Walgreens Company *and* The Pharmacy Guild Affiliated with International Association of Machinists & Aerospace Workers, AFL–CIO. Case 19–CA–359612

July 27, 2026

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY AND MAYER

This is a refusal-to-bargain case in which Walgreens Company (the Respondent) is contesting The Pharmacy Guild affiliated with International Association of Machinists & Aerospace Workers, AFL–CIO's (the Union's) certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed by the Union on February 3, 2025, amended on April 8, 2025, the General Counsel[1] issued a complaint on July 10, 2025, thereafter amended on August 15, 2025, and March 4, 2026, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union following the Union's certification in Case 19–RC–348046. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Sections 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer to the complaint, amended complaint, and further amended complaint,[2] admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On March 31, 2026, the General Counsel filed a Motion for Summary Judgment. On April 7, 2026, the National Labor Relations Board issued an Order Transferring the Proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On May 12, 2026, the Respondent filed an Opposition to the General Counsel's Motions, Response to the Board's Notice to Show Cause, and Cross Motion for Summary Judgment, to which the General Counsel filed a reply. The Respondent filed a Notice of Supplemental Authority on May 20, 2026.

Ruling on Motion for Summary Judgment

The Respondent admits it is engaged in a "technical refusal to bargain."[3] It asserts that it has no duty to bargain, and contests the validity of the Union's certification of representative based on its contention, raised and rejected in the underlying representation proceeding, that the Union was not properly certified due to alleged supervisory taint and the Board's intervening prohibition of mandatory captive-audience meetings in *Amazon.com Services LLC*, 373 NLRB No. 136 (2024).[4]

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[1] Although this case spans the transition from then-Acting General Counsel William B. Cowen to now General Counsel Crystal S. Carey, for simplicity, we use the term General Counsel throughout.

[2] All further references to the Respondent's answer herein are to its March 18, 2026 answer to further amended complaint.

[3] Member Prouty objects to the use of the term "technical refusal to bargain" because it is a blatant misnomer. See *Longmont United Hospital,* 374 NLRB No. 52, slip op. at 2 (2026) (Member Prouty, dissenting) ("I start from the bedrock principle that an employer commits an unfair labor practice under Section 8(a)(5) of the Act when it refuses to bargain with a union certified by the Board as the collective-bargaining representative of a unit of its employees. While such refusals to bargain are sometimes colloquially referred to as 'technical' 8(a)(5) violations, required in order for the employer to 'test certification,' there is nothing technical about the harm that results from such an unlawful refusal to bargain in defiance of its bargaining obligation under the Act.").

[4] In its answer, opposition to summary judgment, and notice of supplemental authority, the Respondent advances various claims, none of which warrant denying the General Counsel's motion.

The Respondent denies that the Union has been a labor organization within the meaning of Sec. 2(5) of the Act. However, the parties stipulated to the Union's status as a labor organization in the underlying representation proceeding. See *Wismettac Asian Foods, Inc.*, 370 NLRB No. 62, slip op. at 1 fn. 1 (2020) (later denial of issue previously stipulated to in representation proceeding did "not raise any litigable issue in [test-of-certification] proceeding"); *Biewer Wisconsin Sawmill, Inc.*, 306 NLRB 732, 732 fn. 1 (1992) (same). Contrary to the Respondent's assertion, the stipulation was not "voided" when the Region conducted a rerun election and, in any event, at no time during the underlying representation proceeding did the Respondent raise a question concerning the Union's status as a Sec. 2(5) labor organization. Consequently, the Respondent's denial of par. 3 of the complaint does not raise a litigable issue.

The Respondent also denies the paragraphs of the complaint which set forth the appropriate unit; allege that the unit employees elected the Union to be their exclusive collective-bargaining representative on September 3, 2024; allege that on October 18, 2024, the Regional Director issued an Order Approving a Stipulation to Set Aside Election executed by the Union; allege that the unit employees again elected the Union to be their exclusive collective-bargaining representative on November 18, 2024; allege that at all times since December 17, 2024, the Union has been the exclusive collective-bargaining representative of the unit; allege that on April 8, 2025, the Respondent refused to recognize and/or bargain with the Union; and allege that since January 24, 2025, it has failed to recognize and bargain with the Union. These representation issues were fully litigated and resolved in the underlying representation proceeding; thus, we conclude that the Respondent's denials of the allegations in pars. 5(a), 5(d), 5(f), 5(k), 5(q), 7(a), and 7(b) of the complaint do not raise any issues warranting a hearing.

Likewise, the Respondent denies pars. 8 and 9 of the complaint, which allege that it has violated the Act and that its unfair labor practices affect commerce. However, in its answer and in its opposition to summary judgment, the Respondent admits that it refused the Union's bargaining requests. This admission is sufficient to establish a violation of the Act. See *Randalls Food & Drug, L.P.*, 369 NLRB No. 100, slip op. at 1 fn.1 (2020).

Further, affirmative defenses advanced in the Respondent's answer and arguments raised in its opposition to summary judgment and cross-motion for summary judgment simply reassert issues that were, or could have been, litigated and resolved in the underlying representation pro-

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor has it established any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.[5]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

During the last 12 months, which period is representative of all material times, the Respondent has been an Illinois corporation, headquartered in Deerfield, Illinois, and has been engaged in the operation of retail pharmacies, including its facility located at 2100 N.E. 139th Street, Vancouver, Washington.

In conducting its business operation described above during the last 12 months, which period is representative of all material times, the Respondent derived gross revenues in excess of $500,000 and purchased and received goods valued in excess of $50,000 directly from points located outside the State of Washington.

We find that the Respondent 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 Certification

Following the rerun representation election conducted by secret ballot on November 18, 2024,[6] the Regional Director issued a Decision on Objections and Certification of

ceeding. These include its second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, twentieth, and twenty-first affirmative defenses and Parts IV, V, VI, VII.C, VII.D, and VIII of its opposition/cross-motion. We therefore conclude that these defenses and assertions do not raise any issues warranting a hearing.

As for the Respondent's first affirmative defense – that the complaint fails to state a claim upon which relief can be granted – the Respondent admits that it has refused to recognize and bargain with the Union, as set forth above. Consequently, "the complaint does indeed state claims upon which relief can be granted." *Wolf Creek Nuclear Operating Corp.*, 366 NLRB No. 30, slip op. at 1 fn. 2 (2018), enfd. 762 F. App'x 461 (10th Cir. 2019).

Lastly, we find no merit to the constitutional claims raised in the Respondent's answer and in its opposition to summary judgment. First, we reject affirmative defenses fourteen and fifteen to the extent they advance bare, unsupported assertions. See, e.g., *Sysco Central California, Inc.*, 371 NLRB No. 95, slip op. at 1 fn. 1 (2022); *Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino*, 366 NLRB No. 58, slip op. at 1 fn. 1 (2018) (citing cases), enfd. sub nom. *Operating Engineers Local 501 v. NLRB*, 949 F.3d 477 (9th Cir. 2020).

Nor is there merit to the Respondent's claim (eighteenth affirmative defense) that the agency's combined prosecutorial and adjudicatory functions violate the Constitution's separation of powers and the due process clause. "[T]he Supreme Court has held that administrative agencies can, and often do, investigate, prosecute, and adjudicate rights without violating due process." *Illumina, Inc. v. Fed. Trade Comm'n*, 88 F.4th 1036, 1047 (5th Cir. 2023) (citing *Withrow v. Larkin*, 421 U.S. 35, 47, 56 (1975)). See also *Flamingo Hilton-Laughlin v. NLRB*, 148 F.3d 1166, 1174 (D.C. Cir. 1998); *NP Red Rock, LLC, d/b/a Red Rock Casino Resort Spa v. NLRB*, No. 24–1221, 2026 WL 1676491 (D.C. Cir. June 10, 2026).

With regard to its contention that the Board's members and administrative law judges are unconstitutionally insulated from Presidential removal (sixteenth, seventeenth, and nineteenth affirmative defenses), there is no evidence that the Respondent suffered any harm from their removal protections. See *SJT Holdings, Inc.*, 372 NLRB No. 82, slip op. at 1 fn. 4 (2023) (citing *Collins v. Yellen*, 594 U.S. 220, 257-258 (2021), and *Calcutt v. FDIC*, 37 F.4th 293, 316 (6th Cir. 2022), rev'd per curiam on other grounds 598 U.S. 623 (2023)); *K & R Contractors, LLC v. Keene*, 86 F.4th 135, 148–149 (4th Cir. 2023) ("[R]egardless of how we answer the constitutional question presented by the removal provisions, we would be required to deny the petition because K & R has not asserted any harm resulting from the allegedly unconstitutional statutes.").

Both the Board and the courts have rejected the Respondent's claim that the agency proceeding itself constitutes "irreparable harm." See *Amazon.com Services, LLC*, 374 NLRB No. 82, slip op. at 2–3 fn. 5 (2026); see also *Care One, LLC v. NLRB*, 166 F.4th 335, 344–349 (2d Cir. 2026) (stating that "removal violations cause cognizable separation-of-powers injury only when the person afforded removal protection engages in action that he would not have taken 'but for the President's inability to remove' him" (citation omitted)); *Leachco, Inc. v. Consumer Prod. Safety Comm'n*, 103 F.4th 748, 757–759 (10th Cir. 2024); *NLRB v. Starbucks Corp.*, 125 F.4th 78, 88 (3d Cir. 2024); *YAPP USA Auto. Sys., Inc. v. NLRB*, No. 24–1754, 2024 WL 4489598 (6th Cir. Oct. 13, 2024). The one case the Respondent cites, *Space Exploration Technologies Corporation v. NLRB*, 151 F.4th 761, 780 (5th Cir. 2025), has not found support in other courts. As for the Respondent's claim that the Act's removal protections are not severable should they be found unconstitutional, the majority of courts have rejected that argument. See, e.g., *Care One*, 166 F.4th at 349 (citing *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 508 (2010)); *Harris v. Bessent*, 160 F.4th 1235, 1257 (D.C. Cir. 2025). But see *Aunt Bertha v. NLRB*, No. 4:24-CV-00798-P (N.D. Tx May 15, 2026). Further, the Supreme Court recently suggested that those courts were correct, see *Trump v. Slaughter*, 609 U.S.—, 2026 WL 1855612, at *16 fn.3 (2026) (noting that "[i]In our prior cases, 'when confronting a constitutional flaw in a statute' like the one before us, we have sought to limit 'the solution to the problem,' severing the invalid removal provision 'while leaving the remainder intact'" (quoting *Free Enterprise Fund v. Public Company Accounting Oversight Bd*., 561 U.S. 477, 508 (2010)). We therefore decline to deny the General Counsel's motion on these bases.

[5] The Respondent's request that the complaint be dismissed and its cross-motion for summary judgment are therefore denied.

[6] An initial secret ballot election was conducted on September 3, 2024. Following the Respondent's objection to that election, the Union signed a stipulation to set aside the initial election and agreed to a rerun election. On November 20, 2024, the Board denied the Respondent's Request for Review of the Regional Director's Order Denying the Employer's Motion to Reconsider Order Approving Stipulation to Set Aside Election.

Representative in Case 19–RC–348046 on December 17, 2024, overruling the Respondent's November 25, 2024 objections and certifying the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time Pharmacists, Pharmacy Technicians, Certified Pharmacy Technicians, and Senior Certified Pharmacy Technicians employed by the Employer at its facility located at 2100 NE 139th St, Vancouver, Washington (Store #16067), excluding all other employees, Customer Service Associates, Designated Hitters, Beauty and Wellness Consultants, Inventory Specialists, Shift Leads, confidential employees, clerical employees, guards, managers and supervisors as defined in the Act.

On February 23, 2026, the Board denied the Respondent's request for review of the Regional Director's Decision on Objections and Certification of Representative. The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

On January 24, February 11, and April 1, 2025, the Union requested that the Respondent recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit. On April 8, 2025, by mail, the Respondent refused to recognize and/or bargain with the Union as the exclusive collective-bargaining representative of the unit. Since about January 24, 2025, and continuing to date, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since about January 24, 2025, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning on the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

ORDER

The National Labor Relations Board orders that the Respondent, Walgreens Company, Deerfield, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with The Pharmacy Guild affiliated with International Association of Machinists & Aerospace Workers, AFL–CIO (the Union), as the exclusive collective-bargaining representative of the employees in the bargaining unit.

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

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

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

> All full-time and regular part-time Pharmacists, Pharmacy Technicians, Certified Pharmacy Technicians, and Senior Certified Pharmacy Technicians employed by the Employer at its facility located at 2100 NE 139th St, Vancouver, Washington (Store #16067), excluding all other employees, Customer Service Associates, Designated Hitters, Beauty and Wellness Consultants, Inventory Specialists, Shift Leads, confidential employees, clerical employees, guards, managers and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility located at 2100 NE 139th Street, Vancouver, Washington, copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be pos-

[7] 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."

ted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the 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 24, 2025.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 19 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. July 27, 2026

James R. Murphy, Chairman

David M. Prouty, Member

Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with The Pharmacy Guild affiliated with International Association of Machinists & Aerospace Workers, AFL–CIO (the Union) as the exclusive 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 the rights listed above.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of our 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 Pharmacists, Pharmacy Technicians, Certified Pharmacy Technicians, and Senior Certified Pharmacy Technicians employed by the Employer at its facility located at 2100 NE 139th St, Vancouver, Washington (Store #16067), excluding all other employees, Customer Service Associates, Designated Hitters, Beauty and Wellness Consultants, Inventory Specialists, Shift Leads, confidential employees, clerical employees, guards, managers and supervisors as defined in the Act.

WALGREENS COMPANY

The Board's decision can be found at www.nlrb.gov/case/ 19-CA-359612 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.