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

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW, LOCAL 2420

and

Case 12-CB-360927

MACK TRUCKS, INC.

John W. Plympton, Esq.
for the General Counsel

Stuart Shoup, Esq.
for the Respondent

Mark Linihan, Esq.
for the Charging Party

DECISION

STATEMENT OF THE CASE

MICHAEL P. SILVERSTEIN, Administrative Law Judge. On September 4, 2024, representatives of Mack Trucks met with Local 2420, UAW officials to hash out production standards governing work performed at the Employer's Jacksonville, Florida regional distribution center. By the next day, the parties agreed on metrics covering six activities at the facility. Two weeks later, the Employer drafted a memorandum of understanding listing the six activities and their corresponding metrics and included two additional clauses confirming that Mack work rules would continue to apply at the facility and the parties would meet as necessary to discuss adjustments to production standards. Employer representatives signed the memorandum of understanding, but the Union refused to sign, balking at the language the Employer drafted concerning production standard adjustments. The Employer filed an unfair labor practice charge alleging that the Union's refusal to sign the memorandum of understanding violated Section 8(b)(3) of the Act. As explained in greater detail below, I find that the parties reached a meeting of the minds on the production standards for the six activities and the continued application of the Mack work rules at the Jacksonville facility, but the General Counsel has not established a meeting of the minds regarding the production standards adjustment language the Employer inserted into the memorandum of agreement. Since this language is a material term of the agreement, I recommend dismissal of the complaint.

On February 21, 2025, Mack Trucks, Inc. (the Employer or Charging Party) filed an unfair labor practice charge against International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, UAW, Local 2420 (the Union or Respondent) docketed by Region 12 of the Board as Case 12-CB-360927. A Complaint and Notice of Hearing issued on March 11, 2026, and Respondent filed its Answer to the Complaint on March 25, 2026.

A trial was conducted in this matter on June 23-24, 2026 in Jacksonville, Florida. At trial, all parties were afforded the right to call, examine, and cross-examine witnesses, to present any relevant documentary evidence, and to argue their respective legal positions orally.[1] Counsel for the General Counsel, Respondent, and the Charging Party filed post-hearing briefs.

On the entire record, including my observation of the demeanor of the witnesses, and after carefully considering the briefs, I make the following:

FINDINGS OF FACT

JURISDICTION

Respondent admits, and I find that at all material times, the Employer has been a Pennsylvania corporation with its principal office and place of business in Greensboro, North Carolina, and an office and place of business located at 4949 Bulls Bay Highway in Jacksonville, Florida. Respondent also admits, and I find that the Employer, at its Jacksonville facility, has been engaged in the sale of after-market truck parts. In conducting its business operations for the 12-month period prior to the issuance of the Complaint, the Employer sold and shipped from its Jacksonville facility goods valued in excess of $50,000 directly to points outside the State of Florida. Thus, I find that the Employer has been an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act. Additionally, Respondent admits, and I find, that it has been a labor organization within the meaning of Section 2(5) of the Act.

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

ALLEGED UNFAIR LABOR PRACTICES

This case involves Mack Truck's Jacksonville regional distribution center (RDC), which stores and distributes after-market parts, e.g. oil filters and engines, for over-the-road trucks.[2] (Tr. 15-16). Bradley Garritson is the manager of the Jacksonville RDC. Garritson reports to Martin Johnston, Volvo Trucks' director for North American RDCs.[3] Alissa Whitt is the

[1] The General Counsel called three witnesses – Martin Johnston, Alissa Whitt, and Bradley Garritson. The Respondent called five witnesses – Nicholas Mathis, Craig Stout, Anthony Jackson, Terry Thurber, and Montego Butler.

[2] Mack Trucks is a wholly owned subsidiary of Volvo Trucks North America. (Tr. 17).

[3] There are eight RDCs in North America – Toronto, Baltimore, Dallas, Columbus, Chicago, Reno,

regional manager for employee and labor relations for Volvo Group's North American service operations, and she provides labor relations support for the Jacksonville RDC. (Tr. 15-16, 79-81).

The Union represents warehouse, maintenance, and clerical employees employed at the Employer's Jacksonville RDC. There are roughly 25-29 employees in the bargaining unit, with 2 maintenance workers, 1 clerical employee, and the rest serving as floor industrial workers. (Tr. 206-207). The Union has represented this bargaining unit for over 10 years. (Tr. 53). Nicholas Mathis is the shop chair/local president. He has held this position since December 2023. (Tr. 215). Craig Stout is the regional servicing representative for UAW Region 8 and is assigned to service the Local 2420 bargaining unit. (Tr. 359-360).

The International Union, UAW, five of its local unions, including Local 2420, and the Employer are parties to a master collective bargaining agreement ("Mack master agreement") which runs from November 15, 2023, through October 1, 2028. (Joint Ex. 1). None of the Employer's principals in this case – Johnston, Whitt, and Garritson – participated in negotiations for the most recent Mack master agreement. (Tr. 17, 82). Mathis did not participate in negotiations for the Mack master agreement, but Craig Stout did. (Tr. 216, 360). Article 18 of the Mack master agreement (Production Standards) states that "provisions are contained in the respective Local Supplemental Agreements." (Joint Ex. 1).

On November 15, 2023, the Employer, International Union, UAW, and Respondent entered into a Local Supplemental Agreement for the Jacksonville facility covering topics like policies and procedures, bargaining unit recognition, wages, holidays, and production standards. (Joint Ex. 2; Tr. 19). This case centers around language in Article 18 – Production Standards – of the Local Supplemental Agreement.

Article 18, Section 36 reads as follows:

(a) The Company and Union shall meet upon request of either Party to establish work standards based on appropriate objective methodology. Should the Company and Union be unable to reach agreement on such work standards within twenty (20) working days of the meeting request, the Parties shall mutually agree on a third party, who shall be empowered to establish such work standards. Should the Company and Union be unable to reach agreement upon the third party within twenty (20) working days of the vendor presentations, a senior member of Company Management and the UAW Region 8 Director or designated representative shall select the third party without undue delay. The time limits may only be extended by mutual agreement of the Parties.

(b) In order to recognize the transition to the work standards system, all Warehouse Operators shall receive a $3,500 gross lump-sum payment upon ratification of the Jacksonville local supplemental agreement. Such payment shall be processed no later than the third pay period after ratification.

Tacoma, and Jacksonville. (Tr. 16). The UAW represents employees in Baltimore, Reno, and Jacksonville, plus at another Employer facility in Byhalia, Mississippi. (Tr. 373).

(c) Upon establishment of the work standards, there shall be a six (6) month trial period prior to the implementation of the disciplinary process detailed in Section 37 below. Upon completion of this trial period, all Warehouse Operators shall receive a $3,500 gross lump-sum payment…

Section 37(c):

Upon the employee's first instance of failing to meet the work standards, the employee shall be provided a coaching opportunity, which will include an evaluation of the employee's work processes in order to determine whether re-training may be required. This coaching step will not be considered as a step in the progressive discipline process.

Section 37(d):

Discipline issued to an employee for failing to meet the work standards shall be progressive and corrective in nature and shall occur after the employee has been provided the coaching opportunity described above. Such discipline shall be administered in a separate progression from other disciplinary action. An employee's sixth discipline for failing to meet the work standards shall result in their discharge.[4]

<u>The Parties Engage the Connors Group to Address Production Standards</u>

Production standards are a tool used by the Employer's RDCs to track warehouse employees' efficiency through metrics measuring output per hour. (Tr. 19). From the Employer's perspective, production standards hold employees accountable for completing each day's required work. (Tr. 157). At the Jacksonville facility, the following nine activities were earmarked for measurement using lines per hour as the base metric:

1) Unloading
2) Putaway – rt (reach truck)
3) Putaway – op (order picker)
4) Picking – rt (reach truck)
5) Picking – op (order picker)
6) Picking – cage
7) Packing - cartons
8) Packing – lines
9) Loading (GC Ex. 8)

Pursuant to the parties' local agreement, in January 2024, the Employer requested discussions with the Union regarding production standards. (Tr. 32). At the time, Douglas Brady was the Jacksonville site manager. Brady and Mathis met at least four times over the next few

[4] Martin Johnston and Craig Stout participated in negotiations for the 2023-2028 local supplemental agreement. This was the first time that production standards language was incorporated into the local agreement. (Tr. 21-22, 27-28, 371-372).

months but could not reach an agreement on production standards.[5] Mathis testified that Brady proposed numbers for the nine activities, but when Mathis pushed back and asked for the Employer's data and methodology behind the numbers, Brady did not provide this information and the talks broke down. (Tr. 23, 217-218).

Unable to reach agreement, the Union opted for a 3rd party to set the facility's production standards. The Employer provided the Union with 3 or 4 options, and the Union ultimately selected the Connors Group. The Connors Group came onsite in about May 2024 tasked to conduct time studies, review standard operating procedures, and monitor employee interaction in certain job functions to create standards for the daily work performed by industrial workers on the inbound and outbound side of the facility. (Tr. 160). Connors Group personnel spent about 2 weeks at the Jacksonville facility, conferred with Employer and Union personnel daily, and presented their findings to the Employer and Union on about August 12th. (Tr. 159, 162-163).

Although the Connors Group's final report is not part of this record, all sides agreed that the Connors Group numbers were higher than anticipated. Even though the Employer had the right under Article 18 of the local agreement to accept the Connors Group's numbers, the Employer felt that these numbers were too aggressive, not attainable on a long-term basis, and would cause unwanted employee turnover in Jacksonville. (Tr. 25, 161). The Employer informed the Union that it was not adopting the Connors Group's findings and that it wished to resume negotiations with the Union.

On August 21, Mathis emailed Garritson the following, laying out the Union's concerns about certain production standard metrics:

> "Given the numerous variables and quality checks involved in these functions, using Lines per Hour as a metric may not accurately reflect performance. A more comprehensive metric should be considered.
>
> <u>Unloading:</u>
> The process of unloading products from trucks should not be assigned a specific performance metric due to the variability in flow and the challenges associated with handling different types of products. Additionally, unloaders are tasked with prepping items for both bulk and small put-away as they unload. Given these complexities, it is essential to establish an indirect labor function to accurately capture the work involved.
>
> <u>Loading:</u>
> Applying strict numerical performance metrics to the loading function is inappropriate due to the inconsistent flow of materials being shipped. Loaders must often wait until most lines are picked before they can proceed, and they are responsible for scanning each item and loading it onto outbound trucks without damage. Imposing high productivity targets on this function can compromise the quality of service delivered to customers.

[5] Craig Stout did not participate in these discussions. (Tr. 24).

<u>Packing:</u>
Packing is the final checkpoint where products are verified and checked before being shipped to customers. The hourly rate for this function should not be set excessively high to ensure that the focus remains on customer satisfaction, quality assurance, and safety, particularly regarding ergonomics." (GC Ex. 5).

For the remaining metrics, Mathis proposed the following numbers:

Put-away (reach truck)	8 LPH
Put-away (order picker)	13 LPH
Picking (order picker)	38 LPH
Picking (reach truck)	10 LPH
Picking (cages)	32 LPH

Renewed Negotiations on September 4th and 5th

The Employer and Respondent agreed to meet at the Jacksonville facility on September 4th and 5th to further discuss production standards. In attendance for the Employer were Martin Johnston, Alissa Whitt, and Bradley Garritson. In attendance for the Respondent were Nicholas Mathis, Terry Thurber (first shift committeeperson), Montego Butler (2nd shift committeeperson), and Anthony Jackson (vice-president). (Tr. 26, 410, 392-394, 423).

Craig Stout did not attend these meetings. He testified that Mathis told him there was going to be a meeting on September 4th to discuss lines per hour because neither side was happy with the Connors Group numbers and they believed they could reach agreement on the numbers themselves. Stout told Mathis that he was unable to attend the meeting due to a previous commitment, but he had no issue with Mathis discussing the LPH numbers without him. Stout also testified that if the Employer and Respondent reached agreement strictly on the LPH numbers, this would not need to be submitted to the union membership for ratification because the process for establishing production standards had already been collectively bargained in the local agreement. (Tr. 368-370, 373-374). But Stout reminded Mathis that the local agreement was a tripartite agreement (between the Employer, Respondent, and International Union) and it required all three parties' assent to reach an agreement. (Tr. 244, 371).[6]

All parties confirm that by the end of the meetings on September 5th, the Employer and Respondent reached agreement on measurement standards for the nine activities. To this end, the parties agreed that there would be no production standard concerning unloading, loading, and the packing lines.[7] (GC Exs. 3-4). The remaining metrics would be:

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[6] Stout and Whitt both testified that they spoke before September 4th. During their conversation, Whitt told Stout that the meeting on September 4th concerned production standards, Stout informed Whitt that he could not attend the meeting, and Stout confirmed that the meeting could proceed without him. (Tr. 91-94, 368-369).

[7] Johnston testified that the Employer withdrew its request for objective production standards for these three activities because there were service quality and ergonomic considerations for these job functions that did not support the need to have defined production standards. Johnston also confirmed that these were the three metrics Mathis highlighted in his August 21st email. (Tr. 40).

Putaway reach truck	8.5 LPH
Putaway order picker	13.5 LPH
Picking reach truck	11 LPH
Picking order picker	41 LPH
Picking cage	35 LPH
Packing boxes	18 Boxes[8]

The lone metric left for discussion on September 5th was putaway order picker. At the end of the afternoon session on the 4th, the Union had asked the Employer to move from 14 to 13.5. On the morning of the 5th, the Employer agreed to move to 13.5 with certain conditions. The specific conditions raised, and roadmap for moving forward, are the source of the dispute here. Therefore, I will summarize the parties' testimony regarding the September 5th meeting.

Martin Johnston

Johnston testified that Garritson conditioned acceptance of the 13.5 number on the Mack work rules and all existing policies and procedures still applying in conjunction with the work standards. Garritson also said that if the scope of work changed and automation came into the building, there would be a need to change the time for picking individual parts. (Tr. 45). Whitt then reiterated that the local work rules would still apply in conjunction with the work standards. Whitt said that she would create a memorandum of understanding to put the parties' agreement in writing. According to Johnston, the Union's response to these points was acknowledgement, acceptance, agreement, and support. (Tr. 46-48). Thus, there was no need to come back and complete negotiations because everything had been settled. (Tr. 48).

Johnston's notes from the September 5th session reflect the following:

- Need to revisit future efficiencies, gains in the event LPH improves
- Work standards still are applicable/apply
- Alissa said efficiency gains and the importance of addressing deviations.
- Alissa said understand parties will discuss need to revise LPH in future
- MOU will need to be signed
- Alissa summary – agreement on #s, create MOU, work rules remain, efficiency gains will be revisited as needed. (GC Ex. 2).

Alissa Whitt

Whitt testified that on the morning of the 5th, Garritson said that the Employer would accept the Union's counter of 13.5 with some understandings – if there was a change in the operation (e.g. efficiency gains), the parties would come back together to revisit the targets. Garritson also noted that the Mack work rules would still apply. (Tr. 105-106). Whitt testified that she interjected and said that if there were changes in the operation, the Employer wanted to

[8] Garritson testified that 21 of the 27 bargaining unit employees would be directly impacted by the production standard time targets. (Tr. 209).

come back together with the Union and revisit the targets. According to Whitt, Mathis' reply to this statement was "I understand that." Whitt also confirmed that the Mack work rules would continue to apply to all Jacksonville activities as before. (Tr. 106, 109). Whitt then said that the Employer would draft the memorandum of understanding and distribute it to all parties for signatures. (Tr. 113). On cross-examination, Whitt confirmed that she did not share any proposed MOU language with the Union on September 5th. (Tr. 132).

Whitt's notes from the September 5th session reflect the following:

- Garritson reviewed counter of 13.5 and will agree with understanding
- Efficiency gains will revisit
- Mack work rules apply
- Whitt said re: efficiency gains. Not just load/unloading – as things change, improvements, investments, changes, etc. where efficiency gains, targets will increase and will need to come together to discuss.
- Whitt said that nothing in this restricts the company from applying the work rules. Mathis said understand that.
- Whitt reiterated – again worth restating – have agreements on the #s, efficiency gains – will increase targets; work rules apply. (GC Ex. 3).

Bradley Garritson

Garritson testified that he told the Union that the Employer would accept 13.5 for the small putaway job conditioned on returning to the bargaining table if efficiency gains were made. (Tr. 184-185). Whitt then said that the Mack work rules would still apply at Jacksonville, she talked further about efficiency gains and ended the meeting by saying that everything would be included in the MOU. (Tr. 186-187).[9]

Union Witnesses

Mathis testified that the Union did not make any bargaining proposals on September 4th and 5th, but the parties went back and forth on what metrics they thought were attainable. (Tr. 279). Mathis also testified that he did not agree to any numbers at the September meetings and there was no discussion on September 5th of an MOU being circulated after the meeting. (Tr. 280-314).

Terry Thurber testified that the parties came to an agreement on the LPH numbers on September 4th and 5th, but he didn't recall a discussion of work rules at the end of the second session. Thurber also testified that he believed that reaching an agreement on the numbers set the parties up for bargaining as to what would be included in the MOU, and that Craig Stout's presence was required for this task. (Tr. 412-414, 416-417). Similarly, Anthony Jackson testified that the parties reached an understanding regarding the specific LPHs at the September meetings,

[9] Garritson testified that earlier in bargaining, the Union asked if the Employer could remove the Mack work rules. (Tr. 180, 211). Garritson's bargaining notes, however, do not reference this point, and neither do Johnston or Whitt's bargaining notes. (GC Exs. 2-4; Tr. 206).

but he did not recall discussion of an MOU on the 5th. Jackson said that he believed the next step was getting Stout involved to ensure that the wording in whatever agreement the parties signed was fair to both sides. (Tr. 396-397). Jackson could not recall a discussion on the 5th regarding work rules and efficiencies gained or lost. (Tr. 400-401). Finally, Montego Butler testified that the parties did not agree on numbers at the end of the September meetings, there was no mention of an MOU at these meetings, and he believed the parties needed to schedule additional meetings regarding production standards. (Tr. 428-430).

Stout Receives Mixed Signals from Mathis and Whitt Regarding the September Meetings

Stout and Mathis testified that Mathis called Stout after the meetings were over and let him know that the parties reached an agreement on lines per hour and Mathis went over each of the activities and the associated metrics. Mathis did not mention anything about facility work rules or the parties revisiting the numbers if there were changes in the building. (Tr. 315-316, 376). Stout also testified that he did not remember speaking with Whitt after the meeting to find out her version of what transpired on the 4th and 5th. (Tr. 378).

Whitt testified that a few days after September 5th, she spoke with Stout over the phone. Stout relayed that Mathis had said they reached an agreement, Mathis shared the details with him, and Stout wanted Whitt to confirm what was in the agreement. Whitt told him that they reached agreement on the time targets and that if there were changes in the facility, such as efficiency gains, they would need to come back together to revisit the targets. Whitt also told Stout that the Mack work rules would continue to apply. Stout then told Whitt that Mathis accused the Employer of saying it could unilaterally change the target numbers. Whitt told him that the Employer would never have proposed this. (Tr. 115-117).

The Memorandum of Understanding

The Employer drafted the following memorandum of understanding and on September 17, Garritson handed Mathis a copy:

> "The Company and the Union recently met to discuss the establishment of Work Standards in accordance with Article 18, Sections 36 of the 2023 Jacksonville PDC Collective Bargaining Agreement. The parties reached agreement regarding the implementation of the following standards for inbound and outbound activities:

ACTIVITY	TARGET & UNIT OF MEASURE
Put Away RT	8.5 LPH
Put Away OP	13.5 LPH
Picking RT	11 LPH
Picking OP	41 LPH
Picking Cage	35 LPH
Packing	18 Boxes

> The Work Standards reflected above are subject to an ongoing process of adjustment in conjunction with changing operations and the realization of efficiencies. The Company and the Union will meet as necessary to discuss the work standards, their implementation, effectiveness, and subsequent adjustments.
>
> Implementation of the work standards will become effective October 7, 2024.[10] This date will mark the start of the six (6) month trial period specified in Article 18.
>
> The parties agree that nothing in this agreement in any way limits the Company's right to administer and enforce the work rules.
>
> It is understood that the conditions and terms contained within this MOU as agreed to by the Company and the Union are considered contractually binding upon all Parties attested by the signatures executed below." (Joint Ex. 3).

Garritson, Johnston, and Whitt had already signed the MOU when Garritson handed it to Mathis. That left blank lines for Mathis and Stout to sign. (Joint Ex. 3).

Garritson testified that a few minutes after handing the document to Mathis, Mathis visited his office and asked him where the MOU came from. Mathis referred to the first paragraph below the metrics – "the work standards reflective above are subject to…" – and told Garritson that he had not agreed to this language. Garritson asked him what had changed in the previous two weeks since they left the bargaining table with an understanding that the MOU would reflect their agreement on production standards. In response, Mathis asked Garritson to email the document to himself and Stout, which Garritson did later that day. (Tr. 190-191).

Mathis testified that Garritson handed him the MOU and Mathis asked him what it was. Garritson told him that he needed to sign the document and Mathis said he would not. Mathis asked who drafted the MOU and Garritson said that it wasn't him and he didn't like the language himself and did not know why it was added. Mathis said that he wasn't signing the document because it didn't make sense, he didn't understand portions of it, and they had not talked about some of the things inserted into the MOU. Mathis testified that he didn't understand the paragraph beginning with "the work standards reflective above are subject to…", the Union never agreed to this language and when Mathis asked Garritson about the language, Garritson said that the Employer could raise the numbers if it wanted to. Mathis asked if the numbers could be lowered and Garritson said no. (Tr 256-259). Mathis also testified that he did not understand the reference to the Mack work rules in the MOU because in his experience, the Mack work rules apply whether there are production standards or not. (Tr. 256-257).

Mathis testified that he told Garritson that he wasn't signing the MOU and called Stout to let him know that the Employer was adding and changing elements of the MOU that had not been agreed to at the bargaining table. (Tr. 261). Stout testified that Mathis and the local union had no issue with the LPH numbers contained in the MOU, but Mathis asserted that the additional language inserted in the MOU below the metrics had not been discussed at bargaining

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[10] Whitt testified that this date was not discussed during the September 4-5 meetings. Johnston requested that this specific date be inserted into the MOU. (Tr. 139-140).

and the Union did not agree with it. (Tr. 366). Stout also testified that he does not have any authority to sign documents on behalf of the Union or any other local unions he services, but he is empowered to negotiate agreements on behalf of the Union. In this case, Stout did not sign the proposed MOU because the Union was not on board with the language in the MOU, he had not been present when the parties met in September, and Stout was not going to overpower the Union or force them into an agreement. (Tr. 361, 365). Stout also clarified that the type of language contained in the MOU below the LPH numbers needs to be ratified by the Union membership. (Tr. 383).

Stout further testified that he called Whitt after Mathis let him know how upset he was with the MOU language. Stout asked Whitt what happened and explained Mathis' perspective that language had been added to the MOU that had not been discussed on September 5th. Stout told Whitt that if language is going to be discussed, he is supposed to be in the room as a party to the agreement. Stout also said that he was offended that someone with Whitt's education and knowledge would try negotiating language without International Union officials present. (Tr. 378-379).

Whitt testified that after Garritson informed her that Mathis would not sign the MOU, she called Stout. Whitt explained that she was very upset and told Stout that they had an agreement and wanted to know why there was no signed agreement. Stout said that he could sign the MOU, but he couldn't make Mathis sign it. Stout never explained why the Union and Mathis would not sign the MOU. (Tr. 120-121, 124).

The Parties Meet Again in Jacksonville on October 21st

Whitt testified that the Employer called another meeting for October 21st to find out why the Union was not signing the MOU. Although the Union attempted to have its entire bargaining committee attend the meeting, Whitt told Stout that this wasn't a formal bargaining session, Garritson would not be attending the meeting, and she was not in favor of the Union committee participating. Ultimately, the October 21st meeting took place with Johnston[11], Whitt, Mathis, and Stout in attendance. (Tr. 123-125).[12]

Whitt testified that at the meeting, Mathis essentially accused the Employer of lying and said that the text in the paragraph below the chart should have been bargained. She says that no party raised the actual numbers in the chart during this meeting and the parties did not resolve whether the agreement would be signed or not. (Tr. 125-127). The meeting ended, but Whitt asked Stout to stay behind to talk. Whitt testified that when it was only her and Stout in the room, she implored him to do the right thing and told him that she didn't reveal what he had said to her during their phone call. Whitt told Stout that he knew there was an agreement and the UAW needed to honor the agreement. Stout asked her if this was a threat, Whitt said it was not,

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[11] Johnston offered very limited testimony regarding this meeting. To this end, he testified that there was an in-person conversation with the International Union representative after September 5th, they discussed employee relations, but Johnston could not recall whether they discussed the production standards MOU. (Tr. 65).

[12] There are no notes in the record from the October 21st meeting.

but that he knew the truth, he knew they had an agreement, and Whitt expected the UAW to honor the agreement. (Tr. 127-128).

Mathis testified that Stout, Johnston, and Whitt came to the Jacksonville facility on October 21st, but the Employer would not allow members of the Union bargaining committee to participate in the discussion. During this meeting, Stout told Whitt that the MOU cannot add, adjust, or alter language in the parties' collective bargaining agreement. Mathis further testified that Whitt would not allow Mathis to speak during this meeting and she would only talk to Stout. When the meeting ended, Whitt asked Mathis to leave the room, and she stayed behind to talk with Stout. Mathis asserts that they spoke behind closed doors for about an hour and when Mathis asked Stout what they discussed, Stout only said that he told Whitt that she could not do what she was trying to do. (Tr. 263-264). Although Stout did not specifically testify about what was discussed on October 21st, he testified that in subsequent phone calls with Holly Georgell, the Employer's Director of Labor Relations, and Whitt, the Employer representatives told him that the language in the MOU was agreed upon at the bargaining table, there would be no more bargaining back and forth, and everybody needs to live up to the agreement and sign the document. (Tr. 389-390).

The Union did not sign the MOU on October 21st, or anytime thereafter.

Mathis Sends Two Emails to the Employer in November Regarding Production Standards

On November 12, Mathis emailed Whitt, Johnston, Garritson, and Stout the following:

> "I wanted to reach out for an update regarding the standards and the start of the six-month trial period. My understanding is that you needed to consult your legal team due to some company confusion about the language. The local wanted to know, since we agreed specifically on the numbers in the meeting, why the six-month trial hasn't started yet or has a expected start date. What is causing the delay?"[13] (GC Ex. 7; Tr. 280).

There is no record evidence indicating that the Employer responded to Mathis' email. Then on November 25, Mathis sent the following email to Garritson, Johnston, Whitt, and Georgell:

> "I am reaching out on behalf of the local membership in my capacity as President and Shop Chair. I recently received a message from Craig that has raised some confusion. According to the message, we are being threatened with labor charges for bargaining in bad faith. This is perplexing because negotiations have already concluded, the books are printed, and the agreed-upon language is final until we return to the bargaining table in 2028.
>
> At no point did I or any representative of this local consent to reopen or alter any part of the agreement. There has been no approval to renegotiate or make changes to the

[13] Mathis testified that he sent this email because he wanted the Employer to provide the methodology and data concerning the activities subject to the production standards. (Tr. 281). The e-mail itself, however, makes no mention of methodology or data.

language we agreed upon. The numbers are settled, and the local is fully prepared to proceed with the six-month trial as planned.

We respectfully request clarification on this matter as soon as possible." (GC Ex. 10; Tr. 284).

There is no record evidence indicating that the Employer responded to Mathis' November 25th email.

The Union Files a Grievance in February 2025 and the Employer Files the Instant ULP Charge

On February 10, 2025, Mathis filed a class action grievance alleging a violation of Article 18 of the local agreement as follows:

"The company is deliberately stalling on the agreed-upon language terms and attempting to alter the language in violation of the CBA tri-party agreement. It is falsely claiming that the Union leadership agreed to add new language, when the purpose of the meetings between Union leadership and the company was to establish work standards, not to change contractual language.

The Union has fully adhered to the contractual language outlined in the Local Supplemental Agreement, Article 18, Section 36, Letter (c), which requires both parties to meet and bargain in good faith regarding production standards in specific job areas. The company initially agreed to the specific standards negotiated with the Union but later undermined the agreement by attempting to insert additional language into the Memorandum of Understanding (MO) without the Union's consent.

As a result, I, as the Shop Chair, refused to sign the fraudulent MO. In response, company directors sought to use the local Union Regional Representative to push the unauthorized language onto the local Union, even going so far as to threaten us with labor charges.

The proposed remedy is to initiate the six-month trial period as outlined in Article 18, Section 36, Letter (c) of the Local Agreement and to issue a formal apology to the local membership for bargaining in bad faith and attempting to undermine the agreement." (Resp. Ex. 2).

On February 21, 2025, the Employer filed the instant charge alleging that the Union violated Section 8(b)(3) of the Act. Four days later, the parties met for a Step 1 meeting on the Union's production standards grievance. The Employer denied the grievance, writing as follows:

"The Union has the burden of proving the Company violated the contract. During the Step 2 meeting, the Union offered its recollection of the meetings where the Company and Union bargained over the establishment of production standards and reached an agreement. Though the Union has no notes or other records reflecting the parties' negotiations, the Company has notes establishing the terms and conditions of the agreement. These notes correspond with the terms of the Letter of Agreement (LOA) presented to the Union following the conclusion of the parties' negotiations. The Union has no written proof of what was discussed or what the Union now contends was agreed upon. Not only has the Company not violated any term of the CBA, but the Union's ongoing refusal to execute the LOA reflecting the terms negotiated in September 2024 constitutes a violation of the National Labor Relations Act (NLRA).

In an effort to resolve this matter and move forward, if the Union: (1) executes the LOA provided with the service copy of the Company's unfair labor practice (ULP) charge, and (2) withdraws the above-referenced grievance, the Company will withdraw its ULP charge. This offer, as part of the 1st step of the grievance procedure, is only binding and available during the 1st Step. Any counteroffer or appeal to the 2nd Step of the grievance procedure shall be treated as a rejection of this offer and will thereby render this offer null and void." (Resp. Ex. 2).

The Baltimore Production Standards Memoranda

In April 2024, pursuant to Article 18 of their local agreement, the Employer, International Union UAW, and the local union representing Baltimore's bargaining unit employees, discussed and reached agreement on work standards governing the Employer's Baltimore facility. (Resp. Ex. 1). Martin Johnston participated in these discussions along with Craig Stout's colleague who was responsible for servicing this bargaining unit. (Tr. 59-61). The Baltimore agreement, as captured below, did not include references to Mack work rules or revisiting the standards if certain efficiencies were met:

"The Company and Union…recently held discussions regarding the establishment of work standards for Baltimore Warehouse Operator employees pursuant to the terms of Article 18 of the Local Supplemental Agreement. As a result of these discussions, the Parties have reached agreement upon the following work standards for Inbound, Outbound, and Packing activities…

Implementation of the work standards will become effective May 6, 2024. This date will mark the start of the six-month trial period specified in Article 18.

It is understood that the conditions and terms contained within this MOU as agreed to by the Company and the Union are considered contractually binding upon all Parties as attested by the signatures executed below…" (Resp. Ex. 1).[14]

[14] During the September 4-5 meetings, Whitt referenced the Employer's Byhalia, Mississippi central distribution facility having just completed the trial period for introduction of production standards language and noted the lessons learned she hoped to apply to the Jacksonville trial period experience. (Tr. 111-112). In her trial testimony, Whitt noted that the Byhalia bargaining unit did not push back on the MOU language the Employer drafted there and all parties signed the agreement. (Tr. 142). This agreement, however, is not a part of the record here and it is unclear whether the MOU language in Byhalia more closely tracked Jacksonville or Baltimore.

Craig Stout's Testimony Regarding Mid-Contract MOUs

Stout testified about his experiences negotiating mid-contract MOUs. In these situations, the Employer talks to him about what it seeks to change, Stout will meet with the Employer and local union officials in person to try to find language that everybody can agree on. One party generates a first draft of the MOU, the parties will go back and forth modifying language until all sides agree, and then all three parties sign the MOU. If the MOU changes the CBA in any way, the local union membership must first ratify the tentative agreement, and once that happens, the new language is incorporated into the parties' CBA. (Tr. 363). Stout also confirmed that these are tripartite agreements, meaning that Stout signs on behalf of the International Union, the local's elected officials sign on the local's behalf, and the company agents sign on behalf of the employer. (Tr. 361).

Regarding the instant matter, Stout testified that a memorandum simply reflecting the production standards numbers would not have to go to the Local Union's membership for ratification. Stout explained that Article 18 of the parties' local agreement sanctioned these discussions without requiring a membership vote on the numbers themselves.[15] (Tr. 373-374, 384). Similarly, Stout testified that referencing the continued application of the Mack work rules in the MOU does not modify the CBA or local agreement in any way because the Employer does not bargain with the Union or International Union regarding the work rules and the work rules are not being modified in the Employer's proposed MOU. (Tr. 382-383). Stout, however, noted that the language below the chart in the MOU contemplates the Employer's ability to change the work standards, something that Article 28 does not specifically address once the initial production standards have been set. (Tr. 387). The local union and International Union did not agree with the language contained in the proposed MOU, and even if they did, this additional language must be submitted to the local union membership for ratification. (Tr. 373-374, 387-389).

Nicholas Mathis' Testimony Regarding His Concerns with the MOU Language

On cross-examination, Mathis acknowledged that any numbers agreed to by the parties, and included in the MOU, would become part of the existing local agreement. Mathis also testified that Article 18 of the local agreement did not say that production standards could never be revisited or changed during the life of the contract. (Tr. 343-344). But Mathis also observed that MOUs run for the life of the contract, so when the parties agreed on production standards numbers on September 5th, he expected that they would also run for the duration of the CBA. (Tr. 259-260).

Analysis

Section 8(d)'s obligation to bargain collectively requires either party, upon the request of another party, to execute a written contract incorporating an agreement reached during negotiations. Section 8(b)(3) of the Act implements that obligation by making it an unfair labor

[15] Stout specifically pointed to page 28 of the local agreement to demonstrate that the parties already bargained over the authority of a 3rd party to set production standard numbers, the six-month trial period for implementing the numbers, and the $3,500 lump sum bonus for bargaining unit employees. (Tr. 387).

practice for a union to refuse an employer's request to sign a negotiated agreement. See *Windward Teachers Association, NYSUT, AFT, AFL-CIO,* 346 NLRB 1148, 1150 (2006); *Graphic Communications Union District 2 (Riverwood International USA),* 318 NLRB 983, 990 (1995) Cf. *H.J. Heinz v. NLRB,* 311 U.S. 514 (1941). This obligation, however, only arises if the parties had a "meeting of the minds" on all substantive issues and material terms of the agreement. See *Sunrise Nursing Home,* 325 NLRB 380, 389 (1998). The expression "meeting of the minds" is based on the objective terms of the contract, not on the parties' subjective understanding of those terms. See *Hempstead Park Nursing Home,* 341 NLRB 321, 323 (2004). It does not require that both parties have an identical understanding of the agreed-upon terms. See *Ebon Services,* 298 NLRB 219, 223 (1990), enfd. mem. 944 F.2d 897 (3rd Cir. 1991). Where the parties have agreed on the contract's actual terms, disagreements over the interpretation of those terms do not provide a defense to a refusal to sign the contract. See *Teamsters Local 617 (Christian Salvesen),* 308 NLB 601, 603 (1992). The General Counsel bears the burden of showing not only that the parties had a "meeting of the minds" on the agreement reached but also that the document which the respondent refused to execute accurately reflected that agreement. See *Kelly's Private Car Service,* 289 NLRB 30, 39 (1988), enfd. sub nom. *NLRB v. W.A.D. Rentals Ltd,* 919 F.2d 839 (2nd Cir. 1990).

Respondent and the Employer Reached a Meeting of the Minds on the Six Activities Subject to Production Standards and Their Corresponding Metrics

Article 18 of the parties' local agreement deputized the Employer and Respondent to meet to establish work standards.[16] That is what happened on September 4th and 5th. During these meetings, the parties agreed that three of the original nine proposed activities (loading, unloading, and packing) would not be subject to a specific measurement and the parties agreed on metrics for the other six activities. Overwhelming record evidence supports this finding. To this end, Martin Johnston, Alissa Whitt, Bradley Garritson, Anthony Jackson, and Terry Thurber all testified that the parties reached agreement on the production standards numbers by the end of the meetings on September 5th. Furthermore, Alissa Whitt and Bradley Garritson's bargaining notes reflect this agreement, and these same numbers are also captured in Nicholas Mathis' bargaining notes. For the above reasons, I find that there is overwhelming record evidence establishing a "meeting of the minds" concerning the production standards numbers, and this understanding is accurately reflected in the chart contained in the memorandum of understanding.

Nicholas Mathis's testimony denying that the parties reached agreement on production standards by the end of the September 4th and 5th meetings defies logic, is contradicted by Mathis's own writings, portions of Mathis's own testimony, and the credited testimony of Johnston, Whitt, Garritson, Thurber, and Jackson. To this end, Mathis first testified, consistent with all of the above-named witnesses, that by the end of September 4th, all numbers had been agreed upon except for small putaway. (Tr. 250). Then Mathis testified that the parties reached agreement on 13.5 lines per hour for small putaway on September 5th. (Tr. 254). Again, this is consistent with the overwhelming record evidence. But on cross-examination, Mathis made a U-turn. He testified that the parties did not agree to numbers on September 4th and 5th, positing that

[16] Throughout my analysis, I use the terms work standards, production standards, numbers, and metrics interchangeably.

the parties were just discussing what sounded attainable and fair. (Tr. 279-280, 291). In response to my questions, Mathis asserted that the parties did not agree on a metric of 18 boxes for packing even though Mathis's own bargaining notes (as well as Whitt and Garritson's) reflect this fact. Mathis then stupefyingly offered that the numbers reflected in his bargaining notes came from the Connors Group despite Mathis's numbers matching the final numbers reflected in the Employer's notes and incorporated into the MOU. Mathis's testimony is further undercut by Stout's testimony that Mathis called him after the September 5th meetings to report that the parties agreed on LPHs and Mathis went through each activity and its corresponding metric during their phone call. Additionally, Mathis's November correspondences to the Employer both indicated that the parties reached agreement on the production standard numbers during the September meetings, and Mathis' testimony rationalizing these contradictions as him simply being a "smart aleck" strains credulity. Thus, I discredit chunks of Mathis's testimony regarding discussions that took place on September 4th and 5th, including the portion of his testimony where Mathis asserts that the parties did not reach agreement on the production standard metrics.[17]

<u>Record Evidence Establishes a Meeting of the Minds Concerning the Continued Enforcement of the Mack Work Rules at the Employer's Jacksonville Facility</u>

Another central element of the General Counsel and Employer's argument is that the Employer agreed to move to 13.5 LPH for put away OP conditioned on the continued application of the Mack work rules to Jacksonville employees, and that the Union explicitly agreed to this condition at the bargaining table. The record evidence supports such a finding. In this regard, Johnston and Whitt's bargaining notes repeatedly reference Employer agents reminding the Union on September 5th that Mack work rules would continue to apply at the facility. Specifically, in Whitt's notes, Whitt captured Mathis saying "understand that" in response to Whitt reminding him that the work rules would continue to apply. Johnston, Whitt, and Garritson's testimony confirmed that the Employer specifically raised this issue on September 5th, and the Union agreed to it. Plus, Mathis testified that the Mack work rules would continue to apply to bargaining unit employees whether or not production standards were in place. Finally, Craig Stout testified without contradiction that the International Union has no hand in negotiating the Mack work rules and language inserted in the MOU simply stating that the work rules continued to apply in Jacksonville did not alter the parties' Mack master agreement or Local agreement in any way.[18] Thus, there was no confusion or ambiguity here. The Employer stated on September 5th that the Mack work rules would continue to apply at the Jacksonville facility, the Union agreed to this, and language confirming this fact was inserted into the MOU. Based on the above, I find that the parties reached a "meeting of the minds" to include language

[17] In making credibility resolutions, the trier of fact may believe some, but not all, of a witness's testimony. *Daikichi Sushi,* 335 NLRB at 622; *NLRB v. Universal Camera Corp.*, 179 F.2d 749 (2d Cir. 1950). There are specific portions of Mathis' testimony that I do credit however, either because they are supported by documentary evidence or more grounded in logic and reality. I will address these findings later in my decision.

[18] Stout's assertions carry extra weight because he was the only witness who testified in this case that participated in negotiations for both the Mack master agreement and the Jacksonville Local agreement. (Tr. 360).

in the MOU confirming the continued application of Mack work rules at the Jacksonville facility.[19]

<u>Record Evidence Does Not Establish a Meeting of the Minds Concerning MOU Language Addressing Future Work Standards Adjustments</u>

The following language inserted into the MOU materially changed Article 18 of the parties' local agreement:

> "The Work Standards reflected above are subject to an ongoing process of adjustment in conjunction with changing operations and the realization of efficiencies. The Company and the Union will meet as necessary to discuss the work standards, their implementation, effectiveness, and subsequent adjustments…"

Because I find that the Union did not consent to this language at the bargaining table nor did the parties agree on the substantive, material, and objective meaning of these sentences, no meeting of the minds has been established.

To be clear, Article 18 only deputized the parties to meet to establish work standards based on appropriate objective methodology. Agreement on the work standards triggered a six-month trial period before progressive discipline linked to the metrics would begin. And if the parties could not agree on numbers, Article 18 required the parties to mutually agree on a 3rd party empowered to establish work standards. Article 18 was part of a Local Agreement executed by the parties and ratified by the Union's membership. But Article 18 said nothing about adjusting the work standards metrics during the life of the contract or even meeting again to discuss this matter.

When the Employer and Union rejected the Connors Group's numbers, they agreed to try again to reach agreement on production standards. I credit Craig Stout's testimony regarding the purpose of this meeting and why he was comfortable with the Union proceeding without him on September 4th. To this end, Stout testified that Mathis told him that the purpose of the meeting was to discuss lines per hour. Similarly, either Holly Georgell or Alissa Whitt told Stout that the purpose of the meeting was to discuss production standards. From Stout's perspective, the parties were on the same page regarding the purpose of their discussion – a purpose that flowed directly from Article 18. Since Mathis and the Union committee were far more familiar with the Employer's workflow, and negotiating numbers did not require a membership ratification vote, Stout explained to both Mathis and Whitt that he had a conflict on September 4th, but the meeting could proceed without him. I found Stout to be an earnest, forthright, and credible witness. His calm demeanor signaled his fidelity to the truth and his testimony reflected this. Stout was keenly aware that he was not present for the parties' negotiations on September 4th and 5th. Instead, Stout simply tried to convey his conversations with Mathis and the Employer before and after September 4th, identifying the contradictions he was hearing, but not passing judgment

[19] Since the parties agreed that three activities (loading, unloading, and packing) would not be tethered to a specific production metric, the Mack work rules allow the Employer to impose progressive discipline for conduct like "wasting time during scheduled work hours" and "performing careless or poor workmanship." (GC Ex. 6).

on either side for presenting him with such a muddled picture of what was discussed in Jacksonville. Thus, I credit Stout that the understood purpose of the meeting was simply to reach agreement on production standards numbers.

Work Standards Adjustment Language was a Material Term of the MOU

In its post-hearing brief, the Employer asserts that MOU language regarding work standards adjustments alters no rights, creates no obligations, and thus is not a material term in the MOU.[20] To support its claim, the Employer points to Stout's testimony that nothing in the Local Agreement says that the work standards cannot be revisited and with proper notification, they could be. But the Employer ignores Stout's earlier testimony asserting that this MOU language changes the work standards language in Article 18 and such an important modification to Article 18's basic charge requires ratification because it alters the process already approved by the Union membership.

Finding a violation here requires a meeting of the minds regarding this material term. But the parties' cursory discussion of this subject on September 5th, and the Employer's unwillingness to pass draft language for the Union's review, contribute to my finding that the Union did not agree on the actual terms governing the adjustment process. To this end, Whitt's notes indicate that Garritson said "efficiency gains will revisit." Whitt's notes then capture her own words said at the table:

> "Efficiency gains. Not just load/unloading. As things change improvements, investments, changes etc. where efficiency gains. Targets will increase and will need to come together to discuss."

But the only place in Whitt's notes indicating that Mathis agreed with and understood the Employer's position did not immediately follow Whitt's comments on efficiency gains. Instead, Whitt's attribution to Mathis of "understand that" immediately followed Whitt's comments that the Mack work rules would continue to apply.[21] Similarly, Johnston's testimony that Mathis' response to the Employer's position was "acknowledgement, acceptance, agreement, and support," while catchy, does not appear to be based on any verbal feedback Mathis or the Union bargaining committee members offered at the table.

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[20] Counsel for the General Counsel makes this same argument in his post-hearing brief, asserting that the two conditions (application of Mack work rules and agreeing to meet again when efficiencies require reexamination of the metrics) merely restate undisputed obligations already imposed by the parties' CBA or by law.

[21] On page 20 of its post-hearing brief, Counsel for the General Counsel asserts that the statement "will have meetings with changes" at the bottom of Mathis' bargaining notes is consistent with the Employer's account that the parties agreed to revisit standards if operational needs changed. I do not agree. "Will have meetings with changes" has two plausible explanations – the first being the meaning the GC and Employer ascribe to it. But an equally plausible explanation is that Mathis is referring to the regular meetings Whitt insisted were necessary as the parties worked through the kinks of the six-month trial period.

Whitt's notes then restated that they have an agreement on the numbers, work rules apply, and efficiency gains – will increase targets. Johnston's notes also reflect what the Employer said on this subject, not that the Union understood or agreed to what the Employer was suggesting. In this regard, Johnston's notes state that Garritson said that they "need to revisit future efficiencies gains in the event LPH improves. Johnston then memorialized Whitt's remarks by writing "efficiency gains, importance of addressing deviations, understand parties will discuss need to revise LPH in future." Johnston also captured Whitt reiterating her point that "efficiency gains will be revisited as needed." Thus, the record is replete with notes and testimony capturing the Employer's understanding, but the record is bereft of detailed, reliable evidence establishing that the Union shared the Employer's understanding regarding the import of the work standards adjustment language. As a result, there is insufficient evidence of the "meeting of the minds" necessary to establish a violation here.[22]

Furthermore, as noted above, different Employer representatives captured slightly varying accounts of what was said at the bargaining table. But neither Whitt, nor Garritson, nor Johnston drafted the MOU. Instead, some unidentified individual, who was not present for the conversation in Jacksonville on September 5th, drafted the MOU – language that was not shared with the Union before September 17th. This disconnect further supports my finding that the Union never endorsed or understood the work standards adjustment language contained in the MOU.

<u>Case Law Relied on by the Employer to Support Finding a Violation is Distinguishable from the Facts Here Because No Draft Language was Given or Read to the Union During Bargaining</u>

The Employer principally relies on *Chauffeurs, Teamsters, and Helpers Local Union No. 771 (Pennsy Supply, Inc., d/b/a Ready-Mixed Concrete),* 357 NLRB 2203 (2011) to support finding an 8(b)(3) violation here. I find this case distinguishable. In *Local 771,* the parties were negotiating a successor contract and entered their final bargaining session with three unresolved issues. By the end of the session, the parties reached an agreement, the Employer presented the union with a typed tentative agreement at 12:20pm and after reviewing the document, the union representative agreed to the language at 1:05pm. Shortly thereafter, the parties stood and shook hands and congratulated each other on finishing the new agreement. *Id.* at 2205. A few days later, the union representative reached out to the employer to say that his boss "had some issues" with the agreement, which prevented the union from signing the document. The employer

[22] I found Alissa Whitt to be an authentic and credible witness. Her recall was detailed and specific and most of her testimony was corroborated by her bargaining notes and the testimony of the General Counsel's other witnesses. In observing Whitt's tone and demeanor, Whitt was truly convinced that the parties had reached an agreement on September 5th and she was genuinely miffed at the Union's unwillingness to sign the MOU. But nothing in Whitt's testimony convinced me that the parties had discussed the concept of future production standards adjustments in anything other than the broad strokes referenced in Whitt's bargaining notes, and certainly not to the level of specificity needed to bind the Union to the equally vague process first laid out in writing for the Union in the MOU. Thus, I am comfortable crediting Whitt's testimony but also crediting Craig Stout's testimony that the MOU language as drafted would modify the parties' Article 18 language and require Union membership ratification, and International Union buy-in, to proceed.

listened to the union's concerns but rejected each of them. The union then refused to sign the agreement. *Id.* The ALJ and the Board found that the parties had reached a "meeting of the minds" on the terms of a new contract, with the ALJ placing special emphasis on the union representative's admission that he reviewed and approved the written agreement without modifications. *Id.* at 2207. In our case, the Employer did not provide the Union with written proposed language covering work standards adjustments during the September 5th meeting. Nor did the Employer read proposed language to the Union. Instead, Employer representatives spoke vaguely about efficiency gains, targets increasing, and coming together to discuss these things, with no indication that the Union understood what the Employer was suggesting because no language was passed between the parties. Therefore, the facts here are distinguishable from *Local 771.*

Similarly, the Board in *Windward Teachers Association* found that the parties had reached a "meeting of the minds" on new bonus language. 340 NLRB at 1150-1152. In doing so, the Board emphasized the union's multiple reviews of contractual language without disputing the accuracy of the language or objecting to it. In *Windward*, the union and employer were negotiating a successor contract with the assistance of a mediator. The employer wished to memorialize in the contract its practice of paying bonuses to teachers who perform certain activities. The employer provided a draft summary of the parties' agreement at the last bargaining session, and the mediator reviewed each item with the union. The union requested clarifying language for several provisions, but not the bonus provision. The employer agreed to these changes and promised to send the union a revised copy of the agreement incorporating all negotiated changes. The parties then congratulated each other on completing negotiations on a successor agreement. After receiving and reviewing the revised copy of the agreement, the union pointed out typographical errors and sought clarification from the employer regarding certain contract provisions. The union did not mention the bonus provision and this language was unchanged from when the mediator reviewed it with the union. The union's bargaining committee endorsed the contract, and membership ratified the agreement after reviewing a copy of the agreement and a 2-page highlights sheet. About a month later, the union refused to sign the new contract, asserting that the bonus language did not accurately reflect what the parties had agreed to during bargaining. The Board found an 8(b)(3) violation, stating that the parties had reached a meeting of the minds on the bonus language, the union reviewed several versions of the contract without objecting to the terms of the bonus clause or disputing its accuracy, and the union provided this same language to its membership, who had the opportunity to read it and vote on it. *Id.* at 1151. Unlike in *Windward,* the Union in our case was not given draft MOU language at the bargaining table. Its first look at the MOU came two weeks later and Mathis immediately questioned where the work standards adjustment language came from because the Union had not agreed to this language at the bargaining table. Therefore, the facts in *Windward* are distinguishable from our case.

Mathis Consistently and Credibly Expressed His Concerns About the Union's Lack of Access to Data and Methodologies for Measuring Employee Productivity and These Concerns Fueled Mathis's Reasonable Belief that the MOU Language Regarding Adjustments to Work Standards Allowed the Employer Unlimited Opportunities to Change Work Standards During the Life of the Contract

As noted earlier, good portions of Nicholas Mathis's testimony about the September 4-5 meetings defies logic and runs counter to overwhelming record evidence. But certain aspects of Mathis's testimony deserve credit, and the following paragraphs explain why. Mathis inherited Article 18 language that he did not negotiate. (Tr. 350). This language mandated the parties to meet and establish work standards based on appropriate objective methodology. And Mathis took this charge to heart. He testified without contradiction that he pushed back on former Jacksonville site manager Douglas Brady's initial work standards proposals. Mathis asked for the data and methodology[23] underlying these numbers, but Brady refused to supply them. So, Mathis triggered the Connors Group option because their sales pitch emphasized the methodologies and metrics used to conduct their time studies. (Tr. 221). When the Connors Group numbers came in too aggressively, the parties pivoted back to face-to-face negotiations, but Mathis continued to question the opaqueness of the Employer's proposed methodologies. To this end, Mathis's August 21st email highlights the bargaining unit's concerns with the Employer using lines per hour as a baseline for certain activities unsuited for such measurement. Mathis pushed the Employer to "establish an indirect labor function to accurately capture the work involved" and "ensure that the focus remains on customer satisfaction, quality assurance, and safety, particularly regarding ergonomics." (GC Ex. 5).

Mathis explained his mindset during his trial testimony. He opined that there is more to objective methodology than just lines per hour. Employees rushing out the door to meet a time target leads to quality concerns along with reductions in customer satisfaction. (Tr. 232-233). And in Mathis's view, as the local president of a predominantly older workforce, production standards must incorporate downtime and restroom time and consider ergonomic and safety concerns. (Tr. 218, 319). In observing Mathis's tone, demeanor, and content during this portion of his testimony, I found Mathis to be a man genuinely concerned for his colleagues' wellbeing and willing to push the Employer hard to reach fair and attainable production standards.

Alissa Whitt's bargaining notes confirm Mathis' focus on data and methodology continued at the September 4 and 5 meetings. At the outset of the September 4th meeting, Mathis asked "what is the methodology? How is data being kept up with" in the system? (GC Ex. 3). And in their afternoon session, Whitt's notes reflect that Mathis had qualms regarding proposed measurements for four of the activities, asking who was keeping up with the data because nothing had been entered into the system.[24] Furthermore, Mathis's credibility on this subject is bolstered by the Employer's agreement to remove lines per hour metrics from loading, unloading, and packing activities.

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[23] Transcript references to "mythology" should be changed to "methodology" on the following pages: 218, 220-221, 224-226, 231, 233, 238, 246, 252, 272, 281-283, 306, 308, 318, 320, 330, 334, and 350.

[24] Terry Thurber echoed Mathis' concerns when he questioned how the Employer landed on specific metrics for these activities without standard operating procedures (SOPs) for these jobs. (GC Ex. 5).

One other aspect of Mathis's testimony warrants credit – his reasonable belief that the draft language in the MOU granted the Employer the right to make multiple adjustments to the production standards metrics throughout the life of the 2023-2028 local agreement. In this regard, I find that at the conclusion of the September 5th meetings, Employer representatives told the Union that it would draft a memorandum of understanding reflecting the parties' agreement. But I also find that the Employer's remarks to the Union on September 5th about efficiencies and revisiting standards were too skimpy on details to bind the Union to the verbiage first laid out in the MOU. No language was ever passed to the Union at the bargaining table on September 5th. Thus, with no terms written in black and white, all the Union was left with was its subjective interpretation of the parties' discussion. Mathis testified that he expected the MOU to be written together, containing verbiage contributed by the Union, its membership, and Stout. (Tr. 305, 330). That's a reasonable expectation considering three parties – the Union, International, and Employer must sign the document. Mathis also testified that he believed the numbers negotiated in early September were supposed to run for the life of the CBA. After all, no language in Article 18 explicitly referenced revisions after setting the initial production standards. Thus, Mathis's kneejerk reaction to the ambiguity in the MOU language was that the Employer was allowed to change production standards as often as it liked so long as it discussed the matter with the Union. (Tr. 303-304). Mathis acknowledged that the drafted language did not specifically permit the Employer to change the numbers, but I credit as reasonable Mathis's take that the gray area in the MOU inured to the Employer's benefit. (Tr. 303-304).

One reason I am comfortable crediting the reasonableness of Mathis's perspective on the MOU language is Stout's corroborating testimony. To this end, Stout testified that Mathis called him shortly after receiving the MOU and said that the MOU work standards adjustment language had not been specifically discussed on September 5th, and the Union did not agree with the proposed language. Although I find that the Employer scratched the surface of this issue on the 5th, I also find that Stout informed Alissa Whitt that discussion of language modifying the parties' agreement required Stout's presence because the International Union is a party to the contract. And even though I credit Whitt's testimony that it was not the intent of the MOU language to permit the Employer to unilaterally change the numbers, I credit Stout and Mathis' belief that the proposed language could be construed to permit unilateral action and it modified the work standards language contained in Article 18 of the local agreement. With each party possessing a different perspective on the import of the MOU language after only a cursory discussion on the subject on September 5th, and the Employer drafting the MOU language without input from the Union, it is clear that no meeting of the minds on the work standards adjustment language existed to compel the Union to execute the MOU.[25] Therefore, I recommend dismissal of this complaint.

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[25] Two simple changes could have easily resolved this matter. First, since Whitt testified that the MOU language was not intended to allow the Employer to unilaterally change the production standards numbers, the Employer could have tweaked the MOU language to explicitly state this. Next, since the Employer asserts that the work standards adjustment language in the MOU did not modify any existing rights or contain material terms, the Employer could have excised the entire paragraph below the chart to have the Jacksonville MOU mirror the Baltimore MOU.

CONCLUSIONS OF LAW

1. Mack Trucks, Inc. (the Employer) is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

2. International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, UAW, Local 2420 (the Union or Respondent) is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has not violated Section 8(b)(3) of the Act.

IT IS FURTHER ORDERED that the complaint herein is dismissed in its entirety.[26]

Dated, Washington, D.C. September 3, 2026

Michael P. Silverstein
Administrative Law Judge

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[26]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 due under the terms of this Order.