerous protections that exist to protect a party from having to disclose privileged information, there is simply no good reason to deprive the parties and the Board of key evidence of what transpired at the negotiating table.

For these reasons, I would overrule *Stericycle I* to the extent it held that bargaining notes are generally privileged and would, instead, analyze requests for bargaining notes under the Board's well-established and broadly applicable law governing the general statutory duty to produce requested relevant information.

Applying that standard here, the bargaining notes requested by the Union were presumptively relevant, and notably the Respondent here asserted no claim of confidentiality or privilege. I therefore would find that the Respondent violated Section 8(a)(5) and (1) by refusing to provide them.

Dated, Washington, D.C. June 1, 2026

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David M. Prouty, Member

NATIONAL LABOR RELATIONS BOARD

Nicholas S. Allen, Esq., for the General Counsel.
Brendan J. Fitzgerald and *Ashton Hupman, Esqs. (Littler Mendelson, P.C.),* of Columbus, Ohio, and Washington, D.C., for the Respondent.
Claiborne S. Newlin, Esq. (Markowitz and *Richman),* of Philadelphia, Pennsylvania, for the Charging Party.

[1] Similarly, the Board's recognition of attorney-client privilege does not justify a blanket ban on disclosure of bargaining notes. Although there may be material contained within bargaining notes for which a claim of attorney-client privilege might apply, the Board has established procedures for entertaining and ruling on such claims, and they coexist comfortably with the statutory duty to provide relevant information. See *Patrick Cudahy, Inc.*, 288 NLRB 968 (1988).

[2] While the oral testimony of negotiators based on their recollection of events at the bargaining table is an important source of evidence, no witness can credibly recall everything that occurred during what can be weeks, months, or even years of bargaining. Consistent with this principle, properly authenticated bargaining notes have been routinely introduced into evidence in Board proceedings, and their rejection has been held to be error. See *Allis-Chalmers Mfg.*, 179 NLRB 1, 2 (1969); see also *NLRB v. Tex-Tan Inc.*, 318 F.2d 472, 483 (5th Cir. 1963).

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried remotely by Zoom for Government videoconference technology on June 22, 2022. Based on timely charges filed by Teamsters Union Local No. 628 (Local 628), the second amended complaint (the complaint) alleges that Stericycle, Inc. (Stericycle or Respondent) failed to continue in effect all the terms and conditions of parties' collective-bargaining agreement by modifying the attendance policy to: (1) assess attendance points to bargaining unit employees for utilizing their five paid sick days; and (2) issue discipline to unit employees based on accrued attendance point totals which included points assessed for utilizing paid sick days" and that such actions constitute "failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the National Labor Relations Act (the Act)[1] and in violation of Section 8(a)(5) and (1). Stericycle denied the material allegations.

On June 21, prior to the opening of the hearing, the General Counsel filed a motion in limine to preclude Stericycle from introducing parol evidence for the purpose of varying the unambiguous terms of the parties' collective-bargaining agreement. The motion was denied. Additionally, The General Counsel's motion to amend the complaint to correct the spelling of one admitted supervisor's name and clarify the nature of the alleged unlawful contract modification. That motion was granted without objection. On June 23, Stericycle filed an answer to the second amended complaint, addressing the amended allegations and raising for the first time an affirmative defense of mistake.

On the entire record,[2] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Local 628, and Stericycle, I make the following

FINDINGS OF FACT

I. JURISDICTION

Stericycle, a corporation with a facility in Southampton, Pennsylvania (the facility), is engaged in providing medical waste and collection treatment services to commercial customers throughout the United States. At its Southampton facility, Stericycle annually purchases and receives goods valued in excess of $50,000 directly from points outside the Commonwealth of Pennsylvania. Stericycle admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Parties

Stericycle is an international company specializing in collecting and disposing of regulated substances, including medical waste, and providing healthcare solutions such as consulting and training. It operates several facilities in Pennsylvania, including one each in Southampton and Morgantown. At the Southampton facility, the facility at issue, employees transport waste from client sites to the facility, where it is consolidated on trailers and shipped to other facilities owned by Stericycle for processing.

Local 628 represents Stericycle employees in two separate bargaining units in Southampton and Morgantown. It has represented Southampton employees since 2000; there are approximately 110 employees in the following bargaining unit:

> "[A]ll full time and regular part time Drivers, Driver Techs, In-House Techs, Helpers, Dockworkers, and Long Haul Drivers employed by the Employer at its Southampton, Pennsylvania facility, excluding all other employees, office clerical employees, guards and supervisors as defined in the act . . . ."

The parties have negotiated seven collective bargaining agreements at the Southampton facility. The current collective bargaining agreement (the 2019 CBA) is effective from November 1, 2019 to October 31, 2022. The 2019 CBA consists of two documents: the parties' prior agreement, effective from November 1, 2016 to October 31, 2019 (the 2016 CBA), and an October 2020 Memorandum of Agreement (2020 MOA).

B. The 2016 Collective-Bargaining Agreement

The 2016 CBA contained, in pertinent part, the following provisions relating to attendance, absences, and paid leave:

> 15. INJURY AND SICKNESS
>
> 15.1 No employee shall lose his position, seniority or right of reinstatement in case of sickness or injury.
>
> 15.2 All employees shall be provided with five (5) days of paid sick leave per calendar year. Sick leave not used by the end of any calendar year will be paid on or before the 2nd week of December of each calendar year at the applicable hourly rate in effect on that date. Each day of sick leave will be paid for on the basis of either eight (8) or ten (10) hours at the applicable hourly straight time rate depending on the employee's regular schedule (i.e., four or five day work week schedule). Paid sick days may be used by the employee as additional personal days which may be taken in the same manner as personal days under Article 20.[3]
>
> 15.3 All new hires, after completing the probationary period, shall receive prorated sick days based upon the number of months remaining in the calendar year.

[1] 29 U.S.C. §§ 151-169.

[2] The parties joint motions to correct the record, filed July 6 and September, 2022, and the General Counsel's unopposed motion to correct the record, filed July 12, 2022, are granted and received in evidence as ALJ Exhs. 1, 2, and 3, respectively.

[3] Reiss' undisputed testimony established that, over 22 years of bargaining, the amount of negotiated sick time has increased by only one day, from four to five. (Tr. 120).

18. VACATION

18.4 Employees shall select vacation based upon seniority within the classification. The Employer shall allow a minimum of one (1) or 10% (rounded up or down as required to make a whole number) of the total number of employees by classification whichever is greater off on vacation each week. Employees absent from work for a continuous period of one year or more, or where an employee has been replaced, shall not be counted as part of the total number of employees in a classification. Additional available vacation weeks shall be at the discretion of the employer, which shall be granted based upon general seniority within the classification.

20. PERSONAL DAYS AND SCHEDULING

20.1 All non-probationary employees shall be provided with four (4) personal days per
calendar year paid on the basis of either eight (8) or ten (10) hours depending on the
employees regular work week schedule at their straight time hourly rate. New hires in their
first calendar year only will receive prorated personal days according to their date of hire.

APPENDIX B

ATTENDANCE POLICY

Work schedules are established for specific reasons and when you are absent or late it reduces the effectiveness of your department. This problem is made worse when you fail to give adequate notice of your absenteeism. The following rule and procedures therefore, will be applied. All unscheduled absences, except as set forth below, are included in this policy. Points are assigned for each unscheduled absence.

This policy is designed to cover most attendance problems: unusual situations will be handled on a case-by-case basis.

This is a negotiated policy and it is expected that employees will conform to its requirements. However, this policy is intended to be subject to just cause principles and nothing in this policy is intended to or constitutes a waiver of the right of review through the grievance procedure of any points, occurrences, or discipline imposed based on just cause standards including whether the reason for the absence is bona fide, compelling, or necessitous and whether under all relevant circumstances the discipline issued is warranted.

DEFINITIONS

Absence; Not being at work for any reason other than those absences set forth under "Exclusion."

EXCLUSIONS FROM THE POLICY

Absences which result from the following shall be excused under the policy and excluded from its terms: vacation, disciplinary suspensions, jury duty, bereavement leave, approved leaves of absence, holidays, personal days, work related injuries, FMLA leave, absences for cause that entitle the employee to disability benefits, any other paid absence under the contract other than paid sick time, and any other excused absences.

REPORTING YOUR ABSENCE

You must notify your department manager, supervisor, or other designated Company representative as soon as you know that you will be absent- in advance of your scheduled start time. It is the employee's responsibility to call out. Employees are required to notify department manager/supervisor as soon as possible but at least one hour in advance. If your manager/supervisor is not available, a voice mailbox system is available for you to leave a message. Please note that the time of all calls will be recorded, requiring the notification times as stated above. You must repeat the call-in procedure for every day that you cannot report to work except if other arrangements have been made. At the time of reporting you must also advise how long you expect to be absent and the reason for your absence.

OCCURRENCES – POINTS

In a rolling twelve-month period, the following points will be assessed for occurrences. Occurrences/points which are twelve months old or more shall be dropped from the employee's record including any discipline associated with the point or occurrence.

Occurrence	Points
Absence when scheduled to work for 1 day	1 point
Medical authorized absences—2 or more days with Dr.'s note. Failure to provide bona fide note, points will be equal to the amount of days absent.	1 point
Failure without cause to call in absence within required time (includes failure to call designated number given to each employee).	½ point
Absence on a day off requested but denied by management without a doctor's certificate. (This point shall be in addition to the one point for absence when scheduled to work).	1 point

DISCIPLINARY ACTION

The progressive disciplinary actions listed below are intended to be remedial in purpose and effect so as to cure absenteeism problems and to prevent new ones from occurring.

Points	Action
accumulated points	verbal warning
accumulated points	written warning
accumulated points	1-day suspension
accumulated points	termination

An employee who does not accumulate any points for a sixty (60) working day period of time shall have his

most recent occurrence removed and his point total reduced by one point and shall be downgraded in the schedule of discipline, This shall apply for no more than two (2) reductions for an employee in a calendar year.

NOTIFICATION

Each employee that accrues a point or an occurrence under this policy and the employee's shop steward at five (5) accumulated points must receive written notice of each occurrence, and of any disciplinary action to be taken, no later than last regular work day of the week following the week in which the incident giving rise to the infraction occurred. Such notices shall also contain the employee's cumulative points and occurrences. The failure to provide written notice as required hereunder shall result in the incident being of no force or effect.[4]

PROBATIONARY EMPLOYEES

Probationary employees can accumulate points during the probationary period. The Department Manager will review the points assessed when evaluating the probationary employee's overall performance during the probationary period. These points can be a factor in the decision to terminate probationary employee.

Upon ratification, the most recent occurrence and associated points will be removed for each bargaining unit employee.

C. Implementation of the 2016 CBA

Pursuant to the 2016 CBA, unit employees were not issued points or occurrences for excluded absences such as vacation and personal days. In contrast, employees who took paid sick days were issued a point or half-point for each paid sick day used.[5] Moreover, when an employee was assessed points under the attendance policy (i.e., paid sick day or other unexcluded reason), the employee and employee's shop steward was issued a piece of paper documenting each point assessed. Upon accruing five points, the employee and employee representative were also issued a documented verbal warning. Discipline progressed with each point thereafter, as follows: written warning for six points; one-day suspension for seven points; and termination for eight points. Points elapsed after either 60 days or one years, as applicable under the aforementioned provisions.

D. Negotiations over the 2019 CBA

Responding to concerns expressed by unit employees to the application of points, occurrences, and discipline to paid sick leave, Local 628 sought to modify the attendance policy during the 2019 CBA negotiations.

1. November 7, 2019

Local 628 proposed modifications during the first bargaining session for a new contract on November 7, 2019 sought to eliminate the issuance of point sheets when unit employees used a paid sick day. Local 628 also proposed a change to the attendance policy as follows:

[Local 628 Proposal #] 14. Appendix B—Attendance Policy—Modify as follows:

OCCURRENCES-POINTS

Progressive disciplinary action for attendance violations will be tracked based on a
calendar year beginning January 1 ending December 31. After the employee has utilized his or her five (5) sick days the following discipline will be issued for attendance violations:[6]

Stericycle, for its part, was amenable to eliminating the issuance of employee notifications under the attendance policy, as issuing paper notices to employees for each and every attendance point was a labor-intensive process.[7] Its initial proposal, however, sought to add call outs to the list of occurrences and points:

Company #5 – New Language—Add Appendix B

- Occurrences – Call Outs on Scheduled Overtime Day = 1 point
- 3rd suspension in a calendar year will result in the immediate termination of employment[8]

Local 628 did not agree to Stericycle's proposal and requested a response to its proposal yo modify the attendance policy.[9]

2. December 4, 2019

At the second bargaining session on December 4, the parties

[4] It is undisputed that the notification requirement was added at Local 628's request during bargaining for the 2016 CBA. (Tr. 122-123.)

[5] "Reiss explained that call-outs disrupt operations by preventing Stericycle from fulfilling its 45 delivery routes per day. (Tr. 119-120.). According to Schmidt, "paid sick time is an income continuance issue. It's not an exclusion or an acceptance for absence under the attendance policy." (Jt. Exh. 27; Tr. 121-123, 146, 164.)

[6] Dagle's notes indicate that Stericycle asked to defer discussion on this proposal: "14 Co. Hold." (R. Exh. 22 at 185.); Reiss' notes were blank on this item. (R. Exh. 23 at 215.) The General Counsel concedes that the text of Local 628's attendance proposal was ambiguous as to whether (1) it sought to eliminate the issuance of points for taking paid sick days or delineate when progressive discipline would issue based on points. (R. Exh. 1 at 6.) Stericycle's witnesses, Reiss and Schmidt, testified that they always construed Local 628's proposals to relate to the issuance of paper notifications for the use of paid sick days only, and not the accrual of points or discipline. They based that view on Local 628's explanation that unit employees viewed the receipt of points sheets as discipline. (Tr. 127-128, 145, 156-157.) Dagle's more extensive notes reflected, however, that Shonfeld agreed, near the end of the meeting, to eliminate the issuance of points for sick days: "Paul – no points for sick days." (R. Exh. 22 at 185.)

[7] It is undisputed that point sheet notifications and the rolling 12-month policy were among Local 628's initial concerns. (Tr. 127-128.)

[8] R. Exh. 2 at 14.

[9] Dagle's notes stated: "#5 Need answer to Union 14." (R. Exh. 22 at 185) Reiss' notes stated "5 No Change." (R. Exh. 23 at 216.)

discussed Local 628's attendance proposal (#14). Stericycle did not agree to the proposed modifications at that time. In the afternoon session, however, the parties reached a tentative agreement to a exclude the "five (5) days of sick leave" (Article 15.2) from the attendance policy (Appendix B),[10] but keep the same points system, and increase the number of "occurrences" to nine.[11]

3. December 5, 2019

The parties met again the following day. At that session, Stericycle presented its counterproposal, consisting of two drafts. The first draft added "Paid Sick days as defined in Article 15.2" to "Exclusions From The Policy." Although it kept the 8-point system in place for points 5 through 8, the proposal changed the "Disciplinary Action" to state that points "1 through 4 absences" would result in "NO Action." Stericycle also proposed to remove "the most recent and associated points" for each unit employee when the contract was ratified. Stericycle's second draft slightly modified the exclusions language by adding the first four days of paid sick leave: "Paid Sick days, one (1) through four (4), as defined in Article 15.2."

Both versions rejected Local 628's proposal to track occurrences and points on a calendar-year basis, and incorporated 2016 CBA's "Notification" section. The parties discussion how the points would work under the new language. However, Local 628 needed more time to evaluate the proposal and would discuss it at the next session.[12]

4. December 18, 2019

At the fourth session on December 18, Local 628 tendered Proposal #2. The draft reflected items that were tentatively agreed to on December 4 and 5, and contained several proposed modifications. Effectively rejecting Stericycle's proposed modifications to the attendance policy, Local 628's draft included the identical language for its November 7th proposal #14. During this session, Schmidt took the position that the disciplinary steps should say the same. Dagle replied that Local 628 was "evaluating," but agreed in principle to Stericycle's proposed changes to the lateness provision if Stericycle agreed to Local 628's attendance proposal.[13]

5. December 19, 2019

At the fifth session on December 19, Stericycle stood by its December 5th attendance policy proposal. Local 628 then proposed the same changes reflected in its November 7 proposal. It characterized this version as a "final offer," reiterating its proposed changes to the attendance policy, including lateness: no points for sick days 1 to 5; progressive discipline would be applied to the next 4 days; and the total number of occurrences would amount to 9 occurrences.[14]

6. January 15 and 16, 2020

There was discussion, but no progress, regarding the attendance provisions on January 15 and 16. On January 15, Local 628 maintained its December 19 proposal regarding the attendance policy. Schmidt rejected it. On January 16, the attendance provisions were not discussed.[15]

7. February 5, 2020

At the eighth bargaining session on February 5, Reiss said that Stericycle agreed to Local 628's proposal change regarding Point 5 if Local 628 agreed to Stericycle's proposal to change Article 15.1 He also presented an outline of the items allegedly tentatively agreed to regarding the attendance policy: "(1) no paper document issued for Points 1-5; (2) Points will be given for absence from a scheduled overtime shift; (3) Upon Contract ratification, the most recent occurrence will be removed for all Team Members." The summary also listed open items: "Add extra step of discipline (9th Step) as Verbal Warning (1st Step) will occur at Point 6 instead of Point 5; (2) Includes Proposal under Article 15.1."[16]

8. February 6, 2020

During the ninth bargaining session on February 6, Local 628 presented Proposal #6. The attendance policy proposal for occurrences and points continued to mirror its November 7 proposal. However, it also included two bundle proposals. The first proposal: (1) Local 628 modifies language in section 18.4 regarding the number of drivers on vacation per week; (2) Stericycle withdraws modification proposal for Article 20; (3) Stericycle withdraws modification proposal for Article 15; and (4) Stericycle agrees to Local 628 proposal on attendance and lateness.

The second bundle proposal did not address attendance and lateness: (1) Local 628 agrees to withdraw proposal modifying vacation at Article 18.1; (2) Local 628 agrees to withdraw proposal modifying holidays at Article 19.2; (3) Local 628 agrees to Stericycle proposal to delete Letter of Understanding #3; (4) Stericycle agrees to Local 628 proposal to add Martin Luther King Day at Article 19.1. Stericycle ultimately rejected both bundle proposals.[17]

During this session, Dagle also orally modified Local 628's attendance proposal. He proposed that if Stericycle agreed to track attendance occurrences and points on a calendar-year basis instead of a rolling basis, Local 628 would agree to the following

[10] Points are not assessed for absences listed in "Exclusions From The Policy." (Jt. Exh. 2 at 10, 27.)

[11] Riess' notes stated: "John [Dagle] – Attendance – 15.2 under Exclusions OK." (R. Exh. 23 at 217-218). Dagle's notes reflected the same understanding: "Attendance exclusion 15.2 of CBA." (R. Exh. 22 at 187-189; Tr. 145-146).

[12] Schmidt's and Reiss's testimony regarding their understanding of Local 628's attendance policy was not credible. They asserted that Local 628 merely sought to eliminate the issuance of points sheets for paid sick days. That contention, however, was contradicted by their two proposals, which reflected Local 628's proposals seeking to exclude paid sick days as countable absences, and made no changes to the notifications provisions. (R. Exh. 4 at 24-26, 31-33; R. Exhs. 22 at 190 and 23 at 220 ; Tr. 145-148, 162-164.)

[13] R. Exhs. 5 at 42, 22 at 193, 23 at 221-222.

[14] R. Exhs. 22 at 197, and 23 at 226.

[15] R. Exhs. 7 at 52, 9 at 64, and 10 at 73; R. Exh. 22 at 198, and 23 at 227.

[16] Dagle's credible and undisputed testimony refuted Stericycle's representation that the parties had reached a tentative agreement regarding the attendance policy as of February 5, 2020. (Tr. 92; R. Exh. 11 at 81; R. Exhs. 22 at 201, and 23 at 230.)

[17] R. Exh. 12 at 86, 91, 96; R. Exh. 22 at 203-204; R. Exh. 23 at 232.

attendance policy for paid sick leave: "No points 5 sick days; After 5 sick days 1-2-3-4; 1 recent occurrence removed; From 11/1/19 – remove any sick day points."[18]

9. February 19, 2020

During the tenth bargaining session on February 19, Stericycle restated its February 5 proposal.[19] Local 628, however, proposed its first written revision of Proposal #14. This version dropped Local 628's proposal to track attendance points on a calendar-year, added language requested by Stericycle counting absences on a scheduled overtime shift as a 1-point occurrence, stated that points would not be assessed until after an employee used five paid sick days, and did not modify the "Disciplinary Action" or "Notification" sections of the 2016-19 policy.

14. Appendix B-Attendance Policy - Modify as follows:

In a rolling twelve month period, the following points will be assessed for occurrences after the employee has used his/her five (5) paid sick days. Occurrences/points which are twelve months old or more shall be dropped from the employee's record including any discipline associated with the point or occurrence.

OCCURRENCE - POINTS

Occurrence	Points
Absence when scheduled to work including a scheduled overtime shift for 1 day	1 point
Medical authorized absences—2 or more days Dr.'s note. Failure to provide bona fide note, points will be equal to the amount of days absent.	1 point with
Failure without cause to call in absence within required time (includes failure to call designated number given to each employee)	½ point
Absence on a day off required but denied by management without a doctor's certificate (This point shall be in addition to the one point for absence when scheduled for work.) [20]	1 point

Stericycle tentatively agreed to Local 628's first bundle proposal, which included the aforementioned Proposal #14 relating to attendance.[21]

10. February 20, 2020

On February 20, Stericycle confirmed the February 19 tentative agreement relating to the attendance policy. It was agreed that points sheets would not be issued for the first five points, an additional point/occurrence would be added to the attendance chart, progressive discipline would then start at the sixth point, and the ninth point would result in termination.[22] Stericycle's February 20 attendance proposal, however, contained language inconsistent with the previous day's agreement not to assess any occurrence points until an employee took five paid six days:

Appendix B - Attendance Policy (Modify as follows)

l) No paper document issued for Points 1-5
2) One (1) point will be given for absence from a scheduled overtime shift
3) Upon Contract ratification, the most recent occurrence will be removed for all Team Members

Note: Adding leniency as Verbal Warning (1st Step) will occur at Point Six (6) instead of Point Five (5) and Termination will occur at Point Nine (9) instead of Point Eight (8). T/A 02/19/20[23]

11. March 2 and 3, 2020

At the March 2 session, however, Stericycle addressed the conflict between the attendance proposals with the following modifications:

Appendix B - Attendance Policy (Modify as follows)

l) Points will not be issued for occurrences until the employee has used all five (5) paid Sick Days
2) One (1) point will be given for absence from a scheduled overtime shift
3) Upon Contract ratification, the most recent occurrence will be removed for all Team Members

Note: Adding leniency as Verbal Warning (1st Step) will occur at Point Six (6) instead of Point Five (5) and Termination will occur at Point Nine (9) instead of Point Eight (8). T/A 02/19/20[24]

On March 3, 2020, Local 628 presented another set of written proposals with no change to the attendance policy language.[25]

12. March 12, 2020

In an effort to finalize agreement on the attendance policy, Local 628 presented the following language at the March 12 session:

14. Appendix B -Attendance Policy- Modify as follows: Tentatively agreed to pending review of entire policy language.

In a rolling twelve month period, the following points will be assessed for occurrences **after the employee has used his/her five (5) paid sick days. Points will not be issued for**

[18] Dagle credibly testified he made this oral proposal on February 6, which is documented in his bargaining notes. (Tr. 106-109; R. Exh. 22 at 204.) Reiss confirmed that such proposals occur frequently during negotiations. (Tr. 126.)
[19] R. Exh. 13 at 101.
[20] R. Exh. 14 at 112-113.
[21] R. Exhs. 15 at 118-119, 16 at 130, 17 at 134, and 23 at 235-36.
[22] Reiss and Schmidt confirmed that, while Local 628 sought to eliminate the issuance of paper notifications until after employees used their five days of paid sick leave, it was understood that such leave would still be counted as occurrences. (Tr. 145-146, 157-158.)
[23] R. Exhs. 15 at 118-119, and 16 at 128-129.
[24] R. Exh. 17 at 135.
[25] R. Exh. 18 at 144.

occurrences until the employee has used all five (5) paid sick days. Occurrences/points which are twelve months old or more shall be dropped from the employee's record including any discipline associated with the point or occurrence.

OCCURRENCES – POINTS

Occurrences	Points
Absence when scheduled to work **including a scheduled overtime shift** for 1 day	1
Medical authorized absences—2 or more days with Dr.'s note. Failure to provide bona fide note, points will be equal to the amount of days absent.	1
Failure without cause to call in absence within required time (includes failure to call designated number given to each employee)	1/2
Absence on a day off requested but denied by management without a doctor's certificate (This point shall be in addition to the one point for absence when scheduled to work).	1

Upon contract ratification the most recent occurrence will be removed for all employees.

Adding leniency as verbal warning (1st Step) will occur at the sixth (6th) occurrence instead of the fifth (5th) occurrence and termination will occur at the ninth (9th) occurrence instead of the eight (8th) occurrence.

Points removed for paid sick days used retroactive to 11/1/2019.[26]

At this session, Stericycle presented its final offer on economics. It also produced a different attendance proposal. The proposal restated the language in its March 2 attendance proposal but attached revised versions of Appendix B and the 2016-19 attendance policy. Attendance points were omitted, leaving only a provision to track occurrence. The accrual of occurrences assessed for absences, however, remained the same as they did under the points system in Local 628's March 12 attendance proposal:[27]

> Occurrences
> In a rolling twelve month period, the following be *considered as occurrences*. Occurrences which are twelve months old or more shall be dropped from the employee's record including any discipline associated with the occurrence. *Occurrences will be issued once an employee uses their five (5) allowable paid Sick Days*. (emphasis in original)

Stericycle's proposal did state, however, that it would not assess occurrences until after the employee used five paid sick days, incorporated the Disciplinary Action section to delete all reference to points, as well as the Notification section of the 2016-19 policy, and maintained the tentative agreement triggering progressive discipline only on upon assessment of a sixth point/occurrence. The Local 628 representatives replied that they needed more time to consider the proposal and draft a tentative agreement.[28]

E. Local 628's May 29, 2020 Proposal

Bargaining sessions were replaced by email exchanges after March 12 due to the COVID-19 pandemic and the subsequent restrictions on in-person gatherings. On May 29, Local 628 emailed Stericycle its Proposal #11 containing its proposed modifications, "with all other contractual language remaining unchanged subject to ratification by the members." The proposal consisted of a draft Memorandum of Agreement relating to the parties' tentative agreement (the 2020 MOA). In contrast to Stericycle's March 12 proposal, however, Local 628's changes maintained the application of occurrences/points *after* employees exhausted their allotted five sick days, but did not include the revised Notification or Probationary Employees sections of the policy. The language for occurrences and points read as follows:

> OCCURRENCES-POINTS
>
> In a rolling twelve-month period, the following points will be assessed for occurrences. Occurrences/points which are twelve months old or more shall be dropped from the employee's record including any discipline associated with the point or occurrence. Occurrences/points will not be issued for employees[']use of their five (5) annual paid sick days.[29]

On June 12, Schmidt returned the draft with redline corrections or deletions as to certain parts of the document. However, there were no comments in the attendance section, except for a notation that the parties tentatively agreed to the draft language for that provision on "6.2.2020."[30]

On August 4, Local 628 replied to Schmidt's June 12 email with revisions, but again, it did not include any changes to the language in the May 29 proposal.[31]

F. The 2020 MOA

In-person bargaining resumed on October 14, 2020, in time for the parties to resolve several outstanding issues. Schmidt, Schonfeld, Riess, and Marculewicz attended for Stericycle; Newlin attended for Local 628. The attendance policy, which was not discussed during this meeting, was the same provision in Local 628's May 29 draft, with the following exception: "Points removed for paid sick days used retroactive to 11/1/2019" to only "current bargaining unit employees as of the

[26] R. Exhs. 19 at 154, and 23 at 245.A
[27] R. Exhs. 19 at 154, and 20 at 164-166.
[28] R. Exhs. 20 at 162-166, 22 at 213, 23 at 245-246; Tr. 42-43.164-165.
[29] Jt. Exh. 4 at 1, 6-8.
[30] Jt. Exh. 5 at 6-8.
[31] Jt. Exh. 17 at 6-8.

date of ratification."[32] On October 31, unit employees ratified the successor agreement (the 2019 CBA), consisting of two parts – the 2016 CBA and the 2020 MOA.

G. The Parties' Different Interpretations of the 2020 MOA

During the latter part of November, Reiss heard about Local 628's communications with unit employees regarding the new attendance policy. Reiss called Dagle to express his disagreement with Local 628's interpretation of those provisions. He insisted that Stericycle did not agreed to eliminate the issuance of points under the attendance policy for employees' use of paid sick days. Dagle disagreed and referred Reiss to the attendance policy negotiated by the parties. Riess called Dagle a liar, insisting that his bargaining notes would prove otherwise. Dagle stood by the terms of the 2020 MOA. Riess replied that he would send Dagle an amendment to the 2020 MOA's attendance policy. Dagle immediately rejected that idea. He explained that such an action would require a reopening of negotiations on sections of the agreement that Local 628 made significant concessions on, including the introduction of drive-cam technology enabling Stericycle to monitor unit employees' activities.[33]

On December 9, Riess emailed Dagle a proposal modifying the 2019 CBA's attendance policy. The proposal deleted all reference to points, the issuance of occurrences and points for using paid sick leave, revised the disciplinary section by reducing the number of occurrences/points necessary to trigger discipline from four points to one occurrence; and required written notice of occurrences after five absences. Local 628 did not reply to the proposal.[34]

On December 22, Riess emailed Dagle again, informing Dagle that he would be "catching up" on issuing notifications for sick leave points accrued for the last two weeks and asking whether he had "any feedback" regarding his proposal. Dagle called Reiss and refused to reopen bargaining. Reiss warned that it would "get ugly" and ended the call.[35]

H. Stericycle's Implementation of the 2019 CBA

On January 1, 2021, Stericycle removed all points and occurrences assessed to Southampton unit employees under its attendance policy for absences which occurred prior to that date. Since that date, Stericycle has consistently applied the attendance policy by issuing occurrences and points to unit employees for using their five paid sick days. Employees are notified through points sheets when they accrue a sixth point/occurrence; points sheets have not been issued for the first five points. Moreover, the progressive disciplinary process has been consistently applied beginning at six points/occurrences for absences.

Throughout the same period, Respondent has issued occurrences/points for employees' use of paid sick days in calculating employees' total accumulated attendance points for purposes of determining whether to issue such discipline. Under its attendance policy, discipline has been applied as follows: a verbal warning for accumulating 6 points; a written warning for accumulating 7 points; a 1-day suspension for accumulating 8 points; and discharged for accumulating 9 or more points.

As a result, since January 1, 2021, Stericycle has applied various levels of discipline to the following unit employees, which they would not have received but for the issuance of points for using paid sick leave: Michael Dilanzo, Malik Ellis, Dwayne Hodge, Juan Salazar, S. Anderson, Quadir Barnes, Harry Bremme, Charles Carcione, Andre Coulter, Dravon Drayton, W. Ferguson, Will Goldsby, Thomas Herman, Taiwan Jones, W. Malinski, Avery McClease, J. McCusker, Tynel Peaker, Jerrell Wilson, and Matthew Wood. Four of those employees – Dilanzo, Ellis, Hodge, and Salazar were discharged.

I. Local 628 Grieves Stericycle's Application of the Attendance Policy

After learning in late January 2021 that unit employees were being issued points/occurrences for using paid sick days, followed by progressive discipline beginning with their sixth absence, Dagle began filing grievances. On February 4, Local 628 timely grieved the issuance of such discipline to unit employees Hodge, Salazar, Peaker, Wilson, Herman, and Jones. On February 12, Local 628 filed similar timely grievances for discipline issued to Hodge, Dilanzo, and Salazar. Local 628 also filed a timely grievance for the same reason on February 26 for discipline issued to Bremme.

With the exception of Bremme's grievance, Stericycle denied the rest of the timely filed grievances on the ground that requests for Step 1 meetings were not timely requested within 14 days of the occurrences. Article 5 of the 2019 CBA states, in part:

> Step 1 - Within fourteen (14) calendar days of the later of the date of the occurrence giving rise to the grievance or of the date on which the occurrence should have reasonably been known, the grievance shall be reduced to writing and presented by the employee and the designated union representative to the employee's immediate supervisor. The parties shall meet and attempt to resolve the grievance within seven (7) calendar days of its presentation.[36]

On March 10, 2021, Dagle sent a letter to Riess seeking to file "a class grievance" on behalf of Southampton unit employees

[32] I do not credit Schmidt's vague assertion that the parties had "very clear discussions of what the understandings were with respect to this particular provision of the agreement" on October 14. First, there was no discussion about the attendance provisions during this meeting; that issue had been resolved in June. Nor were there any bargaining notes or corroboration by Reiss that there were discussions about the attendance policy at this meeting. (Jt. Exh. 3 at 5-7; Tr. 46, 159.)

[33] Reiss did not reveal the source of his belief that unit employees believed they could accrue 14 points/occurrences prior to termination under the new agreement. (Jt. Exh. 7-8; Tr. 50-51, 99-100, 118, 124.) In any event, Reiss' assertion that Stericycle "would have never provided that much of a jump in any kind of provision for an attendance policy, especially in Southampton, given the nature of the challenges [the Company] had with attendance in the first place," is certainly not established by the bargaining record. That record reveals significant concessions by the parties on numerous topics, including the dash cam provision. (Tr. 137-140, 159-160.)

[34] Jt. Exhs. 4, 7, and 8.

[35] Reiss did not dispute Dagle's credible testimony regarding the follow-up conversation. (Jt. Exh. 9-10; Tr. 55-56.)

[36] Dagle's credible, unrefuted testimony established that this application of Article 5 was unprecedented in the relationship between the parties. (Tr. 58-59; Jt. Exhs. 1 at 6, and 12 at 5.)

adversely affected by its application of the attendance policy (the March 10 letter):

> The Union protests Stericycle's disciplining Southampton employees without just cause.
>
> The employer is repeatedly violating the Attendance Policy as stated in the Memorandum of Agreement agreed to by the parties on October 14 and executed by the employer on October 29, 2020 and other relevant provisions of the parties' agreement.
>
> This is a class grievance applicable to employees Dwayne Hodge, Juan Salzar, Michael Dilanzo, Tynel Peaker, Jerell Wilson, Tom Herman, Taiwan Jones, Harry Bremme, Matt Wood, Dravon Drayton and all other employees similarly situated.
>
> Remedy requested: Remove wrongly applied points, occurrences, warning notices, suspensions and terminations and make affected employees whole for any and all losses and benefits to which the grievants are entitled.
>
> The Union is available to conduct the Step 1 grievance meeting regarding this matter at our
> previously scheduled grievance meeting on Friday, March 12, 2021 at 10:30 AM.

In emails to Dagle on March 16 and March 19, respectively, Stericycle rejected Local 628's request to pursue class grievances on the grounds that they were either not authorized under the 2019 or were merely an attempted "end-around" the failure to timely request Step 1 meetings for each grievant. In his March 19 response Schmidt also stated that Stericycle would raise its procedural objections to the individual grievances and the class grievance in any future arbitration.[37]

J. The Information Requests

On April 8, 2021, Dagle submitted an information request to Stericycle for 13 sets of documents relating to the Southampton attendance policy grievances (the April information request). He requested the information by April 23.[38] All of the items were eventually resolved except for two, Requests 6 and 10.

In a May 6, 2021 email, Dagle informed Riess that Stericycle's response to the April information request was "long overdue." Reiss replied on May 9, objecting to both disputed requests:

> 6. A list of all previous grievances where Stericycle took the position that a grievance could not be pursued because a Step 1 meeting was not scheduled within seven (7) calendar days from January 1, 2011 to the date of this request;
>
> - This is an unreasonable request and will not be provided.
>
> - At any time in the past when either side needed more time to respond to a grievance, a conversation was held and agreed to by both parties.
>
> - That is not the case here. The union has never made a request relative to this situation
>
> - 10. Documents showing bargaining notes concerning, or relating to discussions about administration of attendance discipline during negotiations;[39]
>
> - Union not entitled to bargaining notes.

On May 11, 2021, Dagle addressed Reiss' objections. His detailed reply to Reiss' objections regarding the requests at issue were as follows:

> Response to request number 6:
>
> Stericycle refuses to provide a list of previous grievances where it took the position that a grievance could not processed because the Step 1 meeting was not scheduled within seven (7) days. You claim that the union's request is unreasonable. Stericycle claims that the union's failure to schedule a Step 1 meeting within seven days "serve[s] as a bar to [considering] the grievance." The parties have a long history of processing grievances in accordance with Article V of the CSA. Clearly, the parties' practice with respect to applying the seven-day language is relevant to the union's grievance.
>
> Stericycle further claims that "any time in the past when either side needed more time to respond to a grievance, a conversation was held and agreed to by both parties". Please provide all documents supporting this claim.
>
> Response to request number 10.
>
> Stericycle refuses to provide its bargaining notes concerning or relating to discussions of administration of attendance discipline during negotiations. The union is requesting the bargaining notes because, during a discussion of attendance discipline, a Stericycle representative stated that the company's bargaining notes support its interpretation of the language contained in the October 29, 2020 MOU.

Over two months later, on July 21, 2021, Schmidt replied to

[37] It is stipulated that Stericycle has never agreed to waive these procedural objections to either form of Local 628's attendance grievances. (Joint Exh. 1, 11, and 12.)

[38] Jt. Exh. 13.

[39] Dagle credibly testified as to the rationales for these requests: No. 6 related to Local 628's assertion that Stericycle had never denied a timely-filed grievance due to the failure to request a Step 1 meeting within seven days of filing; No. 10 related to Riess' assertion in November 2020 that his bargaining notes would confirm that the 2020 MOA did not accurately reflect the terms the parties agreed to on attendance. (Tr. 61-62).

Dagle's May 11 email, maintaining its refusal to provide the documents responsive to Requests 6 and 10:

> Response to request number 6:
>
> Stericycle refuses to provide a list of previous grievances where it took the position that a grievance could not processed because the Step 1 meeting was not scheduled within seven (7) days. You claim that the union's request is unreasonable. Stericycle claims that the union's failure to schedule a Step 1 meeting within seven days "serve[s] as a bar to [considering] the grievance." The parties have a long history of processing grievances in accordance with Article V of the CBA. Clearly, the parties' practice with respect to applying the seven-day language is relevant to the union's grievance.
>
> Stericycle further claims that "any time in the past when either side needed more time to respond to a grievance, a conversation was held and agreed to by both parties". Please provide all documents supporting this claim.
>
> The Company has not refused to provide a list of grievances and states that it has no obligation to do so because the information requested by the Union is already in the Union's possession. Indeed, the Union is already in possession of its grievances and the Company's responses to those grievances. As such, it is already in possession of the information that it requests. Moreover, to the extent the Union is taking the position that the parties have a practice of not applying the 7-day Step 1 scheduling period, as the union is aware, no "practice" can exist if it contravenes express contract language. Here, the contract clearly provides a 7-day period in which a Step 1 meeting must be scheduled.
>
> With the respect to the Union's request for documentation relating to "any time in the past when either side needed more time to respond to a grievance, a conversation was held and agreed to by both parties," the Company states that it is not in possession of any written documentation relating to such conversations and the
> parties' practice with respect to extensions of time.
>
> Response to request number 10.
>
> Stericycle refuses to provide its bargaining notes concerning or relating to discussions of administration of attendance discipline during negotiations. The union is requesting the bargaining notes because, during a discussion of attendance discipline, a Stericycle representative stated that the company's bargaining notes support its interpretation of the language contained in the October 29, 2020 MOU.
>
> The Company has not refused to provide the Union with its bargaining notes. In fact, in addition to the information set forth above, the document attached represents what was bargained, discussed, documented and agreed to with respect to the attendance policy and the revised disciplinary process of that attendance policy. This document was used by the Company to track the decision points based on conversations at the table on October 14th. Please specifically refer to Appendix B of the attached.

Subsequently, Local 628 referred its attendance policy grievances to arbitration without any of the information covered by Requests 6 and 10. As of June 22, 2022, that arbitration had not yet occurred.

LEGAL ANALYSIS

I. STERICYCLE'S ASSESSMENT OF POINTS/OCCURRENCES UNDER THE 2019 CBA

The complaint alleges that Stericycle "failed to continue in effect all the terms and conditions of the agreement . . . by modifying the parties' agreed-upon attendance policy by: (i) assessing attendance points to Unit employees for utilizing their five paid sick days; and (ii) issuing discipline to Unit employees based on accrued attendance point totals which included points assessed for utilizing paid sick days" and that such actions constitute "failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act." It is undisputed that, since January 2021, contrary to the 2019 CBA's provision eliminating the issuance of occurrences/points for employees' use of five annual paid sick days, Stericycle has issued points when employees use those days.

Section 8(a)(5) and (1) and Section 8(d) of the Act prohibit an employer from modifying terms and conditions of employment established by a collective-bargaining agreement during the agreement's term without the union's consent. Section 8(d) of the Act provides, in relevant part, that "where there is in effect a collective-bargaining contract . . . no party to such contract shall terminate or modify such contract." Pursuant to Section 8(d), neither party to a collective-bargaining agreement may compel the other "either to discuss contract changes or agree to them" during the term of a contract. *Boeing Co.*, 337 NLRB 758, 762 (2002); *Connecticut Power Co.*, 271 NLRB 766, 766-767 (1984); see also, e.g., *Hydrologics, Inc.*, 293 NLRB 1060, 1062 (1989) ("Section 8(d) . . . prevents the employer from implementing a midterm contract modification without the consent of the union"); *Abbey Medical/Abbey Rents, Inc.*, 264 NLRB 969, 969 fn. 1 (1982), enfd. mem. 709 F.2d 1514 (9th Cir. 1983) ("under Section 8(d) of the Act, no party to a collective-bargaining agreement can be compelled to discuss or agree to a midterm modification of a collective-bargaining agreement, and, accordingly a proposed modification can be implemented only if the other party's consent is first obtained").

In *Bath Iron Works Corp.*, however, the Board established a standard insulating an employer from liability under Section 8(a)(5) and Section 8(d) where the employer, based on a "sound arguable basis" for its interpretation of the contract, modifies a term and condition of employment, and "is not motivated by union animus or acting in bad faith." 345 NLRB 499, 502 (2005). Under that test, an employer's action is lawful if its interpretation of relevant provision is at least colorable. Id. at 503. See *NCR Corp.*, 271 NLRB 1212, 1213 (1984) (the Board does not seek to determine which of two equally plausible contract

interpretations is correct where employer's interpretation has a sound arguable basis).

Stericycle advances several rationales for its unilateral contract modification–none of which present a sound arguable basis. The parties bargained consistently for about one year over various provisions, including the attendance and disciplinary policies. They did not land where they did by accident–the 2020 MOA, which mirrored language tentatively agreed to on June 2, 2019, eliminated the issuance of points for unit employees' use of paid sick days.

First, Stericycle contends that it had a sound arguable basis for its interpretation of the contract because paid sick days were not included in exclusions provision. As such, Stericycle insists that it would be unreasonable to construe language exempting five sick days from being assessed points as an agreement to increase the number of occurrences/points from 9 to 14.

Second, Stericycle contends that the attendance policy is ambiguous and, thus, requires one look to extrinsic evidence to determine the parties' intent. In this regard, Stericycle relies on the following: the parties' past practice in issuing attendance points in previous contracts; the uses of terms such as "issue," "issued," "assess," "assessed," "accrue," and "accumulate" elsewhere in the 2019 CBA as contextual clues that that the attendance policy was ambiguous; mutual concerns by both sides–employees' concern that they were being disciplined because points sheets were issued for employees' use of their allotted sick leave and Stericycle's historical concerns about employee absences–demonstrates that Stericycle would never have agreed to increase approved absences by five days—from nine absences to 14 absences; and the lack of any reference in the parties' bargaining notes that they agreed to such an increase in of the number of absences prior to termination.

There is no indication, either within the language of the 2019 CBA or the parties bargaining notes, that the exclusions section was intended to preempt any other provisions, including the extensively negotiated occurrences/points section. Nor is there anything ambiguous about the parties agreement that "[o]ccurrences/points will not be issued for employees[']' use of their five (5) annual paid sick days" or to remove "points [given to Unit employees] for paid sick days retroactive to 11/1/2019." Read together, these two provisions do not lend themselves to another plausible explanation. See *NLRB v. Electrical Workers Local 11*, 772 F.2d 571, 575 (9th Cir. 1985), enfg. 270 NLRB 424 (1984) (if terms of agreement "are unambiguous, the [Board] need not consider extrinsic evidence" of the parties' intent, and, indeed, such evidence is "not only unnecessary but irrelevant").

The fact that the new attendance policy represented a significant increase in points is of no consequence, as the evidence revealed that there were significant concessions on various issues by both sides, including Local 628's agreement to permit the installation of drive-cam technology. Finally, the fact that the parties' communications and notes for the earlier bargaining sessions associated points with the five paid sick days is not where the parties ended up. Again, there were significant concessions by both sides that made it into the final agreement.

Finally, Stericycle did not pursue its alternative defenses that the claims are barred by the doctrines of mutual or unilateral mistake, or deferred to the grievance-arbitration process. In any event, both lack merit. There is insufficient evidence from the bargaining notes and the parties' communications to establish that Stericycle was mistaken as to the meaning of the attendance policy's text in the 2020 MOA or only that its representatives unilaterally misunderstood the language they were agreeing to. With respect to the deferral of its unlawful contract modification to the parties' grievance-arbitration procedure pursuant to either *Dubo Mfg. Corp.*, 142 NLRB 431 (1963) or *Collyer Insulated Wire*, 192 NLRB 837 (1971), that approach is inappropriate. First, Stericycle denied Local 628's attempts to grieve the assessment of points and resulting discipline applied to unit employees. Second, that allegation relates to Stericycle's alleged refusal to provide Local 628 with the information it needed to pursue such grievances.

Under the circumstances, Stericycle's decision to issue points and occurrences to employees for the use of paid sick days, as well as the discipline that resulted therefrom, constituted a unilateral modification of the contract's terms. That modification altered an attendance policy which, given that its application could result in discipline up to discharge, was clearly a mandatory subject of bargaining. See, e.g., *Roll and Hold Warehouse and Distribution Corp.*, 325 NLRB 41, 42 (1997), enfd. 162 F.3d 513 (7th Cir. 1998) (written point system for attendance was a mandatory subject of bargaining); *Ciba-Geigy Pharmaceuticals Div.*, 264 NLRB 1013, 1016 (1982), enfd. 722 F.2d 1120 (3d Cir. 1983). This unilateral change, therefore, constituted an unlawful contract modification within the meaning of Section 8(d) of the Act and violated Section 8(a)(5) and (1).

Additionally, Stericycle violated Section 8(a)(5) and (1) by unilaterally altering terms and conditions of employment involving mandatory subjects of bargaining without providing Local 628 with notice and the opportunity to bargain. *NLRB v. Katz*, 369 U.S. 736, 742-743 (1962); *NLRB v. Borg-Warner Corp.*, 356 U.S. 342, 349 (1958); *S. New England Tel. Co.*, 356 NLRB 338, 345 (2010). The General Counsel established a prima facie violation of Section 8(a)(5) by demonstrating that Stericycle made material and substantial changes in term or conditions of employment–attendance and discipline–constituting mandatory subjects of bargaining, without providing Local 628 with notice and opportunity to bargain. *Success Village Apartments*, 348 NLRB 579, 579-580, 628 (2006) (citing *Chemical Workers Local 1 v. Pittsburg Plate Class Co.*, 404 U.S. 157, 159 (1971)). As explained above, Stericycle failed to demonstrate that the unilateral change was permissible in some manner. *Success Village Apartments*, 348 NLRB at 628.

II. LOCAL 628'S INFORMATION REQUESTS

A. Information Request No. 6

Section 8(a)(5) requires the parties to bargaining relationship to bargain in good faith. In fulfilling that obligation, the parties are required to provide relevant information upon request. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). The employer's duty to provide relevant information exists because without the information, the union is unable to perform its statutory duties as the employees' bargaining agent. The failure or refusal to comply with that obligation constitutes a per se violation of the act,

regardless of the employer's subjective good or bad faith. *Brooklyn Union Gas Co*., 220 NLRB 189, 191 (1975); *Procter & Gamble Mfg. Co.*, 237 NLRB 747, 751 (1978), enfd. 603 F.2d 1310 (8th Cir. 1979). In determining the potential relevance of the requested information, the Board does not pass upon the merits, and the labor organization is not required to demonstrate that the information is accurate, not hearsay, or even ultimately reliable. *Postal Service*, 337 NLRB 820, 822 (2002). Furthermore, information relating to unit employees and their terms and conditions of employment is presumptively relevant and, absent a legitimate defense, must be furnished on request to their labor representative. *Disneyland Park*, 350 NLRB 1256, 1257 (2007); *Metta Electric*, 349 NLRB 1088 (2007); *Postal Service*, 332 NLRB 635(2000); *Sands Hotel & Casino*, 324 NLRB 1101, 1109 (1997).

In determining relevance, the Board uses a "liberal, discovery-type standard" that requires only that the requested information have "some bearing upon" the issue between the parties and be "of probable use to the labor organization in carrying out its statutory responsibilities." *Public Service Co. of New Mexico*, 360 NLRB 573, 574 (2014); *Postal Service*, 332 NLRB at 636. Here, the two information requests at issue, Nos. 6 and 10, pertain directly to unit employees' attendance and related discipline, and are therefore presumptively relevant.

Request No. 6 sought a list of all previous grievances where Stericycle took the position that a grievance could not be pursued because a Step 1 meeting was not scheduled within seven (7) calendar days from January 1, 2011 to the date of this request. Request No. 6 was clearly relevant to Local 628's attendance-disciplinary related grievances and its ability to confirm or refute the merit of Stericycle's claim that Local 628 waived the right to Step 1 meetings because they had not been requested within seven days. See, e.g., *Stericycle, Inc.*, 370 NLRB No. 89, slip op. at 1 fn. 5 (2021) (requiring employer to supply information sought to investigate a possible grievance); *Contract Carriers Corp.*, 339 NLRB 851, 858 (2003) (union need not demonstrate that the contract has been violated in order to obtain the desired information."); *Emery Industries*, 268 NLRB 824, 824–825, 825 fn. 4 (1984) (stating that, where the union has waived its right to bargain over an issue, it may still obtain relevant information if it provides another "legitimate basis" for the request, such as "assessing the validity of a grievance").

On May 9, 2021, Schmidt rejected Request No. 6 on the grounds that it was "unreasonable." It was not. Schmidt reiterated that position on July 2, adding Local 628 already had the information in the form of previous grievance responses. An employer's obligation to provide relevant information is not nullified, however, simply because the union might have been able to obtain the information through other sources, including its own records. See *King Soopers, Inc.*, 344 NLRB 842, 844 (2005) (employer's duty to provide requested information "not satisfied merely because the [u]nion might have been able to locate the document in its records"); *Illinois-American Water Co.*, 296 NLRB 715, 724-725 (1989), enfd. 933 F.2d 1368 (7th Cir. 1991); see also *Lansing Automakers Federal Credit Union*, 355 NLRB 1345, 1352 (2010) (absent special circumstances, "an employer may not refuse to furnish relevant information on the grounds that the union has an alternative source or method of obtaining the information").

Under the circumstances, Stericycle violated Section 8(a)(5) and (1) by failing to bargain in good faith in refusing to provide Local 628 with information about past grievances.

B. Information Request No. 10

Request No. 10 sought documents showing bargaining notes concerning, or relating to discussions about the administration of attendance discipline during negotiations. The documents were presumptively relevant. Stericycle, however, refused to produce that information on the grounds that Local 628 was not entitled to it. It was correct.

In *Stericycle, Inc.*, id. at 1, fn. 5, the Board reversed this judge's finding that Stericycle was required to produce bargaining notes, citing *Berbiglia, Inc.*, 233 NLRB 1476, 1495 (1977) ("If collective bargaining is to work, the parties must be able to formulate their positions and devise their strategies without fear of exposure.") Accordingly, since Stericycle had a legitimate reason for refusing to comply with Request No. 10, that allegation is dismissed.

CONCLUSIONS OF LAW

1. Stericycle is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Local 628 is a labor organization within the meaning of Section 2(5) of the Act.
3. Stericycle violated Sections 8(a)(5) and 8(d) of the Act by unilaterally modifying its collective-bargaining agreement with Local 628 on January 1, 2021 by (a) assessing attendance points to unit employees for utilizing their five paid sick days; and (b) issuing discipline to unit employees based on accrued attendance point totals which included points assessed for utilizing paid sick days.
4. Stericycle violated Section 8(a)(5) and (1) of the Act by failing and refusing since April 8, 2021 to provide the following information requested by the Union: a list of all previous grievances where Stericycle took the position that a grievance could not be pursued because a Step 1 meeting was not scheduled within seven (7) calendar days from January 1, 2011 to the date of this request.
5. Stericycle did not violate Section 8(a)(5) and (1) of the Act by refusing to provide information requested by Local 628 relating to bargaining notes concerning, or relating to discussions about administration of attendance discipline during negotiations.
6. The above unfair labor practices at paragraphs 3 and 4 affected commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Stericycle has engaged in certain unfair labor practices, I shall order it cease and desist from such conduct and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, Stericycle shall be ordered to: Restore to the unit all of the terms and conditions of the parties' collective-bargaining agreement; Rescind all disciplines and/or any other adverse actions issued to the listed employees, as well as any other unit employees presently unknown as a result of Stericycle's unilateral modification of the collective-bargaining

agreement; Offer full reinstatement to unit employees discharged as a result of Stericycle's unlawful contract modification; Make whole any employees adversely affected by Stericycle's unfair labor practices including, but not limited to, reimbursement of financial losses they incurred as a result of such conduct; and furnish the Union with the information relevant and necessary information to Local 628 as the exclusive collective-bargaining representative of employees in the unit.

If Stericycle's facilities are closed due to the Coronavirus Disease 2019 (COVID-19) pandemic or the facilities are open but a substantial complement of employees are not physically present on site, Stericycle may be communicating with its employees by electronic means. In such circumstances, the prompt posting of the notice by electronic means will best effectuate the purposes of the Act by providing employees with timely notice of the unfair labor practices and the steps Stericycle will take to remedy them. In such case, the notice must be posted by such electronic means within 14 days after service by the Region, and the paper notices must be physically posted within 14 days of the reopening and staffing by a substantial complement of employees.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[40]

ORDER

The Respondent, Stericycle, Inc., Southampton, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Teamsters Union Local No. 628 (Local 628) by failing and refusing to furnish it with requested information that is relevant and necessary to Local 628's performance of its functions as the collective-bargaining representative of Stericycle's employees in the following appropriate unit:

(b) In any like or related manner interfering with, restraining, or coercing employees in the following appropriate unit (the unit) 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) Restore to the unit all of the terms and conditions of the parties' collective-bargaining agreement.

(b) Rescind all disciplines and/or any other adverse actions issued to the employees listed below and to any other Unit employees presently unknown as a result of Respondent's unilateral modification of the collective-bargaining agreement, and notify each such employee in writing that this has been done and that the discipline or adverse action will not be used against the employee in any way:

1. S. Anderson
2. Quadir Barnes
3. Harry Bremme
4. Charles Carcione
5. Andre Coulter
6. Dravon Drayton
7. Michael Dilanzo
8. Malik Ellis
9. W. Ferguson
10. Will Goldsby
11 Tom Herman
L2. Dwayne Hodge
13. Taiwan Jones
14. W. Malinski
15. Avery McClease
16. J. McCusker
17. Tynel Peaker
18. Juan Salazar
19. Jerrell Wilson
20. Matt Wood

(c) Offer to all unit employees discharged as a result of the Respondent's unlawful modification of the collective-bargaining agreement, including but not limited to those listed below, 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:

1. Michael Dilanzo
2. Malik Ellis
3. Dwayne Hodge
4. Juan Salazar

(d) Make whole any employees adversely affected by the Respondent's unfair labor practices including, but not limited to, reimbursement of financial losses they incurred as a result of the Respondent's unlawful conduct.

(e) Provide the Union with any of the requested information unlawfully withheld which has not been produced to date.

(f) Post an appropriate Notice to Employees, a proposed copy of which is attached as Appendix A, at Respondent's Southampton facility and both email and distribute by text message a copy of the Notice to all employees who work at the facility. Within 14 days after service by the Region, post at its facility in Southampton, Pennsylvania copies of the attached notice marked "Appendix."[41] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed email and text message, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered

[40] 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.

[41] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 1, 2021.[42]

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

Dated, Washington, D.C. September 30, 2022

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 exercise of the above rights.

WE WILL NOT fail and refuse to bargain in good faith with Teamsters Union Local No. 628 (the Union) as the exclusive collective-bargaining representative of our employees in the following bargaining unit (the Unit):

> All full-time and regular part-time drivers, driver techs, in-house techs, helpers, dockworkers and long-haul drivers employed by Respondent at its Southampton, Pennsylvania facility; excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

WE WILL NOT fail to continue in effect the terms and conditions of the collective- bargaining agreement with the Union by modifying the attendance policy in Appendix B by issuing Unit employees attendance points under the policy for the use of their five annual paid sick days and by disciplining Unit employees based on accrued attendance points total including points issued for the use of paid sick days.

WE WILL NOT fail or refuse to provide the Union information that is relevant and necessary to its role as your bargaining representatives.

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

WE WILL rescind all disciplines and any other adverse actions we issued to employees as a result of our modification of the attendance policy and remove any reference to such disciplines from our files, and WE WILL notify each such employee in writing that this has been done and that the discipline or adverse action will not be used against the employee in any way.

WE WILL offer Michael Dilanzo, Malik Ellis, Dwayne Hodge, Juan Salazar, and all other employees we discharged as a result of our modification of the attendance policy full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make whole any employees adversely affected by our modification of the attendance policy, including but not limited to reimbursing the affected employees for any financial losses they incurred as a result.

WE WILL restore to the Unit all the terms and conditions of the parties' collective-bargaining agreement.

WE WILL furnish to the Union in a timely manner the list of past grievances requested in the Union's letter dated April 8, 2021, to the extent that we have not already done so.

STERICYCLE, INC.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/04-CA-277775 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.

[42] If Respondent's facilities are closed due to the Coronavirus Disease 2019 (COVID-19) pandemic or the facilities are open but a substantial complement of employees are not physically present on site, Respondent may be communicating with its employees by electronic means. In such circumstances, the prompt posting of the notice by electronic means will best effectuate the purposes of the Act by providing employees with timely notice of the unfair labor practices and the steps Respondent will take to remedy them. In such case, the notice must be posted by such electronic means within 14 days after service by the Region, and the paper notices must be physically posted within 14 days of the reopening and staffing by a substantial complement of employees.