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Tim Force Tin Shop, Inc. and International Association of Sheet Metal, Air, Rail, and Transportation Workers (Smart) Northwest Regional Council Local 103. Case 27–CA–322370

September 30, 2026

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY
AND MAYER

On March 28, 2025, Administrative Law Judge John T. Giannopoulos issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge’s rulings, findings,¹ and conclusions and to adopt the recommended Order as modified.²

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusion of Law 4:

“4. By failing to execute and adhere to a previously agreed upon collective-bargaining agreement, the Respondent has violated Section 8(a)(5) and (1) of the Act.”

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Tim Force Tin Shop, LLC, Casper, Wyoming, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 2(e) and reletter the subsequent paragraphs.

¹ The Respondent has excepted to some of the judge’s credibility findings. The Board’s established policy is not to overrule an administrative law judge’s credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² We shall modify the judge’s conclusions of law to conform with the violations found. We shall also modify the judge’s recommended Order to conform to the Board’s standard remedial language and in accordance with our decisions in *Excel Container, Inc.*, 325 NLRB 17 (1997), and *Cascades Containerboard Packaging–Niagara*, 370 NLRB No. 76 (2021), as modified in 371 NLRB No. 25 (2021). We shall substitute a new notice to conform to the Order as modified.

“(e) File with the Regional Director for Region 27, 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 forms reflecting the backpay award.”

2. Substitute the following as paragraph 2(g).

“(g) Within 14 days after service by the Region, post at its Casper, Wyoming facility copies of the attached notice marked “Appendix.”³ Copies of the notice, on forms provided by the Regional Director for Region 27, 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 email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 1, 2023.”

3. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. September 30, 2026

James R. Murphy,

Chairman

The judge ordered remedies consistent with the Board’s decision in *Thryv, Inc.*, 372 NLRB No. 22 (2022), vacated in part on other grounds 102 F.4th 727 (5th Cir. 2024). As fully explained in *Leo Marine Services, Inc.*, 375 NLRB No. 35, slip op. at 5 fn. 17 (2026), Chairman Murphy and Member Mayer agree to apply *Thryv* in this case for institutional reasons. Member Prouty continues to believe that *Thryv* was correctly decided, is well within the Board’s remedial authority, and is necessary to satisfy the Board’s statutory obligation to provide meaningful make-whole relief. *Ibid.*

³ 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.”

David M. Prouty, Member

Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT fail and refuse to execute a collective-bargaining agreement we reached with the International Association of Sheet Metal, Air, Rail, and Transportation Workers (SMART) Northwest Regional Council Local 103 (the Union).

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

WE WILL execute and adhere to the collective-bargaining agreement we reached with the Union (the 2023 CBA), and give retroactive effect to the agreement, in accordance with its terms, covering our employees in the following appropriate bargaining unit:

All employees of the employer engaged in but not limited to the (a) manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, alteration, repairing and servicing of all ferrous or nonferrous metal work and all other material used in lieu thereof and of all HVAC systems, air-veyor systems and air handling systems regardless of material used including the setting of all equipment and all reinforcements in connection therewith; (b) all lagging over insulation and all duct lining; (c) testing and balancing

of all airhandling equipment and duct work; (d) the preparation of all shop and field sketches whether manually drawn or computer assisted used in fabrication and erection, including those taken from original architectural and engineering drawings or sketches; (e) metal roofing; and (f) all other work included in the jurisdictional claims of SMART International Association.

WE WILL make unit employees whole for any loss of earnings and other benefits suffered as a result of our unlawful failure and refusal to execute and adhere to the 2023 CBA, plus interest.

WE WILL make all required payments to the pension and benefit funds as required in the 2023 CBA, on behalf of unit employees, in the event we discontinued or were delinquent on any such payments since July 1, 2023, and WE WILL make unit employees whole for any loss of earnings and other benefits, including any direct or foreseeable pecuniary harms, suffered as a result of our failure to make these contributions, plus interest.

WE WILL compensate unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 27, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

WE WILL file the Regional Director for Region 27, 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 forms reflecting the backpay award.

TIM FORCE TIN SHOP, INC.

The Board's decision can be found at www.nlrb.gov/case/27-CA-322370 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.



Angie Berens, Esq., for the General Counsel.
Daniel Hutzenbiler, Esq. (McKanna, Bishop, Joffe, LLP), for the
General Counsel.

Michael Holmes Cyndi Sauter (Burdzinski & Partners, Labor
Relations Consultants), for the Respondent.

DECISION

STATEMENT OF THE CASE

JOHN T. GIANOPOULOS, Administrative Law Judge. Based upon charges filed by the International Association of Sheet Metal, Air, Rail, and Transportation Workers (SMART) Northwest Regional Council Local 103 (Union or Local 103), a Complaint and notice of hearing (complaint) issued on July 17, 2024, alleging that Tim Force Tin Shop, Inc., (Respondent or Tim Force) reached an agreement with the Union on a new collective-bargaining agreement, and has violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by refusing to execute and to adhere to the terms of the agreement, including by failing to pay the wage rates, benefits, and trust fund contributions called for in the contract. On July 31, 2023, Respondent filed its Answer, denying the unfair labor practice allegations. By agreement of the parties, this matter was tried before me by video conference on January 7, 2025.

After considering the entire record, including my observation of witness demeanor, and having reviewed the briefs filed by the Counsel for the Acting General Counsel (General Counsel) and Respondent, I make the following findings of fact and conclusions of law.¹

I. JURISDICTION AND LABOR ORGANIZATION

Respondent is a Wyoming corporation with an office and place of business in Casper, Wyoming, where it provides residential and commercial heating, ventilation, and air conditioning (HVAC) services and installation. In conducting its operations, Respondent purchases and receives at its Casper, Wyoming, facility goods valued in excess of \$50,000 directly from points located outside the State of Wyoming. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent also admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act. Accordingly, I find that this dispute affects commerce and the National Labor Relations Board (the Board) has jurisdiction pursuant to Section 10(a) of the Act.

II. FACTS

A. Background

Tim Force is owned by Jim Barankiewicz (Barankiewicz), whose father started the company in Casper, Wyoming in about 1965. Barankiewicz has owned and managed the company since 1990. Tim Force has been a union contractor since its inception, and until the dispute at issue in this case, Respondent has always worked under a signed contract with the Union. The most recent collective-bargaining agreement Tim Force signed with the Union covered the period from July 1, 2022, through June 30, 2023 (2022 CBA).² (Tr. 78, 80–81, 83, 88; GC Exh. 2, p. 12.)

Although Casper, which is located in the eastern half of central Wyoming, is the state's second largest city with a population of around 59,000 people, it is somewhat isolated from other population centers in the area.³ By car, Casper is about 181 miles away from Cheyenne, Wyoming, 370 miles away from Idaho Falls, Idaho, and over 500 miles away from Helena, Montana.⁴ There are only two unionized HVAC contractors in the Casper area, Tim Force and Arrowhead Heating & Airconditioning (Arrowhead), which is owned by Michelle Sorensen (Sorensen). Casper area Local 103 members have a history of going "back and forth," sometimes working for Arrowhead, and upon layoff, going to work for Tim Force, or vice versa. (Tr. 18, 42, 69–71, 74–75.)

Local 103's main offices are located in Helena, Montana. Bradon Leatham (Leatham), is Local 103 regional manager, responsible for overseeing the Union's operations in Casper; he lives in Idaho Falls, Idaho, where he also keeps an office. As regional manager, Leatham is responsible for organizing workers, contract enforcement, and overseeing the Union's daily operations, including financial matters and office administration. At the time of the hearing, Leatham had been the Union's regional manager for a about a year and a half. Before becoming regional manager, Leatham was a business representative for the Union. (Tr. 16–17, 31; GC Exh. 1(a), 1(c).)

Historically, as the only two unionized HVAC contractors in Casper, Tim Force and Arrowhead negotiate together with Local 103 for a new collective-bargaining agreement. Once an agreement is reached, they sign separate contracts with the same terms. Collective-bargaining negotiations generally start with an informal meeting between the two contractors and the Union, after which they follow up with emails. For years the parties signed agreements with a 3-year term. However, this changed sometime around 2017, when they started signing contracts with a one-year renewable duration. (Tr. 19, 31, 64, 84.)

It also appears that, in the past, the Union operated a referral

¹ Testimony contrary to my findings has been specifically considered and discredited. The demeanor of each witness was assessed during their testimony and considered in my findings.

² Transcript citations are denoted by "Tr." with the appropriate page number; citations to the General Counsel exhibits are denoted by "GC EXH." Transcript and exhibit citations are intended as an aid only. Factual findings are based upon the entire record and may include parts of the record that are not specifically cited. Transcript page 14, line 12 should read "MR. HOLMES" instead of "MR. HUTZENBILER."

³ See
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- <https://www.census.gov/quickfacts/geo/chart/caspercitywyoming/PST04023>. I take judicial notice of Wyoming's population. *Hollinger v. Home State Mut. Ins. Co.*, 654 F.3d 564, 571–72 (5th Cir. 2011) ("United States census data is an appropriate and frequent subject of judicial notice.")

⁴ I take judicial notice of Casper's location, and its distance from Cheyenne, Idaho Falls, and Helena. See *United States v. Perea-Rey*, 680 F.3d 1179, 1182 (9th Cir. 2012) (Court takes judicial notice of Google map and satellite images); *Pahls v. Thomas*, 718 F.3d 1210, 1216 fn. 1 (10th Cir. 2013) (same); Fed. R. Evid. 201(b).

service or hiring hall that supplied Tim Force and Arrowhead with qualified workers, including journeymen and apprentices. Indeed, Article IV, Section 1, of the 2022 CBA reads as follows:

The union agrees to furnish upon request by the Employer, duly qualified journeymen, Classified, apprentice and pre-apprentice, sheet metal workers in sufficient numbers as may be necessary to properly execute work contracted for by the Employer in the manner and under the conditions specified in this Agreement.

In practice however, the Union did not have a sufficient supply of qualified workers in the area for referral. Barankiewicz testified that the Union used to provide Tim Force with employees years ago, but they no longer did so, as “[t]hey just don’t have them anymore.” (Tr. 87.) Therefore, Tim Force had to find its own employees. Local 103’s inability to refer qualified union journeymen and apprentices to Tim Force was an issue for Barankiewicz, as the parties prepared to negotiate a successor agreement in 2023. (Tr. 84, 87–88; GC Exh. 2.)

B. Negotiations for a successor agreement

By its terms, the 2022 CBA was set to automatically renew for one year on June 30, 2023,⁵ unless a party to the agreement provided notice of their intent reopen negotiations, no less than 90 days prior to the renewal date. On February 3, Local 103 sent a letter to Tim Force and Arrowhead informing them of their intention to open negotiations “for the Casper, Wyoming area C.B.A.,” at a future “date and time that is mutually agreeable for both parties.” (GC Exh. 3) (Tr. 21–23; GC Exh. 2, 3.)

On April 14, Leatham emailed Barankiewicz and Sorensen to inquire about their availability to meet and begin contract negotiations. In his April 14 email, Leatham wrote that the Union was planning to meet with its members on May 9 and asked whether Barankiewicz and Sorensen would be available to meet on May 10 and 11 to discuss opening proposals. Sorensen replied on April 17, saying that she was available to meet on May 10. Barankiewicz did not respond to the email.⁶ (Tr. 22–23, 25, 57, 81; GC Exh. 4.)

The parties met in Casper on May 10, at about 10:00 a.m. Present was Leatham, Barankiewicz, Sorensen, and two business representatives from Local 103. At this meeting, there was an open discussion about what was happening in the Casper area, ongoing work, upcoming work, wages, and various manpower needs, including the status of apprentices and journeymen. (Tr. 25–26, 82, 91.)

During the meeting, Barankiewicz complained that he needed help and that nobody in the area wanted to work. He also com-

plained about the Union not being well represented in the area anymore, that Local 103 “can’t get guys,” and said Tim Force was having a difficult time hiring workers. (Tr. 81–82; GC Exh. 5) At the meeting, the Union offered to pay for direct worker advertisements for Tim Force to help the company find workers. Sorensen said that she could also use advertisement assistance for summer help, but the Union responded that it would be hard to keep seasonal workers. The parties discussed the fact they were already working at a one to one ratio, with no apprentices, and lamented that there were no recruiting or other efforts to help change the situation. The topic of non-union contractors in the area was also discussed. The parties noted that the non-union shops were paying higher wages, but generally did not offer any benefits other than a few employers who offered healthcare. Before taking a lunch break, a conversation took place about potential changes the 2022 CBA. After their open discussion, the parties broke for lunch. (Tr. 26, 30, 81–82; GC Exh. 5.)

After returning from lunch, the Union made an initial verbal proposal for a successor collective-bargaining agreement (2023 CBA), based upon input they had received from members the previous day. The Union proposed increasing economics by \$1.60 per hour,⁷ along with a \$5 increase in payments for service calls and the per diem rate. The Union also proposed an 8-hour paid holiday for Labor Day, however both Tim Force and Arrowhead were solidly against this proposal. (Tr. 27–29; GC Exh. 5–6.)

The Union also discussed changing vacations and moving money from pension contributions for apprentices, who receive a full retirement, to wages in order to help with recruitment by increasing the hourly pay rate. Sorensen replied saying that vacation changes would not affect Arrowhead. As for Barankiewicz, he said that he was not sure if he was going to be in business. (Tr. 27, 82; GC Exh. 5.)

The meeting ended with Leatham saying that he needed to connect with one of the Local 103 business representatives to discuss college HVAC service programs in the area, and would follow up in writing with the Union’s proposals. For her part, Sorensen said she was probably good with the Union’s proposals, but that she needed to speak with Barankiewicz. When asked if he agreed “to the CBA language at that meeting,” Barankiewicz testified “[n]o, sir.” (Tr. 82.) The meeting ended around 2:30 p.m. (Tr. 29, 31, 82; GC Exh. 5.)

Leatham went back to his hotel room and emailed Sorensen and Barankiewicz a recap of their negotiations, noting that the Union agreed to drop the Labor Day leave proposal. He also attached to the email a summary of the Union’s proposals that were presented at the meeting that day. The attached proposal

⁵ All dates are in 2023 unless otherwise noted.

⁶ At the hearing, Respondent’s representative took the position that Barankiewicz did not receive any of the emails in this matter that were sent by Leatham to the Tim Force office email address. (Tr. 25, 60.) Leatham testified that he typically uses the Tim Force office email address to send information to Barankiewicz, who specifically told him to send emails to this address; he also testified that Barankiewicz typically does not send a reply to emails. (Tr. 25, 32, 37, 57, 67.) None of the emails Leatham sent to Barankiewicz at this address bounced back; nor did Leatham receive a notice that any of the emails were undeliverable. And, Barankiewicz admitted to receiving at least one of the emails at

issue in this case that Leatham sent to the Tim Force office email address. (Tr. 92–93, 97.) Under these circumstances, I find that all of the emails in question in this matter that Leatham sent to the Tim Force office email address were received by Barankiewicz. See *Gaffigan v. Does 1–10*, 689 F.Supp.2d 1332, 1342 (S.D. Fla. 2010) (Finding that e-mails sent to defendants that did not bounce back were presumptively sent to valid email addresses that reached defendants.).

⁷ According to Leatham, the way in which the \$1.60 increase would be divided across pay and benefits would be decided by the members. (Tr. 28)

summary reads as follows:⁸

Item #1	1 year contract.
Item #2	Increase of \$1.60 per hour. All fund increases to be deducted from increase.
Item #3	Increase per diem rate by additional \$5.00 per day.
Item #4	Increase of on call by \$5.00.
Item #5	8 hours of pay for Labor Day. When employee is full time. (AGREE TO DROP)

Leatham ended the email by telling Sorensen and Barankiewicz to call him if they had any questions. (Tr. 31–32; GC Exh. 6.)

Around May 15, Leatham testified that he called Barankiewicz, and spoke with him on the phone about the proposed changes to the 2022 CBA. During the call Barankiewicz told him that he was undecided about the new contract. (Tr. 33.)

Barankiewicz initially testified that he thought the parties had another very short meeting where he wanted to discuss the cost of health care and insurance, but was told that the only thing they could bargain about was wages and benefits, and not health care or pensions. However, Barankiewicz later testified that he was unsure sure if this discussion, which he said happened sometime perhaps around the end of May, occurred during a meeting, saying instead that “maybe it was just a phone conversation.”⁹ (Tr. 92) (Tr. 82–83, 91, 92.)

Based upon the discussions that took place on May 10 about manpower issues, the Union had placed help wanted advertisements seeking service technicians for Tim Force. On May 25, Leatham contacted Barankiewicz to discuss the advertisements and the related employee interviews. During this call Leatham also asked Barankiewicz if he had made a decision on the Union’s 2023 CBA proposals. Barankiewicz told Leatham that he had not made any decisions on the contract. (Tr. 33–34.)

On May 30, Leatham emailed Barankiewicz directly, at the Tim Force office email address, and copied Arrowhead on the correspondence. The subject line of the email read: “Negotiations.” In the email, Leatham wrote “I was just getting back with ya after our phone call to see if you had a chance to talk to Michelle [Sorensen] about the proposal. Let me know when you can.” (GC Exh. 7) According to Leatham, this email was prompted by Sorensen, who had inquired as to whether Leatham had heard anything from Barankiewicz. Barankiewicz did not respond to Leatham’s email. (Tr. 34–35, 57; GC Exh. 7)

C. Mid-June conversations between Leatham and Barankiewicz

1. Leatham’s testimony

Leatham testified that the Union had scheduled a membership meeting in Casper for June 13, so he telephoned Barankiewicz on June 12. According to Leatham, this call lasted almost an hour. During their phone call Leatham said the two discussed

manpower issues and talked about the service technicians Barankiewicz had interviewed. Leatham also told Barankiewicz that he would be heading to Casper on June 13 to meet with the Union’s members, and that he was planning to present the 2023 CBA proposals to them for ratification. Leatham asked Barankiewicz if he had made a decision on the proposed 2023 CBA, and Barankiewicz responded by saying that he had not yet done so. Leatham told Barankiewicz that he would contact him the next day. (Tr. 35–36.)

After the June 12 telephone conversation, Leatham sent an email to Barankiewicz and Sorensen. The email, which was sent at 11:36 a.m. on June 12, has a subject line that reads: “Casper tentative agreement,” and reads as follows:

Michelle and Jim,

Please see attached for review. If you have any questions, concerns, language corrections, or accept the proposal please reply all.

Thank you both

Attached to the email was a one page document titled “2023 Tentative Agreement Casper Area CBA.” The document contained a summary detailing the proposed 2023 CBA and changes to language in the existing contract. The summary included the following:

- A one year contract.
- An increase of \$1.60 per hour, with all fund increases being deducted from this amount.
- An increase of the per diem rate by \$5.00 per day.
- An increase of on call pay by \$5.00 per week.
- Adding language to the agreement to help recruit new apprentices, by reallocating “the Northwest Pension funds to the taxable wage rate for 1st and 2nd year apprentices” thereby “putting more money on the check.”
- Removing the vacation deduction from the apprentices, which would “only apply to new apprentices indentured after July 1, 2023.”
- Adjusting language in the existing agreement to accommodate for the proposed changes regarding apprentices, their pay, vacations, and pensions, while also making changes to the existing contract with respect to “travelers,”¹⁰ who would no longer have vacation “deducted” while working within Local 103’s jurisdiction.

Barankiewicz did not respond to the email, but Sorensen did. On June 13, just before 8:00 a.m., Sorensen emailed Leatham directly writing:

second, in person, meeting occurred and I find that this discussion occurred over the phone.

⁸ Unless otherwise noted, all of the emails and testimony are quoted verbatim.

⁹ No documents were introduced into evidence showing that a second, in person, meeting was scheduled or occurred between the parties, nor did Leatham testify about a second meeting. (Tr. 82.) Leatham did testify that he had six or seven phone calls with Barankiewicz about the 2023 CBA. (Tr. 62.) As such, the evidence does not support a finding that a

¹⁰ “Travelers” is a term generally used to describe members of one local union who seek work within the jurisdiction of another local union that is affiliated with the same International. See e.g., *IBEW Local 309 (R. Dron Electrical Co., Inc.)*, 212 NLRB 409, 409 (1974) (describing “travelers”).

Yes this is good with me I know Jim came by last night and we talked he is not sure yet he said he would call you but you maybe call him and the meeting tonight who will be down for this

Leatham testified that the meeting Sorensen was referring to in her email was the ratification meeting that was scheduled the evening of June 13, where the Union was planning to present the 2023 CBA proposal to the membership for a vote, and if ratified to allocate the economic increase. (Tr. 36–37, 67; GC Exh. 8.)

According to Leatham, the next time he spoke with Barankiewicz was on June 13. On that day Leatham was driving from Idaho Falls to Casper for the Union membership meeting, which was scheduled to start at 5:30 p.m. Leatham testified that he stopped in Jackson Hole, Wyoming, for gas at around 9:00 a.m. Because the reception is “hit and miss” on the drive to Casper, Leatham said he called Barankiewicz while in Jackson Hole to ensure that he had good reception. Leatham testified that, during this phone call, he told Barankiewicz that he was on his way to Casper, and asked if Barankiewicz had time to meet sometime during the afternoon. Barankiewicz told Leatham that he “was busy that day, had some stuff going on, but [to] give him a call when [Leatham] got close to town.” (Tr. 39) (Tr. 38–40.)

Leatham called Barankiewicz again around 3:15 p.m. that day, when he was closer to Casper, and said the pair spoke for about ten minutes. When asked about this conversation by the General Counsel, Leatham testified as follows:

That one was a shorter one. It wasn’t very long at all or whatever. It basically just had conversations and says if he’s got an agreement, if he knew what it was, answer any questions anything like that. And it at the end of that thing, he didn’t really have too many questions. He did have some concerns on how he was going to basically stay in business, things like that on there, too, that he brought up. And at the end of that conversation, he’s like, well, I don’t know what I’m going to do, but go ahead and take the membership. I’m good with it. (Tr. 39–40.)

Leatham also testified that Barankiewicz knew the membership meeting was going to occur at 5:30 p.m. that evening, because during the call he told Barankiewicz that he was going to take the agreement to the “membership tonight for ratification, if we can get it agreed upon.” (Tr. 40.) And, Leatham said that during their conversation it appeared Barankiewicz had familiarized himself with the terms of the Union’s 2023 CBA proposals. (Tr. 39–40, 68–69.)

Later, during cross examination by Respondent, regarding the specifics of the June 13 telephone call with Barankiewicz, Leatham testified about the call as follows:

Yep. We were on there, and that was when I was on my way to Casper. I asked him to call to see if he could have a meeting on there, if he was available at 4:00 still, because I was coming into town. He told me he still wasn’t sure what he was going to do on there, but that he did agree to it. And he says, well, I’m good with it, take it to the membership.

And he didn’t know what he was going to do as far as the business side of it. That’s what he was discussing on the business side. But he did say to me—he’s like, well, I’m good with it,

take it to the membership. (Tr. 62–63.)

Leatham believed Barankiewicz agreed to the 2023 CBA during their conversation. According to Leatham, if Barankiewicz had not agreed to the contract, he would not have held the ratification vote that evening, and would have needed to reach out to his “supervision” for guidance. (Tr. 40) (Tr. 40, 58–59, 62–63.)

2. Barankiewicz’ testimony

Barankiewicz admitted that he spoke with Leatham on June 12 but testified that he did not remember what they talked about that day. He also admitted receiving the June 12 email from Leatham with a copy of the Union’s contract proposals. (Tr. 92–93.)

When asked by the General Counsel if he remembered speaking with Leatham on June 13, after having received the Union’s contract proposals, and while Leatham was driving to Casper, Barankiewicz said “[n]o.” (Tr. 93.) Barankiewicz then testified that he only spoke with Leatham once while Leatham was driving to Casper, and that this conversation occurred either on June “12th or the 13th . . . something like that.” (Tr. 93–94.) Furthermore, Barankiewicz said that Leatham sent him the proposed CBA terms by email *after* this one phone call. And, at the time he received the email, Barankiewicz said that he did not know that Leatham was taking the contract proposals to the membership for ratification. (Tr. 93–95, 98–99.)

After his testimony about only receiving one phone call from Leatham in mid-June, the General Counsel confronted Barankiewicz with an affidavit dated December 7, 2023, that he provided during the underlying investigation of this matter. In the affidavit, Barankiewicz states that on or about June 13, 2023, Leatham called him *twice*. (Tr. 97.) In the affidavit Barankiewicz also says that on or about June 12, 2023, he received an email from Leatham with an attachment; this attachment contained the 2023 CBA proposals. (Tr. 97–98.) When asked if the affidavit refreshed his recollection as to whether he spoke with Leatham again *after* having received the contract proposals, Barankiewicz testified “I guess I must have talked to him twice on—the on the 13th.” (Tr. 98.) Barankiewicz then confirmed speaking with Leatham twice while Leatham was driving to Casper for the scheduled ratification meeting. And, Barankiewicz said that during one of the calls on June 13, Leatham told him that he was taking the 2023 CBA proposals to the members for ratification. (Tr. 95, 98–99.)

When asked by Respondent’s representative if, “at any time during any phone call, email, or personal meeting,” he agreed “to sign a CBA,” Barankiewicz answered “[n]o sir.” (Tr. 86.) Notwithstanding, other than acknowledging that Leatham said he was taking the 2023 CBA to the members for ratification, Barankiewicz did not testify about what was discussed during his June 13 conversations with Leatham or the words he used during those discussions. Nor was Barankiewicz asked to deny the words attributed to him by Leatham on June 13 call.

D. June 13 ratification meeting

The Union held the ratification meeting at 5:30 p.m. on June 13, as scheduled. Eight people were present at the meeting, including Leatham. The employees present were members of Local 103 who worked for either Arrowhead or Tim Force. Leatham

estimated that about five of the members present at the meeting worked for Arrowhead and two worked at Tim Force.¹¹ (Tr. 40–42, 55, 63–64, 69.)

During the meeting every member was handed a copy of the 2023 CBA proposal summary that Leatham had emailed to Barankiewicz and Sorensen on June 12. Leatham then explained to the members the proposed changes to the contract, as outlined in the summary. The membership voted unanimously to accept the 2023 CBA. (Tr. 41, 64.)

E. June 14 email to Barankiewicz and Sorensen

On June 14, Leatham emailed both Barankiewicz and Sorensen informing them of the results of the ratification meeting; the subject line of the email read “CBA ratified and allocated.” In the email, Leatham explained that the members unanimously voted to accept the 2023 CBA, and that the economic increase called for in the agreement was also allocated during the meeting. Of the \$1.60 hourly increase, it was determined that 25 cents would go to health care, 5 or 6 cents would go to the “SASMI” trust fund,¹² depending upon rounding, and the remainder allocated to “taxable” wages. (GC Exh. 9.)

Leatham also wrote that the Union members “were all behind” the changes to the apprentice rates, in order to help with recruitment of more apprentices, and that during the meeting they discussed efforts to recruit more qualified journeymen. According to the email, at the meeting Leatham asked members to reach out to other journeymen or service technicians to help with recruitment. Leatham further wrote that he approved and announced to the members that the Union was implementing a \$250 “bounty” for anyone who recruited a Casper area journeyman installer or service technician who stayed employed for 60 days. (GC Exh. 9.) Also, Leatham stated in his email that the Union “started some Google word search ads,” which would steer people to Local 103 or to other advertisements placed by the Union, when specific words were searched. Leatham ended the email by saying that he would complete the “wage sheets,” and make the contract changes “this week,” and once they were approved he would send them to Barankiewicz and Sorensen for their review. (Tr. 42–43; GC Exh. 9.)

According to Leatham, after notifying Arrowhead and Tim Force of the contract’s ratification, he completed the associated “wage sheet,” which allocates all the wages and benefits for the contract’s term, and is incorporated into the agreement as an attachment. He then sent the wage sheet to his superiors for approval, and to ensure its accuracy. (Tr. 43–44; GC Exh. 2, p. 14; GC Exh. 10, p. 17, 30–32.)

Leatham emailed the finalized 2023 CBA and wage sheet to Arrowhead and Tim Force on July 5. In the email, Leatham apologized for the delay, saying that he believed the Union’s staff had already sent out the information. He also wrote that he would be sending a signed copy of the 2023 CBA to both Tim Force and Arrowhead. (Tr. 44–45, 57–58; GC Exh. 10.)

F. Leatham mails a signed CBA to Barankiewicz and Sorensen

On July 13, Leatham mailed Arrowhead and Tim Force two copies of the 2023 CBA. One copy was signed by Leatham and one copy contained no signatures. Leatham testified that he does this so the employers will have a copy of the contract with his signature to keep, and a copy that they could sign and mail back to him. In the envelope mailed to Tim Force, Leatham included a note which read: “Jim, Please sign and return this page. I signed the complete CBA for your records.” (GC Exh. 11) (Tr. 45–48.)

Barankiewicz confirmed the practice of the parties was that, after the contract was “ratified by the guys,” the Union would send a copy of the agreement in the mail to the employers. Historically, Barankiewicz said he would either sign the agreement and send it back, or sign it and the Union would come to the Tim Force office and pick it up. (Tr. 83.)

Sorensen returned a signed agreement, but Barankiewicz did not. (Tr. 48.) While Barankiewicz admitted to receiving the 2023 CBA in the mail from the Union, he said that he did not sign the agreement because “never agreed to it,” and “wasn’t agreeing to it.” (Tr. 85–86.) According to Barankiewicz, he did not agree to the contract because he “didn’t have any labor . . . any help,” and that he did not see the point of “agreeing to a CBA” if he “only had two guys working for [him].” (Tr. 83–84.) Barankiewicz said that Tim Force “needed more help,” and that he “screamed about it the entire time we were negotiating,” complaining that “the nonunion has got a lot of people up here; we have absolutely none. It’s just awful tough to do business.” (Tr. 84.) Barankiewicz claimed the lack of union labor was affecting his business. He said that Tim Force could not “bid a commercial job” because of the lack of “manpower,” and that he raised these issues with the Union during negotiations, but was never provided a solution to his concerns. (Tr. 48, 84–86.)

Not having heard back from Tim Force, on July 20 Leatham contacted Barankiewicz to ask if he had returned the contract, to “see if it got lost in the mail or what the situation was.” Barankiewicz told Leatham that he had not returned the contract, did not sign it, and was not going to return the 2023 CBA. Leatham asked what Barankiewicz was planning to do instead, and Barankiewicz told him that he had spoken with the “guys that he had working for him at the time,” and he was going to pay them a different wage than what was on the wage sheet. Barankiewicz also told Leatham that he was going to find some health insurance for employees, and possibly a 401(k) match. Leatham said that Barankiewicz gave him “a couple different options of how he’s going to pay them different, but not follow our CBA.” (Tr. 49–50.)

After his July 20 conversation with Barankiewicz, Leatham contacted his superiors to inquire about the Union’s next steps. He then filed the unfair labor practice charge in this matter on July 25. (Tr. 50.)

As for the status of negotiations between the Union and Tim Force, the parties have continued their negotiations for a new

¹¹ While Leatham testified that Tim Force employed three workers as of June 13, Barankiewicz said that he only had two employees. (Tr. 55, 83–84.)

¹² SASMI is an acronym for the “National Stabilization Agreement of the Sheet Metal Industry Trust Fund.” See *Fagan v. Nat’l Stabilization Agreement of Sheet Metal Indus. Tr. Fund*, 60 F.3d 175, 176 (4th Cir. 1995).

collective-bargaining agreement. As of the date of the hearing, Leatham said that the Union was negotiating with Tim Force based upon the terms of the expired 2022 CBA, as Tim Force was taking the position that the 2023 CBA did not apply to Respondent. (Tr. 52, 86–87.)

III. ANALYSIS

1. Legal Standard

Section 8(d) of the Act requires a party to execute a written contract incorporating in one document the provisions agreed to during collective bargaining, if requested to do so by another party. *Washington Stair & Iron Works*, 285 NLRB 566, 566 (1987). And, a party violates Section 8(a)(5) and (1) of the Act if it refuses to do so. *Id.*; see also *H. J. Heinz Co. v. NLRB*, 311 U.S. 514, 525–526 (1941). However, “the Board has no authority to order an employer to execute an agreement to which it has not assented.” *New Orleans Stevedoring Co.*, 308 NLRB 1076, 1081 (1992). “The obligation to execute an agreement arises only after a ‘meeting of the minds’ on all substantive issues occurs.” *Id.* Also, it “is well settled that a union and employer’s adoption of a labor contract is not dependent on the reduction to writing of their intention to be bound.” *NLRB v. Haberman Const. Co.*, 641 F.2d 351, 355–356 (5th Cir. 1981). Instead, a “party’s signifying assent to an unsigned paper can serve as the formation of a contract.” *Id.* *New Orleans Stevedoring Co.*, 308 NLRB at 1081. And, a “verbal acceptance of the terms of a collective-bargaining agreement will bind a party.” *Delta Sandblasting Co., Inc.*, 367 NLRB No. 17, slip op. at 9 (2018), *enfd.* 969 F.3d 957 (9th Cir. 2020). Ultimately, the issue is “one of intention. Did the parties intend to have a contract?” *New Orleans Stevedoring Co.*, 308 NLRB at 1081. In making this determination, the Board is “is not strictly bound by the technical rules of contract law but is free to use general contract principles adopted to the collective-bargaining context.” *Id.* (cleaned up); see also *Delta Sandblasting Co., Inc.*, *supra*.

“To decide when the parties agreed on material terms, the Board looks to mutual expressions of satisfaction about the successful negotiation of a contract as hallmark indications that a binding agreement has been reached at the end of negotiations.” *Dist. 4, Commc’ns Workers of Am. AFL–CIO v. NLRB*, 59 F.4th 1302, 1312 (D.C. Cir. 2023) (cleaned up). Such “hallmark indications” can include handshakes at the conclusion of negotiations or emails with remarks that serve as the equivalent of a post deal handshake. *Id.* They can also include “bargaining unit employees’ unqualified ratification of an expired predecessor collective bargaining agreement together with a document reflecting all of the agreed-on contract changes,” as this is similarly “sufficient to show that the parties reached a binding agreement.” *Id.* (internal quotations omitted). Finally, in determining whether a meeting of the minds occurred, it is also appropriate to evaluate the parties’ conduct against the backdrop of prior negotiations. *Delta Sandblasting Co., Inc.*, 367 NLRB No. 17, slip op. at 9 (2018), *enfd.* 969 F.3d 957 (9th Cir. 2020) (in determining whether there was a “meeting of the minds” it is “appropriate to evaluate the parties’ conduct against the backdrop of their prior negotiations.”); *Coral Reef Operating Sys., LLC*, 369 NLRB No. 47, slip op. at 7 (2020) (same).

2. The historical practice of the parties

Because there are only two signatory contractors in the Casper area, and some unit employees go back and forth, working for Arrowhead when they have been laid off from Tim Force and vice versa, both Arrowhead and Tim Force historically bargain together with Local 103 for a successor collective-bargaining agreement. And, as Barankiewicz testified, the past practice is that when negotiations on a new agreement “get done,” the contract then “gets ratified by the guys.” (Tr. 83.) After the ratification, the Union sends out a copy of the final agreement in the mail for signature. The new contract contains the same terms for both Arrowhead and Tim Force, but each company signs a separate agreement. Historically, Tim Force will either sign the new agreement and mail it back to the Union, or someone from Local 103 picks up a copy of the newly signed contract from the Tim Force office. It is against this backdrop that negotiations for the 2023 CBA transpired.

3. Negotiations for the 2023 CBA

The facts of what occurred leading up to the telephone conversations between Leatham and Barankiewicz before the ratification meeting is firmly established by the record. Barankiewicz, Sorensen, and representatives from Local 103, including Leatham, met in Casper, Wyoming, on May 10 to begin negotiations for a successor collective-bargaining agreement. During the meeting, Barankiewicz expressed his displeasure with the fact that Tim Force was having difficulty hiring workers, and that Local 103 was unable to supply Tim Force with qualified employees. Despite a provision in the parties’ collective-bargaining agreement that says the Union will furnish, upon request, qualified journeymen and apprentices, the record shows that Tim Force was required to hire its own employees, as the Union no longer had a sufficient number of qualified workers in the area for referral. This was an issue for Barankiewicz, which he brought up during the May 10 meeting. And, as a result of these concerns, the Union offered to pay for direct advertisements to solicit qualified employees for Tim Force; Leatham also wanted to meet with the Local 103 business representatives to discuss area college HVAC service programs as a potential recruiting ground.

At this first meeting, the Union presented its initial proposals for a successor agreement orally. After hearing the proposals, Sorensen said that she was probably good with them but that she needed to speak with Barankiewicz. There is no evidence that Barankiewicz said anything about the proposals. After the meeting, Leatham emailed both Sorensen and Barankiewicz a summary of the Union’s proposals for a 2023 CBA that they had discussed that day. Later in May, during a discussion with someone from the Union over the phone, Barankiewicz said he wanted to discuss the costs of health care and insurance, but was told the only thing they could bargain about at the time was wages and benefits, and not health care or pensions.

Leatham called Tim Force at least twice in May to ask if Barankiewicz had made a decision regarding the 2023 CBA, once on May 15, and again on May 25. Both times Barankiewicz told Leatham that he had not made any decisions on the contract.

Sometime between May 25 and May 30, Sorensen reached out to Leatham asking whether he had heard anything from

Barankiewicz regarding the 2023 CBA. Therefore, on the morning of May 30, Leatham emailed Barankiewicz asking whether he “had a chance to talk to talk” to Sorensen about the 2023 CBA proposals; Leatham copied Sorensen on the email. Barankiewicz never responded.

a. June 12 call

Regarding the telephone call between Barankiewicz and Leatham on June 12, Barankiewicz admitted they spoke on June 12, but testified that he did not remember what was discussed. I therefore credit Leatham’s testimony about the June 12 call, as it was not otherwise rebutted. Accordingly, the credited evidence shows that Leatham called Barankiewicz on June 12, as Local 103 had scheduled a ratification meeting with its members in Casper on June 13. During the call, the two discussed the company’s manpower issues along with Tim Force’s interviews of service technicians. During the call Leatham also told Barankiewicz that he was coming to Casper the next day for a ratification meeting with the members. Leatham asked if Barankiewicz had made a decision on the 2023 CBA, and Barankiewicz replied saying he had not. Leatham told Barankiewicz that he would call him the next day.

b. June 13 telephone calls

Leatham drove from Idaho Falls to Casper on June 13, and spoke with Barankiewicz twice that day. Leatham testified about both calls and said that during the first call he asked Barankiewicz if he had time to meet that afternoon, but Barankiewicz told him that he was busy and to call when Leatham was closer to Casper. Leatham then testified that he called Barankiewicz at about 3:15 p.m. as he was nearing Casper and told Barankiewicz that he was going to take the agreement to the membership that night for ratification, “if we can get it agreed upon.” During the call, Barankiewicz told Leatham that he had concerns about how he was going to stay in business. At the end of the call, Leatham testified that Barankiewicz told him that he did not know what he was going to do regarding his business, but as for the contract he said “I’m good with it,” and told Leatham to “take it to the membership.”

During cross-examination, Barankiewicz acknowledged that during one of these calls Leatham told him that he was taking the 2023 CBA proposals to the members for ratification. Otherwise, Barankiewicz did not testify about what was said between the two during their June 13 discussions.

In its brief, Respondent urges that I discredit Leatham’s testimony that Barankiewicz told him to take the agreement to the membership for ratification, arguing that it would “require a leap of logic to be considered realistic,” and that it would be illogical to schedule a ratification vote on an unagreed to collective-bargaining agreement, as there had not previously been any indication that Tim Force would accept the Union’s proposals. (R. Br. at 7–8.) However, the Union had, in fact, scheduled a ratification meeting for the evening of June 13 involving the members that worked for both Arrowhead and Tim Force, and Barankiewicz admitted during his testimony that he knew on June 13 the Union had scheduled a ratification meeting that evening. The evidence also shows that Sorensen knew the meeting was scheduled for the evening of June 13, as she references the meeting in her email

to Leatham that morning. And, Sorensen, who signed the 2023 CBA for Arrowhead, had expressed a willingness to adopt the agreement as early as May 10, when the parties first met.

Also, the fact remains that Barankiewicz *never* testified about the words he used during his June 13 telephone calls with Leatham, despite the fact that he was present during Leatham’s testimony, and was called as a witness *after* Leatham testified that Barankiewicz told him to “take it to the membership,” and “I’m good with it.” Instead, Barankiewicz initially denied that he spoke to Leatham while he was driving to Casper on June 13. It was only after he was impeached with his December 2023 affidavit by the General Counsel on cross-examination that Barankiewicz admitted to speaking with Leatham twice on June 13, while Leatham was driving to Casper for the ratification meeting, and that the conversation occurred after Barankiewicz had received the 2023 CBA proposal. *C. P. & W Printing Ink Co.*, 238 NLRB 1483, 1485 (1978) (“It is well established in the law of evidence that a witness’ prior statement which is inconsistent with his or her present testimony raises doubts as to the veracity of that witness.”). Even then, upon redirect examination by Respondent, Barankiewicz was only asked one question—whether he kept a daily planner. (Tr. 103.) Respondent never asked Barankiewicz about the words he used during his June 13 telephone calls with Leatham, or to refute the testimony that he told Leatham “I’m good with it,” and to “take it to the membership.” Cf. *Troy Grove*, 371 NLRB No. 123, slip op. at 4 fn. 4 (2022) (citing *Flexsteel Industries*, 316 NLRB 745, 757–758 (1995) and noting that the failure to examine a favorable witness regarding factual issues upon which that witness would likely have knowledge gives rise to the strongest possible adverse inference regarding such fact).

Accordingly, I credit Leatham’s testimony as to what occurred during their June 13 telephone calls while Leatham was driving to Casper. Therefore, I find that, during their second call on June 13, Leatham told Barankiewicz that he was going to take the agreement to the membership that night for ratification “if we can get it agreed upon.” Barankiewicz told Leatham that he had concerns about how he was going to stay in business, and while he did not know what he was going to do with his business, regarding the 2023 CBA he was “good with it,” and told Leatham to “take it to the membership.”

4. Barankiewicz’ words evidenced a meeting of the minds regarding the 2023 CBA

Whether Barankiewicz subjectively believed that he had, or had not, agreed to sign the 2023 CBA is immaterial, as a “meeting of the minds is measured not by parties’ subjective inclinations, but by their intent as objectively manifested in what they said to each other.” *Dist. 4, Commc’ns Workers of Am. AFL-CIO*, 59 F.4th at 1312. At the end of their June 13 telephone call, Barankiewicz told Leatham to take the 2023 CBA to the membership, and said “I’m good with it.” Barankiewicz testified, with respect to negotiations, the past practice is that when a new agreement gets “done” the contract then “gets ratified by the guys.” (Tr. 83) And, after the ratification vote the Union sends the complete agreement to the contractors for signature. That is what happened here.

Therefore, at the time that he told Leatham to take the 2023

CBA to the membership, Barankiewicz knew that, based upon prior negotiations, he was agreeing to the terms of the 2023 CBA, as outlined in the attachment to Leatham's June 12 email. *Delta Sandblasting Co., Inc.*, 367 NLRB No. 17, slip op. at 9 (2018), enfd. 969 F.3d 957 (9th Cir. 2020) (in determining whether there was a "meeting of the minds" it is "appropriate to evaluate the parties' conduct against the backdrop of their prior negotiations."). And, the unit employees ratifying the 2023 CBA, in the form of a document showing the proposed changes to the expiring contract, was a "hallmark indication" that negotiations had concluded, a meeting of the minds occurred, and the parties reached a binding agreement. *Dist. 4, Commc'ns Workers of Am. AFL-CIO*, 59 F.4th at 1312 (Bargaining unit employees' unqualified ratification of an expired predecessor collective bargaining agreement together with a document reflecting all of the agreed-on contract changes, was sufficient to show that the parties reached a binding agreement). Accordingly, by failing to sign and adhere to the 2023 CBA, I find that Respondent violated Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

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

2. International Association of Sheet Metal, Air, Rail, and Transportation Workers (SMART) Northwest Regional Council Local 103, is labor organization within the meaning of Section 2(5) of the Act.

3. By failing to execute a previously agreed upon collective-bargaining agreement, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

4. By failing to execute a previously agreed upon collective-bargaining agreement, Respondent has violated Section 8(a)(5) and (1) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to execute an agreed-upon collective-bargaining agreement, I shall order the Respondent to execute and adhere to the agreement and, pursuant to its terms, give it retroactive effect to July 1, 2023. I shall also order the Respondent to make unit employees whole for any loss of earnings and other benefits resulting from its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971),¹³ with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

¹³ "The *Ogle Protection* formula applies where, as here, the Board is remedying a violation of the Act which does not involve cessation of employment status or interim earnings that would in the course of time reduce backpay." *River City Asphalt, Inc.*, 372 NLRB No. 87, slip op. at 1 fn. 2 (2023); see also *Coral Reef Operating Sys., LLC*, 369 NLRB No.

Furthermore, In accordance with the Board's decision in *Thryv, Inc.*, 372 NLRB No. 22 (2022), I shall order the Respondent to compensate unit employees for any other direct or foreseeable pecuniary harms incurred as a result of the company's conduct. Respondent shall also be required to reimburse affected unit employees for any expenses ensuing from its failure to make appropriate pension/benefit fund contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). Such amounts should be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

The Respondent also shall be required to compensate unit employees for any adverse tax consequences of receiving lump-sum backpay awards in accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014), and to file a report with the Regional Director for Region 27, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee pursuant to *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016). Additionally, I shall order the Respondent to preserve and provide, at a reasonable place designated by the Board or its agents, all payroll records and other relevant 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 the Order, in accordance with *Ferguson Electric Co.*, 335 NLRB 142 (2001).

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended¹⁴

ORDER

The Respondent, Tim Force Tin Shop, Inc., its officers, agent-s, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to execute a collective-bargaining agreement the Respondent reached with the Union.

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

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

(a) Execute and adhere to the collective-bargaining agreement reached with the Union, and give retroactive effect to the agreement, in accordance with its terms, covering the Respondent's employees in the following appropriate bargaining unit:

All employees of the employer engaged in but not limited to the (a) manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, alteration, repairing and servicing of all ferrous or nonferrous metal

47 (2020) (Applying *Ogle Protection* to a case involving a refusal to execute a previously agreed to collective-bargaining agreement).

¹⁴ 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.

work and all other material used in lieu thereof and of all HVAC systems, air-veyor systems and air handling systems regardless of material used including the setting of all equipment and all reinforcements in connection therewith; (b) all lagging over insulation and all duct lining; (c) testing and balancing of all airhandling equipment and duct work; (d) the preparation of all shop and field sketches whether manually drawn or computer assisted used in fabrication and erection, including those taken from original architectural and engineering drawings or sketches; (e) metal roofing; and (f) all other work included in the jurisdictional claims of SMART International Association.

(b) Make unit employees whole for any loss of earnings and other benefits suffered as a result of Respondent's unlawful conduct, in the manner set forth in the remedy section of the decision.

(c) Make all required payments to the pension and benefit funds as required in the 2023 CBA, on behalf of unit employees, in the event Respondent discontinued or was delinquent on any such payments since July 1, 2023, and make employees whole for any loss of earnings and other benefits, including any direct or foreseeable pecuniary harms, suffered as a result of the failure to make these contributions, in the manner set forth in the remedy section of this decision.

(d) Compensate unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 27, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years.

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

(f) Within 14 days after service by the Region, post at its facility in Casper, Wyoming, copies of the attached notice marked "Appendix."¹⁵ Copies of the notice, on forms provided by the Regional Director for Region 27, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email,

posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 13, 2023.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 27 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. March 28, 2025

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to execute an agreed upon collective-bargaining agreement that was ratified by our employees and accepted by the International Association of Sheet Metal, Air, Rail, and Transportation Workers (SMART) Northwest Regional Council Local 103 (Union).

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

WE WILL bargain with the Union in good faith by executing and adhering to the collective-bargaining agreement which is effective from July 1, 2023, through June 30, 2024 (2023 CBA), and was ratified by our employees in the following unit (Unit) represented by the Union:

All employees of the employer engaged in but not limited to the (a) manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, altera-

¹⁵ If the Respondent's office and meeting places are open and accessible to a substantial complement of employees and members, the notice must be posted within 14 days after service by the Region. If the office and meeting places involved in these proceedings are closed or not accessible by a substantial complement of employees and members due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the office and meeting places reopen and are accessible by a substantial complement of employees and members. If, while closed or not accessible by a substantial complement of employees and members due to the pandemic, the Respondent is commu-

nicating with employees and members by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." 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."

tion, repairing and servicing of all ferrous or nonferrous metal work and all other material used in lieu thereof and of all HVAC systems, air-veyor systems and air handling systems regardless of material used including the setting of all equipment and all reinforcements in connection therewith; (b) all lagging over insulation and all duct lining; (c) testing and balancing of all airhandling equipment and duct work; (d) the preparation of all shop and field sketches whether manually drawn or computer assisted used in fabrication and erection, including those taken from original architectural and engineering drawings or sketches; (e) metal roofing; and (f) all other work included in the jurisdictional claims of SMART International Association.

WE WILL make our Unit employees whole for any loss of earnings and other benefits suffered as a result of our unlawful conduct, plus interest.

WE WILL make all delinquent payments to the pension and benefit funds as required in the 2023 CBA, on behalf of all Unit employees, in the event we discontinued any such payments since July 1, 2023, and WE WILL make Unit employees whole, with interest, for any loss of earnings and other benefits suffered as a result of our failure to make these contributions, and for any other direct or foreseeable pecuniary harms suffered as a result

of our failure to make these contributions.

WE WILL compensate Unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 27, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years.

TIM FORCE TIN SHOP, INC.

The Administrative Law Judge's decision can be found at [www.nlrb.gov/case/ 27-CA-322370](http://www.nlrb.gov/case/27-CA-322370) 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.

