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**United Food and Commercial Workers Local 7 and Federation of Agents and International Representatives and Elizabeth Wesley and Eduardo Alvarado.** Cases 27-CA-298239, 27-CA-301489, 27-CA-303052 and 27-CA-298873

September 30, 2026

**DECISION AND ORDER**

BY CHAIRMAN MURPHY AND MEMBERS PROUTY AND MAYER

On February 8, 2024, Administrative Law Judge Eleanor Laws issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and the Charging Party, Federation of Agents and International Representatives (FAIR), filed answering briefs, and the Respondent filed a reply brief to the Charging Party's answering brief. The General Counsel filed exceptions and a supporting brief, the Respondent filed an answering brief, and the General Counsel filed a reply brief.

The Respondent has excepted to some of the judge's credibility findings. The Respondent's exceptions are based on the judge's findings that the Respondent's representatives (FAIR) filed answering briefs and the Respondent filed a reply brief to the Charging Party's answering brief. The General Counsel filed exceptions and a supporting brief, the Respondent filed an answering brief, and the General Counsel filed a reply brief.

The Charging Party filed exceptions and a supporting brief, the Respondent filed an answering brief, and the Respondent filed a reply brief. The Charging Party filed a reply brief.

Because the Respondent has not presented any argument in support of these exceptions, we find, in accordance with Sec. 8(a)(1) of the National Labor Relations Act, that the Respondent's exceptions are not sustained.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's findings, conclusions, and recommendations only to the extent consistent with this Decision and Order.

We affirm the judge's findings, for the reasons she stated, that (1) Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act by unilaterally confiscating employees' equipment and employer-provided uniforms and requiring them to be returned and break in conformity with the Respondent's policy, and (2) Respondent violated Section 8(a)(3) and (1) of the National Labor Relations Act by denying employees' access to the grievance procedure, conditioning its consent to successor contracts on FAIR's acceptance of a nonmandatory proposal, and bargaining in bad faith.

We have affirmed the judge's conclusions of law consistent with our findings. We have also affirmed the remedy and modified the remedy in certain respects. We have modified the remedy in certain respects to conform to the Respondent's policy, and in certain respects to conform to the Respondent's policy, and in certain respects to conform to the Respondent's policy.

We have affirmed the judge's findings, for the reasons she stated, that (1) Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act by unilaterally confiscating employees' equipment and employer-provided uniforms and requiring them to be returned and break in conformity with the Respondent's policy, and (2) Respondent violated Section 8(a)(3) and (1) of the National Labor Relations Act by denying employees' access to the grievance procedure, conditioning its consent to successor contracts on FAIR's acceptance of a nonmandatory proposal, and bargaining in bad faith.

Member Prouty would affirm the judge's notice-reading remedy. For the reasons stated in his concurrence in *CP Anchorage Hotel 2 d/b/a Hilton Anchorage*, 371 NLRB No. 151 (2022), enfd. 98 F.4th 314 (D.C. Cir. 2024), he would find that notice reading, as well as a distribution of the notice to employees before the reading, should be standard remedies for all unfair labor practices found by the Board. In any event, he agrees with the judge that the Respondent's violations were "serious and widespread," and that "the Respondent's failure to bargain in good faith and other unfair labor practices, including denigrating FAIR and requiring

confiscating their equipment because they might strike,"<sup>6</sup> and telling employees that the grievance procedure was no longer in effect. We likewise affirm the judge's dismissal of the allegations that the Respondent unlawfully interrogated and discharged Elizabeth Wesley. For the reasons set forth below, however, we additionally find that the Respondent violated Section 8(a)(5) and (1) by unilaterally reducing the monthly in-town car allowance.

**Background**

The Respondent, a local of the United Food and Commercial Workers International Union representing its members in Colorado and Wyoming, employs its own agents and representatives. FAIR is the exclusive collective-bargaining representative of the Respondent's employees in two bargaining units. The Respondent and FAIR have been parties to a series of collective-bargaining agreements, the most recent of which were effective from FAIR employees to return their equipment, directly impacted the entire bargaining unit. The failure to bargain in good faith, in particular has directly impacted the bargaining unit since June 2022." In addition, Member Prouty would be open, in a future appropriate case, to addressing the General Counsel's request that the Board reconsider and possibly broaden the standard for electronic distribution of notices currently set forth in *J. Picini Flooring*, 356 NLRB 11 (2010).

<sup>3</sup> In finding this violation and the related 8(a)(3) and (1) violations, Chairman Murphy and Member Mayer do not suggest that it is necessarily unlawful for an employer to require employees to return the employer's property in the event of a strike.

<sup>4</sup> See *Smurfit-Stone Container Enterprises*, 357 NLRB 1732, 1736 (2011) (Because "a party precludes good-faith impasse when it insists on such a [nonmandatory] proposal as the price of an agreement," the "proper legal test in this case for unlawful insistence under *Borg-Warner Corp. v. NLRB*, 356 U.S. 342 (1958)) is 'whether agreement on the mandatory subjects of bargaining was conditioned on agreement on the nonmandatory subject of bargaining.'" (quoting *Taft Broadcasting*, 274 NLRB 260, 261 (1985)) (emphasis original; original brackets omitted), enfd. sub. nom. *Rock-Tenn Services v. NLRB*, 594 Fed. Appx. 897 (9th Cir. 2014). In adopting the judge's finding of violation, we do not rely on fn. 42 of her decision.

Member Prouty notes that he finds the violation under the circumstances here because, even though no impasse was declared, the Respondent clearly insisted, through its take-it-or-leave-it bargaining posture, that FAIR agree to the Respondent's nonmandatory proposal after FAIR had repeatedly objected to it, and the Respondent showed no willingness to abandon its nonmandatory proposal.

<sup>5</sup> See *Starbucks Corp.*, 373 NLRB No. 123, slip op. at 1 (2024) ("[T]he Board has long held unlawful employers' statements that employees dissatisfied with working conditions should quit rather than try to improve them through union activity.").

<sup>6</sup> See *Five Star Mfg.*, 348 NLRB 1301, 1331 (2006) (owner's statement linking confiscation of employees' keys—which also violated Sec. 8(a)(3) and (5)—to selection of union violated Sec. 8(a)(1)), enfd. 278 Fed. Appx. 697 (8th Cir. 2008).

Member Mayer recognizes that employers have a legitimate interest in safeguarding their property in the event of a strike but joins in finding the confiscation unlawful under the specific facts of this case. He finds it unnecessary to pass on whether the Respondent separately violated Sec. 8(a)(1) by telling employees that it was confiscating the equipment because they might strike; any such additional finding would not materially affect the remedy.

November 3, 2018, to June 25, 2022.<sup>7</sup> Article 35, Section 4 of the collective-bargaining agreements has contained the following language since 2014:

Persons on car allowance shall receive:

- a. In town car allowance: seven hundred eighty dollars (\$780.00)
- b. Out of town car allowance one thousand twenty[-]five dollars (\$1025.00)<sup>[8]</sup>
- c. Every twelve (12) months from the date of ratification the Parties will review average cost of Union cars.

Retail Director Ramon Zuniga, who participated in the 2014 negotiations, testified that the parties intended the annual review to avoid having “to bargain over it every single year.”

Since the language was adopted, the Respondent’s accountant has conducted the annual review, and the Respondent’s president, Kim Cordova, has then relied on the results of the review to evaluate the car allowances. The Respondent made mid-term adjustments to the car allowances for the first time in 2021, increasing the in-town allowance to \$868 and the out-of-town allowance to \$1,096. The Respondent communicated the adjustments to the FAIR stewards, among others. Before 2022, the allowances never decreased, even when the review yielded an amount lower than the specific rates set forth in the contract.<sup>9</sup>

After the 2022 review, Cordova announced during a meeting on May 25 that the in-town allowance would decrease from \$868 to \$809, while the out-of-town allowance would increase from \$1096 to \$1120. The Respondent did not notify FAIR of the planned reduction, much less offer to bargain, before announcing to employees that the in-town allowance would be reduced. After the Respondent implemented the reduction, FAIR filed a grievance, which the Respondent denied as untimely.

#### Discussion

Applying the then-extant contract-coverage standard, the judge first concluded that the language of the agreements did not cover the reduction in the car allowance, and

there are no exceptions to that finding.<sup>10</sup> She therefore proceeded to examine whether FAIR had clearly and unmistakably waived its right to bargain over the reduction to the in-town car allowance. *MV Transportation*, 368 NLRB No. 66, slip op. at 12 (“If an agreement does not cover a disputed unilateral change, the Board will next consider whether the union waived its right to bargain over the change.”). Specifically, the judge analyzed “whether some combination of contractual language, bargaining history, and past practice establishes that the union waived its right to bargain regarding the 2022 reduction.” She concluded that it did. She first found that there was an established practice of the Respondent conducting the 12-month review unilaterally and that FAIR had thus “waived its right to participate in it on the front end.” She next concluded that, given the history of the Respondent announcing the results of the annual reviews without FAIR requesting bargaining, FAIR had waived its right to bargain on the back end as well. Based on the 7 years in which the rate remained at \$780, she found that FAIR did not waive its right to bargain over adjustments below that amount, but it did waive its right to bargain over changes that did not bring the rate below \$780.

We disagree with this analysis and therefore reverse the judge. Waiver is an affirmative defense. See *Metrohealth, Inc. d/b/a Hospital Metropolitano Rio Piedras*, 372 NLRB No. 149, slip op. at 4 (2023), enf. 2024 WL 5103360 (D.C. Cir. 2024); *Exxon Research & Engineering Co.*, 317 NLRB 675, 682 (1995), enf. denied other grounds 89 F.3d 228 (5th Cir. 1996). A party therefore may not establish waiver through ambiguous evidence. As we explain, the evidence here is equivocal and therefore cannot support a finding that FAIR clearly and unmistakably waived its right to bargain over decisions to decrease unit employees’ car allowance.

The parties’ past practice does not support a finding of waiver over decreases. To be sure, for years FAIR did not request bargaining when, after an annual review, the Respondent left the then-current car allowance in place or when it announced and implemented an increase. But the parties had never before encountered a situation where,

<sup>7</sup> The contracts for the two units are largely identical.

<sup>8</sup> In the 2014 and 2016 agreements, the out-of-town allowance was \$850 and \$925 per month, respectively.

<sup>9</sup> Specifically, in 2019, the review determined that the average cost for in-town use of the Respondent’s vehicles was \$719.55, but the Respondent maintained the \$780.00 allowance.

<sup>10</sup> Under the contract-coverage standard, “the Board will examine the plain language of the collective-bargaining agreement to determine whether the action taken by an employer was within the compass or scope of contractual language granting the employer the right to act unilaterally.” *MV Transportation, Inc.*, 368 NLRB No. 66, slip op. at 2 (2019). If “the agreement does not cover the employer’s disputed act,

and that act has materially, substantially, and significantly changed a term or condition of employment constituting a mandatory subject of bargaining, the employer will have violated Sec. 8(a)(5) and (1) unless it demonstrates that the union clearly and unmistakably waived its right to bargain over the change or that its unilateral action was privileged for some other reason.” *Id.* (internal footnotes omitted).

The Board subsequently overruled *MV Transportation* in *Endurance Environmental Solutions, LLC*, 373 NLRB No. 141 (2024), and reinstated the clear-and-unmistakable-waiver standard. Chairman Murphy and Member Mayer did not participate in *Endurance Environmental* and do not pass on whether it was correctly decided. They apply it here for institutional reasons and would be willing to reconsider it in a future appropriate case.

after an annual review, the Respondent announced an intent to *decrease* the car allowance rate. Even assuming that FAIR had waived its right to bargain over whether to *increase* the car allowance, and if so by how much, the record on past practice is not sufficient to find a clear and unmistakable waiver of its right to bargain over decisions to *decrease* the rate. Cf. *NBCUniversal Media, LLC*, 371 NLRB No. 5, slip op. at 1 fn. 1 (2021) (finding that waiver of right to bargain over annual merit-based raises did not waive right to bargain over rescission of raises), *enfd.* 2022 WL 2387524 (D.C. Cir. 2022).

Moreover, the parties' bargaining history does not establish a clear and unmistakable waiver whereby the Respondent could, after an annual review, lawfully decide to decrease the car allowance unilaterally. The testimony on the role of the annual-review provision and the parties' intent behind it was rather terse and vague. The Respondent elicited testimony from its agent, Zuniga, that the provision was to avoid "bargain[ing] over *it* every single year" (emphasis added). But what "it" refers to is not clear; it could refer to the amount of the *allowance* (i.e., whether it will go up, down, or remain the same) or the amount of the *increase* (i.e., whether it will go up and, if so, by how much). Only the former would tend to support finding waiver over decisions to reduce the allowance. And the Respondent simply failed to put on evidence that the parties had fully discussed and consciously explored the matter during negotiations or that FAIR consciously yielded or waived its right to bargain over decisions to decrease (or even to otherwise change) the car allowance. See *Johnson-Bateman Co.*, 295 NLRB 180, 185 (1989) ("Waiver of a statutory right may be evidenced by bargaining history, but the Board requires the matter at issue to have been fully discussed and consciously explored during negotiations and the union to have consciously yielded or clearly and unmistakably waived its interest in the matter."). We therefore reverse the judge on this issue and find the violation as alleged.

#### AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusion of Law 5:

"By failing and refusing to bargain in good faith with FAIR as the exclusive collective-bargaining representative of the unit employees, including by unilaterally reducing the in-town car allowance, by insisting as a condition of reaching successor collective-bargaining agreements that FAIR consent to a nonmandatory bargaining propos-

al, and by engaging in overall bad-faith bargaining, the Respondent violated Section 8(a)(5) and (1)."

#### AMENDED REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we amend the judge's recommended remedy in the following respects.

First, having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally decreasing the in-town car allowance, we shall order the Respondent to make whole the affected employees for any loss of earnings and other benefits attributable to the unlawful reduction. Likewise, having found that the Respondent violated Section 8(a)(3), (5), and (1) by unilaterally and discriminatorily confiscating employees' employer-provided credit cards (thereby requiring them to use personal credit cards for work expenses and to subsequently seek reimbursement from the employer), we shall order the Respondent to make whole any employees who paid late fees or credit-card interest on their personal credit cards as a result. Payments shall be computed in accordance with *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). In accordance with our decision in *Thryv, Inc.*, 372 NLRB No. 22 (2022), vacated in part on other grounds 102 F.4th 727 (5th Cir. 2024), the Respondent shall also compensate the employees for any other direct or foreseeable pecuniary harms incurred as a result of these unlawful actions.<sup>11</sup> Compensation for these harms shall be calculated separately from taxable net backpay,<sup>12</sup> with interest at the rate prescribed in *New Horizons*, above, compounded daily as prescribed in *Kentucky River Medical Center*, above.

Second, having found that the Respondent violated Section 8(a)(5) and (1) by engaging in overall bad-faith bargaining and impermissibly conditioning agreement on FAIR acquiescing to its demand to alter the scope of the bargaining units, we shall order the Respondent to compensate FAIR for bargaining expenses it incurred through August 27, 2023, when it finally abandoned its demand to exclude executive secretaries, the inclusion of whom Region 27 found appropriate.<sup>13</sup> We shall likewise order the Respondent to make whole any affected employee negoti-

<sup>11</sup> 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. See *id.*

<sup>12</sup> Credit-card fees or interest shall be calculated separately, as shall car-allowance reimbursements if the Respondent was not treating them as taxable income.

<sup>13</sup> We award bargaining expenses here based on the extent to which the Respondent's bad-faith bargaining forced FAIR to "expend[]" signi-

ators for any earnings they lost when attending bargaining sessions, to the extent those earnings were not reimbursed by FAIR. Id. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enf.d. 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).<sup>14</sup>

In addition, we shall order the Respondent to compensate the affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and to 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 award to the appropriate calendar year(s) for each employee. *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016). Further, we shall order the Respondent to file with the Regional Director for Region 27 a copy of the affected employees' corresponding W-2 forms reflecting the backpay awards.<sup>15</sup>

#### ORDER

The National Labor Relations Board orders that the Respondent, United Food and Commercial Workers Local 7, Wheat Ridge, Colorado, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Telling employees the Respondent confiscated their work equipment because of their activities in support of the Federation of Agents and International Representatives (FAIR) and because employees might strike.

(b) Impliedly threatening employees with discharge, including by inviting them to resign in response to concerted complaints about their working conditions and other protected activities.

(c) Telling employees the grievance-procedure provisions of their collective-bargaining agreements are no longer in force or effect because of the collective-bargaining agreements' expiration.

(d) Disparaging or denigrating FAIR in its communications to employees, including by falsely telling employees that, during a bargaining session for successor collective-bargaining agreements, FAIR told the Respondent to discipline and fire employees.

(e) Confiscating employees' work equipment and employer-provided credit cards and requiring employees to check their equipment in and out daily because of their support for and activities on behalf of FAIR.

(f) Unilaterally changing the terms and conditions of employment of its unit employees, including by confiscating employees' work equipment and employer-provided credit cards and requiring employees to check their equipment in and out daily, discontinuing the contractual grievance procedure, and reducing the in-town car allowance.

(g) Failing and refusing to bargain in good faith with FAIR as the exclusive collective-bargaining representative of the employees in the bargaining units, including by insisting as a condition of reaching successor collective-bargaining agreements that FAIR consent to a nonmandatory bargaining proposal and engaging in overall bad-faith bargaining.

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

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

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

All permanent part-time and full-time Local 7 employees actively engaged in organizing, politics, servicing membership, building maintenance, grievance handling, public relations accountants, programmers, and secret-

ficant time and expense bargaining with a Respondent which bargained in bad faith. In that way [FAIR] was denied the benefit of the good faith bargaining required by the Act." *Nexstar Broadcasting, Inc. d/b/a KOIN-TV*, 371 NLRB No. 118, slip op. at 2 fn. 5 (2022); accord *Barstow Community Hospital*, 361 NLRB 352, 355-356 (2014) (awarding negotiating expenses where the employer's bad-faith bargaining "caused the [u]nion to waste its resources in futile bargaining" and occurred during the critical postelection period when the newly certified union would be susceptible to unfair labor practices that would undermine employee support), incorporated by reference 364 NLRB 565 (2016), enf.d. 897 F.3d 280 (D.C. Cir. 2018). Here, the Respondent engaged in a prolonged course of bad-faith bargaining, involving misconduct at and away from the table; as a result, negotiations were still ongoing at the time of the hearing, more than a year after they began.

Member Mayer would not order the reimbursement of bargaining expenses, as in his view, the Respondent's misconduct, while serious,

does not rise to the level of "unusually aggravated misconduct" that "infected the core of the bargaining process to such an extent that its effects cannot be eliminated by the application of traditional remedies." *Noah's Ark Processors, LLC d/b/a WR Reserve*, 372 NLRB No. 80, slip op. at 3 fn. 9 (2023) (internal quotation marks omitted) (quoting *Bemis Co.*, 370 NLRB No. 7, slip op. at 4 (2020), enf.d. 98 F.4th 896 (8th Cir. 2024).

<sup>14</sup> Member Prouty would also grant the General Counsel's and FAIR's request that the Board order mediator-facilitated bargaining, in light of the Respondent's overall bad-faith bargaining in violation of Sec. 8(a)(5) and (1). See *Grill Concepts Servs., Inc.*, 372 NLRB No. 30, slip op. at 4 fn. 10 (2022) (Member Prouty, concurring), enf.d. 2024 WL 726641 (9th Cir. 2024).

<sup>15</sup> These remedies shall also apply to car-allowance reimbursements if the Respondent treated them as taxable income.

arial duties including department heads; but excluding the President, Secretary-Treasurer, Supervisors as defined by the Act, Executive Secretary to the President, Executive Secretary to the Secretary-Treasurer, Executive Legal Secretary, temporary employees (e.g. Deputy Secretaries, SPUR's), Membership Records clerks represented by OPEIU Local 30, Officers and other employees represented by F.A.I.R. in other bargaining units. For the purposes of this Agreement, Supervisors will mean Executive Staff and General Counsel.

(b) Reinstate and continue in effect the grievance-procedure provisions of the collective-bargaining agreements that expired on June 25, 2022, and, on request, process all grievances the Respondent has refused to process since the collective-bargaining agreements' expiration.

(c) Compensate FAIR for bargaining expenses it incurred through August 27, 2023.

(d) Make affected employee negotiators whole for any earnings lost while attending bargaining sessions in the manner set forth in the amended remedy section of this decision, to the extent those earnings were not reimbursed by FAIR.

(e) Make affected employees whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms, suffered as a result of the Respondent's unlawful reduction of the in-town car allowance, in the manner set forth in the amended remedy section of this decision.

(f) Make whole any employees who paid credit-card fees or interest, and for any other direct or foreseeable pecuniary harms, suffered as a result of the Respondent's unlawful confiscation of employer-provided credit cards.

(g) Compensate affected 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 award to the appropriate calendar years for each employee.

(h) File with the Regional Director for Region 27, within 21 days of the date the amount of backpay owed 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 recipient's corresponding W-2 forms reflecting the backpay award.

(i) 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 design-

nated 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.

(j) Within 14 days after service by the Region, post at its Wheat Ridge, Colorado facility copies of the attached notice marked "Appendix."<sup>16</sup> 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. In the event that, during the pendency of these proceedings, the Respondent has 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 February 7, 2022.

(k) 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.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

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

James R. Murphy, Chairman

David M. Prouty, Member

Scott A. Mayer, Member

<sup>16</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in each notice reading "Posted by Order of the Na-

tional 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."

(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 tell you that we confiscated your work equipment because of your activities in support of the Federation of Agents and International Representatives (FAIR) and because you might strike.

WE WILL NOT impliedly threaten you with discharge, including by inviting you to resign in response to your concerted complaints about your working conditions and other protected activities.

WE WILL NOT tell you the grievance-procedure provisions of the collective-bargaining agreements are no longer in force or effect because the collective-bargaining agreements expired.

WE WILL NOT disparage or denigrate FAIR in our communications with you, including by falsely telling you that, during a bargaining session for successor collective-bargaining agreements, FAIR told us to discipline and fire you.

WE WILL NOT confiscate your work equipment and employer-provided credit cards and require you to check your equipment in and out daily because of your support for and activities on behalf of FAIR.

WE WILL NOT change your terms and conditions of employment without first notifying FAIR and giving it an opportunity to bargain, including by confiscating your work equipment and employer-provided credit cards and requiring you to check your equipment in and out daily, discontinuing the contractual grievance procedure, and reducing the in-town car allowance.

WE WILL NOT fail and refuse to bargain in good faith with FAIR as the exclusive collective-bargaining repres-

entative of the employees in the bargaining units, including by insisting as a condition of reaching successor collective-bargaining agreements that FAIR consent to a nonmandatory bargaining proposal and engaging in overall bad-faith bargaining.

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

WE WILL, on request, bargain with FAIR as the exclusive collective-bargaining representative of our employees in the following appropriate meat and retail units concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in signed agreements:

All permanent part-time and full-time Local 7 employees actively engaged in organizing, politics, servicing membership, building maintenance, grievance handling, public relations accountants, programmers, and secretarial duties including department heads; but excluding the President, Secretary-Treasurer, Supervisors as defined by the Act, Executive Secretary to the President, Executive Secretary to the Secretary-Treasurer, Executive Legal Secretary, temporary employees (e.g. Deputy Secretaries, SPUR's), Membership Records clerks represented by OPEIU Local 30, Officers and other employees represented by F.A.I.R. in other bargaining units. For the purposes of this Agreement, Supervisors will mean Executive Staff and General Counsel.

WE WILL reinstate and continue in effect the grievance-procedure provisions of the collective-bargaining agreements that expired on June 25, 2022, and, on request, process all grievances we have refused to process since the collective-bargaining agreements' expiration.

WE WILL compensate FAIR for bargaining expenses it incurred through August 27, 2023.

WE WILL make whole any affected employee negotiators for any earnings lost while attending bargaining sessions, plus interest, to the extent those earnings were not reimbursed by FAIR.

WE WILL make affected employees whole for any loss of earnings and other benefits suffered as a result of our unlawful reduction of the in-town car allowance, plus interest, and WE WILL also make affected employees whole for any other direct or foreseeable pecuniary harms suffered as a result of our unlawful actions, plus interest.

WE WILL make whole any employees who paid credit-card fees or interest as a result of our unlawful confiscation of your employer-provided credit cards, plus interest, and WE WILL also make affected employees whole for any other direct or foreseeable pecuniary harms suffered as a result of our unlawful actions, plus interest.

WE WILL compensate affected employee 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, copies of each backpay recipient's corresponding W-2 forms reflecting the backpay award.

The Board's decision can be found at <https://www.nlrb.gov/case/27-CA-298239> 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.



*Jose Rojas, Esq.*, for the General Counsel.

*Matthew Schechter, Esq., Kristina Busch, Esq.*, for the Respondent.

## DECISION

### STATEMENT OF THE CASE

ELEANOR LAWS, Administrative Law Judge. This case was tried in Denver, Colorado on August 29–31, and September 26–28, 2023. The Federation of Agents and International Representatives (CP Union or FAIR), filed charges on various dates between June 27, 2002, and June 9, 2023. Charging Party Elizabeth Wesley (CP Wesley or Wesley) filed a charge on August 29, 2022. The General Counsel issued the consolidated complaint on June 28, 2023. The United Food and Commercial Workers Local 7 (the Respondent or UFCW Local 7) filed a timely answer denying all material allegations and setting forth affirmative defenses.

The complaint alleges the Respondent violated Section 8(a)(1) of the National Labor Relations Act (the Act) by:

- (1) announcing the implementation or reinstatement of a dress code in response to activities in support of the CP Union and other protected concerted activities;

- (2) telling employees the Respondent confiscated their work equipment because of their activities in support of the CP Union and because employees might strike;

- (3) telling employees they could work elsewhere and/or inviting them to resign in response to concerted complaints about their working conditions and other protected activities; and

- (4) disparaging or denigrating the CP Union by falsely telling employees that, during a bargaining session for a successor agreement, the CP Union told the Respondent to discipline and fire employees.

The complaint alleges the Respondent violated Section 8(a)(3) and (1) of the Act by:

- (1) confiscating the work equipment of employees represented by the CP Union and requiring them to check-out and check-in their work equipment each day;

- (2) refusing to hire CP Wesley despite having concrete plans to hire; and

- (3) discharging CP Wesley for her union activities.

The complaint further alleges the Respondent violated Section 8(a)(5) and (1) of the Act by taking the following actions without providing the CP Union with notice and an opportunity to bargain:

- (1) reducing the monthly in-town car allowance for drivers;

- (2) confiscating the employees' work equipment and requiring them to check-out and check-in their equipment daily; and

- (3) failing to continue the grievance procedure provisions of the collective-bargaining agreements after their expirations.

Finally, the complaint alleges further violations of Section 8(a)(5) and (1) through the Respondent's conduct at the bargaining table, including insisting the CP Union agree to removal of the secretaries from the bargaining unit and by its overall conduct failing and refusing to bargain in good faith with the CP Union.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Charging Party Union, and Respondent, I make the following

### FINDINGS OF FACT

#### I. JURISDICTION

The Respondent UFCW Local 7, is a labor organization chartered by the United Food and Commercial Workers International Union, AFL–CIO (International Union) with a principal place of business in Wheat Ridge, Colorado (Wheat Ridge office), and other offices throughout the States of Colorado and Wyoming, and has been organized for the purposes of bargaining collectively on behalf of its members in matters of wages, hours, and other working conditions, and has transmitted per capita dues and pension fund fees in excess of \$50,000 from its Wheat Ridge office directly to the International Union's offices in Washington, D.C. The 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 and that the CP Union is a labor

organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

### A. Background Facts

The Respondent Union, UFCW Local 7, is a labor organization that represents workers in retail grocery, food processing, and healthcare. Their primary offices are in Wheat Ridge, Colorado, with satellite offices in Colorado Springs, Pueblo, Grand Junction, and Greeley, Colorado. During the relevant time period, Kim Cordova served as the UFCW Local 7's president, and Martin Garcia was her executive assistant. Monique Palacios served as the executive secretary to the president. Kevin Schneider was the secretary-treasurer until his retirement on July 29, 2022. He supervised the accountant, who during the relevant time period was Chris Nate. Ramon Zuniga has been a retail director at all relevant times. In that capacity, he supervises union representatives in his jurisdiction, which includes South Denver, Colorado Springs, Parker, and Aurora, and conducts Step 1 and Step 2 meetings with FAIR representatives. He also serves on UFCW Local 7's bargaining team and executive grievance committee. Christine Arellano was promoted from union representative to retail director around May 2022.

At all relevant times, Paul Supat was CP Union FAIR's president, Jill Kennedy was executive vice president, and Paul Lowney was secretary-treasurer. FAIR represents staff workers who work for unions. Their primary offices are in Roseville, California.

FAIR represents employees in two of the Respondent Union UFCW Local 7's units, retail and meat. The retail unit consists of:

All permanent part-time and full-time Local 7 employees actively engaged in organizing, politics, servicing membership, building maintenance, grievance handling, public relations accountants, programmers, and secretarial duties including department heads; but excluding the President, Secretary-Treasurer, Supervisors as defined by the Act, Executive Secretary to the President, Executive Secretary to the Secretary-Treasurer, Executive Legal Secretary, temporary employees (e.g. Deputy Secretaries, SPUR's), Membership Records clerks represented by OPEIU Local 30, Officers and other employees represented by F.A.I.R. in other bargaining units. For the purposes of this Agreement, Supervisors will mean Executive Staff and General Counsel.

The meat unit is essentially equivalent and consists of:

All permanent part-time and full-time Local 7 employees actively engaged in organizing, politics, servicing membership,

building maintenance, grievance handling, public relations accountants, programmers, and secretarial duties including department heads; but excluding the President, Secretary-Treasurer, Supervisors as defined by the Act, Executive Secretary to the President, Executive Secretary to the Secretary-Treasurer, Executive Legal Secretary, temporary employees (e.g. Deputy Secretaries, SPUR's), Membership Records clerks represented by OPEIU Local 30, Officers and other employees represented by F.A.I.R. in other bargaining units. For the purposes of this Agreement, Supervisors will mean Executive Staff and General Counsel.

Both the "retail contract" (Jt. Exh. 2)<sup>1</sup> and the "meat contract" (Jt. Exh. 1) ran from November 3, 2018, through June 25, 2022. At the time of the hearing, the parties were bargaining for a successor contract. Most articles of the two contracts are numbered and worded identically.<sup>2</sup>

### B. Alleged Invitation to Resign

Complaint paragraphs 6(a) and 12 allege that about February 20, 2022, President Cordova told employees that they could work elsewhere and/or invited them to resign in response to concerted complaints about their working conditions and other protected concerted activities, in violation of Section 8(a)(1).

#### 1. Facts

In January 2022, UFCW Local 7-represented workers at grocery store King Soopers in the Denver metro area went on strike. The strike lasted 9 days. All of the UFCW Local 7 union representatives and organizers assisted with the strike, as well as employees from other locals and the international union. Coleson Breen, a hybrid union organizer/representative, was responsible for Broomfield, Colorado and most of Wyoming. He worked 100 hours per week during the weeks leading up to the strike and during the strike. (Tr. 446.) Randy Blea, a union representative who had worked for UFCW Local 7 for more than 10 years, was in charge of the strike line for store 50, but also serviced other stores. He worked 60 to 70 hours a week leading up to the strike and more than 90 hours per week during the strike. The weather was freezing and snowy during the strike, with temperatures sometimes below zero. (Tr. 517-518.)

Toward the end of the strike, union representatives and organizers working on the picket lines participated in a Zoom call with Retail Director Zuniga and other UFCW Local 7 management. Representatives from other locals and the international union who were assisting with the strike were on the call. Zuniga asked how things were going on the strike lines and reported on developments in bargaining and other relevant proceedings<sup>3</sup>. Union Representative Jay Martinez voiced frustration over how things were going.<sup>4</sup> He said they did not have the proper training, the

adopted the contracts from the union that previously represented the UFCW Local 7 units, United Local 7 Staff Union (ULSSU).

<sup>3</sup> Kroger, who owns King Soopers, obtained a temporary restraining order restricting the number of picketers who could be in front of the stores, and the instruction to comply with this order was conveyed.

Cordova was not on the call. (Tr. 636.)

<sup>4</sup> Martinez is identified in the transcript as "Paul," but this apparently is either a transcription error or the witness misspoke. Paul Marquez and Jay Martinez are identified as union representatives in the record. Since

<sup>1</sup> Abbreviations used in this decision are as follows: "Tr." for transcript; "GC Exh." for the General Counsel's exhibit; "R Exh." for the Respondent's exhibit; "Jt. Exh." for joint exhibit; "GC Br." for the General Counsel's brief, and "R Br." for the Respondent's brief. Although I have included some citations to the record, I emphasize that my findings and conclusions are based not solely on the evidence specifically cited, but rather are based on my review and consideration of the entire record.

<sup>2</sup> When referring to a specific article of the contract in this decision, the article is the same for both contracts unless otherwise noted. FAIR

paperwork was incorrect, and the digital system was not working. (Tr. 449.) Other people expressed frustration about how disorganized things felt and how difficult the conditions were. (Tr. 518–520.) Blea spoke up as well:

I just remember saying that we were exhausted, people were dropping off, people were not coming out as strong when they first—when we first went on strike, the picket lines were dwindling, especially late in the evening. It was hard to keep track of the payroll, make sure everybody was getting paid that was there and actually there. So it's a lot of—mixture of a lot of things that were happening that we were not prepared for or trained for.

(Tr. 520–521.) Retail Director Zuniga recalled it was a difficult strike with representatives out in the cold with members. (Tr. 637.)

After the strike, on February 7, Cordova convened a meeting in the executive board room with representatives and organizers who had worked on the strike. She said she was embarrassed about the Zoom call because the international union was on the call hearing the employees' complaints. (Tr. 523, 1056.) According to Blea, Cordova said that if they did not like the direction UFCW Local 7 was headed, the bricks were only going to get heavier, and the companies were going to get worse, and she repeatedly said she'd accept their resignation effective immediately if they were not up to the task.<sup>5</sup> (Tr. 523.) Melissa McColister, the political director, said she had a young child to take care of and the hours were long and unsustainable. Jay Martinez and Blea echoed concerns about work-life balance.<sup>6</sup> (Tr. 452–455; 901.) Breen recalled Cordova saying she had heard complaints from a number of staff about the working conditions, they were highly compensated, and if they did not like it they could work somewhere else. (Tr. 452.) Blea responded to Cordova's comment about the representatives being highly compensated as follows:

Also, she mentioned how highly compensated we—we are, which I took offense to. And then I—I spoke up at that point and told her that it was—it was disturbing that she's—she's been saying that for over the past year, how highly compensated she thinks we are, and I would appreciate it if she'd stop saying that because we work very hard. I—I—I said at that point—I've said this in other meetings too—that I've given up my life for this job. This job is a life changer. And everybody

was doing their part, doing the best that they could with what they had. And after working 63 straight days, we come to a meeting and just get pummeled. It just—it was—it was very hurtful. It was hurtful.

(Tr. 524.) Supervisor Nate Bernstein said the team did a good job and thanked them.<sup>7</sup> (Tr. 524.)

Cordova recalled stating that she knew they had worked super hard and were tired, but they had a lot more work to do. She said UFCW Local 7 is a member-driven union and that it has always been the expectation that they worked hard and were highly compensated. Kroger was upset with them, they carry heavy bricks in the labor movement and they were only going to get heavier. The companies were getting bigger and stronger, automating their work, and becoming more anti-union. She reminded the representatives and organizers why they were there, said it was going to get harder, it was up to them whether or not they could handle the stress, and “[t]hey had to dig deep inside and decide if this was a job they still had passion for.” (Tr. 1050–1055.) Cordova said she had received calls from members staying they were embarrassed of Marquez's behavior during the call, and she was embarrassed.<sup>8</sup> (Tr. 1056.) When Cordova was asked if she told Blea to resign, she said she did not, adding:

What I said was you had to decide whether this is the job for you. I mean, there's things that I can control and there's things that I can't. I mean, I wish I could control that we have nicer employers, but our members wouldn't need a union if we had a fair employer. And I told them that.

I also told them that, you know, the grass wasn't always greener working for a for-profit company because you're still going to work your tail off and have stress. But the only American dream that they were going to make possible was the CEO's American dream. But working for the labor movement, they were creating positive change. But again, it was up to them.

(Tr. 1057–1058.)

Retail Director Zuniga testified he thought he was at the meeting, but admitted he had a vague memory of it. (Tr. 639–640.) He did not recall Cordova stating that the employees could resign or quit. (Tr. 640, 643.) Retail Director Arellano recalled that Blea and others said that they needed some work-life balance, and that

Marquez testified but nobody asked him about this meeting, and Jay Martinez is identified by other witnesses as voicing complaints, the weight of the evidence establishes this reference was to Jay Martinez.

<sup>5</sup> I credit Blea's testimony. I found Blea to be highly credible, as he testified with a forthright and open demeanor, appeared earnest and did not tend to embellish or exaggerate his testimony. At the time he testified about this meeting, he was a current employee testifying against his own pecuniary interests, rendering his testimony particularly reliable. *Gold Standard Enterprises*, 234 NLRB 618, 619 (1978); *Georgia Rug Mill*, 131 NLRB 1304, 1304 fn. 2 (1961); *Gateway Transportation Co.*, 193 NLRB 47, 48 (1971); *Federal Stainless Sink Div. of Unarco Industries*, 197 NLRB 489, 491 (1972).

Cordova was admittedly embarrassed about the employees' complaints about the strike conditions, and she took the opportunity to remind employees they were highly paid. This context lends credence to Blea's testimony.

<sup>6</sup> Though the comments attributed to non-testifying employee witnesses are hearsay, they are corroborated by Breen and Blea's comments, lending them greater reliability than uncorroborated hearsay. *RC Aluminum 254 Industries, Inc.*, 343 NLRB 939, 940 (2004). In any event, the comments attributed to them are not material to the outcome of this decision.

<sup>7</sup> Bernstein is identified in the record as the supervisor for the health-care representatives, a retail director, and a member of the executive staff. (Tr. 254, 640, 940.)

<sup>8</sup> As noted above, Marquez testified at the hearing, but was not asked by any party about the Zoom call or the subsequent meeting. Zuniga testified he “believed” it was Marquez who expressed his frustration on the Zoom call. (Tr. 636.) This apparently was communicated to Cordova, who was not on the Zoom call.

employees said the strike was hard and it was cold. Arellano did not recall if Cordova invited anyone to resign their employment. (Tr. 900–901.)

## 2. Legal Standards and Analysis

The Board's longstanding test to determine if there has been a violation of Section 8(a)(1) is whether the employer engaged in conduct which might reasonably tend to interfere with the free exercise of employee rights under Section 7 of the Act. *American Freightways Co.*, 124 NLRB 146 (1959). The rights guaranteed in Section 7 include the right "to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . . ." "[T]he test of interference, restraint, and coercion under Section 8(a)(1) of the Act does not turn on the employer's motive or on whether the coercion succeeded or failed." *American Tissue Corp.*, 336 NLRB 435, 441 (2001) (citing *NLRB v. Illinois Tool Works*, 153 F.2d 811, 814 (7th Cir. 1946)). It is the General Counsel's burden to prove an 8(a)(1) violation.

It is well settled that an employer's invitation to an employee to quit in response to their exercise of protected concerted activity is coercive, because it conveys to employees that support for their union or engaging in other concerted activities and their continued employment are not compatible, and implicitly threatens discharge of the employees involved. *Stoody Co.*, 312 NLRB 1175, 1181 (1993); *Kenrich Petrochemicals*, 294 NLRB 519, 531 (1989); and *L.A. Baker Electric, Inc.*, 265 NLRB 1579, 1580 (1983). As the Board stated in *Jupiter Medical Center Pavilion*, 346 NLRB 650, 651 (2006), "Suggestions that employees who are dissatisfied with working conditions should leave rather than engage in union activity in the hope of rectifying matters coercively imply that employees who engage in such activity risk being discharged." See also *Sans Souci Restaurant*, 235 NLRB 604, 605–606 (1978); *McDaniel Ford, Inc.*, 322 NLRB 956, 962 (1997).

The employees engaged in protected concerted activity by speaking out about onerous working conditions, both during the Zoom call and during the in-person meeting. See *Meyers Industries*, 268 NLRB 493, 497 (1984), and 281 NLRB 882 (1986). I find the evidence establishes, regardless of the precise words Cordova uttered, the employees at the meeting were essentially presented with two choices: Either suck it up and deal with the adverse working conditions or work elsewhere.<sup>9</sup> Cordova reminded employees that they were highly compensated, told them she was embarrassed by their behavior during the Zoom call (which consisted of raising concerns about working conditions), and conveyed that they should stop complaining and work elsewhere if they couldn't quietly accept their working

conditions. Applying Board law, I find the General Counsel has sustained her burden to prove this complaint allegation.

## C. Dress Code Implementation/Reinstatement

Complaint paragraphs 5(a) and 12 allege that on May 25 2022, executive assistant to the President Martin Garcia announced the implementation or reinstatement of a dress code in response to employees' union and other protected concerted activities, in violation of Section 8(a)(1).

### 1. Facts

During the early stages of the pandemic, union representatives were not considered essential and they worked remotely, conducting business by Zoom or by phone. When in-person work resumed, President Cordova, her Executive Assistant Garcia, and Retail Director Zuniga discussed the decline in how some employees were dressing. Representatives were showing up in ripped jeans and wrinkled shirts, and one employee wore pajama bottoms. (Tr. 616–618; Tr. 994.) On the evening of May 24, Cordova called Garcia and asked him to send a reminder about the dress code. (R. Exh. W; Tr. 852, 995.)

On May 25, the union representatives attended an all-day training at the UFCW Local 7's Wheat Ridge offices. The training was preplanned, and was a refresher on policy to see if members had any questions about any of the policies. (R. Exh. L; Tr. 620–621.) The training took place the day after FAIR and UFCW Local 7 agreed to initial dates to bargain a successor contract. (GC Exh. 3.) The majority of FAIR members showed up wearing maroon shirts, which represents FAIR's color, in solidarity to support FAIR in its upcoming negotiations for a new contract. A few members also wore FAIR pins, about an inch in diameter. (Tr. 265, 505, 528.) Some people were wearing Colorado Avalanche shirts that day, because the team was in a National Hockey League playoff game that evening. The Avalanche's main color is maroon. (Tr. 302–304.)

Retail Directors Ramon Zuniga and Christine Arellano conducted the training. Blea thought Zuniga and Arellano looked surprised when they saw the employees dressed in the same color. (Tr. 561, 579–580.) Zuniga was surprised, and thought maybe the employees were dressed in maroon because of the Avalanche playoff game. (Tr. 625, 700.) He did not know maroon was FAIR's color even though he had been a steward.<sup>10</sup> (Tr. 627.)

At the start of the meeting, attendees were instructed to read UFCW Local 7's policy and procedure manual from front to back, and to sign off that they read it. (Tr. 267–268, 457.) Among numerous other provisions, the manual contains a dress code policy, requiring employees to present a professional image, and outlining certain specified standards for different settings. (GC Exh. 30.) At some point that morning, Zuniga and

<sup>9</sup> I credit the testimony of Breen and Blea, which were largely corroborative. Though Breen admitted his recollection of the meeting was "hazy" because it had occurred some time ago, Blea's corroboration lends it credibility. At the time of this testimony, Blea was an employee of UFCW Local 7, rendering his testimony particularly reliable. Cordova's testimony that employees needed to decide if this was the job for them certainly presents the matter in a less coercive manner. I find it telling, however, that Arellano did not recall whether Cordova invited employees to resign—This lends credence to Breen and Blea's testimony

that the message they received was to deal with the conditions or work elsewhere.

<sup>10</sup> Arellano testified that she did not recall how individuals were dressed, and that she did not have discussions about how people were dressed. (Tr. 903–904.) Secretary-Treasurer Kevin Schneider noticed that the employees were all wearing a version of red. (Tr. 796.) Arellano's testimony that she did not notice how the employees were dressed is not credible in the face of evidence that everyone else who testified about the meeting clearly noticed the coordinated colors.

Arellano left the room.

At 10:10 a.m. that morning, Executive Assistant Garcia sent an email to all Local 7 staff with the subject “Dress Code Implementation as of May 31, 2022.” It stated:

All:

Please be advised that we are implementing the dress code policy effective May 31, 2022. All staff will be required to wear business casual attire while working. The office staff will continue to have “casual Friday” that allows for jeans in good condition, Union tee-shirts and/or your favorite sports team jersey. No torn jeans or open toed shoes are allowed.

Union representatives and organizers should always look professional while out in facilities, even on Fridays unless working at the office for the entire day.

Should you have any questions or concerns regarding the foregoing, please feel free to contact me or Dale Lee, Personnel Director.

(GC Exh. 29.) Zuniga did not recall talking to Garcia that morning and he did not think he communicated with anyone about what members were wearing prior to 10:10 a.m. (Tr. 624, 627.) Garcia worked remotely on May 25, he had not been in the office, and did not discuss with anyone how the staff were dressed when he sent the email. (Tr. 851.) The email was not discussed at the meeting, it did not prohibit employees from wearing maroon or any other color, and it did not prohibit union gear or insignia. UFCW Local 7 staff had been sent reminders of the dress code policy in the past. (GC Exh. 39; R Exh. S.) Garcia and Cordova were not aware of FAIR’s colors.<sup>11</sup> (Tr. 856, 872, 1001.)

## 2. Legal Standards and Analysis

An employer violates Section 8(a)(1) of the Act by promulgating rules or enforcing rules more strictly in response to union activity. *Lutheran Heritage Village-Livonia*, 343 NLRB 646, 647 (2004); See also *Dynamics Corp. of America*, 286 NLRB 920, 921 (1987), citing *Keller Mfg. Co.*, 237 NLRB 712, 713 fn. 7 (1978), and *Hudson Oxygen Therapy Sales Co.*, 264 NLRB 61 fn. 2 (1982).

There is no question the employees engaged in protected activity when they dressed in maroon as a showing of unity and support for the upcoming contract negotiations. I find, however, the General Counsel has not sustained her burden of proof to establish the May 25 email was sent in response to this protected activity. Garcia provided unrefuted testimony that he had not been in the office and he had not spoken with anyone about how the staff were dressed when he sent the email that morning. His testimony is supported by Cordova’s unrefuted testimony that she had told Garcia to send a reminder about the dress code when they spoke on the evening of May 24. Their testimony is further corroborated by an email from UFCW Local 7’s attorney, Matthew Schechter, five minutes after Garcia sent the dress code reminder email, asking what prompted it, and Garcia’s response, “Kim called me last night about our slovenly dressed Union Reps and Organizers out in the field.” (R. Exh. W.) While the timing

lends support to the General Counsel’s allegation, it is outweighed by evidence showing the reminder was already in the works, and was prompted by reasons other than how employees were dressed at the May 25 meeting.

Based on the foregoing, I recommend dismissal of this complaint allegation.

## D. Car Allowance

Complaint paragraphs 9(a) and 14 allege that on about May 25, 2022, the Respondent reduced the monthly car allowance for in-town drivers by approximately \$58, in violation of Section 8(a)(5) and (1).

### 1. Facts

The Respondent’s union representatives and organizers who travel for work can receive a car allowance for use of their personal vehicle or they can use a union-provided car, if one is available. (Tr. 628.) The relevant provision from the contract effective November 2, 2018, Article 35, Section 4, states that employees on car allowance shall receive:

- a. In town car allowance: seven hundred eighty dollars (\$780.00)
- b. Out of town car allowance one thousand twenty five dollars (\$1025.00)
- c. Every twelve (12) months from the date of ratification the Parties will review average cost of Union cars.

(Jt. Exh. 1, 2; Tr. 47, 309.) UFCW Local 7’s accountant, overseen by the secretary-treasurer, performs the annual recalculation, taking into consideration fuel, maintenance, insurance, and lease costs, based on the total number of months employees drove union cars the prior calendar year. (Tr. 601, 630, 789–794; R. Exhs. T, V.) This method of review was agreed to during contract negotiations in 2014, and has been utilized since then. Retail Director Ramon Zuniga, who participated in the 2014 negotiations, recalled that FAIR wanted an annual review, and UFCW Local 7 agreed to the provision in Section 4c above with the understanding that it was an automatic review that did not require bargaining each year (Tr. 601, 793.) President Cordova reviews the calculations and determines the amount to implement, though it has not historically deviated from the secretary-treasurer’s recommendation. (Tr. 794, 809.) Prior to 2022, UFCW Local 7 Secretary-Treasurer Kevin Schneider usually emailed anyone affected by the rates advising them of the new rates and their effective date.<sup>12</sup> (Tr. 796; R. Exh. A.)

When the in-town calculation has resulted in an amount lower than the amount set forth in the contract, UFCW Local 7 has maintained the base-level contract amount. For example, the calculation for 2019, based on the expenses from 2018, was \$719.55. Schneider recommended that, despite this calculation, the in-town allowance should stay at \$780, and President Cordova agreed to keep the allowance at \$780. (Jt. Exh. 11; Tr. 810–813.) In March 2021, Schneider notified various individuals, including FAIR stewards, that the in-town car allowance increased

<sup>11</sup> Kennedy had not informed anyone at UFCW Local 7 that maroon was FAIR’s color.

<sup>12</sup> Schneider retired on July 29, 2022, having worked for UFCW Local 7 for 36 years, serving as Secretary-Treasurer since 2013.

from \$780 to \$868, and the out-of-town car allowance increased from \$1,025 to \$1,096 effective the previous February, based on the average costs for both 2019 and 2020.<sup>13</sup> (Jt. Exh. 10; R. Exh. A.) It is no surprise that when the rates for the car allowances went up in 2021, FAIR did not file a grievance. (Tr. 175–177, 222.)

On May 16, 2022, UFCW Local 7’s accountant, Chris Nate,<sup>14</sup> sent Schneider updated automobile calculations. (Jt. Exh. 7.) The amount calculated for the in-town car allowance was \$809.87. This was based on the 2021 costs from Christine Arellano and Margie McGraw, who drove union vehicles that year.<sup>15</sup> On May 25, Schneider asked Nate for the car rate allowance for the past 10 years. Nate sent Schneider, cc’ing Cordova, a list of the car allowances from 2012 through 2021, showing the following for in-town allowance:

| Year | Amount |
|------|--------|
| 2012 | \$650  |
| 2013 | \$650  |
| 2014 | \$780  |
| 2015 | \$780  |
| 2016 | \$780  |
| 2017 | \$780  |
| 2018 | \$780  |
| 2019 | \$780  |
| 2020 | \$780  |
| 2021 | \$868  |

(Jt. Exhs. 7, 9.)

During the May 25, 2022, meeting discussed directly above, Zuniga called Cordova in response to some questions about the car allowance. Cordova told employees that the in-town car allowance was decreasing and the out-of-town allowance was increasing. (Tr. 272–274, 469, 530–532, 633, 1,018–1,020.) Schneider explained to the group that the change was based on representatives’ mileage and expenses for in-town union cars. (Tr. 312, 532, 1,021.) Union Representative Blea asked if the decrease to the in-town allowance was mandatory, and recalled that Cordova replied, “[L]egally we have to do this because we have to be able to prove or to substantiate why we’re paying the car allowance that we’re paying.” (Tr. 532.) Cordova recalled explaining that UFCW Local 7 had to be accountable to justify

expenditures to the Department of Labor and there was a significant decrease in the in-town mileage.<sup>16</sup> (Tr. 633, 1,021–1,022.)

Employees expressed frustration about the decrease in light of rising gas prices. (Tr. 470, 632.) Secretary-Treasurer Schneider recalled employees expressing concern, stating:

The staff was concerned about the—the reduction on the car allowance. And there was discussion of the calculation, including Margie McGraw and Debbie Olander.<sup>17</sup> Debbie had a smaller area in the metro area than some of the other metro area union reps. And others expressed that Margie McGraw should have been excluded from the calculation because she was off on a medical leave for a period of time during the year.

(Tr. 797.)

The stewards informed FAIR Vice President Kennedy that the in-town car allowance was decreased. (Tr. 50–52.) FAIR filed a grievance but it was untimely. (GC Exh. 2; Tr. 166.)

On April 13, 2023, Cordova emailed the FAIR officers and stewards to inform them that the in-town car allowance was changing from \$808.87 to \$945.74, and the out-of-town car allowance was changing from \$1,120.69 to \$1,220.<sup>18</sup> (R. Exh. B.)

## 2. Legal Standards and Analysis

The Act, at Section 8(a)(5), provides that it shall be an unfair labor practice for an employer “to refuse to bargain collectively with the representatives of his employees.” Collective bargaining is defined in Section 8(d) as “the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment.” Well-settled law provides that an employer may not change the terms and conditions of employment of represented employees without providing their representative with prior notice and an opportunity to bargain over such changes, absent a valid defense. See *NLRB v. Katz*, 369 U.S. 736, 747 (1962); *Litton Financial Printing Division v. NLRB*, 501 U.S. 190, 198 (1991). The unilateral change doctrine “extends to cases in which an existing agreement has expired and negotiations on a new one have yet to be completed.” *Litton Fin. Printing Div.* 501 U.S. at 191.

In *MV Transportation, Inc.*, 368 NLRB No. 66 (2019), the Board determined that the “contract coverage” standard applies when determining whether an employer’s unilateral action is permitted by a collective-bargaining agreement. Under this standard, “the Board will examine the plain language of the collective-bargaining agreement to determine whether action taken by an employer was within the compass or scope of contractual

<sup>13</sup> Neither FAIR President Supat nor Vice President Kennedy was included in the email.

<sup>14</sup> Nate was a FAIR member at the time. (Tr. 790.)

<sup>15</sup> Arellano did not report any costs for January, May, or December 2021. McGraw did not report any expenses for April, May, or August 2021. (Jt. Exh. 9; Tr. 807–808.) There is no allegation before me that the reduction in the car allowance was discriminatory. Any perceived anomalies in how the amount was calculated is not material to the issue of whether the reduction was an unlawful unilateral change.

<sup>16</sup> The Respondent did not prove this rationale was true, but that does not materially impact the outcome.

<sup>17</sup> Schneider testified the reference to Olander was a mistake, and when refreshed with the documents, realized he was actually referring to Arellano. (Tr. 808.)

<sup>18</sup> Stewards Marquez and Blea did not recall seeing an email about the car allowance for 2022. (Tr. 338, 581.) No FAIR steward asked Zuniga to bargain about the change. (Tr. 634.)

The General Counsel asserts that the stewards were not copied on Cordova’s April 2023 correspondence (GC Br. 102), but this is not accurate.

language granting the employer the right to act unilaterally.” Id., slip op. at 2. If the contract does not cover the employer’s action, the Board “will continue to apply its traditional waiver analysis to determine whether some combination of contractual language, bargaining history, and past practice establishes that the union waived its right to bargain regarding a challenged unilateral change.” Id., slip op. at 17; citing *Omaha World-Herald*, 357 NLRB 1870, 1871 (2011); *American Diamond Tool*, 306 NLRB 570 (1992).

As recounted above, the pertinent language of the contract states:

Persons on car allowance shall receive:

- a. In town car allowance: seven hundred eighty dollars (\$780.00)
- b. Out of town car allowance one thousand twenty five dollars (\$1025.00)
- c. Every twelve (12) months from the date of ratification the Parties will review average cost of Union cars.

(Jt. Exhs. 1, 2.) The contract language is silent as to the method of annual review, other than that it will involve “the Parties.” It is also silent about what, if any, impact the review will have on the agreed-upon rates delineated in the contract. Unilateral action, other than conducting the review, is therefore not permissible under the “contract coverage” standard. As such, I must determine whether some combination of contractual language, bargaining history, and past practice establishes that the union waived its right to bargain regarding the 2022 reduction in the in-town car allowance.<sup>19</sup>

Turning first to bargaining history, Retail Director Ramon Zuniga, who participated in negotiations in 2014, testified that when the annual review provision was added to the contract, the parties contemplated reviewing and adjusting the car allowance based on the costs incurred by drivers using union cars. This testimony is unrefuted, and as discussed below, is consistent with the parties’ past practice.

A past practice must occur with such regularity and frequency that employees could reasonably expect the “practice” to continue or reoccur on a regular and consistent basis. *Philadelphia Coca-Cola Bottling Co.*, 340 NLRB 349, 353–354 (2003); *Eugene Iovine, Inc.*, 328 NLRB 294, 297 (1999). The record shows that UFCW Local 7, at least since 2014, conducted an annual review of costs to determine the car allowance in the manner described above.<sup>20</sup> Unrefuted evidence establishes that UFCW Local 7’s accountant and secretary-treasurer, without input from FAIR leadership, calculated the amount based on the previous year’s costs, with Cordova approving the final amount, and presented it to, among others, the FAIR stewards. This amount never went below the negotiated amount, which as of November 3, 2018, was \$780 as explicitly set forth in the contract. The cal-

culcation went above \$780 in 2021 to total \$868. It went above \$780, but below the previous year’s total of \$868, in 2022, to total \$809.87. I find, therefore, the Respondent has established a past practice of unilaterally calculating the annual car allowance in the foregoing manner, consistent with the evidence of the bargaining history.

Under the “clear and unmistakable waiver” standard, a waiver of statutory bargaining rights is not lightly inferred and must be “clear and unmistakable.” See *Metropolitan Edison v. NLRB*, 460 U.S. 693, 708 (1983); *Provena St. Joseph Medical Center*, 350 NLRB 808 (2007). “A union’s acquiescence in previous unilateral changes,” standing alone, “does not operate as a waiver of its right to bargain over such changes for all time.” *Owens-Corning Fiberglas*, 282 NLRB 602, 602 (1987). The Board, however, has held that “[a] clear and unmistakable waiver may be inferred from past practice,” *California Pacific Medical Center*, 337 NLRB 910, 914 (2002).

Based on a combination of the contract language, bargaining history, and past practice, I make a number of findings. First, FAIR did not take part in the annual review of the average cost of union cars set forth in Article 35, Section 4c. This was done by UFCW Local 7’s accountant, overseen by the secretary-treasurer, and seemingly rubber-stamped by the president for years. By acquiescing to this practice each year, FAIR waived its right to participate in it on the front end. Second, unrefuted evidence establishes that the annual rates were presented to FAIR’s stewards, at least since 2014, without any sort of advance notice and opportunity to bargain over them. This is plainly apparent by Secretary-Treasurer Schneider’s February 22, 2021, email to his bookkeeper, Brenda Matthews, instructing her to implement the changes to the automobile allowance for the month of February based on the annual calculations, and his later email to the FAIR stewards and others, on March 1, 2021, informing them about the changes with a simple “FYI.” (R. Exh. A). Schneider’s testimony that this was his method of communication about the changes prior to 2022 is unchallenged.

The 2018 contract language specifies a negotiated amount of \$780 for the out-of-town car allowance, with an annual review that does not speak to whether any increases or decreases from this amount will be implemented. Looking at the history, which held the \$780 amount level for 7 straight years, the affected FAIR-represented employees were certainly entitled to regard an in-town car allowance of at least \$780 as part of their wage structure. See *N. Star Steel Co.*, 347 NLRB 1364, 1378 (2006). The bargaining history and the past practice establish that the Respondent, for several years, undertook the review to calculate the applicable and agreed-upon costs, set the in-town car allowance, and notified FAIR after the fact of the allowance’s final amount, which never dipped below \$780. Under these circumstances, I find FAIR waived its rights to bargain over the 2022 in-town car allowance calculation and implementation.<sup>21</sup> Accordingly, I

result from the established past practice of making and implementing the calculation of costs for the in-town car allowance that resulted in a car allowance less than the previous year, the practice itself remained the same, other than that it was communicated at a meeting rather than through email.

The General Counsel also argues that FAIR could have bargained with UFCW Local 7 to retrieve additional data to provide a better repres-

<sup>19</sup> The Respondent does not dispute that the monthly car allowance are a mandatory subject of bargaining. (See R. Br. 17–18.)

<sup>20</sup> The General Counsel does not dispute this. (See GC Br. 102–103.)

<sup>21</sup> The General Counsel cites to *NBC Universal Media, LLC*, 371 NLRB No. 5, slip op. at 1 fn. 1 (2021), a case involving bargaining for a first contract. In that case, there was no past practice established. Here, there was an established past practice. Though there was no previous end

recommend dismissal of this complaint allegation.

*E. Allegations Regarding Employees' Work Equipment.*

Complaint paragraphs 5(a) and 12 allege that, about June 25, 2022, Executive Assistant to the President Martin Garcia told employees that the Respondent confiscated their work equipment because of their activities in support of the Charging Party Union, and because employees might strike. Complaint paragraphs 6(b) and 12 allege that about June 27, 2022, Cordova told employees the same thing. Both allege violations of Section 8(a)(1).

Complaint paragraphs 7(a), 9(b), 13, and 14, allege that between about June 25, 2022, and July 18, 2022, the Respondent confiscated the work equipment of FAIR-represented employees and required them to check-out and check-in their equipment each day to perform their job duties in violation of Section 8(a)(5), (3), and (1).

1. Facts

On Saturday, June 25, 2022, during a bargaining session, detailed below, UFCW Local 7 presented an "all or nothing" comprehensive proposal, which FAIR rejected. At around 4:30 p.m., FAIR decided to conclude negotiations for the day and regroup. At the time, the parties had additional bargaining dates scheduled.

At about 4:45 or 4:50 p.m., Retail Director Arellano, at Cordova's instruction, called FAIR Vice President Kennedy and told her that all of the bargaining members needed to come back to the Wheat Ridge office by midnight and turn in certain equipment. (Tr. 93, 937, 1,028.) At 4:53 p.m., Garcia sent an email to the staff stating, "Please turn in your credit cards, computers and keys by midnight tonight to the Wheat Ridge office." An hour later, Garcia emailed the staff stating, "To clarify, we need all tablets, surfaces, and computers" with bullet point items as follows:

- Computers
- Surfaces
- Tablets
- Keys
- Key Fobs
- Union Visas

(GC Exh. 31.)<sup>22</sup>

Union Representative Marquez received the email when he was driving home. As he was turning around to head back to the Wheat Ridge office, Garcia called him to ask if he had received the email, and Marquez asked why they needed to return their equipment. Garcia responded that they were not sure if the employees might go on strike. Marquez returned his equipment to Arellano, who was in Garcia's office checking in equipment for

all employees. (Tr. 283–284.)

Union Representative Breen received the email after he got home that evening following an hour-long drive. He drove back to the Wheat Ridge office and handed in his equipment, keys, and credit card. He asked how he was supposed to book his hotel rooms for his frequent travel in Wyoming. Cordova responded that he needed to do his job, and Garcia told him his supervisor would give him additional details. (Tr. 472–473.)

At 7:05 p.m., Arellano emailed the following to the union representatives:

For clarification All union Reps are still required to do 100% of your Union Representatives job duties such as service the membership, turn in Route books (paper copies) your 90 day app list as per Martin's directive by June 29th etc.

(GC Exh. 31.)

After June 25, the union representatives were required to check out their equipment each day. The director on duty retrieved the equipment from Garcia's desk and employees would sign a check-out sheet, and upon return each day a check-in sheet. They were not permitted to keep the equipment overnight or take it out of the office. (Tr. 285–286.)

Union Representative Marquez used his iPad and laptop in the field. He used an iPad app called Sidekick to sign members up, withdraw them from the union if they were leaving, update addresses and phone numbers, and register voters. Because they had to turn in keys, the representatives and organizers could only come to the office during business hours, when previously they could get into the office on evenings and weekends.<sup>23</sup> (Tr. 287–289.) Marquez has Sidekick on his work phone too, but found the app was not smartphone friendly and it was more difficult to use on the phone. UFCW Local 7 handed out paper grievance forms and route books for representatives to use. (Tr. 328–329.) Marquez had not filed a paper grievance for several years. It was inconvenient, more difficult, and slower to do grievances and route books on paper rather than the computer. (Tr. 339–340.) Marquez stated the following regarding the use of computers to do his work:

[I]t's a lot faster. Just because it's a click of a mouse, you click a button, you change, you type in a date or—and then you send it off via email. Doing it by hand, you have to handwrite everything down, of course. And then you have to return your paper books to the office and turn them in."

(Tr. 341.)

Breen had previously filed grievances online, and found it to be much more efficient and accurate. Doing the grievances by paper was much slower and hampered his ability to do his job, as he testified.

entative sample of costs for the calculation. The possibility of such bargaining, however, is not material to whether, through contract language, bargaining history, and past practice, FAIR waived its right to participate in such calculations.

Finally, the General Counsel argues that the Board should overrule *MV Transportation*. I am bound to follow the Board's current precedent

and leave the General Counsel's request for revisiting that precedent to the Board should this decision be appealed.

<sup>22</sup> Though there was testimony that certain individuals pleaded their cases to keep some equipment, there is no dispute the directive was sent to all UFCW Local 7 staff.

<sup>23</sup> Union representatives rarely visited the Wheat Ridge offices during evenings and weekends except during "crunch time." (Tr. 334.)

I had to do everything on paper. If I made a mistake while I was writing out a form, I had to start a new one. I had to use paper notes; I didn't have access to any of the notes I had taken before because I took them all on my Surface. So I didn't have access to my previous notes. Yeah. It—it was—it's and—yeah, it was extremely difficult. I—I think I filed a handful of grievances on paper, but it was just very inefficient.

(Tr. 476.) Arellano testified that some FAIR members still did handwritten grievances, but she did not identify any such employees. (Tr. 918.)

UFCW Local 7 pays the bills for union credit cards. After the union visas were ordered returned, the representatives had to charge work expenses on their personal credit cards and seek reimbursement. (Tr. 945–946.)

On July 27, during a meeting discussed below, Cordova stated to the staff:

Why did we take your equipment? Okay. I want to answer that. You are not being locked out. You guys are working without a contract. Okay? Um, there are things that don't survive that. The no strike or no lockout do not survive that. You have whatever recourses you have under the law. So you want to strike. We under the law have to

continue to represent our members. We need your equipment, we need your laptop, we need all of that. I mean, we want to resolve this as quickly as possible and get back to work.

(GC Exhs. 34, 34a.)

Cordova stated she made the decision to retrieve the equipment because the collective-bargaining agreement expired that night, the parties had not reached a new agreement, and Cordova feared FAIR would call a strike.<sup>24</sup> Cordova had heard that FAIR was following UFCW Local 7's "playbook." When UFCW Local 7 did not extend the contract with King Soopers, however, Cordova provided notice to King Soopers, before the contract expired, that UFCW Local 7 intended to strike. (Tr. 865, 1,027–1,028, 1,109.) Cordova also said she had the equipment returned because she needed to protect UFCW Local 7's assets and they probably would need the equipment to represent their members. She was also concerned about confidential information and the inability to shut the system down in the event employees walked out. (Tr. 1,028–1,029.) Only the FAIR bargaining unit was directed to return their work equipment. (Tr. 939.)

At the end of a July 14 bargaining session (discussed below), Tyson Kehm, a member of FAIR's bargaining team, asked if the FAIR members could get their equipment back. President Cordova said she would look into it and get back to them. (Tr. 105.) On July 18, Cordova sent an email informing the union representatives that, following a discussion between UFCW Local 7 and FAIR, the employees could pick up their equipment the following day. She informed employees that, in the event of a labor dispute, or at UFCW Local 7's request, the equipment must be immediately returned. (GC Exh. 32.)

FAIR was not provided with notice or an opportunity to bargain before the equipment was retrieved, and FAIR did not re-

quest to bargain after the fact about the equipment. (Tr. 180, 223.) FAIR did not inform Cordova or anyone at UFCW Local 7 that they intended to strike, but they were not required to do so. (Tr. 291, 1,111–1,126.)

## 2. Legal Standards and Analysis

The legal standards for violations of Sections 8(a)(5) and (1) are set forth above. Under Section 8(a)(3), an employer commits an unfair labor practice when it engages in "discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization . . ."

### a. Section 8(a)(1)

The Respondent contends that it was justified in requiring employees to return their equipment because they had the right to prepare for a strike. This is wholly unconvincing. Just four weeks after the Respondent took back the equipment, on July 18, President Cordova agreed to return the equipment back to the employees with the agreement that the employees would turn the equipment back in to UFCW Local 7 in the event of a strike. The parties were in bargaining the entire day on May 25, yet for reasons that have not been explained at all, the more drastic step of taking the employees' work equipment was the first course of action, rather than simply starting with this seemingly unproblematic agreement to return the equipment in the event of a strike. Moreover, the Respondent's fear of a strike was ostensibly based on Cordova hearing that FAIR was taking a page out of UFCW Local 7's "playbook." First, this is based on uncorroborated hearsay. In addition, the reference to the "playbook" is less than clear, but Cordova interpreted it as meaning the FAIR members were trying to bargain the way she bargained. (Tr. 1,109.) Taking things a step further, assuming that's what the FAIR members meant, this would translate into them giving UFCW Local 7 advance notice if they intended to strike. A strike, or a threat to strike, of course, never happened, and instead the parties had agreed to continue bargaining. I find, under these circumstances, the Respondent's abrupt action of requiring employees to return their work equipment, and the statements related to this action, were coercive in violation of Section 8(a)(1).

### b. Section 8(a)(5)

The facts, detailed above, demonstrate that FAIR was not given timely notice or a meaningful opportunity to bargain prior to UFCW Local 7 requiring employees to return their equipment, as everything occurred within a matter of minutes. The Respondent describes the order to return work equipment to the UFCW Local 7 as a "mere inconvenience" thus seeming to argue that it was too de minimis to require bargaining. The duty to bargain only arises if changes are "material, substantial and significant." *Alamo Cement Co.*, 281 NLRB 737, 738 (1986); *Flambeau Air-mold Corp.*, 334 NLRB 165, 171 (2001). The General Counsel bears the burden of establishing this. *North Star Steel Co.*, 347 NLRB 1364, 1367 (2006). Once the General Counsel has done so, the Respondent bears the burden of then showing that the

<sup>24</sup> Though the contract expired at midnight on June 25, Art. 42 provides for automatic renewal from year to year unless either party changes or terminates it at the expiration. (Jt. Exhs. 1, 2.)

changes were in some way privileged. See, e.g., *Fresno Bee*, 339 NLRB 1214 (2003) (and cases cited therein).

I find the General Counsel has established that requiring employees to return their work equipment was a material, substantial, and significant change to their working conditions. Testimony firmly establishes what common sense in the age of technology would tend to dictate, i.e., it was more time consuming and burdensome to do grievances and route books by hand using paper than it was to do them electronically. Moreover, taking union credit cards from some employees required them to incur a personal expense subject to reimbursement rather than the Respondent assuming the expense in the first instance. Finally, the duration of the Respondent's action is sufficient to constitute a material change. See *Rangaire Co.*, 309 NLRB 1043 (1992) (one-time unilateral refusal to adhere to a past practice of a paid extra half hour for lunch on Christmas Eve violated Section 8(a)(5)).

The Respondent argues that it was responsible under the LMRDA, 29 USC § 501, to safeguard its assets. (R. Br. 24.) This argument is unavailing as it both misses the mark and is speculative. There was no evidence presented that any law required the Respondent's actions, nor was there any evidence regarding the intersection of how compliance with the LMRDA touched on the employer's actions. The Respondent's argument that it feared a strike likewise fails for the reasons articulated above.<sup>25</sup>

Based on the foregoing, I find the Respondent's unilateral action of requiring employees to return certain work equipment violated Section 8(a)(5).

#### c. Section 8(a)(3)

Finally, the General Counsel contends that the Respondent's demand that employees return their work equipment amounted to unlawful discrimination. Though the facts of this case do not fall perfectly neatly into the Board's traditional paradigms for analyzing Section 8(a)(3) allegations, the plain language of the statute prohibits "discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization . . ."

In the instant case, the facts establish that in the immediate wake of FAIR's rejection of UFCW Local 7's comprehensive proposal, Cordova made the decision to require FAIR bargaining-unit members to return their work equipment. No other employees were treated in this manner. The timing, the rash and extreme nature of the decision and ensuing actions, and animus toward FAIR discussed in the following section, establish a prima facie case of discrimination. The justifications the Respondent articulated for its actions do not hold up for the reasons detailed above. I find, therefore, the evidence establishes that the employees' equipment was taken away based on their status as FAIR members to discourage membership in violation of Section 8(a)(3).

<sup>25</sup> The Respondent states in its brief, "[T]he dispute regarding the property could have been resolved sooner, but no representative of FAIR responded to Local 7's numerous requests calls and messages." (R. Br. 11.) Given that representatives from both FAIR and UFCW Local 7 had been together the entire day on June 25, any argument that FAIR was unreachable makes no sense.

#### F. President Cordova's June 27 Remarks about FAIR

Complaint paragraphs 6(c) and 12 allege that on June 27, 2022, President Cordova disparaged or denigrated the Charging Party Union by falsely telling employees that, during a bargaining session for a successor agreement, the Charging Party Union told Respondent to discipline and fire employees, in violation of Section 8(a)(1).

##### 1. Facts

On June 27, 2022, President Cordova held a mandatory meeting with bargaining-unit employees at the Wheat Ridge office to discuss negotiations. Cordova relayed secondhand information about a sidebar that had occurred during the June 24 bargaining session. The morning of June 24, FAIR Vice President Kennedy had asked Garcia if they could talk, and Garcia, Arellano, and Kennedy met in Arellano's office. Kennedy said UFCW Local 7 did not follow progressive discipline and went straight to final warnings.<sup>26</sup> (Tr. 860-861, 907-908.) Garcia acknowledged that Kennedy did not tell Garcia and Arellano that they should discipline employees, but stated that it was unfair to give final written warnings without having given some other progressive discipline. (Tr. 874.) No other FAIR representative attended the sidebar. Arellano and Garcia called Cordova after the meeting. (Tr. 863.)

Union Representative Breen recorded the June 27 meeting Cordova held with employees. Cordova started off by saying:

Let me tell you about your union and bring them in here because we will talk about it to their face when we meet. . . . You guys have your FAIR representatives asking for side bars with us, and none of you guys are in there as a witness. You guys need to be in there as a witness, all right, so you can hear what your representatives are saying. Your representatives came in and asked for a side bar with our staff and said we were bad parents and we needed to discipline you, and that we let you guys get away with too much, and that we need to discipline you, boom, boom, boom, and terminate, and then they don't have . . . then their hands are tied and can't do anything for you. Martin and Christine sat there. We did not agree to any off the record conversation, and they came and asked if they could come talk to us and then they come to our office and say that. I kind of like you guys. I don't want to boom. Boom. Boom, discipline to terminate you.

Garcia added:

Yes, they did come, they came what's her name, Jill came and knocked on our door, asked to speak with Christine and I, in a side bar, never once did she say it was off the record discussion. . . . She said the reason they have a problem with the grievance procedures is because we are bad parents. We don't discipline you guys enough. She said if we issued more progressive discipline, then we would not have an issue and you'd never hear from FAIR again.

<sup>26</sup> There is a dispute as to whether Kennedy likened UFCW Local 7 to "bad parents" but whether or not this terminology was used is immaterial. I also find it unnecessary to pass on any discussion about the discipline, or lack thereof, of a secretary who may have leaked confidential information, to decide this complaint allegation.

Cordova then stated:

In the last contract we did when Mars<sup>27</sup> was here, Mars came in the office and did the same thing, and they said, he told us that, shocked, he said, fire them, the staff is greedy and lazy, and absurd proposals. You need to fire them. We were like we kind of like them. And then for FAIR to come back again and say that. Bring her [Kennedy] in here because I am coming to bargaining and Imma tell her that, you know, well, one, we don't appreciate that. And that is not right. Uh, you know, but put your eggs in whatever basket you guys want to put your eggs in, all right. There's yet to be a timely grievance filed yet. Uh, you know. Whatever. We are happy to recognize them. It is your union. But Imma tell you straight up and up front. Come into our office and saying that. And then came back for another side bar. And I am just really shocked. Come in. We're transparent. Whatever. Do your ... the way you were. If any of you guys have bargained with me, we don't ever side bar without a member. There. Have a witness there. Jesus. You know, and if that is not how your bylaws work, then that is not how your bylaws work. But you come in and we will let you into the meeting. So you could hear what's being said.

(GC Esh. 34, 34a.)

In another meeting, Cordova told UFCW Local 7 Organizer Jimena Peterson that Kennedy had said, during a sidebar with Garcia, that "they need to punish us and fire us right away because we're spoiled." (Tr. 885, 889.)

During a later Zoom meeting with FAIR members and FAIR leadership, FAIR members asked Kennedy about what Cordova had said at the June 27 meeting. Kennedy acknowledged having a sidebar without a bargaining-unit member present and making some comments, apologized, and said it would never happen again. (Tr. 885–886.) Blea also testified that Kennedy admitted to the sidebar, but said she was trying to explain to Garcia and Arellano that what they were doing was not progressive discipline and that they needed to hold people accountable prior to just jumping to a 5 or 10-day final warning. Blea spoke up as follows:

I was one of the first ones to speak up and say that those kind of conversations can't happen without a witness with you—without somebody else, a FAIR member in the room with you at the time. That she shouldn't be meeting with the company alone because I understood what she was saying because I use that analogy the same when I represent the members as well.

<sup>27</sup> The former FAIR President was Steve Mars.

<sup>28</sup> Blea's detailed testimony of what Kennedy said is credited. It is corroborated by Kennedy's testimony of what she said during the side bar. Peterson, by contrast, spoke of a "discussion between President Cordova and Ms. Kennedy about something that occurred during a side conversation at the original bargaining session." (Tr. 884.) Peterson testified as follows:

Q BY MR. SHECHTER: In any event, do you remember a discussion between President Cordova and Ms. Kennedy about something that occurred during a side conversation at the original bargaining sessions?

A Yes.

Q Okay. And was that conversation between President Cordova and Ms. Kennedy about the earlier conversations across the bargaining table?

A Yes.

But I just tried to explain to her she needed to take somebody with her because things get turned around.<sup>28</sup>  
(Tr. 1132, 893.)

## 2. Legal Standards and Analysis

An employer's free speech right to communicate its views to its employees is "firmly established," and cannot be infringed by a labor organization or the Board. Furthermore, Section 8(c) of the Act simply implements the First Amendment by requiring that the expression of any views, argument, or opinion shall not be evidence of an unfair labor practice as long as that expression does not contain any threat of reprisal or promise of benefit thereby violating Section 8(a)(1) of the Act. *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 617 (1969). Moreover, an employer may convey to its employees its position during negotiations for a collective-bargaining agreement. *United Technologies Corp.*, 274 NLRB 1069, 1074 (1985), *enfd. sub nom. NLRB v. Pratt & Whitney*, 789 F.2d 121 (2d Cir. 1986). Making false or reckless statements to bargaining-unit employees with an aim of undermining union support, however, is not permitted. See *General Electric*, 150 NLRB 192 (1964).

"Words of disparagement alone concerning a union or its officials are insufficient for finding a violation of Section 8(a)(1)." *Sears, Roebuck & Co.*, 305 NLRB 193 (1991). An employer, however, may violate the Act when it denigrates the union in the eyes of employees. See *Lehigh Lumber Co.*, 230 NLRB 1122 (1977).

I find that Cordova intentionally misled employees about Vice President Kennedy's comments by saying that Kennedy had asked the Respondent to discipline employees more often and more severely. It is clear from Organizer Peterson's testimony that she received the message that Kennedy wanted to "fire" the FAIR members "right away" because they were spoiled. Nobody present at the sidebar, or anywhere, testified to such a comment from Kennedy. On the contrary, Garcia, who was present both at the sidebar and also at the June 27 meeting, admitted that Kennedy did not say UFCW Local 7 should discipline their members, but instead said it was unfair to give final warnings without previous progressive discipline. It is plainly apparent that Kennedy's comments were intentionally contorted in an effort to turn the membership against FAIR leadership.

President Cordova's comments that she "kind of likes" the FAIR members, juxtaposed with her statements implying that FAIR representatives cast their own membership as lazy and

Q Okay. And what do you recall about what President Cordova said to Ms. Kennedy?

A Jill Kennedy had a sidebar with Martin and basically told her that they need to punish us and fire us right away because we're spoiled. And she did the sidebar without anybody from the bargaining committee present.

(Tr. 885–886.) The latter part of this testimony is confusing, as Peterson was asked what Cordova had said to Kennedy. It is doubtful Cordova's comment to Kennedy started off with "Jill Kennedy had a sidebar . . .," which leads to the conclusion that her testimony on this point was nonresponsive.

greedy, were obviously aimed at undermining FAIR and persuading FAIR members that UFCW Local 7 had their best interests at heart. See *NLRB v. Pratt & Whitney Air Craft Div.*, 789 F.2d 121, 134 (2d Cir. 1986) (“Attempts to coerce the employees, or to portray the employer rather than the union as the workers’ true protector, remove such speech from the penumbra of protection ....”). Moreover, Cordova’s statement that FAIR had yet to file a timely grievance is belied by the record.

It is abundantly clear that the intent behind this meeting was to inform the membership that FAIR was an incompetent union that was difficult to work with, and to suggest employees should not associate themselves with FAIR. See *McDaniel Ford, Inc.*, 322 NLRB 956, 961 (1997). The manner in which this was done was disingenuous and coercive. Based on the foregoing, I find the General Counsel met her burden to prove this complaint allegation.

### G. The Grievance Procedure

Complaint paragraphs 9(c) and 14 allege that since about July 19, 2022, Respondent failed and refused to continue in effect the grievance procedure provisions of the collective-bargaining agreements after their expiration, in violation of Section 8(a)(5) and (1).

The General Counsel asserts in its closing brief that the Respondent’s repeated statements to FAIR stewards that the grievance procedure did not survive the contracts’ expiration independently violate Section 8(a)(1), and were fully litigated.

#### 1. Facts

Article 21, titled “Dispute Procedure” states<sup>29</sup>:

Step 1. By conference during scheduled working hours between the aggrieved employee(s), the F.A.I.R. representative, and the Local’s designated representative. Each party shall designate its representative to the other party in writing.

a. An employee shall have the right to select any designated F.A.I.R. representative whom is a member of the F.A.I.R. Bargaining Unit.

b. F.A.I.R. will provide Local 7 with a list of designated F.A.I.R. representatives within seven (7) days of ratification.

c. F.A.I.R. shall give three (3) day written notice to the President of Local 7 of any changes of designated F.A.I.R. representatives.

Step 2. If the grievance cannot be satisfactorily resolved under Step 1, the grievance shall be reduced to writing and submitted to Local 7’s designated representative. Such submission shall be made within twenty (20) days of the date the employee becomes aware of the occurrence and shall clearly set forth the issues and (alleged) specific violation of the provisions of this contract. Local 7’s representative and the F.A.I.R. representative shall meet (during normal working hours) within ten (10) days after submission of the written grievance to attempt to resolve the grievance.

Step 3. If the grievance cannot be satisfactorily adjusted in the above procedure, either party may, within thirty (30) days from the date of the Step 2 meeting, request arbitration and the other party shall be obligated to proceed with arbitration in the manner hereinafter provided. The parties shall forthwith attempt to agree upon an impartial arbitrator.

A separate article, Article 22, covers the arbitration procedure. (Jt. Exhs. 1, 2.)

The FAIR stewards initiate Step 1 grievances with UFCW Local 7 management.<sup>30</sup> The goal of a Step 1 meeting is to make every effort to resolve the grievance informally. If the grievance is not resolved, FAIR files a Step 2 grievance with the UFCW Local 7’s personnel director (who during the relevant time period was Dale Lee) and/or President Cordova. (Tr. 44, 292–293, 534, 703.)

Following expiration of the collective-bargaining agreement, FAIR filed numerous grievances on behalf of its members with UFCW Local 7. (GC Exhs. 16, 40.) A July 13 grievance concerned a member, Doug Hendrickson, who was claiming expenses for being forced to turn in his work equipment on June 25. UFCW Local 7, through Garcia and Lee, promptly responded to this and numerous other grievances asserting that there was no grievance and arbitration procedure in force between the parties because the collective-bargaining agreement had expired.<sup>31</sup> Numerous responses, including an August 8, 2022, letter Lee sent to FAIR President Paul Supat, used this same language:

First and foremost, the parties’ collective bargaining agreement expired on June 26, 2022. As we have previously explained to FAIR, there is presently no grievance and arbitration procedure in force between the parties. I ask that you withdraw this meritless grievance forthwith. The grievance is denied, as well as your request for a Step II meeting.

(GC Exhs. 16, 42.)

On August 9, FAIR Vice President Kennedy sent President Cordova correspondence following up on the previous grievances and arguing that the grievance procedure applied even after the collective-bargaining agreement’s expiration. Kennedy stated the grievance concerning Hendrickson occurred prior to the contracts’ expiration, and cited to Board authority supporting its view that the UFCW Local 7 was required to adhere to the grievance procedure even after contract expiration. FAIR filed the NLRB charge alleging that the Respondent had repudiated the grievance procedure on August 16, 2022. On August 17, Garcia responded to Kennedy’s August 9 letter, reiterating that the collective-bargaining agreement had expired, but stating that UFCW Local 7 was prepared to meet and discuss any post-expiration grievances, while immediately reasserting the grievance and arbitration procedure was no longer in force or effect. Garcia then said UFCW Local 7 would respond on a case-by-case basis to demands to arbitrate, and stated that UFCW Local 7 was prepared to process Hendrickson’s grievance through to arbitration. (GC Exhs 1(g), 16.)

<sup>29</sup> The Respondent’s brief incorrectly states this provision is titled “Grievance and Arbitration Procedure.”

<sup>30</sup> Paul Marquez, Randy Blea, Dominic Rossi, and Brian Archuleta were FAIR stewards. Manny Lopez had previous been a steward. (Tr. 256.)

On August 29, 2022, Cordova's executive assistant, Garcia, summarized a Step 1 meeting with stewards Paul Marquez and Tyson Khem over a suspension issued to Blea. Garcia stated, "I denied the grievance stating that failure to follow a directive does not require progressive discipline and that their contract expired . . . and they do not have a grievance and arbitration procedure." (GC Exh. 43.) UFCW Local 7's August 30 response to this grievance used slightly different language than its previous responses, stating:

First, the parties' collective bargaining agreement expired on June 26, 2022. As we have previously explained to FAIR, there is presently no grievance and arbitration procedure in force between the parties. Notwithstanding the foregoing, Local 7 is prepared to meet to discuss the discipline imposed upon Mr. Blea if you so desire, although we are unwilling to arbitrate this matter as we are not bound by the expired arbitration provisions as previously explained.

(GC Exh. 16.) This correspondence, from Personnel Director Lee, went on to address the grievance's merits.<sup>32</sup>

On August 31, 2022, UFCW Local settled a grievance on behalf of Jay Martinez, who had been issued a final written warning on July 21, 2022. The discipline was reduced from a final written warning to a written warning. Steward Manny Lopez signed on behalf of FAIR. (R. Exh. Y.)

During a Step 1 meeting on September 14, 2022, concerning Jennifer Striefel's suspension, Cordova started off the meeting by stating, "Just so we are clear, the grievance procedure does not survive the expiration of the CBA." (GC Exh. 50.) On September 15, Supat filed a written grievance, asking for expungement of Striefel's suspension and other relief. Supat instructed Cordova to contact Kennedy if she disagreed with FAIR's position, in accordance with the collective-bargaining agreement. On September 16, Lee wrote to Supat and used identical language as his August 30 correspondence, about the contract's expiration and the lack of a grievance and arbitration procedure. (GC Exh. 16.)

Supat sent Cordova written grievances on July 13, 2022, July 20, 2022, August 7, 2022 (4 separate contacts), August 9, 2022 (2 separate contacts), August 13, 2022 (2 separate contacts), August 20, 2022, August 29, 2022, and September 15, 2022, November 13, 2022, December 8, 2022, March 6, 2023, and March 7, 2023. In each case, Supat clearly set forth the alleged contract violations, requested relief for the grievant, and instructed UFCW Local 7 to contact Kennedy if they disagreed with FAIR's position, in accordance with the collective-bargaining agreement. (Jt. Exh. 8; GC Exhs. 16, 42.) They were repeatedly denied and included language stating the grievance process was no longer in effect. On March 8, 2023, Cordova emailed Supat and Kennedy regarding some these grievances. She addressed each on the merits, and explained why each was without merit. She asked for Kennedy's availability for a call to discuss performance issues of some of the union representatives. (GC Exhs. 38, 51.)

UFCW Local 7 repeatedly responded that there was no griev-

ance procedure in a series of grievances concerning Paul Marquez. An August 9, 2022, grievance concerned discipline Marquez received on August 4. He met with Zuniga, who said, "The contract is expired, there's no arbitration procedure, therefore, the grievance is denied. There's no grievance procedure." (Tr. 298.) Marquez and his steward Randy Blea met with Zuniga and Dale Lee about an August 13, 2022, grievance concerning discipline Marquez received on August 8. When Blea referred to the meeting as a Step 1, Zuniga said the contract expired, there was no arbitration, so the grievance was denied. (Tr. 294–296, 541.) A March 7, 2023, grievance concerned Marquez' suspension on February 27, 2023. Marquez and stewards Blea and Brian Archuleta met with Zuniga and Arellano. Zuniga said the contract was expired, there was no arbitration procedure or grievance procedure, so the grievance was denied. (Tr. 299–300.) In a Step 1 meeting over a one-week suspension Marquez received, Zuniga started the meeting by saying:

As you already know, the CBA's that are between Local 7 and FAIR are currently expired. As I have stated in previous grievance meetings, the arbitration clause does not survive when the CBA's expire. We will listen to what FAIR has to say, however, we will reiterate that there is currently no grievance procedure in place.

(GC Exh. 51.) During an August 10, 2023, grievance meeting over a suspension Marquez received on August 4, during a telephone call with Marquez, Blea, and Dominic Rossi, Zuniga told them the contract was expired, there was no arbitration or grievance procedure, and the grievance was denied. (Tr. 300–301; GC Exh. 45.) Marquez was not aware of any Step 2 meetings regarding the four grievances filed on his behalf. (Tr. 324.)

Some grievances after the contract's expiration were resolved. (Tr. 171, 758–761, 231, 712.) With regard to a grievance regarding Tyson Kehm's August 10, 2022, written warning, Arellano emailed Kehm directly on August 12, 2022, to inform him the written warning was being removed. Apparently this was unbeknownst to Supat, who on August 13 wrote to Cordova about Kehm's grievance, and was unbeknownst to Lee, who responded on August 15, to Supat's correspondence. (GC Exh. 41.)

Marquez and Blea as FAIR stewards were never denied meetings they requested, and were not aware of other stewards being denied meetings. (Tr. 326–327, 575.) As of March 17, 2023, FAIR had filed and pursued approximately 23 grievances. (GC Exh. 45.)

## 2. Legal Standards and Analysis

Parties to a collective-bargaining relationship, as a general rule, have a continuing statutory obligation to adhere to established grievance procedures even after the expiration of a contract. *Bethlehem Steel Co.*, 136 NLRB 1500 (1962), *enfd.* In pertinent part 320 F.2d 615 (3d Cir. 1963); *Indiana & Michigan Electric Co.*, 284 NLRB 53, 54–55 (1987). An employer's obligation to arbitrate, by contrast, only continues past the contract's expiration if the underlying dispute arose under the agreement's terms prior to its expiration. *Litton*, above, at 205; *Nolde Bros. v. Bakery Workers Local 358*, 430 U.S. 243 (1977). Unilateral ab-

<sup>32</sup> Lee provided some information Supat had requested along with this letter and with later correspondence about Jennifer Striefel's grievance.

rogation of a grievance procedure violates Section 8(a)(5). See, e.g., *Bethlehem Steel Co.*, above (unilateral abandonment of contractual grievance procedure after contract expired violated Sec. 8(a)(5)).

I find the General Counsel has established that the Respondent violated Sections 8(a)(5) and (1) through its series of actions with regard to the grievance procedure. First, it is clear that, at least initially, the Respondent did not process grievances at all, and when presented with grievances, simply responded with canned (and incorrect) language, cited above, telling FAIR the grievance process was nonexistent because of the contracts' expiration.

Only after Kennedy's August 9 letter disputing UFCW Local 7's interpretation, and the Board charges about the grievance procedure, did UFCW Local 7, while still asserting the grievance procedure was not in effect, offer to meet and discuss the issues underlying the grievances. Even when this occurred, these meetings were prefaced by language repudiating the grievance, such as Cordova's statement, "Just so we are clear, the grievance procedure does not survive the expiration of the CBA." It is not clear what UFCW Local 7 was trying to accomplish by sending these mixed messages, but in any event, they continued to reassert that they were not adhering to the grievance process, because, as they steadfastly repeated, it no longer existed.

The Respondent asserts that Supat's letters represented the unilateral change, as FAIR attempted to shift the burden for scheduling Step 2 meetings from the union to the employer.<sup>33</sup> (R. Br. 21.) Lee clearly perceived Supat's letters as requests for Step 2 meetings, as evidenced by his repeated responses stating, "As we have previously explained to FAIR, there is presently no grievance and arbitration procedure in force between the parties. I ask that you withdraw this meritless grievance forthwith. The grievance is denied, as well as your request for a Step II meeting." (GC Exhs. 16, 42.) (Emphasis supplied). UFCW Local 7's repeated, plainly stated denials of Step 2 meetings based on the contract's expiration, constitute further evidence of the Respondent's unlawful abrogation of the grievance procedure. Accordingly, I find the General Counsel has established this complaint allegation.

I also find that the repeated statements that the grievance procedure did not survive the contracts' expiration served to undermine FAIR and coerce it to accept the Respondent's last best and final offers (LBFOs), which are discussed fully in the next section, and constituted independent violations of Section 8(a)(1) which were fully litigated. See *Electri-Flex Co.*, 228 NLRB 847, 849 fn. 6 (1977), *enfd.* As modified 570 F.2d 1327 (7th Cir. 1978), *cert. denied* 439 U.S. 911 (1978); *Pilgrim Life Insurance Co.*, 249 NLRB 1228, 1228 fn. 1 (1980), *enfd.* 659 F.2d 1070 (3d Cir. 1981).

#### H. Bargaining Allegations

Complaint paragraphs 10(a) and 10(b) allege that since about June 25, 2022, the Respondent insisted, as a condition of reaching any collective-bargaining agreement, that the Charging Party Union agree to the removal of the secretaries from the Retail Unit

and Meat Unit, which is not a mandatory subject of bargaining.

Complaint paragraph 10(c) alleges that on several occasions since about June 25, 2022, in support of the condition described above in paragraph 10(a), Respondent presented the Charging Party Union with offers described as take-it-or-leave-it last best final offers, including on June 25, 2022, July 14, 2022, August 12, 2022, August 24, 2022, and January 23, 2023.<sup>34</sup>

Complaint paragraph 11 alleges that the Respondent failed and refused to bargain in good faith.

Complaint paragraph 14 asserts that the above conduct violated Section 8(a)(5) and (1).

#### 1. Facts

As noted above, the most recent collective-bargaining agreement between the parties ran from November 3, 2019, through June 25, 2022. On April 20, 2022, FAIR President Supat sent UFCW Local 7 President Cordova a letter asking to bargain a new contract, and instructing her to contact FAIR Vice President Jill Kennedy with available dates. After receiving no response, Supat sent another letter to Cordova on May 11, 2022, requesting bargaining dates. On May 16, Monique Palacios, Cordova's executive secretary, responded. After some back and forth, the parties scheduled bargaining for June 23–25, 2022. (GC Exh. 3.) The parties did not meet as scheduled on June 23, but bargaining occurred on June 24–25, a Friday and a Saturday. (Tr. 58.)

Bargaining took place at the Respondent Union's offices in Wheat Ridge, Colorado. FAIR's bargaining team consisted of Jill Kennedy, Dominic Rossi, Brian Archuleta, Carla Wyatt, and Paul Marquez. Tyson Kehm and Manny Lopez were alternates. UFCW Local 7's bargaining team consisted of Martin Garcia, Christine Arellano, Blake Howell, and Tony Settles. Cordova was also at the bargaining table for some of the sessions. The bargaining sessions were open, so others came in and out to observe. Garcia and/or Cordova acted as the spokesperson for the UFCW Local 7, and Kennedy was the spokesperson for FAIR.

The parties exchanged proposals on June 24. Each party's proposal started with the previous contract language, with changes denoted by striking through the previous language and adding revised language. FAIR presented proposals on recognition and exclusions, funeral leave, holidays, per diem, 401K, comp time/premium pay, and maternity/paternity leave. The only change to the recognition and inclusion proposal was a change in language from "programmers" to "information technology" and the parties tentatively agreed to this change. The parties agreed to FAIR's change to include individuals acting as parents to the list of people for whom time off for funeral arrangements and/or bereavement could be granted. FAIR proposed an increase to the amount of time off to attend a funeral, but it was rejected and remained unchanged. With regard to holidays, Juneteenth was agreed upon, as it was already a holiday per the terms of a standing letter of understanding (LOU). FAIR also proposed a full day for Christmas Eve and New Year's Eve, an increase from the previous ½ day for each holiday, and some changes to personal days. FAIR proposed a per diem amount of \$65 for all employees. Previously only salaried employees re-

<sup>33</sup> The Respondent's brief erroneously refers to Kennedy's letters, but it is clear from the record the letters came from Supat.

<sup>34</sup> This allegation is analyzed as part of the overall allegation of failure to bargain in good faith, as it was in the parties' briefs.

ceived per diem. The parties discussed modifying this to \$59. FAIR proposed a match to members' existing 401K. The parties agreed to have a deeper conversation about that because UFCW Local 7 wanted to review it as part of their economics. In response to FAIR's comp time proposal, there were discussions about possible tax implications. FAIR also proposed changing the maternity/paternity leave policy to adopt the states' family medical leave insurance program. (GC Exh. 4; Tr. 70.)

UFCW Local 7 offered several proposals related to provisions on probationary employees, medical leaves of absence, personal leave, vacations, holidays, weekly disability and sick pay, per diem, and car allowance. Regarding recognition and inclusion, UFCW Local 7 proposed removing the executive secretaries from the bargaining unit. At the time, there were 5 executive secretaries in the bargaining unit: the executive secretaries to the president, the secretary-treasurer, the legal secretary, and 2 grievance secretaries. FAIR did not agree to this change.

UFCW Local 7 proposed extending the probationary period for new employees from 3 months to 6 months, with an option to extend an additional 6 months. FAIR responded that they wanted to check the contract provisions between the UFCW Local 7 and Kroger, as it was their understanding the UFCW Local 7 wanted to mirror those contracts. UFCW Local 7 proposed decreasing the amount of time before qualifying for personal leave from 6 months to 12. FAIR responded that they wanted to see what the law required. UFCW Local 7 proposed some changes to the vacations, adding a cap for accrual, and a pause in accruing leave until the vacation bank fell below the cap. The parties tentatively agreed to this proposal. UFCW Local 7 proposed numerous changes to the weekly disability and sick pay provisions. Garcia explained the changes were made to conform with the law, and said he would have someone come and provide a deeper explanation. FAIR did not agree to these changes. UFCW Local 7 proposed reducing the in-town car allowance from \$868 per month to \$809 per month.<sup>35</sup>

FAIR offered a counter proposal regarding holidays, reducing its previous number of personal holidays. UFCW Local 7 rejected these changes. FAIR also proposed changing a time limit for the grievance procedure, which UFCW Local 7 rejected. FAIR offered a counter proposal to the per diem provision, advocating \$59 for all employees. This proposal was put on hold pending further conversation about it. FAIR proposed going back to the \$868 in-town car allowance, and proposed reimbursement for liability insurance the members were required to maintain. This proposal was rejected. FAIR proposed to eliminate the current 2-tier vacation progression in favor of a single progression for all employees. FAIR also proposed 3 weeks of vacation. UFCW Local 7 rejected these proposals. (GC Exh. 6; Tr. 82–85.)

At some point on June 24, Kennedy met privately with Garcia and Arellano, as discussed in detail above. During this meeting, Garcia and Arellano explained that the proposal to remove the secretaries from the bargaining unit was the result of one of them leaking confidential information. When asked if UFCW Local

took any disciplinary action, Garcia and Arellano said they did not. (Tr. 78–79.) Bargaining concluded around 4:30 on June 24, after FAIR decided that further negotiations would not be fruitful that day and they wanted to regroup. (Tr. 226.)

The parties met again on June 25. They tentatively agreed to Article 14, Holidays, adding Juneteenth as a holiday but keeping Christmas Eve and New Year's Eve as ½ days. (Tr. 87; GC Exh. 7.) FAIR submitted a wage proposal, asking for a 10 percent wage increase in year 1, and a 7.5 percent wage increase in years 2 and 3. UFCW Local 7 rejected this proposal. (GC Exh. 8; Tr. 88.)

UFCW Local 7 responded with a comprehensive proposal. Among other things, it proposed to remove the executive secretaries from the bargaining unit because they were confidential employees. FAIR stated this was a nonstarter because the executive secretaries had been members of the bargaining unit for quite some time. FAIR said they could accept the \$59 per diem proposal, and UFCW Local 7 responded that their offer was a comprehensive proposal so it was all or nothing. FAIR rejected the comprehensive proposal. (GC Exh. 9; Tr. 90–91.) Bargaining concluded at around 4:30 or 5. FAIR requested additional bargaining dates, and UFCW Local 7 indicated they were willing to continue bargaining that day. FAIR responded that they were finished for the day because things had stalled and they needed to talk to their team. As discussed at length above, UFCW Local 7 instructed the FAIR-represented employees to return certain work equipment by midnight.

At 9:20 p.m. on June 25, Garcia sent the bargaining unit a letter addressed to FAIR President Supat, with UFCW Local 7's "Last, Best, and Final Offer" (LBFO) attached. This offer mirrored the comprehensive proposal UFCW Local 7 handed to FAIR across the table earlier that day. The letter expressed regret that FAIR chose to "break off" negotiations at 4:30 on June 25 following UFCW Local 7's comprehensive proposal. Garcia went on to emphasize the time and expenses UFCW Local 7 expended on its members, including payment of strike benefits, and its precarious financial position resulting from these expenditures. Garcia outlined the wage proposal in the UFCW Local 7's comprehensive proposal, explained his view that it was generous, and opined that FAIR's wage proposal would "wreak financial havoc" on UFCW Local 7's ability to serve the membership and would result in significant layoffs. Garcia concluded by stating the UFCW Local 7 remained committed to reaching an agreement, referred to the attachment of its "Last, Best, and Final Offer," and urged FAIR to accept it. In the event FAIR chose not to accept the LBFO, Garcia urged FAIR to return to the bargaining table expeditiously, noting that the dates FAIR proposed did not work for the UFCW Local 7, stating they needed at least 2 weeks' notice for bargaining dates, and proposing alternative dates of July 14 and August 8, 11, and 12. (GC Exh. 10.) UFCW Local 7 did not declare an impasse or say they intended to implement the LBFO. (Tr. 186–187; Tr. 1036.)

FAIR took UFCW Local 7's LBFO to the membership for a vote, and it was rejected. Kennedy sent an email to Garcia on

<sup>35</sup> This would tend to support the General Counsel's argument that reducing the car allowance was a unilateral change. This proposal, however, does not refute the evidence of past practice detailed above.

July 1 notifying him of the vote, stated that FAIR remained committed to negotiating a fair contract, and would meet them for bargaining on July 14. (GC Exh. 11.)

On June 27, UFCW Local 7 filed a unit clarification petition (Case 27–UC–298258) seeking to exclude all five executive secretaries and one of the two programmers from the bargaining unit. (Jt. Exh. 31; Tr. 108–109.)

Bargaining resumed on Thursday July 14. President Cordova was present for UFCW Local 7 along with her executive board and staff directors. The same FAIR bargaining team was present, with other FAIR members coming in and out throughout the day. President Cordova was the spokesperson for UFCW Local 7, and Kennedy was the spokesperson for FAIR. Cordova spoke to the bargaining team and conveyed that under FAIR’s economic proposals she would need to lay people off, noting the members were highly compensated.

FAIR gave proposals to UFCW Local 7 that differed from the June proposals. FAIR reduced the amount of the 401K match and reduced the wage proposal to 7 percent in year 1 and 5 percent in years 2 and 3, and proposed hourly increases of \$6 in year 1 and \$2 in years 2 and 3 for hourly employees. President Cordova conveyed these changes were not doable and would result in layoffs. The parties reached agreements on some matters, but President Cordova said UFCW Local 7’s offer was a package proposal. (GC Exh. 12; Tr. 102–104.)

On July 27, Supat sent Garcia an information request asking for, among other items, what information that the secretaries handle is confidential, any specific instances where confidential information has been leaked and what actions were taken, and UFCW Local 7’s rationale for proposing to remove the secretaries from the bargaining unit but allow them to do bargaining-unit work. On August 2, Garcia responded to some of the information request as to other items, and stated that UFCW Local 7 staff work as a team and numerous individuals perform work that could arguably be considered bargaining-unit work. He did not respond to the other requests, claiming they were an improper attempt at discovery for the unit clarification proceeding and/or privileged by attorney-client and work product privileges, and were irrelevant because they concerned a permissive subject of bargaining.<sup>36</sup> (GC Exh. 13.)

The parties met for bargaining on Monday August 8. The session lasted about 5 minutes. UFCW Local 7 did not deviate from their previous LBFO, and said FAIR could offer additional proposals. FAIR did not have additional proposals and said the meeting was over unless UFCW Local 7 had new proposals. Supat told the UFCW Local 7 bargaining committee that if they were not willing to discuss matters or make any kind of movement, there was no need to proceed. (Tr. 279–280.)

President Cordova followed up with a letter to FAIR President Supat on August 12, stating her belief that FAIR had broken off negotiations on August 8, as well as on June 24 and 25, and touting the favorable terms of the LBFO. Cordova lamented that their time and efforts could have been better spent servicing the membership, and stated that upcoming negotiations with em-

ployers were in jeopardy. Cordova concluded by stating the previous LBFO was on the table until the morning of August 15, after which time it would be withdrawn, and any future offer may be substantially less favorable to FAIR members. (GC Exh. 14.) FAIR President Supat responded on August 18, disputing Cordova’s characterization of the bargaining sessions, expressing his concerns about UFCW Local 7’s conduct, and stating that FAIR remained ready and willing to bargain. (GC Exh. 15.)

On Wednesday August 24, UFCW Local 7 amended Article 1, Recognitions and Exclusions, to include programmers (without FAIRs tentatively agreed upon proposal to update this to “information technology”), but excluding confidential employees, including confidential executive secretaries. The language in Article 16, Weekly Disability and Sick Pay, was changed back to the language in the expired agreement. Otherwise, the proposal was the same as the June 25 LBFO. (GC Exh. 17.) Nobody from UFCW Local 7 said the parties were at impasse or that UFCW Local 7 intended to implement the offer. (Tr. 191, 1039.)

The membership voted on the August 24 offer and it was rejected. On September 1, Supat sent Cordova a letter informing her of the vote and requesting additional bargaining dates. (GC Exh. 18; Tr. 135–126.) Cordova responded on September 20, summarizing her view of FAIR’s poor behavior in negotiations, informing Supat that she needed a months’ notice to secure dates for bargaining, and asking for availability in December and January. After further correspondence about bargaining dates, the parties agreed on January 23, 2023. (GC Exh. 19.)

On January 9, 2023, Cordova wrote to Supat, copying the FAIR membership, asserting that FAIR had improperly conducted a single vote on the LBFO with both the meat and retail units voting together, but it was her understanding that a majority of the retail unit may have voted to accept the LBFO. Cordova asked Supat to advise her, in writing, whether or not one or more of the bargaining units accepted the LBFO during the August 2022 vote. Kennedy responded on January 19, disputing Cordova’s characterization of the vote as improper, and informing her that employers are generally not entitled to inquire about the details of internal union business. (GC Exh. 19.)

The parties met for bargaining again on Monday January 23, 2023, from about 9 a.m. to 5 p.m.. Cordova was the spokesperson for UFCW Local 7 and Kennedy was the spokesperson for FAIR. FAIR withdrew some proposals on the dispute procedure and comp time/premium pay, and reverted to the language in the expired contract. FAIR withdrew its proposal for maternity/paternity leave, and stated they would follow the law Colorado was putting into place. FAIR reduced the wage proposal to 4 percent for years 1, 2, and 3, with 1 percent added bonus each year. (GC Exh. 20; Tr. 135–136.)

UFCW Local 7 proposed an LBFO. Article 1, “Recognition and Exclusions” still excluded the executive secretaries from the bargaining unit. For Article 35, Car Allowance, the proposal gave the UFCW Local 7 discretion over who would get a car allowance. The wage proposal called for a wage increase of 3

<sup>36</sup> The failure to provide this information was not a complaint allegation, and the record lacks evidence regarding the merits of any defenses the Respondent provided. The General Counsel argues the response (or

lack thereof) is evidence of bad faith bargaining (GC Br. 125) but the record is not sufficiently developed to consider it.

percent in years 1–3, as well as bonus increases of .5 percent per year. (GC Exh. 21; Tr. 136–137, 189.) FAIR representatives reiterated that they were not interested in having the executive secretaries removed from the bargaining unit. During a sidebar with Kennedy and two of her FAIR team members and Garcia and Arellano from UFCW Local 7, FAIR offered to exclude two executive secretaries of UFCW Local 7’s choosing from the bargaining unit based on an assumption they may lose one or two secretaries from the unit clarification. FAIR also offered some movement on wages. UFCW Local 7 rejected this and FAIR ended negotiations for the day. (Tr. 138–139, 183, 192, 219.) Nobody from UFCW Local 7 stated that the parties were at impasse or that UFCW Local 7 intended to implement some or all of these proposals. (Tr. 191, 1040.) FAIR did not share the January 23 proposal with its membership.<sup>37</sup> (Tr. 194–195.)

On January 27, 2023, Kennedy sent Cordova an email expressing disappointment in UFCW Local 7’s January 23 LBFO, specifically the exclusion of executive secretaries from the bargaining unit, and the provision, which Kennedy labeled as regressive, conditioning any employee’s entitlement to a car allowance on Cordova’s approval. Kennedy notified Cordova that the membership had twice rejected the previous offers so she would not be putting this most recent offer, which was essentially the same, to a vote. Kennedy requested additional bargaining dates and offered dates in February and March, 2023.<sup>38</sup> Cordova responded on January 31, 2023, disputing the statements in Kennedy’s January 27 correspondence, and expressing frustration about FAIR’s conduct at the bargaining table, in particular its failure to respond to their LBFO.<sup>39</sup> Cordova expressed doubt that further negotiations would result in an agreement, but stated she would check with her members on available dates and get back to Kennedy. (GC Exh. 22.)

FAIR member Eduardo Alvarado filed a decertification petition on February 1, 2023. (Jt. Exh. 4.)

On February 22, 2023, Supat emailed Cordova requesting additional bargaining dates. He instructed her to call Kennedy, who did not recall being contacted. (GC Exh. 24; Tr. 144.)

Meanwhile, the hearing on the unit clarification for the IT staff and the executive secretaries occurred. On March 20, 2023, the Regional Director for Region 27 issued a decision and order clarifying the bargaining unit. The decision clarified that the executive secretaries to the president and treasurer, as well as the legal secretary were excluded from the bargaining unit, but the grievance secretaries and the IT specialist were included. (Jt. Exh. 5.)

On March 31, 2023, Supat emailed Cordova to request additional bargaining dates in light of the unit clarification decision. Email correspondence to schedule dates followed, with Kennedy informing Cordova that Fridays–Sundays worked better for FAIR. Kennedy proposed June 2–4 and 16–18. Cordova requested a call to establish FAIR’s availability. Neither Supat nor

Kennedy called Cordova because they believed information was being twisted and misrepresented. (GC Exh. 25; Tr. 146–147.)

On May 23, 2023, Cordova emailed Kennedy asking for a conversation to verify FAIR’s availability to bargain, considering it appeared FAIR only represented its members on the weekends. Cordova faulted FAIR for failing to process approximately 24 grievances, some dating back to the Spring of 2022. She further stated, “FAIR’s lackadaisical representation and lack of urgency to reach an agreement has caused its membership financial harm as well as disruption to Local 7’s operation.” Cordova concluded by stating that the January 23, 2023, LBFO was renewed if FAIR agreed by the following day to put the offer to a vote by 8pm on May 26, 2023. Cordova distributed the letter to FAIR’s membership. (GC Exh. 26.) FAIR did not agree to put the January 23, 2023, LBFO to a vote because it still excluded all of the executive secretaries from the bargaining unit, despite the unit clarification decision.<sup>40</sup> (Tr. 149–150.)

That same day, a member wrote to Kennedy expressing disappointment with FAIR’s representation and the decision not to put the January 23 LBFO to a vote, stating:

I received Kim’s email about your responses to bargaining. You have not provided proper representation! If you are only able to represent us 3 days out of the week I would like my dues to reflect that! You need to let this membership vote! I am so done with the incompetence and I am demanding as a dues paying member to let us vote. If you are only working for us 3 days of the week why (sic) are we even paying you for?! I feel like I should receive a refund for the 4 other days! You are not willing to bargain or do any work that a representative is supposed to do. So stop with the games and let us vote!

(GC Exh. 27.) Kennedy asked for a conversation with the member, but they declined, preferring to communicate via email. They responded on May 25, asserting that members wanted to vote, and a number of members were proposing a vote without Kennedy since she could only work three days per week. Kennedy responded and some further email correspondence along the same lines occurred. (GC Exh. 27.)

On June 3, 2023, Supat responded on FAIR’s behalf to Cordova’s May 23 email. He criticized UFCW Local 7’s failure to respond to requests for bargaining dates, stated that Mondays, Fridays, and the weekends worked best for FAIR, and proposed June 16–19, 2023. Supat stated that he did not wish to communicate by phone due to the possibility of misinformation, and informed her that he would not bring the January 23 LBFO to a vote because NLRB Region 27 found merit to the charge alleging unlawful inclusion of a permissive bargaining subject in the UFCW Local 7’s last, best, and final offer. (GC Exh. 28.)

On August 25, 2023, UFCW Local 7 proposed that the executive secretaries Region 27 determined were not excluded from the bargaining unit could choose to remain in the bargaining unit or get out of it. The proposal added, “Any remaining bargaining

<sup>37</sup> Kennedy testified she could understand this might upset FAIR’s membership. (Tr. 196.)

<sup>38</sup> This correspondence was shared with the FAIR members.

<sup>39</sup> In some of the correspondence between the parties, UFCW Local 7 contends that FAIR’s voting procedures were faulty. The merits of this dispute were not explored, and are not material to the issues before me.

<sup>40</sup> While the evidence is clear that UFCW Local 7 continued to present its package proposals, nobody from UFCW Local 7 told FAIR that the secretaries’ exclusion was a “must have” item. (Tr. 1044.)

unit Executive Secretary position shall be removed from the bargaining unit through attrition.” (GC Exhs. 46–47.) On August 27, 2023, UFCW Local 7 gave a final offer to FAIR. Article 1, Recognition and Exclusions, was consistent with Region 27’s unit clarification decision, and excluded only the executive secretaries to the president and treasurer, and the executive legal secretary from the bargaining unit. The following provision was added, “The Executive Secretaries to the President, Secretary-Treasurer, Executive Legal Secretary and non-bargaining unit Executive Secretaries may perform any and all of the work performed by bargaining unit secretaries without exclusion.” (R. Exhs. D, E; Tr. 207.)

As of the time of the hearing, the parties have continued to bargain. The parties remained in disagreement about wages, vacation, who can perform bargaining-unit work, and some other terms and conditions of employment. (Tr. 209–210.) No party has declared impasse.

## 2. Legal Standards and Analysis

Section 8(a)(5) and 8(d) of the Act obligates parties to “confer in good faith with respect to wages, hours, and other terms and conditions of employment.” *NLRB v. Wooster Div. of Borg-Warner Corp.*, 356 U.S. 342, 344 (1958). The good-faith requirement means that a party may not “negotiate” with a closed mind or decline to negotiate on a mandatory bargaining subject. “While Congress did not compel agreement between employers and bargaining representatives, it did require collective bargaining in the hope that agreements would result.” *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152 (1956). Sincere effort to reach common ground is the essence of good-faith bargaining. *NLRB v. Montgomery Ward & Co.*, 133 F.2d 676, 686 (9th Cir. 1943); *NLRb. v. Reed & Prince Mfg. Co.*, 118 F.2d 874, 885 (1st Cir. 1941), cert. denied 313 U.S. 595 (1941).

“In determining whether a party has violated its statutory duty to bargain in good faith, the Board examines the totality of the party’s conduct, both at and away from the bargaining table.” *Public Service Co. of Oklahoma*, 334 NLRB 487, 487 (2001) (internal citations omitted), enf. 318 F.3d 1173 (10th Cir. 2003). “From the context of an employer’s total conduct, it must be decided whether the employer is engaging in hard but lawful bargaining to achieve a contract that it considers desirable or is unlawfully endeavoring to frustrate the possibility of arriving at any agreement.” *Id.*, citing *Atlanta Hilton & Tower*, 271 NLRB 1600, 1603 (1984).

A proposal to alter the scope of an existing bargaining unit is a permissive subject of bargaining. *Aggregate Industries*, 361 NLRB 879 (2014), reaffirming and incorporating by reference 359 NLRB 1419, 1421 (2013), enf. denied on other grounds in *Aggregate Industries v. NLRB*, 824 F.3d 1095 (D.C. Cir. 2016).

Insistence to impasse on a nonmandatory subject of bargaining violates Section 8(a)(5) and (1). *NLRB v. Borg-Warner Corp.*, 356 U.S. at 349. Parties may offer proposals concerning nonmandatory subjects of bargaining, “but may not insist on these proposals to impasse.” *Taft Broad. Co.*, 274 NLRB 260, 261 (1985). When evaluating whether parties have insisted to

impasse on a particular nonmandatory subject of bargaining, the Board considers whether agreement on the mandatory subjects are conditioned on agreement on the nonmandatory subject of bargaining. *NLRB v. Borg-Warner Corp.*, above. See also *Latrobe Steel Co. v. NLRB*, 630 F.2d 171 (3d Cir. 1980), cert. denied 454 U.S. 821 (1981). It is well established that “conditioning agreement regarding mandatory subjects on acceptance of a nonmandatory proposal is not good-faith bargaining. In short, a party *precludes* good-faith impasse when it insists on such a proposal as the price of an agreement.” *Smurfit-Stone Container Enterprises*, 357 NLRB 1732, 1735–1736 (2011), enf. sub. nom. *Rock-Tenn Services v. NLRB*, 594 F.App’x 897 (9th Cir. 2014) (Emphasis in original).

The Board has long held that even if parties have reached deadlock in their negotiations, a finding of impasse is foreclosed if that outcome is reached “in the context of serious unremedied unfair labor practices that affect the negotiations.” *Noel Corp.*, 315 NLRB 905, 911 fn. 33 (1994) (citing cases), enf. denied on other grounds 82 F.3d 1113 (D.C. Cir. 1996); See also *Great Southern Fire Protection*, 325 NLRB No. 13 (1997); *Anderson Enterprises*, 329 NLRB 760, 762 (1999).

### a. Removal of Secretaries from Bargaining Unit

There is no dispute that the inclusion or exclusion of the secretaries from the bargaining unit is a permissive subject of bargaining. The Respondent argues that UFCW Local 7 never insisted upon a permissive subject of bargaining to the point of impasse. In *Borg-Warner*, above, the employer proposed permissive subjects as a condition precedent to accepting a collective-bargaining agreement, yet continued bargaining over mandatory subjects. 356 U.S. at 346–347. The Court held:

The company’s good faith has met the requirements of the statute as to the subjects of mandatory bargaining. But that good faith does not license the employer to refuse to enter into agreements on the ground that they do not include some proposal which is not a mandatory subject of bargaining. We agree with the Board that such conduct is, in substance, a refusal to bargain about the subjects that are within the scope of mandatory bargaining.

*Id.* at 349. As the Board held in *Smurfit-Stone*, above, a party *precludes* good-faith impasse when it insists on a nonmandatory proposal as the price of an agreement.<sup>41</sup> (Emphasis in original.)

Here, the FAIR bargaining team repeatedly told UFCW Local 7 that its proposal to eliminate all secretaries from the bargaining-unit was a nonstarter. Cordova testified that she never told FAIR representatives that secretaries’ exclusion from the bargaining unit was a “must have” item. That said, UFCW Local 7 continued to make the same proposal excluding the secretaries from the unit, and insisted on their wholesale inclusion as part of a comprehensive package in a series of LBFOs, even after the unit clarification. In other words, to reach an agreement, FAIR was required to accept the proposal excluding all of the secretaries from the bargaining unit.

<sup>41</sup> Because good-faith impasse is precluded under the present facts, any finding as to whether it was reached is likewise precluded.

The Respondent contends that the parties had not agreed upon many other terms, including wages and other key terms and conditions of employment. In *Island Architectural Woodwork, Inc.*, 364 NLRB 906, 912 (2016), the Board held that even though other issues were outstanding and the employer remained willing to bargain, the company president's repeated insistence on a memorandum of agreement that excluded certain employees from the bargaining unit indicated that he would not sign a successor agreement unless the union agreed to the memorandum of agreement. The Board noted the employer's "unyielding demand" that the employees remain outside the unit. The Respondent cites to *Taft Broad. Co.*, above, where the Board found that the employer did not insist on a permissive proposal to impasse. In that case, however, the employer offered twice to modify the nonmandatory proposal it issue. 274 NLRB at 261. Moreover, the Board found that the permissive proposal was never presented "as a prerequisite or condition of agreement on the mandatory subjects of bargaining." *Id.* Here, even after the unit clarification decision, the Respondent's proposals continued for months to exclude all secretaries from the bargaining unit, and these proposals were exclusively and persistently presented as part of an all-or-nothing LBFO.

Based on the foregoing, I find the General Counsel met her burden to prove this complaint allegation.

#### *b. Bad-Faith Bargaining*

The general legal standards for assessing whether parties are bargaining in good faith are set forth above. In *Nexstar Broadcasting, Inc.*, 371 NLRB No. 118 (2022), the Board adopted the administrative law judge's finding that the totality of the circumstances, both during bargaining and away from the table, distinguished the employer's conduct from lawful hard bargaining. The conduct included, *inter alia*, a "take it or leave it" attitude, as well as issuing memoranda to the bargaining unit "denigrating and undermining" the union.

The Act "clearly condemns" a "take it or leave it" attitude in bargaining. *NLRB v. Int'l Union, AFL-CIO*, 361 U.S. 477, 506, (1960). In *Industrial Electric Reels*, 310 NLRB 1069, 1072 (1993), the Board noted that while "presenting an offer on a 'take-it-or-leave-it' basis may be evidence of bad faith, it is not per se unlawful. The determination of whether a party making such an offer has bargained in bad faith must be based on the totality of that party's conduct." In this case, each of UFCW Local 7's offers was presented as a package proposal, on a take-it-or-leave it basis. Even after FAIR made some concessions, UFCW Local 7 responded with the same LBFO. And, as detailed above, because of FAIR's all-or-nothing approach, for a period of over a year, each LBFO hinged on removing the secretaries from the bargaining unit.<sup>42</sup> Moreover, without explanation, UFCW Local 7 proposed a regression to the current car allowance provision, making it solely within the president's discretion. See *United Brother of Carpenters & Joiners, Loc. 1780*, 244 NLRB 277, 281 (1979)

In addition to the conduct during bargaining, UFCW Local 7's conduct away from the bargaining table demonstrates a clear intent to undermine FAIR and frustrate bargaining. Particularly troubling is the June 27, 2022, speech Cordova gave, detailed above, which casts no doubt that UFCW Local 7 sought to erode confidence in FAIR to strengthen its bargaining position. In addition, Cordova's January 9, 2023, and May 23, 2023, correspondence with the FAIR membership indicates bad faith. In the January 2023 letter, she accused FAIR of malfeasance in taking the August 2022 LBFO to a vote of the members without offering any explanation about the basis of her "understanding" that FAIR had acted improperly. In the May 2023 letter, she conflated the bargaining team's availability to schedule full days of bargaining with FAIR's overall representation of its members, informing the membership that FAIR only represents its members on the weekend. Not surprisingly, this correspondence caused a member to ask Kennedy, "If you are only working for us 3 days of the week why (sic) are we even paying you for?!" And tellingly, even though it was UFCW Local 7 who insisted there was no grievance process after June 25, 2022, Cordova faulted FAIR for failing to process approximately 24 grievances.

I further find UFCW Local 7's requirement for FAIR members to return their work equipment and their baffling and unwavering insistence that there was no post expiration grievance procedure, both found to be unlawful in this decision, were power plays designed to weaken FAIR and force them to accept the LBFOs.

Based on the totality of the conduct, both at and away from the bargaining table, I find the General Counsel has met her burden to prove that UFCW Local 7 failed and refused to bargain in good faith, as alleged.

#### *I. Elizabeth Wesley Allegations*

The complaint alleges that the Respondent discharged Elizabeth Wesley because she assisted FAIR and engaged in concerted activities, and because the Respondent believed she would engage in a FAIR strike in violation of Section 8(a)(3).<sup>43</sup>

##### *1. Facts*

##### *a. The Executive Board*

UFCW Local 7 has an executive board that manages its business. (Tr. 380, 975–976, 986; R. Exhs. F, G.) The executive board consists of 25–30 rank-and-file members, along with the UFCW Local 7 president and secretary-treasurer. The executive board has 25 vice presidents. The vice presidents "assist the President in the discharge of the President's official duties." (R. Exh. G.)

The executive board meets monthly to go over the UFCW Local 7's business, income and expenses, and ratifies the president's dispersal of funds. They vote on the budget and whether or not to approve expenses. The executive board approves all money paid out of the funds of the local union each month and

<sup>42</sup> The most recent proposal on August 27, 2023, beyond the date of the complaint allegations, still attempts to modify the scope of the unit and proposes allowing nonbargaining-unit secretaries to perform bargaining unit work.

<sup>43</sup> This language is slightly different than what appears in the complaint, however I grant the General Counsel's request to amend pars. 7(b) through (e) of the complaint to conform to the evidence adduced at the hearing. (GC Br. 97.)

approves the annual budget. The president determines employee compensation and expenses, but the executive board has authority to approve or deny compensation and expenses. Executive board members preside over appeals from the president's decisions to terminate union representatives, and makes the final decision regarding whether to uphold the terminations. An executive grievance committee reviews unresolved grievances and the executive board makes the final determination on which cases go to arbitration. The executive board hears appeals disagreeing with the president's interpretation of the UFCW Local 7 bylaws. Finally, the executive board is in charge of all business not otherwise delegated to specific officers. Executive board members can resign at any time. (Tr. 418–422, 975–976, 980–990; R. Exh. G.) The president does not have the authority to terminate an executive board member. This power lies with the executive board. (Tr. 986.)

According to the executive board's bylaws, UFCW Local 7 salaried employees can only be nominated to the 1st through 4th vice president positions. (R. Exh. G; Tr. 978–979, 1,014.) The parties' collective-bargaining agreements forbid vice presidents from performing bargaining-unit work. (Jt. Exhs. 1, 2.) UFCW Local 7 has interpreted this provision to apply only to permanent employees who have completed their probationary periods. (Tr. 1015–1016.) Once an employee completes their probationary period, they must either resign from the executive board or from their employment with UFCW Local 7. (Tr. 818, 980, 1,014–1,015.)

Service on the executive board is voluntary and does not come with additional pay, but UFCW Local 7 reimburses members who work in the stores for time lost from their employment at their regular wage rates. (Tr. 437–438, 815–818; GC Exh. 53.) UFCW Local 7 compensates executive board members who also work for UFCW Local 7 as a special project union representative, a temporary union representative, or a probationary union representative, as part of their regular pay. (Tr. 437–438, 816–821, 836–837, 1,095.)

Elizabeth Wesley served on the UFCW Local 7 executive board since May 2021 as the 9<sup>th</sup> vice president. (Tr. 380.) In this role, she was a constitutional officer of the UFCW Local 7. (Tr. 418; R. Exh. G.)

#### *b. Wesley's Employment*

In addition to regular employees, UFCW Local 7 sometimes "borrows" members to work on special projects. Special project union representatives, referred to as SPURs, work for one of the employers UFCW Local 7 represents, and are borrowed for a period of time to assist the UFCW Local 7. While serving as SPURs for the UFCW Local 7, employees remain employed by their stores but are placed in a leave status, referred to as "union leave." For employees on union leave, UFCW Local 7 pays them what they would have received in their stores, or "time lost." They also get most staff benefits. (Tr. 959–960.)

Article 7 of the parties' collective-bargaining agreement provides, "The probationary period for salaried staff will be six

(6) months with an option for Local 7 to extend the probationary period an additional six (6) months upon mutual agreement between Local 7 and FAIR. (Jt. Exhs. 1, 2.)

Elizabeth Wesley became a member of UFCW Local 7 when she was hired as a floral manager for King Soopers grocery store in 2005. She served as a union steward at her store. Wesley initially worked for UFCW Local 7 from April 2018 to October 2019, first as a SPUR and then as a temporary union representative, working in place of the Northern Colorado Springs union representative, Dominic Rossi, who was on paternity leave. (R. Exh. M.) As a SPUR, Wesley worked on filing mass grievances regarding contract violations at King Soopers and Safeway. She was paid hourly the same wages and benefits she earned at King Soopers and received a union credit card. When she became a temporary union representative in January 2019, Wesley received a salary, bonus, and car allowance, but retained her previous benefits. As a temporary union representative, Wesley serviced the membership, visited stores, held grievance meetings, and did the other day-to-day work of a union representative.<sup>44</sup> (Tr. 360–363.) She returned to King Soopers in November 2019.

In May 2021, Wesley was selected to serve on UFCW Local 7's executive board, as discussed above. (Tr. 380.) Also in May 2021, Wesley applied to be a SPUR. Zuniga requested a union leave of absence from King Soopers for Wesley, from July 4, 2021, through January 1, 2022, and she returned as a SPUR on July 12, 2021. (GC Exhs. 48, 49; R. Exh. P; Tr. 367.) Wesley retained her hourly pay and continued her same health and pension benefits, but they were paid for by UFCW Local 7 rather than King Soopers. Wesley reported to Zuniga and worked 40 hours per week. In November 2021, she went on salary and received a car allowance. (Tr. 369–370.) She was initially bumped up to the position of temporary representative because several representatives were out with Covid. Her salary was \$1,680 per week, plus about \$300 a week bonus, plus a car allowance. She received a cell phone and computer, which she did not have when she was a SPUR. In Wesley's view:

I mean I was still, technically, a SPUR, but I was a temporary union representative. . . . I was handling member grievances on a regular basis, communicating with store managers, servicing the membership in every way that a Union rep does. As a temporary rep the only thing that I wasn't doing was holding Step Two meetings, and Executive Grievance Committee." (Tr. 372–273.) Wesley's union leave was extended on January 1, 2022. (GC Exh. 52.)

In or around March 2022, Wesley volunteered to serve on the scab trials at Secretary-Treasurer Schneider's request, when a previous volunteer backed out. (Tr. 394–395.) The scab trials concerned appeals of discipline members who crossed the picket line during the King Soopers strike, discussed above, received. (Tr. 1,076.) On March 8, 2022, Schneider emailed Cordova a list of executive board members who volunteered to serve on the scab trials, which included Wesley and 12 others. This was enough to ensure there was an alternate each day of the trials. (R. Exh. U; Tr. 801.) The scab trials were ongoing through the end

<sup>44</sup> Cordova offered Wesley a permanent position as an organizer. Wesley accepted, but after giving it some thought, she told Cordova she was not comfortable working as an organizer and would rather wait for

a representative position. In October 2019, Rossi returned from maternity leave, and Wesley returned to her job at King Soopers on October 27. (Tr. 364; R. Exh. N.)

of Wesley's employment with UFCW Local 7.

On April 6, 2022, Wesley applied to be the Southern Colorado permanent union representative.<sup>45</sup> A couple days before Wesley submitted her application, Zuniga told her that the Southern Colorado representative was being let go, and asked if she would temporarily cover the position. She agreed, and Zuniga told her the announcement was coming and encouraged her to apply.<sup>46</sup> (GC Exh. 35; Tr. 374.) Wesley interviewed for the union representative position on April 21, and subsequently was offered the position. (Tr. 383; R. Exh. R.) Zuniga told her that she would be a probationary employee for a year.<sup>47</sup> (Tr. 408–409, 678, 744, 1,063.) After Wesley accepted, Zuniga told her she could remain on union leave for six months, and this would permit her to go back to King Soopers if she was not enjoying her job as a union representative.<sup>48</sup> Wesley was given a company car and a credit card. (Tr. 393.) Wesley testified she was not represented by a union, including FAIR, when she became a salaried employee.<sup>49</sup> (Tr. 373.)

Wesley was listed as a SPUR in the staff directory dated April 12, 2022, and as a union representative on May 18, 2022. (Tr. 771; GC Exh. 36.) Cordova's executive secretary, Monique Palacios, prepares the directory. She does not believe it is meant to track formal positions, but rather is used for staff to find each other's phone numbers. (Tr. 766.) As to changing Wesley from a SPUR to a union representative in the directory, Palacios testified:

Q Why did you change her job titled (sic) from SPUR to union representative?

A I believe—oh, and I don't know, if that's okay to say. But I believe it's because she was acting as a union representative in the Southern Colorado area. So in my perspective, I would consider her a union representative for the area, not a SPUR, just assisting in special projects.

...

Q Understood. I think, I believe you said, with respect to Elizabeth Wesley, or Liz Wesley, you changed her from SPUR to union representative, because she was already filling that—or servicing the Southern Colorado position area, I mean?

A I believe she would have been helping more of the union representative position than just the SPUR position. It—I'm not sure—well, we were in bargaining, so we had SPURs assist the bargaining. But then, she started helping more as a union representative. And I think that that's when I might have changed her to union representative.

<sup>45</sup> Southern Colorado is one of the largest areas and requires significant travel. (Tr. 592, 595.)

<sup>46</sup> Zuniga also contacted 2 or 3 other individuals to inform them of the opening. (Tr. 676.)

<sup>47</sup> As a probationary employee, Wesley was not placed on the UFCW International pension, and was not offered the chance to participate in the 401K or long-term disability plans. (Tr. 408–409, 430.) These attach after an employee becomes permanent. (Tr. 658, 960–961.)

<sup>48</sup> Wesley testified she had no intention of going back to King Soopers. (Tr. 384–385.)

Q And how did you find out that she was becoming more of a —doing more of union representative work?

A There might have been -- I don't know if she filed grievances, or I don't know if she was -- I don't know how -- I don't know.

(Tr. 772, 774–775.) Wesley's selection as the Southern Colorado representative was announced at a meeting during the annual stewards' conference in May 2022.<sup>50</sup> (Tr. 387, 465, 1,000.)

Wesley believed she should have been removed from the executive board when she became a union representative. (Tr. 399.) She testified as follows:

I expected to be removed, but Kevin Schneider reached out and asked me, specifically, to be on the sca -- on the committee for the SCAB trials. Because of that, it was my understanding that I was to stay on the executive board through the end of the SCAB trials, because Kevin -- Matt wanted another King Soopers representative on the committee. They didn't have a lot of King Soopers people on the executive board to choose from. There was a lot of Safeway, there's Kaiser, there's -- so they specifically told me they wanted me on the committee. I did not want to be on the committee, I was doing what my executives asked me to do. What I was doing was anything I could possibly do to keep and succeed at my Union representative job that was my objective and my reason for agreeing to stay on the SCAB committee.

(Tr. 439.) Wesley also served on the executive board's hardship committee until the end of her employment. (Tr. 440.)

In June 2022, Zuniga explained to Wesley that her leave from King Soopers was expiring on July 2, and that returning to King Soopers for a few weeks in June would reset the clock on her one-year maximum union leave. The six months of union leave was routinely extended in this manner for another six months to give employees the option of going back to their store. (Tr. 667–668, 684–685; GC Exh. 52; R. Exh. L.) Zuniga said that typically, employees are on probation for six months but this can be extended an additional six months by agreement between FAIR, UFCW Local 7, and the employee. (Tr. 744–745.) Sarah Negrette, the Southern Colorado Springs representative, interviewed with Zuniga and Lee, who told her she would need to wait a year before becoming a permanent employee. She was on salary and had a union vehicle and credit card. (Tr. 824–825.) Maggie Salazar, who replaced Wesley, said Lee and Garcia told her they would decide if she was permanent after a year. She was on salary and was issued a union vehicle and credit card and remained on the executive board. (Tr. 836–837.) With regard to

<sup>49</sup> Cordova testified she believed Wesley was a member of the FAIR bargaining unit. (Tr. 1,064.)

<sup>50</sup> Union Representative/Organizer Coleson Breen said during his affidavit in September 2-22 that he could not remember if there was an announcement about Wesley. His recollection was refreshed by Wesley's testimony. (Tr. 495, 505–506.) Cordova's corroborating testimony lends credence to Breen's refreshed testimony, but also renders it unnecessary.

the probationary period, Cordova testified as follows:

Q So let's say a month. Is -- is the probationary period always one year?

A It -- we have up to that year to look at. Some people we take longer. Some people they may excel and it could be shorter. It kind of depends on where they are, you know, how they're doing with their training, and how they're adapting. We've had people on probationary periods longer.

...

Q Right. But my question was, had Elizabeth Wesley continued to remain employed on probationary period and at the end of those first six months in order to extend it, you had to ask FAIR for -- to extend that probation, correct?

A I -- I would -- I would, but there's other mechanisms, yes. (Tr. 1,105–1,106.)

On June 28, President Cordova held an executive board meeting via Zoom to discuss the bargaining negotiations (the parties had bargained on June 24 and 25, as detailed above). During the meeting, Cordova told the executive board members that they would need to service the membership in the event of a strike. (Tr. 833–834, 839–840, 1,064–1,065.) According to Wesley, on June 28, Monique Palacios called Wesley and told her she was calling the executive board members because Cordova wanted to know what the executive board members would do in the event of a labor dispute with FAIR. Wesley said she did not believe there would be a labor dispute, but if there was, her inclination would be to resign her position on the executive board and honor the strike. She could not stay in both positions because the executive board represents the company and as a union representative she would eventually be covered by FAIR. Palacios conveyed that Cordova wanted Wesley to know that, as an executive board member, she had a duty to the membership. (Tr. 398–399.)

Palacios testified that she does not make phone calls to executive board members on behalf of Cordova other than for scheduling purposes. She did not call any executive board member to ask whether or not they would work during a labor dispute. (Tr. 767–768.) Cordova testified she would never ask Palacios to make such a call.<sup>51</sup> (Tr. 1,064.)

The evening of June 29, 2022, Cordova and Zuniga discussed that Wesley “just could not prioritize her work as an executive board member and service the membership in case of a labor dispute.” (Tr. 686, 751.) After that, Cordova and Zuniga decided, “in order to just help protect her and everything, so that she has a job to go to and she can remain on the board, that we would send her back to King Soopers.” (Tr. 752.) At 9:30 p.m. on June 29, 2022, Zuniga emailed Wesley, stating:

I understand that you have a conflict with covering your area in case of a labor dispute. So that you don't lose your opportunity to return to your store please contact your store management tomorrow to be placed back on the schedule effective Sunday Jul 3, 2022.

<sup>51</sup> I credit Wesley that she did receive such a call, as it comports with the events that unfolded on June 29.

<sup>52</sup> Cordova places this meeting on June 29 (Tr. 1071) but given that Cordova and Zuniga's conversation leading to the decision to send Wesley

Please contact me in the morning to coordinate turning in your equipment, credit card and vehicle along with a list of pending issue (sic) meetings and grievances.

(GC Exh. 37.) Wesley's conflict was that she would not step up and serve the membership in the event of a labor dispute, and Cordova believed there would be no conflict if she was not serving members. (Tr. 1,100–1,101.)

On June 30, Cordova and Wesley met in Cordova's office. Cordova explained that she really needed to have their areas covered and their members taken care of, and that as an executive board member, she needed to know that Wesley would continue to work if FAIR went on strike.<sup>52</sup> Wesley said she was in an impossible position because Cordova was asking her to scab against her colleagues. Wesley explained that the only thing she could do in good conscience would be to honor the strike and resign from the executive board. (Tr. 401, 1,068.) After going back and forth, Cordova eventually told Wesley she could finish the week and then she should go back to her store. Cordova told her that going back to her store did not mean the door to work for UFCW Local 7 was shut. (Tr. 403, 1,070.) Wesley turned in her equipment on Friday and resigned from King Soopers, which ended her seat on the executive board because she was no longer an active UFCW Local 7 member. She did not appeal her termination as a union representative to the executive board or offer to resign from the executive board. (Tr. 405, 431.) UFCW Local 7 did not request another union leave extension for Wesley beyond the one set to expire on July 2, 2022. (Tr. 743.)

## 2. Legal Standards and Analysis

The Respondent asserts that Wesley was a managerial employee who falls outside the Act's protections. The party seeking to exclude an individual as managerial bears the burden of proof. *The Republican Co.*, 361 NLRB 93, 97 (2014); *LeMoyné-Owen College*, 345 NLRB 1123, 1128 (2005).

In *NLRB v. Yeshiva University*, 444 US 672, 682–683 (1980), the Supreme Court described managerial employees as follows:

Managerial employees are defined as those who “‘formulate and effectuate management policies by expressing and making operative the decisions of their employer.’” *NLRB v. Bell Aerospace Co.*, supra, at 288 (quoting *Palace Laundry Dry Cleaning Corp.*, 75 NLRB 320, 323, n. 4 (1947)). These employees are “‘much higher in the managerial structure’” than those explicitly mentioned by Congress, which “‘regarded [them] as so clearly outside the Act that no specific exclusionary provision was thought necessary.’” 416 U.S., at 283 . . . Managerial employees must exercise discretion within, or even independently of, established employer policy and must be aligned with management. See *id.*, at 286–287 . . . (citing cases). Although the Board has established no firm criteria for determining when an employee is so aligned, normally an employee may be excluded as managerial only if he represents

ley back to her store occurred the evening of June 29, this was an error. After saying she did not know if she was at the office on June 30, Cordova's recollection was refreshed by her name on the June 30 transcript from the scab trials. (Tr. 1085–1086; R Exh. AD.)

management interests by taking or recommending discretionary actions that effectively control or implement employer policy.

(Footnotes omitted.) “[T]he specific job title of the employees involved is not in itself controlling. Rather, the question whether particular employees are ‘managerial’ must be answered in terms of the employees’ actual job responsibilities, authority, and relationship to management.” *NLRB v. Bell Aerospace Co. Division of Textron, Inc.*, 416 U.S. 267, 290 fn. 19 (1974).

The only Board law addressing whether union employees are considered managerial by virtue of their service on their employer’s executive board has arisen in the context of representation cases. The Respondent first points to *Retail Store Employees Union, Local 880, Retail Clerks International Association, AFL-CIO*, 153 NLRB 255, 259 fn. 9 (1967). In that case, the Board determined that the president and secretary-treasurer of the Local 880 were excluded as supervisors because they had the authority to recommend the hiring and discharge of organizers. Union Organizer Krzys, who was also a first vice president and member of the executive council, was not excluded with the president and secretary-treasurer under this rationale. Rather, the Board, citing to *Laundry, Cleaning & Dye House Workers (Ind.) Loc. 26*, 129 NLRB 1446, 1447 fn. 4 (1961), excluded him because the executive council passed on the hiring and discharges of business agents and organizers, and formulated labor relations policies. In turn, footnote 4 of *Laundry, Cleaning & Dye House Workers*, excluded an executive committee member as a confidential employee, not as a supervisory or managerial employee.

In *Retail Clerks, Local 428 (Rose C. Wong)*, 163 NLRB 431, 434 fn. 4 (1967), the respondent had a 25-member executive board. The Board held that two office clerical employees who were second vice president and recorder and members of their employer’s executive board, which passed upon the hiring and discharges of the respondent’s organizers and made important policy decisions, were managerial personnel. In addition, the administrative law judge determined that two business representatives, who performed the same job duties as field representatives (who were held to be statutory employees), were managerial employees through their service on the executive board as follows:

They vote on matters before the executive board and possess authority and power through their participation as voting members of the executive board, and their right to otherwise participate in the considerations and deliberations of the Board, to formulate and determine policy. . . . In the absence of precedent to the contrary, in light of the clear analogy to be drawn between the role of a corporate board of directors and Respondent’s executive board, and as the evidence warrants a conclusion that the two business

representatives may effectively participate in the formulation and effectuation of policy of the Respondent and are closely allied to Respondent’s “managing” body, I find that they are managerial personnel

163 NLRB at 438.<sup>53</sup> See also *Florida Southern College*, 196 NLRB 888, 889 (1972) (Professor and dean’s service on a committee to make recommendations regarding the hiring or firing of faculty members excluded from bargaining unit).

Though not precedent, the Respondent cites to *Food and Commercial Workers Local 101*, 20-RC-17811, Decision and Direction of Election, 2003 BL 33979 (2003), as instructive. In that case, the regional director considered whether union representatives who also served on the employer’s executive board were managerial employees. Five of the six representatives whose status was at issue were vice-presidents and the other was the recorder. The regional director summarized the executive board’s authority as follows:

The International Constitution and the Employer’s Bylaws provide that members of the Employer’s Executive Board have full and complete charge of all business of the Local Union not otherwise delegated to a specific officer or reserved to the membership. While the Employer’s president is given the authority to disburse the Local Union’s funds, such disbursements must be ratified by the Executive Board. Such disbursements include the wages and salaries of all individuals employed by the Employer. In this regard, the record reflects that the Executive Board approved the wage and benefits package contained in the last two collective-bargaining agreements covering the Employer’s clerical employees, and the wage and benefits package for union representatives implemented in October 2002.

While the President is given the authority to terminate the employment of any union representative, such authority is subject to an appeal to the Executive Board, which may reverse such a decision. In addition, the bylaws provide that the President’s disposition of a member’s grievance is subject to an appeal to the Executive Board.

Against this factual backdrop, the regional director found the union representatives who served on the employer’s executive board were more closely aligned with management than with the employees of the petitioned-for unit.

The General Counsel argues that Wesley was an employee based on her work as a SPUR and temporary union representative, noting that she was not hired to be an executive board vice president. This argument, however, does not distinguish the instant case from the cases cited above, as the executive board members excluded in those cases were also employees in their respective other capacities as representatives.

The General Counsel asserts that, in practice, Wesley was not a managerial employee despite her role as vice-president on the executive board because she did not necessarily formulate and apply policies within the meaning of *Bell Aerospace* and *Yeshiva*, above. It is clear, however, she was a voting member of the executive board, with its broad-ranging responsibilities, including oversight of employee terminations, with decision-making

<sup>53</sup> The Board affirmed the administrative law judge’s decision, though it is unclear whether exceptions were made to this particular ruling. The General Counsel alleges that the business representatives in *Local 428*

were required to serve on the executive board, but I could not discern that from the facts of the Board’s decision.

authority.<sup>54</sup>

The General Counsel correctly states that the issue in this case is not whether executive board members should be excluded from a bargaining unit or be compelled to pay dues. Instead, the General Counsel frames the issue as “whether a union-employer may interfere with the Section 7 rights of confidential employees who also are on the executive board because they refuse to cross the picket line in the event of a strike.” (GC Br. 94.) The issue of Wesley as a confidential employee was never alleged, developed, or litigated. In any event, the analysis for “managerial employee” does not materially differ in the unfair labor practice context. While I find the result is extremely unfortunate under Wesley’s circumstances, I am bound to apply the Board’s law, cited above, which has held that union representatives who serve on executive boards in capacities and under circumstances similar to Wesley, are managerial employees.<sup>55</sup>

Accordingly, I recommend dismissal of the complaint allegations related to Wesley.<sup>56</sup>

#### CONCLUSIONS OF LAW

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

2. By telling employees the Respondent required them to return their work equipment because of their activities in support of the CP Union and because employees might strike; by telling employees they could work elsewhere and/or inviting them to resign in response to concerted complaints about their working conditions and other protected activities; by disparaging or denigrating the CP Union by falsely telling employees that, during a bargaining session for a successor agreement, the CP Union told the Respondent to discipline and fire employees; and by repeatedly telling employees the grievance procedures in their expired collective-bargaining agreements were no longer in force or effect, the Respondent has violated Section 8(a)(1) of the Act.

3. By requiring employees to return their equipment and requiring them to check-out and check-in their equipment daily and by failing to continue the grievance procedure provisions of the collective-bargaining agreements after their expirations, the Respondent has violated Section 8(a)(5) and (1) of the Act.

4. By taking back the work equipment of employees represented by the CP Union and requiring them to check-out and check-in their work equipment each day, the Respondent has violated Section 8(a)(3) and (1) of the Act.

5. By failing and refusing to bargain in good faith, including

by insisting as a condition of reaching a successor collective-bargaining agreement that FAIR consent to a nonmandatory bargaining proposal, with FAIR as the exclusive collective-bargaining unit of the following employees:

All permanent part-time and full-time Local 7 employees actively engaged in organizing, politics, servicing membership, building maintenance, grievance handling, public relations accountants, programmers, and secretarial duties including department heads; but excluding the President, Secretary-Treasurer, Supervisors as defined by the Act, Executive Secretary to the President, Executive Secretary to the Secretary-Treasurer, Executive Legal Secretary, temporary employees (e.g. Deputy Secretaries, SPUR’s), Membership Records clerks represented by OPEIU Local 30, Officers and other employees represented by F.A.I.R. in other bargaining units. For the purposes of this Agreement, Supervisors will mean Executive Staff and General Counsel.

The Respondent violated Section 8(a)(5) and (1).

6. The Respondent did not otherwise violate the Act as alleged.

7. By the conduct described in paragraphs 2, 3, 4, and 5 above, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

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

Having found the Respondent unlawfully told employees the Respondent confiscated their work equipment because of their activities in support of the CP Union and because employees might strike; told employees they could work elsewhere and/or invited them to resign in response to concerted complaints about their working conditions and other protected activities; told employees their grievance procedure was no longer in effect after the expiration of the collective-bargaining agreements; and disparaged or denigrated the CP Union by falsely telling employees that, during a bargaining session for a successor agreement, the CP Union told the Respondent to discipline and fire employees, the Respondent shall be ordered to cease and desist from these actions.

Having found the Respondent unlawfully failed to continue the grievance procedure provisions of the collective-bargaining

<sup>54</sup> The General Counsel’s likening of Wesley’s role to that of a stockholder and asserting that her single vote’s inability to be singularly impactful are unpersuasive. Clearly, serving on the executive board was not akin to owning stock. And even though her individual vote was not controlling; this is generally true of any individual member of a governing board. (GC Br. 90.)

<sup>55</sup> Though the Board has engaged in a “dual capacity” analysis with regard to individuals who work as employees and supervisors, I was unable to find such an analysis applicable to management status. If such a “dual capacity” analysis applied, Wesley’s role as a union representative was clearly predominant.

<sup>56</sup> In the event a reviewing authority disagrees with me, I have made factual findings with regard to the allegations. Applying these factual findings, assuming Wesley was an employee under the Act, I would

easily find Cordova interrogated her on June 30, 2022, about in violation of Sec. 8(a)(1) when she asked her whether she would continue to service the membership in the event of a FAIR strike. This was a pointed question from the president that strikes at the heart of protected activity, and it occurred in the context of other unfair labor practices. With regard to the discharge allegation, it is undisputed that Wesley was permitted to resign from her position on the executive board at any time, and that President Cordova was not empowered to remove her from the executive board. Had Wesley removed her conflict of interest by resigning from the executive board and nonetheless been discharged from her union representative position and sent back to her store, the facts would certainly lend themselves to a finding of discrimination based on her support for the FAIR membership. She did not, however, and in my view this is fatal to the General Counsel’s case.

agreements after their expirations, the Respondent will be ordered to reinstate and continue in effect the grievance procedure provisions of the collective-bargaining agreements that expired on June 25, 2022, and, on request, process all grievances the Respondent has refused to process since the collective-bargaining agreements' expiration.

Having found that the Respondent unlawfully refused to bargain in good faith, it shall meet, on request, with the CP Union and bargain in good faith over the terms and conditions of employment of the bargaining unit employees and, if an agreement is reached, embody such agreement in a signed contract.

The General Counsel requests an affirmative bargaining order. An affirmative bargaining order is the Board's longstanding remedy when an employer has refused to bargain with an incumbent union. *Caterair International*, 322 NLRB 64, 65 (1996). Notably, the Board decision approved by the Supreme Court in *Franks Bros. Co. v. NLRB*, 321 U.S. 702 (1944), did not rely on particular factual circumstances to justify the imposition of an affirmative bargaining order. See *Franks Bros. Co.*, 44 NLRB 898 (1942).

That said, the U.S. Court of Appeals for the District of Columbia Circuit has required the Board to justify, on the facts of each case, the imposition of an affirmative bargaining order. See, e.g., *Vincent Industrial Plastics v. NLRB*, 209 F.3d 727 (D.C. Cir. 2000); *Lee Lumber & Bldg. Material Corp. v. NLRB*, 117 F.3d 1454, 1462 (D.C. Cir. 1997); *Exxel/Atmos, Inc. v. NLRB*, 28 F.3d 1243, 1248 (D.C. Cir. 1994). The Court has required a reasoned analysis that includes balancing the following considerations:

- (1) the employees' Section 7 rights;
- (2) whether other purposes of the Act override the rights of employees to choose their bargaining representatives; and
- (3) whether alternative remedies are adequate to remedy the violations of the Act.

*Vincent Industrial Plastics v. NLRB*, above at 738.

Turning to the first factor, an affirmative bargaining order, with its bar to raising questions concerning FAIR's continuing majority status for a reasonable time, will advance the Section 7 rights of employees who have been deprived of the benefits of the collective-bargaining process. An affirmative bargaining order will not unduly prejudice the Section 7 rights of employees who may oppose continued union representation because its duration is no longer than is reasonably necessary to remedy the ill effects of the violation. I find therefore that the first factor favors an affirmative bargaining order.

As to the second factor, I find the purposes of the Act do not override the rights of employees to choose their bargaining representatives. On the contrary, an affirmative bargaining order promotes the Act's policies by promoting meaningful collective bargaining. It would remove the UFCW Local 7's incentive to continue to act in a manner that encourages greater dissatisfaction with and disenfranchisement of FAIR.

Finally, considering factor 3, a cease-and-desist order alone would be inadequate to remedy UFCW Local 7's refusal to bargain in good faith with FAIR. In this case, where the record demonstrates FAIR members blamed its leadership, at least in part, for the present situation, an affirmative bargaining order would insulate FAIR from the consequence that UFCW has caused, and help to prevent further disaffection on this basis for a sufficient time period. This outweighs the temporary impact the affirmative bargaining order will have on the rights of employees who may oppose continued union representation. As all three factors weigh in FAIR's favor, I find an affirmative bargaining order is warranted under the D.C. Circuit's standards.

The General Counsel also requests an order requiring the Respondent to participate in mediation with the Federal Mediation and Conciliation Services upon FAIR's request, but cited to no authority in support of this requested remedy. Accordingly, this requested remedy is denied.

I will order that the employer post a notice at the facility in the usual manner, and distribute the notice electronically to the extent mandated in *J. Picini Flooring*, 356 NLRB 11, 15–16 (2010), and *Durham School Services*, 360 NLRB 694 (2014). In accordance with *J. Picini Flooring*, the question as to whether an electronic notice is appropriate, and if so what method of electronic notice should be required, is to be resolved at the compliance phase. *Id.* at 13.<sup>57</sup>

The General Counsel requests an enhanced remedy in the form of a notice reading. The Board recently explained the rationale for notice readings, distilled from its caselaw:

The Board has ordered the notice-reading remedy in cases where the respondent's unlawful conduct has been "sufficiently serious and widespread" to ensure that the content of the notice is disseminated to all employees. . . . Notice reading is a way to let in a "warming wind of information" to not only alert employees to their rights but also impress upon them that, as a matter of law, their employer or union must and will respect those rights in the future. Reading the notice (and any explanation of rights) aloud disseminates that information through the work force in a clear and effective way. This awareness, in turn, means that respondents will be less able to violate the Act unnoticed as a matter of course. . . . Notice reading offers employees a chance to hear, in a formal setting and in the presence of other employees and a Board agent, that their rights have value and that the Board takes those rights seriously. Notice reading also underscores for the respondent that, under a broad order, it cannot simply find another more creative way to violate the Act.

*Noah's Ark*, 372 NLRB No. 80, slip op. at 6 (2023) (footnotes omitted). The Board has ordered the notice-reading remedy in cases where the respondent's unlawful conduct has been "sufficiently serious and widespread" to ensure that the content of the notice is disseminated to all employees. *Homer D. Bronson Co.*, 349 NLRB 512, 515 (2007) (citing *Federated Logistics & Ope-*

<sup>57</sup> The General Counsel asserts that the Board should modernize its approach to remedial notice postings and update its decision in *J. Picini Flooring*. The General Counsel also argues that it should amend its standard remedial language by adding a provision that explicitly requires

the Respondent to grant Board agents reasonable access to its property to verify compliance with the Board's orders. The Board has not authorized these proposed updated remedies, and I therefore decline to grant them.

ations, 340 NLRB 255, 258 (2003)), *enfd. mem.* 273 Fed. Appx. 32 (2d Cir. 2008). In the instant case, I find the violations are sufficiently serious and widespread to support a notice-reading remedy, especially considering the Respondent's failure to bargain in good faith and other unfair labor practices, including denigrating FAIR and requiring FAIR employees to return their equipment, directly impacted the entire bargaining unit. The failure to bargain in good faith, in particular has directly impacted the bargaining unit since June 2022.<sup>58</sup>

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>59</sup>

#### ORDER

The Respondent, United Food and Commercial Workers, Local 7, Wheat Ridge, Colorado, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Telling employees the Respondent confiscated their work equipment because of the activities in support of the CP Union and because employees might strike;

(b) Telling employees they could work elsewhere and/or inviting them to resign in response to concerted complaints about their working conditions and other protected activities;

(c) Telling employees their grievance procedure provisions of their collective-bargaining agreements are no longer in force or effect because of the contracts' expiration;

(d) Disparaging or denigrating FAIR by falsely telling employees that, during a bargaining session for a successor agreement, FAIR told the Respondent to discipline and fire employees;

(e) Confiscating the employees' work equipment and requiring them to check-out and check-in their equipment daily;

(f) Failing to continue the grievance procedure provisions of the collective-bargaining agreements after their expirations;

(g) Failing and refusing to bargain in good faith with FAIR, including by insisting as a condition of reaching a successor collective-bargaining agreement that FAIR consent to a non-mandatory bargaining proposal, as the exclusive collective-bargaining representative of the following units of meat and retail employees:

All permanent part-time and full-time Local 7 employees actively engaged in organizing, politics, servicing membership, building maintenance, grievance handling, public relations accountants, programmers, and secretarial duties including department heads; but excluding the President, Secretary-Treasurer, Supervisors as defined by the Act, Executive Secretary to the President, Executive Secretary to the Secretary-Treasurer, Executive Legal Secretary, temporary employees (e.g. Deputy Secretaries, SPUR's), Membership Records clerks represented by OPEIU Local 30, Officers and other

employees represented by F.A.I.R. in other bargaining units. For the purposes of this Agreement, Supervisors will mean Executive Staff and General Counsel.

(h) 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) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with FAIR as the exclusive collective-bargaining representative of our employees in the following meat and retail bargaining units:

All permanent part-time and full-time Local 7 employees actively engaged in organizing politics, servicing membership, building maintenance, grievance handling, public relations accountants, programmers, and secretarial duties including department heads; but excluding the President, Secretary-Treasurer, Supervisors as defined by the Act Executive Secretary to the President, Executive Secretary to the Secretary-Treasurer, Executive Legal Secretary, temporary employees (e.g. Deputy Secretaries, SPUR's), Membership Records clerks represented by OPEIU Local 30, Officers and other employees represented by F.A.I.R. in other bargaining units. For the purposes of this Agreement, Supervisors will mean Executive Staff and General Counsel.

(b) Reinstate and continue in effect the grievance procedure provisions of the collective-bargaining agreements that expired on June 25, 2022, and, on request, process all grievances the Respondent has refused to process since the collective-bargaining agreements' expiration.

(c) On request, bargain in good faith with FAIR as the exclusive collective-bargaining representative of the bargaining units with respect to a successor agreement and, if an understanding is reached, embody the understanding in a signed agreement, without insisting that FAIR consent to a nonmandatory bargaining proposal as a condition of reaching an overall agreement.

(d) Within 14 days after service by the Region, post at its offices in Wheat Ridge, Colorado, copies of the attached notice marked "Appendix."<sup>60</sup> 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

<sup>58</sup> The General Counsel argues that a notice reading should be a standard remedy, but I am bound to apply extant Board law, which considers it an enhanced remedy.

<sup>59</sup> 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.

<sup>60</sup> 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."

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 25, 2022.

(e) Within 14 days after service by the Region, hold a meeting or meetings, scheduled to ensure the widest possible attendance, where a Board agent, in the presence of a responsible management official, will read the notice to employees. An agent of the CP Union may attend if the CP Union so desires.

(f) 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.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. February 8, 2024

#### 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 invite you to quit your employment as a response to your protected concerted activities.

WE WILL NOT disparage or denigrate FAIR in our communications to you.

WE WILL NOT tell you that the grievance procedure is no longer in force because of the expiration of the collective-bargaining agreements between UFCW Local 7 and FAIR.

WE WILL NOT tell you that your actual or anticipated activities in support of FAIR in the course of successor contract bargaining caused us to confiscate your work equipment.

WE WILL NOT preemptively confiscate your work equipment because we believe that you will go on strike amid successor contract bargaining.

WE WILL NOT change terms and conditions of your employment, including the confiscation of work equipment, without first notifying FAIR and giving it an opportunity to bargain.

WE WILL NOT fail or refuse to continue in effect the grievance procedure provisions of the collective-bargaining agreements after expiration of the agreements.

WE WILL NOT fail and refuse to bargain in good faith with FAIR as the exclusive collective-bargaining representative of our bargaining unit employees, including by insisting as a condition of reaching a successor collective-bargaining agreement that FAIR consent to a nonmandatory bargaining proposal.

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

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of employment of bargaining unit employees, notify and, on request, bargain with FAIR as the exclusive collective-bargaining representative of our employees in the following bargaining unit(s):

All permanent part-time and full-time Local 7 employees actively engaged in organizing, politics, servicing membership, building maintenance, grievance handling, public relations accountants, programmers, and secretarial duties including department heads; but excluding the President, Secretary-Treasurer, Supervisors as defined by the Act, Executive Secretary to the President, Executive Secretary to the Secretary-Treasurer, Executive Legal Secretary, temporary employees (e.g. Deputy Secretaries, SPUR's), Membership Records clerks represented by OPEIU Local 30, Officers and other employees represented by F.A.I.R. in other bargaining units. For the purposes of this Agreement, Supervisors will mean Executive Staff and General Counsel.

WE HAVE bargained with FAIR over the return of work equipment in the event of a labor dispute.

WE WILL reinstate and continue in effect the grievance procedure provision of the collective-bargaining agreements that expired on June 25, 2022, and WE WILL, on request, process all grievances we have refused to process since the collective-bargaining agreements' expiration.

WE WILL bargain in good faith with the FAIR as the bargaining representative of the bargaining units with respect to a successor agreement and, if an understanding is reached, embody the understanding in a signed agreement, without insisting that FAIR consent to a nonmandatory bargaining proposal as a condition of reaching an overall agreement.

#### UNITED FOOD AND COMMERCIAL WORKERS

The Administrative Law Judge's decision can be found at [www.nlrb.gov/case/27-CA-298239](http://www.nlrb.gov/case/27-CA-298239) 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.



