UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

ALEUT INFORMATION TECHNOLOGY, LLC

and

Cases 19–CA–350069
19–CA–359289
19–CA–361247

INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 959

Patricia Fedewa, Esq., for the General Counsel.

Michael Garone, Esq. (Schwabe, Williamson & Wyatt), of Portland, Oregon, for the Respondent.

DECISION

CHARLES J. MUHL, Administrative Law Judge. This case involves two storylines, the first of which is an alleged unlawful withdrawal of recognition. Respondent Aleut Information Technology, LLC operates a facility at the U.S. Department of Defense's (DOD) Clear Space Force Base in Anderson, Alaska. In 2023, the DOD awarded a contract to the Respondent to perform work at the Base. The Respondent employed 9–12 operators to do so. Charging Party International Brotherhood of Teamsters Local 959 (the Union) was the exclusive collective-bargaining representative of those operators.

At material times, the Respondent's operators worked a 7-days-on/7-days-off schedule. In October 2024, bargaining-unit employee Egbert Visker learned that another contractor on the Base offered its employees a 14-days-on/14-days-off schedule. He and other unit employees were interested in that schedule. When Visker heard that the Respondent and the Union already had agreed to a 7/7 schedule in ongoing initial contract negotiations, he began to research how to decertify a union. He then discussed the possibility with supervisor Bryce Wolffe on multiple occasions. At first, Wolffe was nonresponsive or stopped short of committing to help Visker with his endeavor. But in January 2025, Wolffe broke down and told Visker employees could get the 14/14 schedule if Visker got the needed signatures on a decertification petition. On January 28, 2025, Visker submitted the decertification petition to the Respondent. On February 10, 2025, the Respondent withdrew its recognition of the Union as the operators' bargaining representative based upon the petition. In March 2025, the Respondent implemented the 14/14 schedule.

The General Counsel's complaint principally alleges on withdrawal of recognition that the Respondent unlawfully provided more than ministerial support to the employees' decertification efforts. It also alleges that the Respondent unlawfully promised employees a different work schedule if they signed the decertification petition. Finally, the complaint alleges that the Respondent unlawfully withdrew recognition from the Union. I conclude that the Respondent violated Section 8(a)(5) and (1) as alleged.

The second storyline is the alleged unlawful discharge of an employee for union activity. On April 29, 2024, Eric Vantrease began working for the Respondent as an operator. Supervisor Wolffe advised him up front that one of his job requirements was to obtain a specific certification that DOD required for all operators. Vantrease had 6 months from his start date to obtain the certification, per DOD. However, Wolffe inexplicably did not advise Vantrease of that deadline when informing him of the requirement.

On October 22, 2024, the Union notified the Respondent that Vantrease was going to be a member of its bargaining committee to negotiate an initial collective-bargaining agreement. On that same date and with the 6-month deadline looming, Wolffe asked Vantrease for the status of his efforts to obtain the certification. Vantrease told him that he submitted multiple requests to get a training course approved by the Respondent, but no one ever responded to his requests. As a result, on November 5, 2024, Wolffe got Vantrease access to the Respondent's online training program so that he could obtain the certification. A little more than 6 weeks later, the Respondent gave Vantrease a 14-day final deadline to complete the task. Vantrease failed to do so. From Vantrease's start date to the Respondent's deadline to obtain the certification totaled 249 days, including 59 from the date that Wolffe provided him with online training access.

The General Counsel alleges that the Respondent unlawfully discharged Vantrease because of his participation in the Union's bargaining committee. The Respondent argues that its termination of Vantrease was lawful because Vantrease did not obtain the DOD-required certification. I conclude that the General Counsel did not establish that the Respondent harbored animus towards Vantrease's union activity and therefore did not meet the initial *Wright Line* burden. Even if the General Counsel had met the burden, the Respondent demonstrated that it would have discharged Vantrease even if he had not engaged in any union activity. Thus, the Respondent's discharge of Vantrease was lawful.

On March 31 and April 1, 2026, I heard about this case in Fairbanks, Alaska. On June 1, 2026, the General Counsel and the Respondent filed posthearing briefs, which I have read and carefully considered. On the entire record, I make the following findings of fact and conclusions of law.[1]

FINDINGS OF FACT[2]

ALLEGED UNFAIR LABOR PRACTICES

I. BACKGROUND

The Respondent is engaged in the business of maintaining communication systems for the United States Department of Defense, including at its facility at Clear Space Force Station (the Base) in Anderson, Alaska. That includes responsibility for protecting communications of the U.S. Navy, which operates surface and submarine vessels out of the Base.

The Defense Department awarded the Enhanced Polar System (EPS) contract to the Respondent for communication operations at the Base, pursuant to which the Respondent took over from the prior contractor in April 2023. The prior contractor was Arctic Slope Regional Corporation (ASRC). ASRC and the Union had a collective-bargaining agreement in effect when the Respondent took over the EPS contract. The bargaining unit (the Unit) was:

---

[1] On August 29, 2025, the General Counsel, through the Regional Director for Region 19 of the National Labor Relations Board (the Board), issued a consolidated complaint and notice of hearing against Respondent Aleut Information Technology LLC in Cases 19–CA–350069, 19–CA–359289, and 19–CA–361247. The complaint was premised upon unfair labor practice charges filed by Charging Party International Brotherhood of Teamsters Local 959 (the Union) on September 9, 2024; January 28, 2025; and February 27, 2025. On March 31, 2025, the Union filed an amended charge in Case 19–CA–361247. On September 12, 2025, the Respondent filed a timely answer to the complaint, denying the substantive allegations and asserting numerous affirmative defenses. On February 24, 2026, the General Counsel filed an amended complaint, which the Respondent timely answered on March 9, 2026.

In its answers, the Respondent admitted, and I so find, that it is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the National Labor Relations Act (the Act or NLRA). The Respondent also admitted, and I so find, that the Union is a labor organization within the meaning of Sec. 2(5) of the Act.

[2] In order to aid review, I have included citations to the record in my findings of fact. The citations are not necessarily exclusive or exhaustive. My findings of fact are based upon consideration of the entire record. Any testimony in conflict with my findings has been discredited. In assessing witnesses' credibility, I relied upon witness demeanor; the context of the testimony; the quality of the recollections; testimonial consistency; the presence or absence of corroboration; the weight of the respective evidence; established or admitted facts; inherent probabilities; and reasonable inferences that may be drawn from the record as a whole. See *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001), citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996), enfd. sub nom. 56 Fed.Appx. 516 (D.C. Cir. 2003). My specific credibility determinations are detailed in the findings of fact.

All full-time and regular part-time employees engaged in satellite system operations and maintenance on the Enhanced Polar System Operations contract at Clear Space Force Base, Alaska.

II. THE PRIOR INFORMAL SETTLEMENT

On April 19, 2024,[3] the General Counsel, through the Regional Director of Region 19, approved an informal settlement agreement executed by the Respondent and the Union.[4] The settlement disposed of allegations that the Respondent had engaged in numerous unfair labor practices after taking over the EPS contract from ASRC. In relevant part here, the settlement required the Respondent to cease and desist from:

- Failing and refusing to bargain with the Union as their employees' representative in dealing with the Respondent as a successor employer to ASRC Federal System Solutions, LLC regarding wages and other working conditions in the existing bargaining unit;

- Upon request, refusing to bargain in good faith or exchange proposals with the Union;

- Discouraging employees from membership in or support for the Union;

- Telling employees that the Respondent may not recognize, or plans not to recognize, the Union as the employees' collective-bargaining representative.

- Purposefully raising or relying upon claims of disaffection for which the Respondent had no objective evidence in order to avoid its obligation to recognize and bargain with the Union.

The settlement also required the Respondent to affirmatively:

- Upon request, bargain in good faith with the Union; and

- Bargain in good faith with the Union from a status quo retroactive to when the Respondent set its initial terms and conditions of employment as a successor.

Following the settlement, union representative Jeremy Holan submitted an information request to the Respondent to, in part, determine what the status quo was for bargaining-unit employees' terms and conditions of employment. On May 22, the Respondent, through its corporate counsel Paul Kubicki, sent a response to the request. Kubicki provided some of the

[3] All dates hereinafter are in 2024 unless otherwise specified.

[4] GC Exh. 3.

terms and conditions of employment constituting the status quo. On hours scheduled per week, Kubicki stated:

> Employees are scheduled for 84 hours per week condensed into seven days per pay period [7-on/7 off]. Shifts are scheduled quarterly. Employees working over 80 hours in a pay period will be granted flex time for any hours over 80 hours. Flex time is capped at 36 hours and can be used in lieu of PTO.

On wages, Kubicki wrote to Holan:

> Pay System: Our pay system is based on the rates bid for the contract by labor category. Employee pay rates are determined based on a holistic approach considering experience, education, past courses, and training. For promotions, overall performance is also taken into account.
>
> Merit System: Merit increases are provided after our annual performance review cycle and are applied to the first pay period in October. Employees are eligible for a merit increase if they started before April 1 of that year, have not received an out-of-cycle increase after April 1, received a rating of at least 1.65 on their performance review, and demonstrate good corporate citizenship. Eligible employees are given a percentage increase based on their overall score, performance, company performance, and the budget for merit increases determined by the Finance department. Managers provide recommendations for increases to the Vice President of their business line for final review and approval.
>
> Other Wage Increases: No across-the-board wage increases are provided unless a cost-of-living adjustment is needed or there is a realignment with pay rates due to significant market changes. Other out-of-cycle pay increases may be given if an employee takes on additional responsibilities or if their performance exceeds expectations and provides a significant benefit to the employer.

III. THE RESPONDENT HIRES ERIC VANTREASE AS AN OPERATOR

Bryce Wolffe worked for the Respondent from April 2023 through March 2026. He initially was the site manager for the Respondent at the Base. The site manager is responsible for overseeing the Respondent's operations at that facility.[5]

In early April, Wolffe interviewed Eric Vantrease for an operator position. The two had known each other since 2018 when Vantrease was working as a lieutenant colonel for the Air Force National Guard at the Base. During the interview, Wolffe asked Vantrease if he had obtained his "security plus certification," which was required by the DOD for all operators.

[5] Tr. 74, 252–253.

Vantrease told Wolffe that he did not have the certification and asked if that was a showstopper. Wolffe told him not to worry about it and Vantrease would get it when he gets it. Wolffe added that he would work on getting Vantrease a "waiver" (from DOD) and, if so, all Vantrease had to do was obtain the certification. Wolffe did not give Vantrease any deadline to obtain the security plus certification, but the waiver Wolffe mentioned gave Vantrease 6 months from his start date to do so. In this same timeframe, Wolffe hired two additional operators (Odgers and Teamer) who did not have the security plus certification. This was the first time the Respondent hired individuals who had not yet obtained the certification. Odgers obtained the certification within a couple of months of his start date.[6]

On April 9, the Respondent sent Vantrease a letter offering him the position of satellite communications operator/maintainer II with a starting date of April 29, 2024. Vantrease accepted the offer. The letter stated that the offer was contingent on "acceptable results of all pre-employment screening and requirements," but did not specifically mention the security plus certification. The offer also stated that Vantrease would be a probationary employee for the first 180 days.[7]

On April 23, prior to Vantrease's start date, Wolffe invited him to a meeting with a number of the Respondent's corporate officers, including Vice President Geoff Vaughan. One of the operators attending the meeting asked if the Respondent was going to get back into a union contract. Vaughan said no. He told the group that the Union would send in the same dumb woman to negotiate and she would not come down on things and the Respondent would not come up on things, so they would not reach an agreement and they would go back to what they have always been with not having a union contract.[8]

IV. THE RESPONDENT NOTIFIES EMPLOYEES OF ENFORCEMENT OF A CAP ON THE ACCRUAL OF FLEXTIME HOURS

Vantrease's first workday for the Respondent was April 29. His and the other operators' work schedule was 7 days on/7 days off with 12-hour workdays. Thus, for each pay period, Vantrease was paid for 80 hours worked and the additional four became flextime hours. At that point, the Respondent's payroll system allowed employees to accrue more than 36 hours of flextime.[9]

---

[6] Tr. 150, 275, 281–283.

[7] GC Exh. 35.

[8] Tr. 79, 152–154; GC Exh. 46. I credit Vantrease's testimony concerning what Vaughan said. Vaughan did not testify. The Respondent stipulated that Vaughan was a Section 2(11) supervisor. (Tr. 79.) Thus, the Respondent could have called him as a witness if he had favorable testimony to provide. Moreover, Wolffe qualified his testimony about Vaughan's comments by saying he "can't quote it verbatim" and Vaughan "essentially [said] something to the effect of" that the Respondent did not care either way about a union. I do not credit Wolffe's testimony. (Tr. 307–308.)

[9] Tr. 22, 157–158.

On June 24, Base Site Manager Chris Ortiz emailed employees about flextime and stated:

> Please be aware that with the new update to Costpoint [the payroll system] the max cap of 36 hrs for Flex Time is enforced. The system is going to prevent the addition of Flex hours after 36 hrs. I don't want any of you to leave any earned Flex on the table so ensure you're using Flex first when requesting vacation time and be aware of what you're accruing so you can keep your balance under the 36 cap. I am sure there are going to be many questions so please reach out so I can get them resolved ASAP. Thank you.

The Respondent did not notify the Union that it now intended to enforce a limit on an employee's accrual of flextime hours to 36 total.[10]

V. THE JUNE 26 MEETING BETWEEN THE RESPONDENT AND THE UNION

On June 26, the Respondent and the Union met at the Base. Kubicki, Wolffe, and Ortiz attended for the Respondent. Holan and Union Business Manager Eileen Whitmer represented the Union. No bargaining-unit employees participated. The meeting lasted about an hour. It began with those present introducing themselves and describing the role they played with their employer. The Respondent passed a proposal on the ground rules for contract negotiations. The Respondent also sought a letter of agreement on holiday pay whereby unit employees would receive 12 hours of paid time off instead of 8 hours of paid time off for each federal holiday. The Union did not immediately agree or respond to that proposal. The Union put the existing contract with ASRC on the table and asked the Respondent to sign it. The Respondent refused. The union officials also raised an issue with the Respondent's classification of unit employees as salaried, not hourly. (The employees were hourly at ASRC.) The union representatives stated it would be a matter of negotiation during their talks. The Respondent also discussed with the Union that much of the current equipment in use by the employees was not operationally accepted equipment and it was a non-negotiable for the Respondent that the unit employees be able to operate that equipment. Finally, the parties agreed to search for future bargaining dates in October.[11]

VI. VANTREASE 'S INITIAL EFFORTS TO OBTAIN THE SECURITY PLUS CERTIFICATION

At some time after his hire, Vantrease spoke to Nick Dube, a project manager for the Respondent. Dube told Vantrease that he had taken a "boot camp" course to obtain his security plus certification and it was quick and easy.[12]

[10] GC Exh. 7; Tr. 88.

[11] Tr. 84–85, 304, 372–376, 379; R. Exh. 23; GC Exhs. 18, 19, 21. The Union later had a week in August open up for negotiations and offered it to the Respondent, but the Respondent did not agree. The Respondent also wanted to negotiate virtually, but the Union opposed doing so. (Tr. 89.)

[12] Tr. 163–164.

On June 25, Vantrease notified Wolffe, Ortiz, and other managers that he put in a request for time off from August 4 through 6 to attend the security plus certification bootcamp. Between then and July 9, Vantrease completed a training request for the course. Pursuant to a Respondent policy, Vantrease sought reimbursement from the Respondent for the cost of the training. Teamer, one of the other hires who needed the certification, also submitted an application. Vantrease submitted the request to Ortiz, who routed it up to Wolffe on July 9. Ortiz told Vantrease to let him know if Vantrease did not hear anything within 2 weeks. On July 20, Vantrease emailed Ortiz and other supervisors to inform them he had not heard anything back on his request.

Vantrease submitted a second request in August for September training. On August 6, he emailed Ortiz and others and again stated he had not heard anything about his request for reimbursement.

On August 27, Vantrease informed Ortiz that he was going to take the security plus class in October.[13]

At some point in August or September, Wolffe began working in the program manager position. In that position, Wolffe moved to the Respondent's sister facility in Colorado Springs, Colorado. He was responsible for the operation of both facilities and no longer was in daily contact with Vantrease. Ortiz took over as site manager and was responsible for overseeing the day-to-day operations at the Base.[14]

In September, Vantrease spoke to Wolffe about the security plus certification training. Wolffe told Vantrease to forward his training request to Wolffe and he would get it pushed through. Vantrease submitted the request that month, seeking training in October.[15]

VII. THE RESPONDENT GRANTS WAGE INCREASES TO CERTAIN EMPLOYEES

On October 7, Holan, the union representative, advised Kubicki, the Respondent's general counsel, that he was informed that the Respondent gave all employees a wage increase. He asked Kubicki to provide him with employees' new rates of pay, how much each person received for an increase, and when the increases went into effect. On October 21, Kubicki responded that three employees received wage increases and provided Holan with their names and the amount of the annual increase, which were $2870, $2875, and $3402.50. Kubicki did not provide any information on how the Respondent arrived on these three employees receiving increases or how the amount of the increases was determined.[16]

---

[13] GC Exh. 44.

[14] Tr. 285–287.

[15] Tr. 162–165; GC Exhs. 36, 37, 41, 43; R. Exhs. 3 and 4. Vantrease said in two of his quarterly performance reviews that his goal was to obtain the security plus certification by the end of the calendar year.

[16] GC Exh. 25.

As previously noted, the Respondent maintained a merit wage increase policy as part of the status quo when it set initial terms and conditions of employment as a successor employer.

VIII. THE RESPONDENT LEARNS THAT VANTREASE IS ON THE UNION'S BARGAINING TEAM

On October 22, Union Representative Holan sent an official notification to the Respondent's corporate supervisors and crew members notifying them that Vantrease was a member of the Union's bargaining team for a new collective-bargaining agreement.[17]

That same day after this notification was sent, Wolffe and Vantrease traded text messages. Wolffe was travelling that day to scheduled contract negotiations in Alaska. Wolffe asked Vantrease how security plus certification training was going. He noted that Vantrease was coming up on the waiver period and asked if everything was going well. (October 29 was 6 months from the date of Vantrease's first workday.) Vantrease responded that he could not get anyone to approve his training requests. Wolffe then stated that the Respondent no longer would approve bootcamps.

Vantrease told Wolffe that he discovered a learn-at-your-own-pace option to obtain the certification. Wolffe responded that he easily could get Vantrease a license for "Pluralsight" for a self-paced option that would accomplish the same thing. (Pluralsight is an internet-based program the Respondent used to offer training to employees. Employees could train on off-time or, if approved, during work hours.) Vantrease asked Wolffe to send him information on that option and he would get started. Vantrease added that getting zero responses to his training requests was frustrating.[18]

October 29, the waiver deadline, came and went without any further communication from the Respondent's supervisors to Vantrease about obtaining a security plus certification.

Due to a snowstorm, the parties cancelled their schedule negotiation sessions in October.

IX. VANTREASE'S FURTHER EFFORTS TO OBTAIN A SECURITY PLUS CERTIFICATION

On November 5, Vantrease texted Wolffe, saying he never got the information Wolffe was going to send him about the self-paced training course. Wolffe responded that he had requested a Pluralsight license for him and the ticket for it was in process. He said he would follow up the next day and get the status of the ticket. Vantrease told Wolffe that he was tired of this looming over him. Wolffe responded "we will get it." Later that day, a system email was sent to Vantrease stating that a Pluralsight account had been created for him and inviting him to hit the "Accept Invite" button.[19]

---

[17] GC Exh. 42; Tr. 165–166.

[18] GC Exh. 42; Tr. 294.

[19] GC Exh. 42; R. Exh. 5; Tr. 167, 294–295.

Vantrease worked from November 6 to 12. On his last workday, Vantrease signed his "FY25 Third Quarter Check-In" performance appraisal, which Ortiz signed 2 days later. In the appraisal section on "Goals', Vantrease again stated: "My personal goal is to . . . complete 1 certification by the end of 2024." Ortiz commented: Mr. Vantrease is currently completing his [security plus] enrollment. He is looking to complete his cert by EOY '24 and is on-track to accomplish his Personal Goal as listed above". That same day, Wolffe verified with Vantrease that he had access to Pluralsight.[20]

Vantrease then was off from work from November 13 through December 4, either for personal time or contract negotiations. Despite it being possible to access Pluralsight outside of work, Vantrease did not attempt to do so at any point during that 3-week time period.[21]

The Respondent and the Union met to bargain from November 18 through 20. On the 18th, the parties met at about 9 a.m. after the Union submitted a proposal. They caucused around 9:45 a.m. and met again at 1 p.m. so the Respondent could ask the Union some questions. The day ended about 1:30 p.m. to 2 p.m. with all proposals in the Respondent's hands. On November 19, the session began at 9:30 a.m. and ended around 11 a.m. to 11:30 a.m. The union representatives returned at 1 p.m. to give the Respondent a counterproposal. Again, all the proposals were in the Respondent's possession at the end of the day. On November 20, the Respondent pushed back the session start time to 10:30 a.m. and then provided the Union with multiple counterproposals. The Union also submitted an economic proposal. The session ended between 12 p.m. and 12:30 p.m.[22]

At some point in the November sessions during a sidebar, Vantrease spoke with Wolffe and Sarah Bockelman, a human resources business partner for the Respondent. Bockelman explained why the Respondent would not approve a boot camp for the security plus certification. She said the Respondent wanted him to take the time to learn and retain the

[20] GC Exh. 41; R. Exh. 2; Tr. 168.

[21] I do not credit Vantrease's nonsensical testimony that he could not access Pluralsight while off-duty and at home. (Tr. 206–208.) He claimed unconvincingly that his account was linked to a work computer. But that does not mean he could not access the training while off-duty. In that regard, I take administrative notice that the Pluralsight homepage is accessible on the Internet and has a sign in function. Once Vantrease's account was set up, he could login on the Internet site using his work email address. He did not need a PIV card to log in to Pluralsight. (Tr. 354.) Vantrease also admitted that he could log into his work email account and, as will be discussed later, Vantrease did access his work email while off-duty. Vantrease also asserted that he did not have a "personal laptop" at his house, then conceded that he had "several computers" but they were for his children's home schooling. Even if true, Vantrease could have used the computers for training or could obtain internet access at any number of other places, most notably a public library. Finally, Vantrease conceded that he never took any steps to determine if he could access Pluralsight at home. (Tr. 214.) The end result from this testimony is that Vantrease made no immediate effort to access Pluralsight after the Respondent gave him access to it and instead had multiple excuses for why he did not do so.

[22] Tr. 92–93.

material, not rush through something to get the certification and then forget all of the information. Bockelman said the latter was not beneficial to the company.[23]

The first time Vantrease accessed Pluralsight was sometime on December 4, 5, 6, or 7 when he was working. But multiple courses were available to obtain a security plus certification and he was unsure which course to take. However, he did not inquire of any supervisor about an answer to that question.[24]

Vantrease was off work from December 8 through 17.

X. THE RESPONDENT'S DISCHARGE OF VANTREASE

The parties' next bargaining sessions were on December 10 and 11. They bargained for roughly 2 1/2 hours on the 10th and 5 1/2 hours on the 11th. The Respondent provided some information to the Union on the first day, allowing the Union to finish proposals and submit them to the Respondent. The parties were scheduled to bargain on the 12th, but the Respondent cancelled that session because it needed permission from corporate to complete its economic proposals.[25]

On December 13, Kubicki spoke to Holan and advised him of Vantrease and Teamer still not having a security plus certification. Kubicki wanted to discuss how to remedy that. Kubicki said the certification was a requirement of employment and the Respondent needed to rectify the situation. Holan responded that Vantrease had been trying to get the situation rectified but the Respondent was not responding to his requests. He added that Vantrease had been sending emails to Wolffe and Ortiz seeking reimbursement for security plus training, but his requests went unanswered.[26]

On that same date, Kubicki emailed Holan a link for a 12-hour course and remote proctored test to obtain the security plus certification. Kubicki also stated that Vantrease was obligated to obtain the certification within 6 months of his start date, whether the Respondent offered training opportunities or not. Kubicki concluded that 14 days would be sufficient time for Vantrease to obtain the certification.[27]

As of the date of this conversation, Vantrease had access to Pluralsight for 4 weeks but still had not begun a training course.

---

[23] Tr. 169. I credit Vantrease's testimony about this conversation, as Bockelman did not recall it. (Tr. 364.)

[24] Tr. 170.

[25] Tr. 95, 171; GC Exh. 28, 29.

[26] Tr. 97, 100; GC Exh. 30.

[27] GC Exh. 31.

On December 15, Wolffe provided Holan with the security plus communications he had with Vantrease.[28]

Vantrease returned to work on December 18 and 19, then was on use-or-lose leave from December 20 through January 1, 2025.[29]

On December 20 at 11:46 a.m., Wolffe emailed Vantrease on their work accounts and raised issues with certain entries in Vantrease's timecard stemming from him seeking pay while attending bargaining sessions. Although he was on vacation, Vantrease read Wolffe's email.[30]

At 1 p.m. that same day, Wolffe emailed Vantrease a second time with an attached memorandum entitled "Notice of Non-Compliance of Mr. Eric Vantrease." In the attachment, Wolffe stated that a security plus certification was required for all personnel within Vantrease's section. He further stated that new employees were allowed 6 months from the start of employment to obtain the certification and were required to acknowledge the requirement at the time of accepting the employment offer. Wolffe concluded that this was the final notice to obtain the certification within the next 14 calendar days (a deadline of January 3, 2025). He also said an additional 7 days could be obtained upon a written request if Vantrease had to retake the certification test. Finally, Wolffe wrote that, if Vantrease did not obtain the certification by the deadline, he would be terminated.

Vantrease opened Wolffe's email and attachment and read them shortly after Wolffe sent them.[31]

At 3:16 p.m., Vantrease responded to Wolffe's earlier email concerning the timecard entry issues. However, Vantrease did not respond to Wolffe's email concerning the notification of non-compliance.

On January 1, 2025, Vantrease returned to work. The next day, Vantrease emailed Wolffe a lengthy response to the notice of noncompliance detailing all of the events and communications regarding the security plus certification. Vantrease also claimed to have not seen the notice from Wolffe until January 1, 2025, when he returned to work. He asked for a 45-

---

[28] GC Exh. 24; R. Exh. 14.

[29] Tr. 171.

[30] Tr. 171–172; GC Exhs. 39, 45; R. Exhs. 1, 2.

[31] I do not credit Vantrease's testimony that he viewed the subject line of Wolffe's email ("Notice of Non-Compliance of Mr. Eric Vantrease") but did not open the attachment until he returned to work on January 1, 2025. (Tr. 173–175, 182–186, 223–224.) He testified that he did not open Wolffe's non-compliance email/attachment because he could tell from the title that his employment was at risk. If anything, the logical step to take after reading the title would be to open the email and attachment and see if you could save your job. Even if the shock of seeing the email title caused Vantrease to not immediately open the attachment, it simply is unbelievable that he would not open it for almost 2 weeks. The rational conclusion here is that Vantrease would not sit idly by for 12 days before reading Wolffe's email.

day extension to complete the training. The Respondent and the Union also exchanged several emails about the situation.[32]

On January 6, 2025, Wolffe responded via email. He told Vantrease that his original deadline to obtain the certification was October 29, 2024, and the extended final deadline was January 4, 2025. Wolffe asked Vantrease to provide proof that he had obtained the certification no later than close of business on January 5, 2025. Vantrease responded on January 6, 2025, listing numerous concerns he had with the Respondent's handling of the notice of noncompliance.[33]

On January 7, 2025, Wolffe responded to Vantrease's concerns. He said that the official notification from the Respondent to Vantrease of his failure to comply with the security plus certification requirement occurred on December 20 when Wolffe emailed the notice to Vantrease. Wolffe further noted that, while the notice was sent when Vantrease was on leave, he and Vantrease were already communicating via email about another matter on that same date. Wolffe also stated that Vantrease had 63 days of access to the Pluralsight training platform from November 5, 2024, through January 7, 2025. Wolffe stated that the deadline for Vantrease to obtain the certification would remain January 4, 2025. Finally, Wolffe told Vantrease to confirm before close of business on January 7, 2025, if he had obtained the certification.[34]

On January 7, 2025, Vantrease emailed Wolffe that he had not obtained the security plus certification. He thereafter ceased working for the Respondent.[35]

XI. THE EFFORTS OF BARGAINING-UNIT EMPLOYEE EGBERT VISKER TO DECERTIFY THE UNION

Egbert Visker worked for the Respondent at the Base as an operator from June 2024 through December 2025. As an operator, Visker was a member of the bargaining unit.

In October 2024, Visker learned that employees working for another contractor at the Base were working a 14/14 schedule, with 14 days on and then 14 days off. At the time, the Respondent's operators were working a 7/7 schedule. From there, Visker spoke to program manager Wolffe about the advantages of adopting a 14/14 schedule for employee morale and being able to hire employees from anywhere in the United States. Wolffe told him there would be ways of getting a 14/14 schedule. However, the two also were aware that the Union already agreed to a 7/7 schedule in negotiations for an initial contract. Visker suggested decertification of the Union as a possible way to move to a 14/14 schedule earlier. Wolffe responded that decertification was something he would look at and potentially do.[36]

---

[32] GC Exhs. 23, 24, 39, 51, 55.

[33] GC Exh. 39.

[34] GC Exh. 40.

[35] GC Exh. 40.

[36] Tr. 22–24.

From there, Visker researched the decertification process. He also spoke with other employees about how he was working with the Respondent to obtain a 14/14 schedule in exchange for obtaining their signatures on a decertification petition. He then drafted a decertification petition with the names of employees who expressed an interest.[37]

On November 24, Visker sent an email to Wolffe entitled "Decert draft." Visker used the private email addresses of the two. As the title suggested, the email contained an attachment of a decertification petition which Visker had drafted. The petition contained the names of five bargaining-unit employees out of an apparent total of 12 unit employees. Visker utilized the private email addresses because he realized they should not be talking about skirting the Union on the Respondent's email system. Wolffe did not respond to the email.[38]

A few hours later that same day, Visker sent Wolffe a second email entitled "CBA vs Employee Negotiated." In an attachment, Visker provided suggestions for site structure, wages and benefits, and scheduling if the decertification took place. The suggestions were based in part on the ASRC collective-bargaining agreement. Visker stated:

> We can discuss whatever you want if you need clarification on anything. Of course our conversation never happened. I'm not sure how you can verify if this is possible without showing collusion with me but I'll leave that to you.

He also encouraged Wolffe to "seriously consider this" because his plan would result in an overall lower cost to the company.[39]

During the third week of January 2025, Visker was on paid time off but visited the Colorado Springs facility to assist a colleague by performing a quality assurance audit. Wolffe was working there as the project manager at the time. Wolffe and another supervisor took Visker to lunch. As project manager, Wolffe had the authority to pay for such lunches. Visker told Wolffe that, if they could get a 14/14 schedule authorized, Visker could get the (employee) signatures needed for decertification. Wolffe responded that they could get the 14/14 schedule done if Visker got the signatures.[40]

---

[37] Tr. 24–25.

[38] GC Exh. 10; Tr. 60, 64, 76–77.

[39] Tr. 25–26; GC Exh. 11.

[40] Tr. 29. Although Wolffe denied it (Tr. 310–315), I credit Visker's testimony with respect to Wolffe telling him employees could get the 14/14 schedule if Visker got the signatures. That Visker shortly thereafter obtained signatures on the decertification petition is the expected outcome if Wolffe told him the Respondent could get the employees the 14/14 schedule if Visker got the needed signatures. Moreover, Visker's testimony about this conversation appeared confident and trustworthy.

On January 28, 2025, Visker obtained the signatures of five employees and his own signature on a decertification petition. He sent the petition to Ortiz, the site manager for the Base. He then texted Wolffe and said: "Got 6 guys, so more than 50%. I just addressed it to Chris and he can push it up the chain tomorrow."[41]

On that same date, the Respondent and the Union had a bargaining session which lasted a couple of hours. The Union ended the session in order to put together counterproposals on all the outstanding articles. The following day, the parties bargained for a short period of time in the morning. Around midday, the Respondent notified the Union that it would not be meeting for the rest of the day.[42]

On February 10, 2025, the Respondent withdrew its recognition of the Union as the exclusive collective-bargaining representative of the Unit. It did so based upon the decertification petition Visker provided to it.

In March 2025, the Respondent implemented the 14/14 schedule for the operators.[43]

LEGAL ANALYSIS

I. DID THE RESPONDENT VIOLATE SECTION 8(A)(5) AND (1) BY UNILATERALLY CHANGING ITS FLEXTIME ACCRUAL POLICY?

The General Counsel's complaint alleges that the Respondent violated Section 8(a)(5) and (1) by unilaterally changing its flextime policy without providing the Union with notice and an opportunity to bargain over the change.

The law is well settled that an employer violates Section 8(a)(5) when it unilaterally changes represented employees' wages, hours, and other terms and conditions of employment without providing their bargaining representative with prior notice and a meaningful opportunity to bargain over the changes. *Lincoln Lutheran of Racine*, 362 NLRB 1655, 1656 (2015), citing to *NLRB v. Katz*, 369 U.S. 736, 742–743 (1962). Where, as here, parties are engaged in negotiations for a collective-bargaining agreement, an employer's obligation to refrain from unilateral changes extends beyond the mere duty to provide notice and an opportunity to bargain about a particular subject matter. It encompasses a duty to refrain from implementation at all, absent overall impasse on bargaining for the agreement as a whole. *RBE Electronics of S.D., Inc.*, 320 NLRB 80, 81 (1995); *Bottom Line Enterprises*, 302 NLRB 373, 374 (1991).

Employees' work schedules are a mandatory subject of bargaining. See, e.g., *Green Apple Supermarket of Jamaica, Inc.*, 366 NLRB No. 124, slip op. at 22–23 (2018); *Indiana Hospital*, 315 NLRB 647, 655–657 (1994).

---

[41] GC Exh. 12, 13; Tr. 25, 30–31.

[42] Tr. 96

[43] Tr. 336–337.

I conclude that the Respondent violated the Act as alleged. Site Manager Ortiz' June 24 email to employees announcing that the 36-hour cap was going to be "enforced" is all the evidence that is needed to find the violation. Ortiz' announcement establishes that the Respondent did not enforce the cap in its written policy. His statement that he was concerned about employees leaving hours on the table is an acknowledgment that some of them had balances in excess of 36 hours despite the cap in the policy. His statement that he was sure employees would have many questions is another indication that strict enforcement of the cap was a change in their work hours. *Pacific Bell Telephone Co.* 362 NLRB 885, 885 fn. 2, 912 (2015), relying on *Daily News of Los Angeles*, 315 NLRB 1236, 1237 (1994), enfd. 73 F.3d 406 (D.C. Cir. 1996), cert. denied 519 U.S. 1090 (1997), (unilateral change to enforcing a previously dormant policy violates Sec. 8(a)(5)). Moreover, the Respondent made this change when they had not reached an overall contract agreement. In fact, the parties had not even begun negotiating in June 2024.

The Respondent points to Kubicki's May 22 email to Holan and his statement that "Flex time is capped at 36 hours and can be used in lieu of PTO" as the status quo allowing it to enforce the cap. That may have been the policy, but the Respondent was not strictly enforcing it (or not enforcing it at all) until Ortiz advised employees it would do so in his June 24 email. Going from lax or no enforcement to strictly enforcing a policy on work hours is a material change in working conditions. And it is irrelevant that the Respondent's change resulted from an update to its payroll system. A Section 8(a)(5) unilateral change violation is not contingent on the motive for the change. The Respondent concedes it did not notify the Union of this change and offer to bargain over it prior to implementing strict enforcement of the cap. Thus, the Respondent's action violates Section 8(a)(5) and (1). See *Bemis Co., Inc.*, 370 NLRB No. 7, slip op. at 37–38 (2020) (employer violated Section 8(a)(5) when it unilaterally changed employees' work schedules from 8 to 12-hour shifts and from 10 workdays to 7 per pay period).

II. DID THE RESPONDENT VIOLATE SECTION 8(A)(5) AND (1) BY UNILATERALLY GRANTING WAGE INCREASES TO CERTAIN EMPLOYEES?

The General Counsel's complaint alleges that the Respondent violated Section 8(a)(5) and (1) by unilaterally granting wage increases to certain employees without providing the Union with notice and an opportunity to bargain.

Without question, wages are a mandatory subject of bargaining. See, e.g., *Rieth-Riley Construction Co., Inc.*, 374 NLRB No. 13 (2024), citing *Columbia University*, 298 NLRB 941, 941 (1990).

At some point in the fall of 2024, the Respondent provided wage increases to three employees (out of a bargaining-unit with about 9-12 employees). Subsequent to implementation, Holan inquired about the subject and Kubicki advised Holan of the increases. Kubicki did not tell Holan how the Respondent picked those three employees or how it arrived at the dollar amount of the increases, each of which were around $3000 annually. The

Respondent implemented the wage increases without notifying the Union prior to implementation or providing the Union with a chance to bargain.

To defend against this allegation, the Respondent relies upon *NLRB v. Katz*, above, 369 U.S. at 745-47. In that case, the Supreme Court held that, where wage increases were automatic increases to which the employer had already committed itself and were not informed by a large measure of discretion, their unilateral implementation did not amount to an unlawful failure to bargain under Section 8(a)(5) of the Act. Id. at 746–747.

In May prior to the increases, Kubicki advised Holan of the Respondent's policy on wages in response to an information request. Kubicki stated that employee wages were determined by "a holistic approach considering experience, education, past courses, and training." He also said that the Respondent provided merit wage increases after annual performance reviews and employees were eligible if, in part, they demonstrated "good corporate citizenship." Finally, Kubicki stated that the percentage increase given to an eligible employee was based on the "overall score, performance, company performance, and the bud for merit increases determined by the Finance department."

I conclude the Respondent's defense is meritless. The description Kubicki provided to Holan concerning the merit wage increase policy makes abundantly clear that the Respondent exercised a high degree of discretion in determining who got an increase and what the amount of the increase would be. Other than the policy itself, the Respondent presented no evidence on how the three employees were chosen to receive increases or how the increase was determined for them.

The Respondent violated Section 8(a)(5) and (1) by unilaterally granting wage increases to employees without providing the Union with notice and an opportunity to bargain.

III. DID THE RESPONDENT VIOLATE SECTION 8(A)(3) AND (1) BY DISCHARGING ERIC VANTREASE FOR HIS UNION ACTIVITY?

The General Counsel's complaint alleges that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging Vantrease for his union activity.

A. Legal Framework

When assessing the lawfulness of an employer's discharge of an employee under Section 8(a)(3), the Board applies the analytical framework set forth in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved by *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 395 (1983). To prove an 8(a)(3) violation under *Wright Line*, the General Counsel must demonstrate, by a preponderance of the evidence, that the employee's protected activity was a substantial or motivating factor in the employer's discharge of the employee. *SBM Site Services, LLC*, 367 NLRB No. 147, slip op. at 2 (2019). The General Counsel satisfies the initial burden by showing that: (1) the employee engaged in protected activity, (2) the employer had knowledge of the activity, and (3) the employer had animus towards the activity. Animus can be established through direct evidence or inferred from circumstantial evidence on the record. *Intertape Polymer Corp*, 372 NLRB No. 133, slip op. 6–7 (2023). Circumstantial evidence of discriminatory motive may include the timing of the discharge in relation to the protected conduct; the presence of other unfair labor practices; statements or actions showing an employer's general and specific animus; and evidence that the employer's proffered reason for the discharge is pretextual. Pretext may be shown by false reasons for the discharge; disparate treatment of the employee; departure from past practice; shifting explanations for the discharge; and failure to meaningfully investigate if the employee engaged in the asserted misconduct

If the General Counsel meets the initial burden of proof, the burden then shifts to the employer to demonstrate it would have discharged the employee even in the absence of the employee's protected conduct. *Wright Line*, 251 NLRB at 1089. The employer cannot carry this burden merely by showing that it also had a legitimate reason for the discharge, but must persuade, by a preponderance of the evidence, that the discharge would have taken place even if the employee had not engaged in protected conduct. *Northeast Center for Rehabilitation*, 372 NLRB No. 35, slip op. at 1–2 fn. 5 (2022), and cases cited therein.

B. The General Counsel's Initial Wright Line Burden

As to the General Counsel's initial burden, Vantrease engaged in union activity by serving as a member of the Union's bargaining team and attending negotiation sessions. The Respondent obviously was aware of this activity, given the Union's notification of Vantrease being on the committee and his participation in the negotiation sessions. Vantrease did not engage in any other union activity beyond the contract negotiations. The Union notified the Respondent of Vantrease's role on the bargaining team on October 22. That was more than 2 months prior to his discharge.

To summarize the facts relevant to animus, Wolffe informed Vantrease during his initial job interview in April 2024 that he was required to obtain the security plus certification as a condition of employment. Although Wolffe mentioned a "waiver" period, he did not specifically inform Vantrease that he had 6 months from his start date to obtain the certification. The first action Vantrease took to obtain the certification was to submit a training request to the Respondent roughly 2 months after his start date. Vantrease submitted a second request in August and a third request in September. At no point did the Respondent respond to the requests. But Vantrease also did not follow up with anyone about the request, apparently feeling submitting a monthly training request was sufficient.

Then on October 22, Wolffe for the first time asked Vantrease what the status was of his efforts to obtain the certification. In his inquiry, Wolffe pointed out that the waiver period was close to expiring. He did not say that it would expire on October 29. Vantrease told him that he did not get any responses to his training requests. Wolffe said for the first time that the

Respondent would not approve a boot camp. Instead, Wolffe said he could provide Vantrease with access to Pluralsight for a self-paced option to obtain the certification.

Wolffe's inquiry occurred on the same date on which the Union notified the Respondent that Vantrease was on its bargaining committee. But it also was a date a week out from when Vantrease's waiver period would expire.[44]

On November 5, Wolffe provided Vantrease with access to Pluralsight to obtain the certification. On November 12, Wolffe confirmed with Vantrease that he had access to Pluralsight. But Vantrease did not attempt to access the training platform until the 1st week in December.

On December 13, Kubicki spoke with Holan and informed him that Vantrease still had not obtained the security plus certification. Later that same day, Kubicki sent Holan information on a 12-hour course with a proctored exam to obtain the certification. Kubicki also said that Vantrease was obligated to obtain the certification within 6 months of his start date—the first time the Respondent asserted that deadline. As a result, Kubicki concluded that 14 days was a sufficient time period for Vantrease to obtain the certification.

As a result, on December 20, Wolffe sent an email to Vantrease giving him 14 days to obtain the certification and the ability to get another week to obtain the certification if he failed the exam during the 14-day period. Vantrease did not obtain the certification.

To establish the Respondent's animus towards Vantrease's union activity, the General Counsel relies almost entirely on timing. The first contention is that, once the Respondent knew of Vantrease's union support, it only then asked Vantrease what the status was of his efforts to obtain the security plus certification. I find no merit to this argument. Admittedly, Wolffe first asked Vantrease about his progress obtaining the certification on October 22, the same date the Respondent learned Vantrease was on the Union's bargaining committee. But Wolffe's inquiry was a result of the impending October 29 deadline for Vantrease to obtain the certification. When Vantrease informed him that his training requests were denied, Wolffe advised him of the ability to obtain the certification using Pluralsight. Wolffe said nothing to Vantrease in their October 22 text messages about the Union or Vantrease's participation in contract negotiations.

The General Counsel next argues that the Respondent failed to explain the timing of its issuance of a 14-day deadline for Vantrease to obtain the certification. The Respondent issued that deadline in a December 20 email from Wolffe to Vantrease. But Kubicki had spoken to Holan on December 13 about the need for Vantrease to obtain the certification. Later that same day, Kubicki sent Holan a link to a 14-day course to obtain the certification. The December 20 deadline email came a week after this conversation and the 14-day deadline the Respondent provided was the same as in the course Kubicki previously referenced. Moreover, that Wolffe

[44] The record does not establish what event occurred first. Only Vantrease testified about the Union's notification to the Respondent that he was on the Union's bargaining committee. Holan did not testify about this and no email notification was entered into evidence.

sent the deadline email on a day that Vantrease was off work is explained by Wolffe already having sent Vantrease an earlier email the same day concerning pay issues to which Vantrease responded. Finally, the General Counsel's contention that the 14-day deadline was an unreasonable one cannot be established because Vantrease made no effort to take the 12-hour course that Kubicki identified prior to the deadline being issued. By doing so, he also foreclosed the possibility of having another week to obtain the certification if he failed the first attempt at passing the certification test.

Beyond timing, the General Counsel does identify conduct which supports a finding of general animus. The Respondent did enter into the informal settlement agreement in April to resolve earlier allegations of unlawful conduct, including a refusal to bargain in good faith. That settlement agreement did not have a nonadmissions clause. The Respondent also made two unlawful unilateral changes to flextime hours in June and wage increases in October. In April, the Respondent's Vice President Vaughan told employees at a meeting that the Respondent was not going back to having a union contract. He also insulted one of the Union's bargaining representatives and said they would not reach agreement on a contract. However, this generalized animus is insufficient, standing alone, to sustain the General Counsel's burden of proof. See *Tschiggfrie Properties, Ltd.*, 368 NLRB No. 120, slip op. at 8 (2019) ("[T]he General Counsel does not invariably sustain [her] burden by producing—in addition to evidence of . . . protected activity and the employer's knowledge thereof—any evidence of the employer's animus or hostility toward union or other protected activity."). Finally, it is worth noting that all of this general animus conduct occurred before the Union notified the Respondent that Vantrease would be on its bargaining team.[45]

For all these reasons, I conclude that the General Counsel has not met the initial *Wright Line* burden because the Respondent did not harbor animus towards Vantrease's union activity.

C. The Respondent's Shifting Wright Line Burden

Assuming arguendo that the General Counsel met the initial *Wright Line* burden, I will analyze whether the Respondent met its shifting burden of showing, by the preponderance of the evidence, that it would have discharged Vantrease absent his union activity.

The Respondent's stated reason for discharging Vantrease was his failure to obtain the security plus certification. Vantrease knew of this DOD requirement even before he was hired and began working for the Respondent back in April. But Wolffe inexplicably did not inform Vantrease that he had 6 months from his start date to obtain the certification. Moreover, Vantrease submitted multiple training requests to Wolffe and Ortiz to offset the cost of training, but no one responded to those requests until October 22, when Wolffe informed Vantrease that the Respondent would not approve a boot camp. Thus, Vantrease's failure to obtain the certification from his start date through the waiver end date on October 29 is not a justification

[45] I do not find that general animus was established by, as the GC argues, the assistance the Respondent provided to Visker with the decertification petition, as that occurred after Vantrease's discharge.

for his discharge, given the supervisors' missteps. Nonetheless, Vantrease certainly could have taken more steps in that timeframe to obtain a certification that was a condition of his employment.

However, the story changes as of November 5, when Wolffe provided Vantrease with access to the Pluralsight training website where he could obtain the certification at his own pace. The time period from that date until the January 3, 2025 deadline for him to obtain the certification totaled 59 days. From November 6 to December 31, Vantrease worked a total of 13 days and was off work for 43 days. Bargaining sessions accounted for only 5 of those 43 off days. If you allow for 8 hours of sleep each day, the total number of available, off-duty hours for Vantrease to train in this time period was somewhere near 608 hours (38 days X 16 hours per day). By Vantrease's own admission, he spent only about 20 hours total taking the Pluralsight training.[46] Without question, this infinitesimal number of hours spent training is not indicative of an individual doing everything possible to obtain a certification needed to retain employment.

Vantrease's lack of effort to obtain the certification manifested itself in other ways. He seemed to think that training was confined to work hours, as he made no attempt to access Pluralsight and take the training when he was off duty. But he never asked Wolffe or another supervisor if it was possible to access Pluralsight when he was off duty. He also did not attempt to login to the Pluralsight internet page when he was off duty. His contention that he was unable to access Pluralsight unless onsite at the Base is not credible. Pluralsight is internet based and has a log-in option on its homepage. No reason exists why Vantrease would be unable to access the site with the login information he obtained from the Respondent. When asked at the trial about his access to a computer at home, he hedged. Even if he did not have a computer at home, many other options are available to obtain internet access. The overall picture simply is that Vantrease ignored his obligation to obtain the certification for a prolonged period of time, then blamed others for this failure.

In light of this, I reject the General Counsel's argument that the Respondent did not give Vantrease sufficient time to obtain the certification.

The General Counsel also notes that the Respondent failed to present any comparators that it likewise discharged for failure to obtain a required certification. But Vantrease and two others were the first two individuals the Respondent hired as operators when none of them had the certification already. The Respondent established that Vantrease was the first of his kind in being hired without the certification and thereafter failing to obtain it. In any event, one of the three employees who was hired without the certification obtained it withing a couple of months.

[46] Tr. 214–215.

I conclude that the Respondent met its shifting *Wright Line* burden showing that it would have discharged Vantrease even absent his union activity. The Respondent's discharge of Vantrease was lawful.

IV. DID THE RESPONDENT VIOLATE SECTION 8(A)(1) BY PROVIDING MORE THAN MINISTERIAL ASSISTANCE TO EMPLOYEES TO OBTAIN SIGNATURES ON A DECERTIFICATION PETITION?

The General Counsel's complaint alleges that the Respondent violated Section 8(a)(1) by providing more than ministerial assistance to the employee effort to obtain signatures on a decertification petition rejecting the Union, by instructing employees to gather signatures. This allegation involves the conversations between Wolffe and Visker in the fall of 2024 and January 2025.

An employer violates Section 8(a)(1) by actively soliciting, encouraging, promoting, or aiding in the initiation, circulation, signing, or filing of a decertification petition. *Armored Transportation, Inc*., 339 NLRB 374, 377 (2003); *Wire Products Mfg. Co*., 326 NLRB 625, 640 (1998), enfd. sub nom. mem. *NLRB v. R.T. Blankenship & Associates, Inc*., 210 F.3d 375 (7th Cir. 2000). The employer may provide ministerial aid in response to employees' unsolicited inquiries, but beyond that it has no legitimate role in the decertification process. *Times-Herald*, 253 NLRB 524 (1980). For example, an employer may provide an inquiring employee with general information, such as the wording for the petition, the unit description, and/or the number of signatures needed. *Eastern States Optical Co*., 275 NLRB 371, 372 (1985); *Ernst Home Center, Inc*., 308 NLRB 848, 848 fn. 1 (1992). However, an employer may not instigate or circulate a petition, encourage employees to sign, or allow circulation of the petition during work time. *Armored Transport, Inc*. above; *Sociedad Espanola de Auxilio Mutuo Y Beneficencia de P.R*., 342 NLRB 458, 459, 471 (2004); *Harding Glass Co*., 316 NLRB 985 (1995). The Board determines if the preparation, circulation, and signing of the petition constituted the free and uncoerced act of the employees. *KONO-TV-Mission Telecasting Corp*., 163 NLRB 1005, 1006 (1967).

In this case, no question exists that bargaining-unit employee Visker was the driving force behind the decertification petition. The question that remains is whether program manager Wolffe went beyond providing ministerial aid to Visker to obtain employee signatures on the petition.

In October 2024, Visker spoke to Wolffe about the possibility of getting employees a 14/14 schedule. Visker suggested to Wolffe that decertification of the Union was a possible way to do so. Wolffe responded that decertification was something he would look at and potentially do. So far, so good, as Wolffe only theorized about assisting Visker. He did not take any action.

Visker then spoke to employees about how he was working with the Respondent to obtain the 14/14 schedule in exchange for obtaining their signatures on the petition. Visker prepared a petition with the names (but not the signatures) of employees who had expressed interest and sent it to Wolffe. Again, that is Visker taking action, not Wolffe.

But things changed in the third week of January 2025. Visker spoke to Wolffe and told him he could get the needed signatures on the petition if the company could authorize the 14/14 schedule. Wolffe responded that they could get the schedule done if Visker got the signatures. On January 28, 2025, Visker submitted the petition with six signatures on it to the Respondent. On February 10, the Respondent withdrew recognition from the Union based upon the petition. In March 2025, the Respondent implemented the 14/14 schedule.

Wolffe telling Visker that employees would receive their 14/14 schedule if they signed the decertification petition goes well beyond ministerial aid. Promising a benefit to employees to obtain signatures on a decertification petition is coercion.

Other than asserting that Visker's testimony about these events was not credible, the Respondent offers no defense to this allegation. As discussed above, I found Visker's testimony to be truthful.

Accordingly, the Respondent violated Section 8(a)(1) in January 2025 by providing more than ministerial assistance to employees to obtain signatures on a decertification petition.

The General Counsel's complaint also alleges Wolffe's statements in his conversations with Visker constituted an unlawful promise of benefit to the employees. An employer violates Section 8(a)(1) by promising or suggesting to employees their terms and conditions of employment would improve if they decertified their union. *Desert Springs Hospital Medical Center,* 369 NLRB No. 16 (2020); *Equipment Trucking Co*., 336 NLRB 277, 282–283, 287 (2001); *Hancock Fabrics*, 294 NLRB 189, 192 (1989), enfd. mem. 902 F.2d 28 (4th Cir. 1990). Wolffe promised employees their desired 14/14 schedule in exchange for their signatures on the decertification petition. Thus, I conclude, his statement was a promise of benefit which also violated Section 8(a)(1).

Finally, the General Counsel's complaint alleges that the Respondent violated Section 8(a)(5) and (1) when Wolffe bypassed the Union and dealt directly with employees by promising them a different work schedule if they signed a decertification petition. The criteria for finding unlawful direct dealing are that: (1) the employer was communicating directly with union-represented employees; (2) the discussion was for the purpose of establishing or changing wages, hours, and terms and conditions of employment or undercutting the union's role in bargaining; and (3) such communication was made to the exclusion of the union. *ADT, LLC*, 374 NLRB No. 104, slip op. at 2–3 (2026); *El Paso Electric Co*., 355 NLRB 544, 545 (2010). Based on the conversation between Wolffe and Visker in the third week of January 2025, all the criteria have been met. As to the first element, Wolffe spoke to Visker, a bargaining-unit employee, at the Respondent's Colorado Springs facility with only another supervisor present. As to the second element, the purpose of the discussion was for employees to obtain a positive change in their work schedule. As to the third element, no representative of the Union attended or was aware of the meeting. With all the criteria met, the Respondent violated Section 8(a)(5) and (1) by dealing directly with unit employees.[47]

V. DID THE RESPONDENT VIOLATE SECTION 8(A)(5) AND (1) BY WITHDRAWING ITS RECOGNITION OF THE UNION ?

The General Counsel's complaint alleges that the Respondent violated Section 8(a)(5) and (1) by withdrawing its recognition of the Union as the exclusive collective-bargaining representative of the Unit. The General Counsel advances four different legal theories to establish that the recognition withdrawal was unlawful.

A. No Showing that the Union Lost Majority Support

An employer is privileged to withdraw recognition only upon a showing with objective evidence that the union has, in fact, lost the support of a majority of the unit employees. *Levitz Furniture*, 333 NLRB 717 (2001). The burden of proof rests on the employer. Id. at 723, 725. When an employer withdraws recognition, it does so at its own peril and will be required to show actual loss of majority support if the union files an unfair labor practice charge over the withdrawal. *T-Mobile USA, Inc.*, 365 NLRB 175, 186 (2017), citing *Levitz* at 725.

A petition signed by a numerical majority of bargaining-unit employees clearly expressing opposition to union representation constitutes objective evidence. *Levitz* at 725. Nonetheless, when an employer relies on an employee petition for evidence of a union's loss of majority support, it is the employer's obligation to authenticate the petition signatures on which it relies. *Valley Health Sys., LLC*, 369 NLRB No. 16 slip op at 1 (2020), *revd. and remanded on other grounds* 840 Fed. Appx. 134 (9th Cir. 2020); *Latino Express, Inc.*, 360 NLRB 911, 925 (2014).

The Respondent here did not present any evidence establishing it authenticated the signatures on the decertification petition. It did not elicit any testimony from Visker, Wolffe, Kubicki, or employees or documents on the subject. Absent authentication of the signatures, the Respondent had no objective evidence that the Union lost majority support. Moreover, the Respondent did not establish the size of the bargaining unit at the point it withdrew recognition.

On this basis alone, the Respondent's withdrawal of recognition violated Section 8(a)(5) and (1).

B. Hearst Corp.: ULPs that are Directly Related to the Employee Decertification Effort

In *Hearst Corp.*, 281 NLRB 764 (1986), enfd. mem. 837 F.2d 1088 (5th Cir. 1988), the Board held an employer may not rely on a tainted decertification petition to withdraw recognition. A

---

[47] To confirm, I conclude that the Respondent violated the Act as alleged in complaint paragraphs 5(b)(1), 5(b)(2), and 8(d). I dismiss complaint paragraphs 5(a)(1), 5(a)(2), and 8(c).

petition is tainted when an employer engages in unfair labor practices directly related to the decertification effort, such as actively soliciting, encouraging, promoting, or assisting in the initiation, signing, or filing of a decertification petition. See also *Kauai Veterans Express Co*., 369 NLRB No. 59, slip op. at 1–2 (2020); *AIM Aerospace Sumner*, 367 NLRB No. 148, slip op. at 1 fn. 2 (2019); and *SFO Good-Nite Inn, LLC*, 357 NLRB 79, 80 (2011), enfd. 700 F.3d 1, 403 U.S. App. D.C. 75 (D.C. Cir. 2012). This creates a conclusive presumption that an employer's commission of unfair labor practices directly advancing a decertification effort taints a resulting petition. *SFO Good-Nite Inn* at 81 ("presumption is based on the predictable result of an employer's unlawful, direct participation in an employee decertification effort—a petition plagued with uncertainty because of the very nature of the employer's unfair labor practices, which is *per se* insufficient to rebut the presumption of continuing majority status"). In other words, an employer may not unlawfully instigate or propel a decertification campaign and then invoke the results of that campaign to justify its unilateral withdrawal of recognition.

In this case, the Respondent, by Wolffe, violated Section 8(a)(1) by providing more than ministerial assistance to Visker's decertification efforts. In January 2025, he offered a quid pro quo to implement the 14/14 schedule in exchange for employee signatures on the decertification petition. This unlawful conduct is directly related to the decertification effort, meaning the petition the Respondent relied upon to withdraw recognition is tainted. *ADT, LLC*, 374 NLRB No. 104 (2026).

Again, on this basis alone, the Respondent's withdrawal of recognition violates Section 8(a)(5) and (1).

C. Master Slack: Causal Link Between Decertification Efforts and Other ULPs

In *Master Slack Corp*., 271 NLRB 78 (1984), the Board held that a decertification petition is tainted where there is a causal connection between the decertification efforts and other unfair labor practices distinct from any unlawful assistance by the employer in the actual petition. To determine whether such a causal connection exists under *Master Slack*, the Board considers: (1) the length of time between the unfair labor practices and the withdrawal of recognition; (2) the nature of the illegal acts, including the possibility of their detrimental or lasting effect on employees; (3) any possible tendency of the unfair labor practices to cause employee disaffection from the union; and (4) the effect of the unlawful conduct on employee morale, organizational activities, and union membership. *Master Slack* applies where "there is no straight line between the employer's unfair labor practices and the decertification campaign, and the *Master Slack* test must be used to draw one, if it exists." *SFO Good-Nite Inn, LLC*, 357 NLRB 79, 80 (2011).

The other labor practices that occurred in this case were the June 2024 unilateral change to the cap on accrued flextime hours and the October 2024 unilateral wage increases to three employees.

As to the first *Master Slack* factor, the signatures on the decertification petition were dated January 28, 2025, and the Respondent's notification to the Union of its recognition withdrawal is dated February 10, 2025. Thus, the other ULPs occurred many months before either of those events. This factor does not support the finding of a causal link.

Regarding the second *Master Slack* factor, the other ULPs were not hallmark violations and are unlikely to have a lasting effect on employees. The Respondent advised employees of its intention to enforce the 36-hour flextime cap prior to implementing it, so employees had time to avoid any loss of hours. The wage increases, while unlawful, were a continuation of the Respondent's practice in the past. This factor also does not support the finding of a causal link.

The relatively mild nature of the other ULPs also means they are unlikely to spurn employee disaffection with the Union. If the employees had any disaffection from the other ULPs, it more likely would have been directed to the Respondent, not the Union. The third *Master Slack* factor does not support the finding of a causal link.

Finally, no evidence was presented to show that the other ULPs affected employee morale, organizational activities, or union membership. The fourth *Master Slack* factor also does not support the finding of a causal link.

None of the *Master Slack* factors establish a causal link between the other ULPs and the decertification efforts. Thus, the Respondent's withdrawal of recognition is not unlawful under *Master Slack*.

D. Settlement Bar

Under the Board's settlement bar doctrine, as stated in *Poole Foundry & Machine Co.*, 95 NLRB 34 (1951), enfd. 192 F.2d 740 (4th Cir. 1951), and its progeny, an employer that enters into a settlement agreement requiring it to bargain with a union must bargain for a reasonable period of time before the union's majority status can be questioned. In deciding whether the parties have bargained for a reasonable period of time under *Poole,* the Board considers the following factors: whether the parties were bargaining for an initial agreement; the complexity of the issues negotiated and the parties' bargaining procedures; the total amount of time elapsed since the commencement of bargaining and the number of bargaining sessions; the amount of progress made in negotiations and how near the parties were to agreement; and the presence or absence of a bargaining impasse. *AT Systems West, Inc.*, 341 NLRB 57, 61 (2004), citing *Lee Lumber & Building Material Corp.*, 334 NLRB 399 (2001), enfd. 310 F.3d 209 (D.C. Cir. 2002). See also *Gerrino Restaurant*, 306 NLRB 86 fn. 2, 88–89 (1992); *Driftwood Convalescent Hospital,* 302 NLRB 586, 588–589 (1991).

The settlement bar doctrine applies to this case, because the Respondent agreed to a settlement with the General Counsel and the Union on April 18, 2024. The settlement affirmatively required the Respondent to bargain in good faith with the Union for a reasonable period of time before the Respondent could withdraw recognition. The Respondent withdrew recognition on February 10, 2025. Thus, the question is whether this period of just short of 9 months is a reasonable period of time such that the Respondent's withdrawal of recognition was permissible.[48]

Applying the *Poole* factors, the parties here were negotiating an initial contract. As to complexity of the negotiations, the parties did have the Union's previous collective-bargaining agreement with ASRC to use as a template. However, the Respondent rejected the Union's request to adopt that contract. Moreover, the parties' disagreement over whether the employees should have been paid an hourly wage or a salary was an unusual and complex issue. Thus, the factors of initial contract and complexity of bargaining weigh against finding that a reasonable period of time to bargain had elapsed. *AT Systems West*, above, citing *Ford Center for the Performing Arts,* 328 NLRB 1 (1999).

As to the third *Poole* factor, the parties do not agree as to the total amount of time elapsed since the commencement of bargaining.[49] The Respondent contends that the first bargaining session occurred on June 26, 2024. The General Counsel argues that was not a bargaining session, but rather an informational meeting.

I am not aware of any Board decision that specifically addresses whether a meeting was for informational purposes or a bargaining session in the context of a settlement bar evaluation. However, the Board, and appellate courts, have addressed the question in analogous cases dealing with an employer implicitly recognizing a union by engaging in bargaining.

In *Terracon, Inc.*, 339 NLRB 221, 225 (2003), enfd. *International Union of Operating Engineers, Local 150 v. NLRB*, 361 F.3d 395 (7th Cir. 2004), the Board concluded that a meeting was informational. The employer only met with the union once for a brief period of time. The employer never made any comments conceding the union's majority status or connoting an intent to recognize the union. Specific issues were never the subject of mutual discussion. During the meeting, the employer stated that the specific union demands "were unlikely to be a problem." The Board concluded that the employer was simply attempting to "educate itself about the [u]nion's purported purpose and to assess whether or not it should grant recognition to the [u]nion."

---

48 The General Counsel also argues that the voluntary recognition bar applies to this case. I am not aware of any Board decision that applied the recognition bar when the bargaining obligation arose from a settlement agreement. Because this case involves the Respondent having to bargain in good faith as a result of the settlement agreement, I conclude that the recognition bar is not applicable.

49 As previously discussed, under *Poole*, the entire period to evaluate whether a reasonable period of time has elapsed runs from April 18, 2024, the date of the settlement, through the February 10, 2025, date of the recognition withdrawal. But, under *Lee Lumber*, one factor in determining whether a reasonable period of time had passed is the time period from the date negotiations began through the date of the recognition withdrawal.

Similarly, in *Ednor Home Care*, 276 NLRB 392, 393–394 (1985), the Board adopted the administrative law judge's finding that an employer and union had an informational meeting and the employer did not voluntarily recognize the union A representative of the employer and one for the union attended the meeting, which lasted 45 minutes. The employer representative reviewed the union's proffered authorization cards, asked a "number of questions regarding the probable nature and extent of the union demands, and requested that [the union representative] furnish a blank form of the union contract." The judge concluded the employer had not engaged in negotiations with the union. Instead, the discussions reflected "merely an effort to gather information regarding the employees' purported desires and their motives for seeking union representation."

In contrast, the Ninth Circuit Court of Appeals held in *Coffman v. Queen of the Valley Medical Center*, 895 F.3d 717, 728 (9th Cir. 2018), that a meeting between an employer and union was not an informational one but rather a bargaining session. There, the parties discussed specific issues including employee schedule changes and arrangement of a union representative's presence at an employee's investigatory meeting. The employer also provided information relevant to the parties' full collective-bargaining agreement, promised to furnish more information later, and agreed to schedule a meeting to negotiate a comprehensive collective-bargaining agreement. The employer's conduct went beyond "educat[ing] itself about the Union's purported purpose."

The facts in this case do not fit squarely with any of the three decisions discussed above. Although it is a close call, I conclude that, on balance, the June 26, 2024 meeting was informational, not a bargaining session. The meeting was short. No unit employee was present. The five representatives in attendance each spent time introducing themselves and describing their job duties. Admittedly, the parties agreed to schedule bargaining sessions for dates in October. Moreover, the Respondent submitted proposals on ground rules and holiday pay. But the parties did not engage in any back and forth thereafter on those proposals and the union did not submit counterproposals. The Union also submitted its contract with ASRC for acceptance, but the Respondent immediately rejected the idea. The Union identified an issue concerning whether employees should be paid a salary or by the hour as one that it wanted to negotiate. The Respondent, in turn, raised an issue it was not willing to negotiate concerning employees being able to operate certain equipment. In neither case did the parties go back and forth on either of those issues after they were identified. In the end, the words of Respondent representative Kubicki carry the day as to the meeting being informational, telling his colleagues "I'm going to plan on meeting with the union on the 26th to talk ground rules and schedule."[50]

This means that the date on which bargaining commenced was November 18, 2024, and the Respondent withdrew recognition on February 10, 2025. This is a short period of time lasting less than 3 months. The parties engaged in a total of seven bargaining sessions in that time period. The number of sessions is fine, but not that almost all of the sessions were for short

[50] GC Exh. 60.

periods of time and not one of them involved 8 hours. In these circumstances, I conclude that *Poole* factor three weighs against finding that the parties negotiated for a reasonable period of time.

Regarding *Poole* factor 4 (the amount of progress made in negotiations and how near the parties were to agreement), the parties made a minimal amount of progress over the course of their seven bargaining sessions.[51] The possibility of the parties agreeing to a full contract was not imminent. In those circumstances, this factor weighs against concluding that a reasonable period of time had passed when the Respondent withdrew recognition. *AT Systems West Inc.*, 341 NLRB 57, 62 (2004).

Finally, no party claims that the Respondent and the Union reached impasse in bargaining.

Overall, then, the *Poole* factors weigh against finding that the parties negotiated for a reasonable period of time. Accordingly, I conclude that the settlement bar prohibited the Respondent from withdrawing recognition on February 10, 2025.

CONCLUSIONS OF LAW

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

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

3. The Respondent violated Section 8(a)(5) and (1) on June 24, 2024, by changing its policy on the accrual of flextime hours.

4. The Respondent violated Section 8(a)(5) and (1) in October 2024 by unilaterally granting wage increases to employees.

5. The Respondent violated Section 8(a)(1) in the 3rd week of January 2025 by providing more than ministerial support to an employee effort to obtain signatures on a decertification petition.

6. The Respondent violated Section 8(a)(1) in the 3rd week of January 2025 by promising its employees a different work schedule if they signed a decertification petition.

[51] Tr. 113–116.

7. The Respondent violated Section 8(a)(5) and (1) in the 3rd week of January 2025 by bypassing the Union and dealing directly with bargaining-unit employees by promising its employees a different work schedule if they signed a decertification petition.

8. The Respondent violated Section 8(a)(5) and (1) on February 10, 2025, by withdrawing recognition of the Union as the exclusive collective-bargaining representative of the Unit.

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

10. The Respondent did not violate the Act in the other manners alleged in the General Counsel's complaint.

REMEDY

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

I grant the General Counsel's request for an affirmative bargaining order, which requires bargaining for at least a reasonable period of time as the appropriate remedy for the Respondent's unlawful withdrawal of recognition from the Union. First, I find that the Respondent had already committed itself to bargain with the Union by virtue of the terms of the settlement agreement into which it voluntarily entered. Thus, an affirmative bargaining order in these circumstances restores the status quo as agreed to by the Respondent.

Additionally, for the reasons fully set forth in *Caterair International,* 322 NLRB 64 (1996), I find that an affirmative bargaining order is warranted. I adhere to the view, reaffirmed by the Board in *Caterair* that an affirmative bargaining order is "the traditional, appropriate remedy for an 8(a)(5) refusal to bargain with the lawful collective-bargaining representative of an appropriate unit of employees." Id. at 68.

In several cases, however, the U.S. Court of Appeals for the District of Columbia Circuit has required that the Board justify, on the facts of each case, the imposition of such an order. See, e.g., *Vincent Industrial Plastics v. NLRB,* 209 F.3d 727 (D.C. Cir. 2000); *Lee Lumber & Building Material v. NLRB,* 117 F.3d 1454, 1462 (D.C. Cir. 1997); and *Exxel/Atmos, Inc. v. NLRB,* 28 F.3d 1243, 1248 (D.C. Cir. 1994). In *Vincent,* the court stated that an affirmative bargaining order "must be justified by a reasoned analysis that includes an explicit balancing of three considerations: (1) the employees' Section 7 rights; (2) whether other purposes of the Act override the rights of employees to choose their bargaining representatives; and (3) whether alternative remedies are adequate to remedy the violations of the Act." 209 F.3d at 738.

Consistent with the court's requirement, I have examined the particular facts of this case as the court requires, and I find that a balancing of the three factors warrants an affirmative bargaining order.

First, an affirmative bargaining order in this case vindicates the Section 7 rights of the unit employees who were denied the benefits of collective bargaining by the Respondent's unlawful withdrawal of recognition. At the same time, an affirmative bargaining order does not unduly prejudice the Section 7 rights of employees who may oppose continued union representation, because its status is temporary. Moreover, I have found that the Respondent committed numerous other unfair labor practices in addition to unlawfully withdrawing recognition. These included providing more than ministerial support to an employee’s effort to obtain signatures on a decertification petition. The Respondent also offered a change to employee work schedules in exchange for an employee obtaining signatures on the decertification petition. That unlawful support resulted in a decertification petition being submitted to the Respondent, which it relied upon to withdraw recognition. The Respondent also made unlawful unilateral changes to flextime and wages which undermined the Union’s position as the bargaining representative of the operator employees. Under these circumstances, it is only by restoring the status quo ante and requiring the Respondent to bargain with the Union for a reasonable period of time that employees will be able to fairly decide for themselves whether they wish to continue to be represented by the Union.

Second, the affirmative bargaining order also serves the policies of the Act by fostering meaningful collective-bargaining and industrial peace. That is, it removes the Respondent's incentive to delay bargaining in the hope of further discouraging support for the Union. It also ensures that the Union will not be pressured, by the possibility of a decertification petition, to achieve immediate results at the bargaining table following the Board's resolution of its unfair labor practice charges and issuance of a cease-and-desist order.

Third, a cease-and-desist order, without a temporary decertification bar, would be inadequate to remedy the Respondent's violation, because it would permit a decertification petition to be filed before the Respondent had afforded the employees a reasonable time to regroup and bargain through their representative in an effort to reach a collective-bargaining agreement. That result would be particularly unfair in circumstances such as those here, where the investigation and litigation of the Union's charges took roughly a year and a half and the nature of the Respondent's unfair labor practices were likely to have a continuing effect, thereby tainting any employee disaffection from the Union arising during that period or immediately thereafter. I find that these circumstances outweigh the temporary impact the affirmative bargaining order will have on the rights of employees who oppose continued union representation.

For all the foregoing reasons, I find that an affirmative bargaining order with its temporary decertification bar for a reasonable period of time is necessary in this case to fully remedy the Respondent's unlawful withdrawal of recognition.

The General Counsel also requests as a remedy that the Respondent be required to submit written progress reports from bargaining every 30 days to the compliance officer for Region 19 and serve copies of those reports on the Charging Party. I grant the General Counsel's request. *All Seasons Climate Control, Inc.*, 357 NLRB 718, 718 fn. 2 (2011).[52]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[53]

ORDER

The Respondent, Aleut Information Technology, LLC, Anderson, Alaska, its officers, agents, successors, and assigns, shall

1. Cease and desist from

   a. Refusing to recognize and bargain in good faith with the Union as the exclusive collective-bargaining representative of employees in the bargaining unit:

      > All full-time and regular part-time employees engaged in satellite system operations and maintenance on the Enhanced Polar System Operations contract at Clear Space Force Base, Alaska.

   b. Withdrawing recognition from the Union and refusing to bargain with it as the exclusive collective-bargaining representative of unit employees.

   c. Providing more than ministerial support to an employee effort to obtain signatures on a decertification petition.

   d. Promising employees a different work schedule in exchange for signing a decertification petition.

---

[52] The General Counsel did not seek as an additional remedy a requirement that the Respondent bargain with the Union for a minimum number of days or hours per week. I otherwise conclude the combination of an affirmative bargaining order and written progress reports are sufficient to remedy the unfair labor practices found. I decline to order the remaining special remedies sought by the General Counsel.

[53] 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.

e. Unilaterally changing employees' terms and conditions of employment, including flextime hours caps and wages, without providing the Union with notice and an opportunity to bargain.

f. Bypassing the Union and dealing directly with employees regarding their terms and conditions of employment.

g. In any like or related manner interfering with, coercing, or restraining employees in the exercise of the rights guaranteed them by the Act.

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

a. Within 15 days of the Union's request, bargain with the Union at reasonable times in good faith until full agreement or a bona fide impasse is reached, and if an understanding is reached, incorporate such understanding in a written agreement. The Respondent shall submit written bargaining progress reports every 30 days to the compliance officer of Region 19, serving copies thereof on the Union.

b. Make unit employees whole for any loss of earnings or other benefits, and for any other direct or foreseeable pecuniary harms, suffered as a result of Respondent's unilateral changes in terms and conditions of employment.

c. On request by the Union, rescind the unilateral changes in unit employees' terms and conditions of employment that were implemented in June and October 2024, including the change to the flextime hours cap and wages. Nothing in this Order is to be construed as requiring the Respondent to rescind any changes that benefited the unit employees unless the Union requests it to do so.

d. Compensate affected employees for the adverse tax consequences, if any, of receiving lump sum backpay awards, and file with the Regional Director for Region 19, within 21 days of the date of the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

e. File with the Regional Director for Region 19, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.

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

g. Post at its facility at Clear Space Force Base, Alaska, copies of the attached notice marked "Appendix."[54] 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 posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by e-mail, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 24, 2024.

h. Within 21 days after service by the Region, file with the Regional Director of 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., August 19, 2026.

Charles J. Muhl
Administrative Law Judge

[54] 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."

APPENDIX

NOTICE TO EMPLOYEES

Mailed 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 refuse to recognize and bargain in good faith with the International Brotherhood of Teamsters Local 959 (the Union) as the exclusive collective-bargaining representative of employees in the following bargaining unit:

> All full-time and regular part-time employees engaged in satellite system operations and maintenance on the Enhanced Polar System Operations contract at Clear Space Force Base, Alaska.

WE WILL NOT withdraw recognition from the Union and refuse to bargain with it as the exclusive collective-bargaining representative of unit employees.

WE WILL NOT provide more than ministerial support to an employee effort to obtain signatures on a decertification petition.

WE WILL NOT promise employees a different work schedule in exchange for signing a decertification petition.

WE WILL NOT unilaterally change employees’ terms and conditions of employment, including flextime hours caps and wages, without providing the Union with notice and an opportunity to bargain.

WE WILL NOT bypass the Union and deal directly with employees regarding their terms and conditions of employment.

WE WILL, within 15 days of the Union's request, bargain with the Union at reasonable times in good faith until full agreement or a bona fide impasse is reached, and if an understanding is reached, incorporate such understanding in a written agreement. WE WILL submit written bargaining progress reports every 30 days to the compliance officer of Region 19, serving copies thereof on the Union.

WE WILL make unit employees whole for any loss of earnings or other benefits, and for any other direct or foreseeable pecuniary harms, suffered as a result of our unilateral changes in terms and conditions of employment.

WE WILL on request by the Union, rescind the unilateral changes in unit employees' terms and conditions of employment that were implemented in June and October 2024, including the change to the flextime hours cap and wages.

ALEUT INFORMATION TECHNOLOGY, LLC
(Respondent)

Dated ____________________ By ____
(Representative) (Title)

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

915 2nd Avenue, Room 2948, Seattle, WA 98174-1078
(206) 220-6300, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/ 19-CA-350069 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (206) 220-6284.