

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

**COMMERCIAL STEEL TREATING
CORPORATION d/b/a CURTIS PRIMAT**

and

**Case 07-CA-328161
07-CA-336388
07-CA-338406**

**LOCAL 174 INTERNATIONAL UNION
UNITED AUTOMOBILE, AEROSPACE,
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW), AFL-CIO**

*Robert Drzyzga, Esq.,
for the General Counsel.*

*Marc L. Fleischauer, Esq. (Taft, Stettinius & Hollister LLP),
for the Respondent.*

*Robert D. Fetter, Esq. (Miller Cohen PLC),
for the Charging Party Union.*

DECISION

STATEMENT OF THE CASE

Benjamin W. Green, Administrative Law Judge. Local 174, International Union United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO (the Union) filed the charge and amended charge in case 07-CA-328161 on October 17, 2023¹ and November 17, respectively. (G.C. Exh. 1(a), 1(c)) On February 20, 2024, the Union filed the charge in case 07-CA-336388. (G.C. Exh. 1(e)) On March 21, 2024, the Union filed the charge in case 07-CA-338406. (G.C. Exh. 1(h)) On May 30, 2025, the Regional Director for Region 7 issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (the complaint) alleging that Commercial Steel Treating Corporation d/b/a Curtis PriMat (the Respondent) violated Section 8(a)(1) and (5) of the National Labor Relations Act. (G.C. Exh. 1(l)) On June 13, 2025, the Respondent filed an answer to the complaint. (G.C. Exh. 1(n)) A virtual Zoom hearing was conducted before me on March 9 and 10, 2026.

¹ All dates herein refer to 2023 unless stated otherwise.

The complaint allegations and my recommended findings herein are summarized in the following table:

Comp. ¶	Act Section	Allegation Description	Recommendation (Analysis Pages)
7	8(a)(1)	Maintained overbroad rules in the Associate Handbook.	Violation ² (Infra pp. 20-30)
8	8(a)(1)	October 6 - Directed employees not to discuss their demotion and/or wage rate with the Union or other employees..	Violation (Infra pp. 30-31)
9	8(a)(1)	October 13 and 17 - Threatened to discharge employees if they did not sign the Associate Handbook Acknowledgment Form.	Violation (Infra pp. 31-32)
11	8(a)(5)/(1)	October 13 and 17 - Bypassed the Union and dealt directly with unit employees by soliciting them to sign the Associate Handbook Acknowledgement Form.	Violation (Infra pp. 32-33)
13, 15	8(a)(5)/(1)	October 13 and 17 - Unilaterally required unit employees to sign Associate Handbook Acknowledgment Forms without notifying and offering to bargain with the Union.	Violation (Infra pp. 33-34)
12	8(a)(5)/(1)	February 12 and 13, 2024 - Bypassed the Union and dealt directly with unit employees by notifying them of its decision to close the facility and offering them severance packages.	Violation (Infra pp. 34-35)
16	8(a)(5)/1)	Failed to bargain in good-faith over the effects of the plant closing. ³	Violation (Infra pp. 35-38)

² I recommend a finding that the rules in the Associate Handbook were unlawfully overbroad as alleged by the General Counsel, except for the posting provision in Article VI, Group 1 Offenses, Building Violations ¶ 2 (G.C. Exh. 3 p. 28) and the confidential information provision in Article IX, Group 4 Offenses, Company Record Violations ¶ 3 (G.C. Exh. 3 p. 32). I recommend dismissal of the posting and confidential information provision allegations. (Infra, pp. 19-21, 24-25)

³ Complaint paragraphs 14-15 allege that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally announcing to unit employees its decision to close the facility and closing the facility without bargaining over the effects thereof. However, the General Counsel did not assert a unilateral change theory in the posthearing brief. Rather, the General Counsel argued that the Respondent did not, by its overall conduct, bargain in good faith regarding the plant closure. Accordingly, I address herein only the bad-faith bargaining allegation and not a unilateral change.

On the entire record, after considering the posthearing briefs filed by the General Counsel, the Respondent, and the Union, I provide below my recommendations in the findings of fact,⁴ legal analysis, conclusions of law, remedy section, order, and notice to employees.

5

JURISDICTION AND LABOR ORGANIZATION

During the calendar year ending December 31, 2023, the Respondent purchased and received at its facility in Madison Heights, Michigan (the facility) goods valued in excess of \$50,000 directly from points outside the State of Michigan. (G.C. Exh 1(l), 1(n), ¶ 3) At least until the facility closed, the Respondent was an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. (G.C. Exh 1(l), 1(n), ¶ 4) At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act. (G.C. Exh. 1(l), 1(n), ¶ 5) Accordingly, I find that this dispute affects commerce and that the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

15

ALLEGED UNFAIR LABOR PRACTICES

FINDINGS OF FACT

20 Background

The Respondent provided metal heat-treating services at the facility until it was closed on April 15, 2024. (G.C. Exh. 1(l), (n) ¶ 2).

25 The Respondent's management team at the facility included CEO Jeffrey Wilson, Human Resources Manager Jodi Joseph, General Manager John Bamford, Plant Manager Garry Harison, Maintenance Manager Paul Dupuis, and day shift Supervisor Hayder Aljubouri. (Tr. 44, 49-50, 153, 253-254) Joseph identified Curtis Metal Finishing as another Wilson company. (Tr. 252-253) (G.C. Exh. 26 p. 6) Wilson's stepdaughter, Tobi Cantle-Wilson, was the human resources manager for Curtis Metal Finishing. (Tr. 111, 174-175)

30

⁴ My factual findings are a compilation of credible testimony and other evidence, as well as logical inferences drawn therefrom. To the extent evidence of a fact is trustworthy and not contested, the fact is generally stated without reference to the underlying evidence. In assessing credibility, I consider such factors as the context of witness' testimony, the quality of their recollection, testimonial consistency, the presence or absence of corroboration, the weight of the respective evidence, established or admitted facts, inherent probabilities, reasonable inferences that may be drawn from the record as a whole, and witness demeanor. See *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enf. sub nom., 56 Fed. Appx. 516 (D.C. Cir. 2003).

The Respondent and Union have been parties to successive collective-bargaining agreements, the most recent agreement being effective July 1, 2022 to June 30, 2025 (the CBA).⁵ (G.C. Exhs. 1-2)

5 James Brock was the Union Vice-President when the Respondent closed in April 2024. Brock later became Union President. (Tr. 90) Brock has never been employed by the Respondent. (Tr. 119) Respondent employee Christopher Combs was the Union chairman at the facility. (Tr. 42-43) Combs' responsibilities as chairman included participation in the negotiation of collective-bargaining agreements and the processing of grievances. (Tr. 43)
 10 Three Union Committeemen, one on each shift (day, afternoon, midnight), reported to Chairman Combs.⁶ The three committeemen were Andre Harris (day shift), Hamani Lowe (afternoon shift), and Kelvin Davis (midnight shift). (Tr. 44) Harris became the acting chairman when the Respondent discharged Combs on November 1. (Tr. 91-92)

15 Article XII of the CBA states, in part, regarding "Vacation Benefits," that "[t]he Company will provide employees with Vacation Benefits as set forth in Exhibit 'D' attached hereto" (G.C. Exh. 2 p. 37) Exhibit D states, in part, as follows (G.C. Exh. 2 p. 52):

**"EXHIBIT "D"
 VACATION BENEFITS**

20 Section 1 Every employee who has been that has reached their seniority with the Company shall be entitled to a vacation in accordance with the following schedule:

25 A prorate will be provided prior to January 1, 2023, for the first year of this vacation reset date. (7-1-22)

...

30 Section 5: Terminated or retired associates who are otherwise qualified to vacation time and have worked twenty-six (26) weeks or more during the previous year will be paid in lieu of their vacation. If he/she has worked less than

⁵ Complaint paragraph 10 describes the bargaining unit as follows: "All machine operators, production employees, shipping and receiving employees, maintenance employees, maintenance helpers and facilities maintenance employees employed by the Employer at its facility located at 31440 Stephenson Highway, Madison Heights, Michigan; but excluding guards and supervisors as defined by the Act." (G.C. Exh. 1(l) ¶ 10) The Respondent's answer "admits that its latest collective bargaining agreement with the Charging Party defined the bargaining unit." (G.C. Exh. 1(n) ¶ 10) The CBA defines "employee" as "hourly paid employees" and "recognizes the Union as the exclusive bargaining agent for its employees." (G.C. Exh. 2 pp. 2-3) In Exhibit "A" (Straight Time Hourly Wage Rates), the CBA lists the employee classifications in the complaint's unit description. (G.C. Exh. 2 pp. 44-45) As the Respondent has not expressly opposed the unit description in the complaint or the appropriateness of that unit, I recommend a finding that the unit description in the complaint is accurate and appropriate.

⁶ The shop chairman and shop committeeman positions are also referred to as the chief steward and stewards, respectively. (Tr. 52-53, 185-186, 189, 191)

twenty-six (26) weeks, he/she shall receive a fractional pay equal to the number of weeks worked during the vacation year divided by fifty-two (52). Example: If a recalled employee has worked fourteen (14) weeks prior to the May 1 vacation determination date, he/she would get 14/52 vacation allowance. (7-1-19).”

5 CEO Wilson testified that he was not intimately familiar with the CBA and generally relied on HR professionals such as Joseph to deal with contractual matters. (Tr. 165, 308-309) Joseph testified that, despite the reference in CBA Exhibit “D,” Section 5 to “[t]erminated or retired associates,” the Respondent’s practice was to pay outstanding PTO only to employees who retired and not to employees who were terminated. (Tr. 313-316) Joseph testified that she was unaware of any provision in the CBA requiring the Respondent to pay employees outstanding paid time off (PTO) if they were separated as a result of a plant closure. (Tr. 316, 318) According to Joseph, before March 2024, she only knew of a CBA provision regarding retirement.⁷ (Tr. 315-316, 318) Wilson testified that he knew unit employees were contractually entitled to outstanding vacation time upon the closing of the plant. (Tr. 209)

Combs was hired by the Respondent on May 14, 2011. (Tr. 37) From May 2011 to May 2018, Combs held various production positions, including production laborer, furnace operator, and lead furnace operator. (Tr. 40-41) In May 2018, Combs was promoted from day shift furnace operator to maintenance tech with a \$3 per hour wage increase. (Tr. 41-42, 48)

Wilson testified that Combs was not qualified for maintenance and should not have been promoted to a maintenance position because company and CBA protocols for filling the position were not followed, Combs did not have any technical background, Combs did not go through the technical training program, and Combs did not hold a journeyman card. (Tr. 198-203) Joseph testified that, according to GM Bamford, Maintenance Manager Dupuis promoted Combs to maintenance without following the CBA requirement to first post the position. (Tr. 311-313) The Union did not file a grievance contending that Combs was promoted in violation of the CBA. (Tr. 321)

September 28, 2023 – Email Regarding Safety Concerns

On September 28, Combs, as “UAW 174 Shop Chairman,” copying Union VP Brock, sent HR Manager Joseph an email which stated, in part (G.C. Exh. 4) (Tr. 46-47):

Good morning Jodi this is a list of safety issues at commercial steel as of 9-28-2023. Could you please go threw these issues and ASAP and provide safety solutions for all these listed items within 5[]business days or the UAW will be

⁷ The CBA contains Exhibit “C” regarding a “Retirement Benefit Plan.” (G.C. Exh. 2 p. 49-51) Exhibit “C” makes no express reference to vacation pay or other PTO.

obligated to contact MIOSHA^[8] to establish what is and is not a safe working environment for all associates.

5 In this email to Joseph, Combs listed 24 bullet points describing specific safety concerns at the facility. (G.C. Exh. 24)

October 6 – Combs Demotion

10 On October 6, HR Manager Joseph sent Union Chairman Combs a text asking him to come to the front of the facility in 15 minutes. (G.C. Exh. 18) (Tr. 49-50, 302-303) Combs replied, “Me and my committee man or just me[?]” Joseph replied, “You can bring [Harris] if you want.” Combs replied that he would bring Harris. (G.C. Exh. 18)

15 Combs testified as follows regarding the October 6 meeting: Combs and Harris went to the small conference room in the front offices across from HR. (Tr. 51) CEO Wilson and Joseph were present. (Tr. 52) When they arrived, Wilson told Harris he was not needed and not allowed to attend. Harris left. (Tr. 52-53) Wilson told Combs he should never have been a maintenance man. Combs asked why, but Wilson did not answer. (Tr. 53) Combs asked, “What about my pay?” Wilson told Combs he was keeping his maintenance pay rate. (Tr. 53-54)
20 Combs asked, “Well, what about the guys on the floor?” (Tr. 54) Wilson told Combs not to tell the members or the Union about his pay rate staying the same. (Tr. 54) Wilson said, “You’re not stupid. You’re just going to make the money.” (Tr. 54) Combs said the Union would find out because Sheila Draper, the person in charge of Union finances, would see it in the dues. Joseph said she did not think Draper would notice. (Tr. 54-55, 259) After the meeting, Combs called
25 Union VP Brock and told him what happened. (Tr. 56, 102)

Wilson denied he told Harris not to attend the October 6 meeting. (Tr. 154, 197) Wilson testified that he did not know who Harris was or whether he was a union steward. (Tr. 196-197) Wilson did not recall Combs arriving at the October 6 meeting with Harris, but conceded it was
30 possible that Harris was present. (Tr. 196-197) Wilson testified that he asked Combs to return to the senior furnace operator position because the company was behind in production and we “needed our best athletes on the field.” (Tr. 153-154, 182, 198, 201) Although Wilson did not “recall exactly” whether he mentioned that Combs was not qualified to be a maintenance person, he testified, “I’m sure I did.” (Tr. 198-201) Combs did not agree to the demotion. (Tr. 198)
35 Wilson testified that he told Combs his pay would not be reduced, but Combs was needed in

⁸ MIOSHA refers to the Michigan Occupational Safety and Health Administration. As discussed below, Combs filed with MIOSHA certain complaints against the Respondent, including allegations that the Respondent took discriminatory adverse actions against Combs (demotion, reduction of pay, verbal warning, two 5-day suspensions, and discharge) for activity protected by the Michigan Occupational Safety and Health Act (MIOSHA Act). The Union also filed grievances against the Respondent for the same adverse employment actions. The instant complaint does not contain any allegations that the Respondent violated Section 8(a)(3) and (1) of the Act by taking adverse employment actions against Combs because charges alleging such violations were administratively dismissed prior to complaint on grounds of deferral to an arbitration award favorable to Combs. (G.C. Exhs. 12-13) (Tr. 16-17)

production. (Tr. 182, 198) Wilson denied calling Combs “stupid,” but did not otherwise testify that there was or was not a discussion about whether Combs should tell the Union he was being demoted with no reduction in pay. (Tr. 154)

5 Joseph testified that she arrived at the October 6 meeting late and only Wilson and Combs (not Harris) were present. (Tr. 303) According to Joseph, Wilson told Combs he was being moved from maintenance to production because they needed furnace operators who can run the equipment and Combs was not sufficiently skilled to work in maintenance. (Tr. 303-304) Joseph testified that Wilson said the CBA had not been followed when Combs was promoted to maintenance.⁹ (Tr. 304) Joseph further testified that Wilson said he was not going to hurt Combs or his family by reducing his pay. (Tr. 259) Joseph denied Wilson told Combs not to tell the Union or other employees his pay would remain the same despite his demotion. (Tr. 249) Rather, Joseph claimed Combs asked if he should tell the Union his pay was not being reduced and Wilson said it was up to him. (Tr. 249) Joseph also denied Wilson told Combs he was 15 stupid for asking that question or suggesting he wanted to talk to the Union about it. (Tr. 249-250) According to Joseph, Combs asked her how the Union would not find out about his pay and she responded, “I don’t know if Sheila [Draper] notices the wages on the spreadsheet that come across.” (Tr. 259-260) Joseph testified that she never said Draper would not notice the pay reduction, but did explain that Draper might not notice and left it up to Combs whether to 20 tell the Union. (Tr. 260)

October 11 - Grievance Meeting

25 On October 11, a grievance meeting was held regarding the discharge of a unit employee. (Tr. 61-64, 97-99) CEO Wilson and HR Manager Joseph were present for the Respondent. VP Brock and Chairman Combs were present for the Union. (Tr. 62, 98) During this meeting, Wilson claimed employees were abusing their personal days by taking too many and he wanted employees to take less time off. (Tr. 62-63, 98) Brock rejected this request. (Tr. 98) Brock testified that Wilson threatened to discipline and fire employees if they did not forfeit personal 30 time and he (Brock) threatened to file grievances and NLRB charges if the Respondent took such disciplinary action. (Tr. 98) Brock testified that Wilson said, if the Union filed grievances and charges, “he might possibly close the plant and a lot of tough talk.” (Tr. 98) Combs testified that “Wilson wanted us to stop filing grievances.” (Tr. 63-64) When asked whether Wilson threatened plant closure, Combs testified that Wilson said, “he would if he had to.” (Tr. 64) 35

⁹ On cross examination, Joseph admitted that, in prior arbitration testimony and a position statement she submitted to the Board, she did not claim Combs was told he was being promoted because the Respondent needed operators. Rather, prior to the hearing, Joseph represented only that Combs was demoted because the CBA was not followed when he was promoted to maintenance and he did not have the required background for that position. (Tr. 304-307) (G.C. Exh. 19) Joseph was present for Wilson’s testimony and testified after him. (Tr. 280-281) Accordingly, Joseph was in a position to echo Wilson’s testimony. See *Orland Park Motor Cars, Inc.*, 333 NLRB 1017, 1035 (2001). For that and other reasons discussed below in the credibility section of this decision, I did not find Joseph an entirely credible witness.

During this October 11 meeting, Wilson also raised the issue of work rules. (Tr. 63, 99) Combs said work rules had never been negotiated and Brock said any work rules would be the subject of bargaining. (Tr. 63, 99) Brock testified that Wilson wanted to change work rules to make them stricter and he did not care whether the Union agreed with everything he said because he was willing to spend as much money as he had to on lawyers and arbitrations. (Tr. 99) Combs testified that Wilson said he was not afraid of grievances because he had enough money for all the arbitrations.¹⁰ (Tr. 63-64)

October 12 - Memorandum Regarding Mandatory Meetings

On October 12, in the morning, the Respondent posted on a board near the time clock a memorandum from management to all hourly associates regarding half-hour “Mandatory Plant Wide Meetings” to be held for each shift on October, 13, 2023. (Tr. 64-65) (G.C. Exhs. 5, 25) The meetings were scheduled for 7 a.m. (first shift), 2:30 p.m. (second shift), and 3:00 p.m. (third shift). (G.C. Exhs. 5, 25) Combs took a picture of the letter and texted it to Brock. (Tr. 65, 99-101) (G.C. Exh. 25)

October 12 – Combs Demotion Grievance and Reduction in Pay

Despite being demoted from maintenance tech to furnace operator, Union Chairman Combs retained his maintenance tech wage rate from October 6 to October 12. (Tr. 259)

On October 12, Combs gave Plant Manager Harrison a Union grievance alleging he had been unjustly removed from the maintenance department in violation of CBA Article 14. (Tr. 57-58) (G.C. Exh. 17) The grievance sought the adjustment, “[r]einstatement to maintenance, make whole for all lost wages, benefits, and seniority.” (G.C. Exh. 17) Written under “Foreman’s Disposition” was the comment, “Denied, management will not reinstate into maintenance based on maintenance experience and decrease in dept size.” (G.C. Exh. 17)

Later on October 12, Supervisor Aljubouri told Combs that CEO Wilson would like to see him. (Tr. 58-60) Combs went to his Union office and saw Wilson and HR Manager Joseph waiting in the hallway. (Tr. 59-60) Combs testified that Wilson “aggressively” approached him

¹⁰ The Respondent’s witnesses did not rebut the testimony of the General Counsel’s witnesses regarding this October 11 meeting and the General Counsel’s witnesses largely corroborated each other. However, Brock testified that Wilson expressly threatened to close the plant if the Union filed grievances and charges (Tr. 98), while Combs testified that Wilson wanted the Union to stop filing grievances (Tr. 63) and only later testified that Wilson said he would close the plant if he had too (Tr. 64). My impression was that, despite being somewhat unclear, Combs understood Wilson to have threatened plant closure if the Union filed grievances. However, the complaint does not allege an unlawful threat of plant closure and I need not recommend whether such a violation occurred. For purposes of analyzing violations alleged in the complaint, I do conclude that, on October 11, Wilson expressed hostility toward the Union’s filing of grievances and otherwise contesting the Respondent’s demands and plans.

and said, "That was real stupid of you."¹¹ (Tr. 60) According to Combs, Wilson had the grievance he filed that morning and almost threw it at him. Combs asked, "Why?" (Tr. 60) Wilson responded, "Well, now you're losing money" and "effective immediately, you're . . . going back down to operator pay." (Tr. 60)

Joseph admitted the Respondent reduced Combs' pay rate on the same day (October 12) Combs filed a grievance regarding his demotion. (Tr. 260) Wilson testified that he reduced Combs' pay rate because, "[a]pparently, I was in violation of the union rules." (Tr. 183) Wilson did not consult Joseph before reducing Combs' pay. (Tr. 308-309)

October 13-18 – Associate Handbook with Acknowledgement Form

On October 13, the Respondent held the three mandatory meetings previously announced in the October 12 memorandum. (Tr. 263-266) (G.C. Exhs. 5, 22, 25) Union Chairman Combs attended the meeting for day shift unit employees. Plant Manager Harrison spoke and HR Manager Joseph was present. Combs testified that Harrison reviewed with employees the Respondent's cell phone rules and other "minor stuff." (Tr. 65-67) At this meeting, the Respondent provided employees with an Associate Handbook which contained an Associate Handbook Acknowledgement Form (page 33 of the Associate Handbook) on top. The Respondent required employees to sign the Acknowledgement Form, but Combs did not do so because he left the meeting early. (Tr. 65-67, 77-78, 262-266) (G.C. Exhs. 5-6)

The Associate Handbook (G.C. Exh. 3) contained extensive regulations regarding employees' wages, hours, and other terms and conditions of employment (pp. 5-25), including provisions regarding cleanliness (pp. 5, 13), obtaining permission to leave work areas (p. 5), rental and return of tools and uniforms (p. 5), access to premises once released from payroll (p. 5), when/where to enter the plant and punch in for the start of a shift (p. 6), procedure for late arrival or early departure (p. 6), attendance procedures and point guidelines (pp. 7-9), procedure for selecting lunch/work breaks (pp. 9), timeclock policy and procedures (e.g., restrictions on clocking in more than 15 minutes late and leaving the premises for lunch) (pp. 9-10), safety regulations (e.g., procedures to follow in case of injury) (pp. 10-11), attire (pp. 12-13), operational/equipment use guidelines (pp. 13-17, 21-23), fire prevention (pp. 18-19), and safety regulations (pp. 19-21). In addition to these regulations, the Associate Handbook contained an extensive list of rules for personal conduct which "calls for progressive Disciplinary Action against the offending associate." (G.C. Exh. 3 p. 25) The rules were grouped in offenses from group 1 to 4. The higher the group the more serious the offense, with group 4 offenses or repeated violations of lesser offenses subjecting an employee to discharge. (G.C. Exh. 3 pp. 25-32). The rules were essentially a list of categorized offenses reflecting violations of the regulations. Finally, the Associate Handbook contained the Associate Handbook Acknowledgement Form. (G.C. Exh. 3 p. 33)

¹¹ Wilson did not provide specific testimony regarding this October 12 interaction with Combs. Wilson did deny he called Combs stupid at the October 6 meeting "or to his face any other time." (Tr. 154)

Specific provisions of the Associate Handbook at issue in the instant case are quoted below (G.C. Exh. 3) (emphasis in the original):

INTRODUCTUION (G.C. Exh. 3 p. 4)

For the benefit of both current and future Associates, we have published on the following pages “*Rules and Regulations*” to be followed while employed by Commercial Steel Treating Corporation. They have been prepared for your protection, as well as the Company’s.

Supervisors are responsible for maintaining safe and efficient production and have all Associates’ best interest in mind when enforcing *Company Rules and Regulations*.

Please read and familiarize yourself with this handbook. If you have a question, request clarification from your Supervisor. Your full cooperation in maintaining a healthy, safe, and efficient place to work is required. Your thorough understanding and observance of our *Rules and Regulations* is a condition of your employment with the Company.

GENERAL REGULATIONS (G.C. Exh. 3 p. 5)

Always cooperate with Supervision. They help protect you and your job security.

SUBSECTION A: PLANT CLEANLINESS AND ORDER (G.C. Exh. 3 p. 5) . . .

3. Associates wishing to enter the premises at times other than their scheduled working hours must first obtain permission from the Supervisor or Guard on duty.

4. Soliciting, taking up collections, holding meetings or distributing literature for any cause or purpose is forbidden on Company premises without written authorization from Management.

...

9. Campaigning of any type on behalf of public or Union officials is prohibited on Company property.

SUBSECTION B: ELECTRONIC AND SMART DEVICE REGULATIONS (G.C. Exh. 3 p. 6)

1. All Smart devices including but not limited to cell phones, laptops, smart watches, earbuds, etc are permitted only during Work Breaks or Lunch Periods in the designated break areas; cafeteria or locker room, unless an event approved by Management arises. Only in the event of an emergency will Supervisors allow associates to take personal calls.

2. The use of photography or videography on Company property will only be permitted when authorized by Management.

...

INTRODUCTION RULES FOR PERSONAL CONDUCT (ARTICLES VI THROUGH IX) (G.C. Exh. 3 p. 25-26)

In order to insure that our Plant is safe, orderly and a pleasant place to work, the following “Rules for Personal Conduct” have been developed. These *Rules* are not intended to restrict the proper rights of anyone. They have been established to protect the rights of everyone – and to ensure the necessary cooperation needed in the proper conduct of our business.

...

2. Violation of these *Rules* calls for progressive Disciplinary Action against the offending Associate. For Group 1 offenses, the action will normally result in a Written Warning for the first offense. In more serious cases (Group 2 and 3 Offenses), you may be assessed a Disciplinary Layoff. For major violations (Group 4, or repeated violation of other *Rules*, you are subject to Discharge.

...

4. In Management’s opinion, there can be no mechanical formula for establishing Disciplinary Action, but the following three important facts will be considered in all cases:

- A. The seriousness of the offense.
- B. The Associate’s past record;
- C. The circumstances surrounding each particular case.

5. It should be borne in mind that any set of *Rules* cannot be all-inclusive or apply in every situation which may occur. These *Rules* are not intended to limit the causes for Disciplinary Action to only those set forth. Offenses not enumerated will be considered on the particular facts and discipline, if warranted, will be determined by the nature and gravity of the offense when considered in light of the Associate’s past record. Moreover, the Disciplinary Action for specific acts of misconduct, set forth herein, are designed to apply only to the ordinary acts of misconduct. The penalties may be more or less severe if the gravity and circumstances of the offense warrant.

ARTICLE VI

GROUP 1 OFFENSES (G.C. Exh. 3 p. 27)

Violation of any Group 1 *Rule* will result in Disciplinary Action ranging from a **Written Warning up to and including Discharge**. Specific penalties will depend on the circumstances and gravity of the offense when considered in light of the Associate's past record. Normally, a first violation of a Group 1 *Rule* (without a record of violation(s) in other Groups), will result in a Written Warning where neither mitigating nor aggravating circumstances exist.

...

SAFETY VIOLATIONS (G.C. Exh. 3 p. 27)

1. Distracting the attention of others, or causing confusion by shouting, improper use of paging system, catcalls, demonstrations, horseplay, rough housing, scuffling, running or throwing things.

COMPANY RECORD VIOLATIONS (G.C. Exh. 3 p. 27) . . .

2. Removal from the premises without proper authorization of Associate lists, Company records, or other job-related information of any nature.

BUILDING VIOLATIONS (G.C. Exh. 3 p. 28)

1. Posting, defacing or removal of notices, signs, or writing in any form on bulletin boards, toilet room areas or other Company property at any time without signed authorization from Management.
3. Utilizing items including but not limited to, cell phones, tablets, smart devices, ear phones, or reading material which does not pertain to your work during working hours, not including designated areas during approved lunch or break times.
4. Unauthorized use of photography or videography on Company premises.

ARTICLE VIII (G.C. Exh. 3 p. 29)

GROUP 2 OFFENSES

A violation of any Group 3 *Rule* will result in Disciplinary Action ranging from a **three (3) calendar day Disciplinary Layoff up to and including Discharge**. Specific penalties will depend on the circumstances and gravity of the offense when considered in light of the Associate's past record. Normally, a first violation of a Group 3 *Rule* (without a record of violation(s) in other Groups), will result in a Disciplinary Layoff of up to five (5) calendar days where neither mitigating nor aggravating circumstances exist.

WORK PERFORMANCE VIOLATIONS (G.C. Exh. 3 p. 30) . . .

4. Immoral or indecent conduct on Company property at any time.

ARTICLE IX

GROUP 4 OFFENSES (G.C. Exh. 3 p. 32)

Violation of any Group 4 *Rule* will result in **Discharge**.

COMPANY RECORD VIOLATIONS (G.C. Exh. 3 p. 32) . . .

3. Unauthorized disclosure, or misuse of Company records, customer lists, processing information, pricing and estimating data or other confidential information of any nature.

WORK PERFORMANCE VIOLATIONS (G.C. Exh. 3 p. 32) . . .

4. Unauthorized soliciting of funds or distribution of literature, written or printed matter of any description on Company premises during working hours.

ASSOCIATE HANDBOOK ACKNOWLEDGEMENT FORM (G.C. Exh. p 33)

...

By signing below, I agree, unless otherwise provided under the terms of a collective bargaining agreement applicable to me, as a condition of my employment or continued employment, not to commence any action or lawsuit relating to my employment against the Company or its Associates more than one hundred eighty (180) days after the occurrence of the facts giving rise to the

claim. I agree to waive any longer statute of limitations to the contrary. In the event that the statute of limitations applicable to any claim is less than one hundred eighty (180) days, I agree that the shorter statute of limitations shall apply. I understand and agree that any action or lawsuit filed outside this
 5 limitations period is barred. I understand and agree that this limitations period (or applicable shorter period) will not be extended for any reason, including continuing violations. This provision does not prohibit the timely filing of a charge with a federal administrative agency, but unless filed within 180 days (or
 10 in less time if any applicable law requires), I waive my right to recover money damages or other relief as permitted by law.

On October 13, Combs texted Brock a copy of the Associate Handbook Acknowledgement Form. (G.C. Exh. 16)

15 On about October 17, at about 7 a.m., Supervisor Aljubouri approached Combs in the lunchroom and said Plant Manager Harrison wanted to see him to sign a paper. (Tr. 67-68) Combs and Aljubouri went to Harrison's office. (Tr. 68) Harrison told Combs, "If you want to work here, my man, you got to sign this paper" (referring to the Associate Handbook Acknowledgement Form). (Tr. 68-69) Combs did not sign the form at that time. (Tr. 69)

20 A position statement submitted by HR Manager Joseph to the Region during the investigation of this matter states, in part, as follows (G.C. Exh. 19):

25 October 13, 2023 – Plant wide meetings were held with all associates to re-issue handbooks to all associates and to review the rules of the handbook. Mr. Combs refused to sign for his handbook until Wednesday, October 18, 2023, when he was told if he was not going to sign stating that he was going to follow the rules, he was going to have to go home until he was willing to sign the acknowledgment and adherence to the rules.

30 On October 17, at 7:15 a.m., after meeting with Harrison and Aljubouri, Combs sent the following text to Brock (G.C. Exh. 16) (Tr. 71)

35 Hey bro Sorry to bother you this early but they are pressing me to sign that paper and everybody else I do not believe that paper they are trying to get us to sign is legal or right I don't wanna get caught up in insubordination can you please review it and get back to me asap.

40 Brock texting Combs the phone number of Union attorney Marc Fetter. (Tr. 71-72, 101) (G.C. Exh. 16)

On October 18, Combs texted HR Manager Joseph a picture of an Associate Handbook Acknowledgement Form signed by him with the following message (Tr. 69-70) (G.C. Exh. 6):

Good morning the attached letter is only being signed by me due to the fact that if I don't sign it I'll be fired. The terms of any agreement should be bargained with the Union.

5 **Adverse Employment Actions against Combs at Issue in other Proceedings**

10 On October 9, 2024, an administrative law judge for the State of Michigan issued a decision finding that the Respondent violated the MIOSHA Act by taking the following adverse employment actions against Union Chairman Combs because Combs engaged in activity protected by the MIOSHA Act: Demotion (October 6), reduction of pay (October 12), verbal warning (October 19), 5-day suspension (October 24), another 5-day suspension (October 31), and discharge (November 1). (G.C. Exh. 15)

15 On October 18, 2024, an arbitrator issued an award finding that the Respondent did not have just cause under the CBA for taking the adverse employment actions against Combs which the Michigan administrative law judge found unlawful. (G.C. Exh. 13)

February 9-13, 2024 – Announcement of Plant Closing

20 By letter dated February 9, 2024, CEO Wilson notified the Respondent's customers that the facility would close effective March 15, 2024. (Tr. 157-160) (R. Exh. 3)

25 On February 12, 2024, HR Manager Joseph emailed Union VP Brock a letter from Wilison which stated, "Effective March 15, 2024, Commercial Steel Treating Corporation will permanently discontinue operations." (Tr. 108) (G.C. Exh. 8)

30 On February 12 and 13, 2024, the Respondent held three meetings with unit employees (one for each shift) to discuss the plant closing. (Tr. 211-214) The meetings with the first and second shifts were held on February 12, 2024 and the meeting with the third shift was held on February 13, 2024. (Tr. 280, 284-285) According to Joseph, the Respondent employed 21 employees at the time. (Tr. 279) Wilson, Joseph, and Plant Manager Harrison attended these meetings. (Tr. 212, 278-281) At each meeting as employees entered, Joseph and Harrison handed them a memorandum dated February 12, 2024 which stated (Tr. 225-226) (G.C. Exh. 7):

35 Beginning in 1927 Commercial Steel Treating Corporation has been a leader of heat-treating services in the United States. We are very proud of the work we have provided to our customers and the mark we have made in this industry. However, as the market has evolved, difficult decisions have had to be made. After careful consideration, we are announcing the permanent closure of
40 Commercial Steel Treating Corporation effective in March 2024.

45 We understand the impact this will have on all associates of this Company. We will continue to run the product currently in the building. For associates who stay until released by the company, a four (4) week severance package will be provided. To receive the severance package, an associate must work until the final

day Commercial Steel Treating remains open or you are officially released, which may extend beyond March 2024 for some associates.

We appreciate your work and dedication and know this period will be difficult for all associates. We are here to help. Please direct any questions you may have to your Human Resources Department at (586) 495-7298.

Acting Union Chairman Harris sent Union VP Brock the Respondent's February 12, 2024 memorandum regarding the plant closure. (Tr. 109, 120) (G.C. Exh. 7)

Wilson led the initial discussion at these plant closure meetings and discussed the memorandum. (Tr. 212, 226) Wilson testified that he asked employees not to take time off so they could close the plant in a reasonable time and advised employees that, if they stayed until the company closed, they would receive the 4 weeks of severance in addition to the PTO they were contractually entitled to under the CBA. (Tr. 212-214) At hearing, Joseph answered, "Yes," when asked whether, in addition to the severance offer which was made at the first February 12, 2024 meeting, "there was also discussion about paying out PTO banks, like Mr. Wilson testified to yesterday, is that correct?" (Tr. 280-281)

On February 13, 2024, at 9:26 a.m., Brock sent Joseph an email which stated, "The Union demands to bargain the effects of the plant closure. I am available on Tuesday February 20, 2024, Thursday February, 2024, and Friday February 23, 2024." (Tr. 108) (G.C. Exh. 9)

On February 13, 2024, at 10:17 a.m., Joseph replied to Brock by email which stated, in part, "We will be shutting the plant down and adhering to the rules of the contract in the process." (G.C. Exh. 9) (Tr. 227-230)

On February 13, 2024, at 10:30 a.m., Brock responded to Joseph by email which stated, "As you know under the National Labor Relations Act the employer is obligated to bargain the effects of the plant closure with the Union. If the employer refuses to bargain the Union will be forced to seek other remedies." (G.C. Exh. 9) The Respondent did not agree to meet and bargain with the Union. (Tr. 228)

Unfair Labor Practice Charge 07-CA-336388

On February 20, 2024, the Union filed the unfair labor practice charge in case 07-CA-336388 alleging the Respondent failed to bargain in good faith regarding the effects of the plant closing. (Tr. 108-110, 287) (G.C. Exh. 1(e))

In a position statement dated February 28, 2024 submitted by Joseph to the Board, Joseph stated (G.C. Exh. 20):

In response to your letter dated February 27, 2024, the company announced to its associates the permanent closure of the business effective March 15, 2024. The closure was announced Monday, February 12, 2024. During the meeting it was communicated to associates both verbally and in writing that everyone that

worked until the last day of business would receive weeks of severance pay (see attached letter).

The company offered the 21 union members severance pay due to there being no language in the contract regarding a closure of the business therefore, there the company had no reason to negotiate with the union.

Case 07-CA-336388 was ultimately resolved pursuant to a non-Board settlement whereby the Respondent agreed to bargain in good faith over the effects of the plant closing and post a notice to employees. Pursuant to this settlement, the Union conditionally withdrew the charge. (Tr. 110, 146, 206, 274) (G.C. Exh. 10)

March 13-21, 2024 – Effects Bargaining

On March 13 and 21, 2024, the parties held bargaining session at the facility regarding the effects of the plant closing. (Tr. 111-116) Present for the Union were VP Brock, Acting Chairman Harris, and Committeeman Davis. Present for the Respondent were HR Manager Joseph and Curtis Metal HR Manager Cantle-Wilson. (Tr. 111, 113) CEO Wilson did not attend the March 2024 bargaining sessions. (Tr. 177)

During the March 13, 2024 bargaining session, the Union asked whether, as previously indicated in the February 12, 2024 letter to the Union, the Respondent still planned to close on March 15, 2024. The Respondent indicated that they would likely remain open at least until March 27, 2024 and did not know for sure when they would close. (Tr. 111) The Union asked for certain information and whether the Respondent had an offer for a closing agreement. (Tr. 111, 236-237) Brock testified that the Respondent indicated they did not have such an offer and provided little information. Joseph testified that the Respondent discussed with the Union the letter to employees regarding a 4-week severance package. (Tr. 236-237) Brock indicated that he would send the Respondent a written proposal and request for information. (Tr. 111-112)

On March 15, 2024, Brock emailed Joseph a request for information and the following proposal (Tr. 112-11, 237-238) (G.C. Exh. 11):

U1) All bargaining Unit employees receive fifty two (52) weeks of straight time pay upon plant closure.

U2) All Bargaining Unit employees receive fifty two (52) weeks of healthcare coverage upon plan closure.

U3) All bargaining unit employees have transfer rights to Curtis Metal Finishing Company at 6645 Sims Dr, Sterling Heights, MI 48313[.]

U4) Christ Combs reinstated and to [be] made whole for all lost wages, benefits, and seniority.

The Union's March 15, 2024 information request included requests for a current list of bargaining unit employees (including name, address, phone number, date of birth, date of hire, classification, classification seniority, rate of pay current hours of work, and shift), the average hourly cost of each unit employee, the total hours worked by each employee over the past 3 years, 3 years of income statements, documents dealing with projected costs and operating results, where company work would be performed in the future, the reason for the plant closure, whether dissolution was anticipated, and whether unit employees would have hiring preference at any related or affiliated company. (G.C. Exh. 11) On March 20, 2024, the Respondent provided some of the requested information.¹² (Tr. 117, 134-135, 238-240) (R. Exh. 1, 9-10)

During the March 21, 2024 bargaining session, the Respondent rejected the Union's 52-week severance proposal and proposed only to pay unit employees their PTO with no severance. (Tr. 113-116, 137-142, 240) Joseph testified that, between February 12 and March 21, 2024, the Respondent's financial situation had changed for the worse and the labor force had been reduced from about 21 to about 9 unit employees. (Tr. 241) According to Joseph, the purpose of the PTO payout was "[j]ust to make another proposal to the UAW and the members." (Tr. 240-241) Joseph claimed employees would receive about the same amount of money if they received their PTO payouts instead of 4 weeks of severance. Joseph further claimed she was not aware until the preparation for the instant unfair labor practice case that unit employees were, under the CBA, contractually entitled to be paid their unused PTO upon closure of the facility. (Tr. 246) Joseph denied that, prior to the March 2024 bargaining sessions, she looked at the CBA to determine the same. (Tr. 313)

Union VP Brock testified that, on March 21, 2024, he accused the Respondent of regressive bargaining because employees were previously offered 4 weeks of severance and were already entitled to PTO under the CBA. (Tr. 114, 137-38) Brock testified that he asked why the Respondent would make such a ridiculous offer. (Tr. 114-115) According to Brock, the Respondent's representative said "they were just doing as they were told; they didn't really have any authority over the situation." (Tr. 114) Brock testified that he accused the Respondent of engaging in bad-faith surface bargaining and indicated he would file charges. (Tr. 114, 139) Brock said the Respondent's proposal was a joke and the Union stormed out of the meeting. (Tr. 140-141, 241)

Wilson generally denied having any discussion with Respondent bargaining representatives Joseph and Cantle-Wilson regarding the Respondent's proposal in advance of the March 21, 2024 bargaining session and that he was not aware such an offer was made. However, Wilson could not rule out the possibility that he approved the Respondent's March 21, 2024 proposal to pay out unused PTO with no severance. (Tr. 206-210) Wilson testified that he

¹² Joseph testified that she provided the Union with 3 years of income statements, but Brock denied he received them. (Tr. 117, 135-136, 239) (R. Exh. 1) (G.C. Exh. 11) On cross examination, Respondent's counsel asked Brock certain questions about the Respondent's production to the Union of requested information until the General Counsel noted that Brock "admitted he received the information. There's no information allegation in the complaint." (Tr. 136) The income statements in question appear to reflect Respondent's annual income for the years 2021 to 2023. (R. Exh. 1)

would have had to approve any agreement reached on the effects of the closure, but the parties did not come close to reaching such an agreement. (Tr. 206-207)

April 15, 2024 – Plant Closed

On April 15, 2024, the Respondent ceased operations and closed the facility. (Tr. 244) CEO Wilson denied that any unit employees were laid off between the announcement of the closure in February and the time the facility closed in April. (Tr. 171, 186-189) Nevertheless, the Respondent employed only seven unit employees when the facility closed. (Tr. 171, 245-46) (R. Exh. 13) As of the hearing, the unit employees had not received severance or accrued PTO. (Tr. 209) It was Wilson's understanding that employees did not receive such payments because of the pending unfair labor practice case and the possibility of settlement. (Tr. 172)

Credibility

I address in this section issues of credibility which are not discussed elsewhere in the decision.

I credit the testimony of Union Chairman Combs that Union Committeeman Harris came to the October 6 meeting but left when CEO Wilson told Harris he was not needed and not allowed to attend. (Supra pp. 6-7) Combs stated in a text to HR Manager Joseph that he intended to come to the meeting with Harris. Wilson's recollection was minimal as he did not recall who Harris was or whether Harris was present at the meeting. Joseph testified that she arrived late to the meeting and, therefore, would not have been present and in a position to know whether Harris came to the meeting or what Wilson said to him.¹³

I credit Combs' testimony that, on October 6, Wilson told him he was not stupid and would not tell the Union he was being demoted with no reduction in pay. (Supra pp. 6-7) Joseph admitted there was a discussion about whether Combs should tell the Union his pay was not being reduced and only denied it was Wilson who raised the issue. Wilson did not corroborate Joseph in this regard. Further, neither Wilson nor Joseph actually denied that Wilson told Combs he was not stupid; they denied only that Wilson called Combs stupid. Meanwhile, Combs' testimony was more detailed and consistent with subsequent events. It is uncontested that Wilson reacted in a hostile manner when, on October 11, the Union raised the prospect of filing grievances. It is also uncontested that, on October 12, the same day Combs filed the demotion grievance, Wilson reduced Combs pay because, according to Wilson, "[a]pparently, I was in violation of the union rules." (Tr. 183) Wilson testified that this was the reason he reduced Combs' pay even though the demotion grievance demanded no such action. In fact, the Union grievance sought as a remedy that the Respondent make Combs whole for lost wages, benefits, and seniority (apparently presuming that Wilson would reduce Combs' pay after the grievance was filed). This sequence of events suggests that Wilson, on October 6, sought to

¹³ Combs' testified that Joseph was present when he and Harris arrived for the October 6 meeting and, for reasons discussed herein, I found Combs more credible than Joseph. If Joseph was present, she did not deny Wilson told Harris to leave. Accordingly, either way, I would find that Wilson told Harris he was not needed and not allowed to attend the meeting.

avoid a grievance by telling Combs not to discuss the matter with the Union and, on October 12, reduced Combs' pay because he (Wilson) was angry that Combs disregarded that directive.

Likewise, I credit Combs' testimony regarding his interaction with Wilson and Joseph on October 12 when Wilson told Combs it was "real stupid" to file a grievance regarding his demotion because "now you're losing money" and "effective immediately, you're . . . going back down to operator pay." (Supra pp. 8-9) (Tr. 60) Neither Wilson nor Joseph specifically testified to and denied that conversation. In testifying to the events of October 6, Wilson generally denied he ever called Combs stupid. (Tr. 154) However, Combs' testimony was far more detailed and likely. As discussed above, Wilson did not want Combs to notify the Union of his demotion and was angry when Combs did so and filed a grievance. As I found that Wilson suggested to Combs that he (Combs) would not act stupidly by telling the Union about his demotion with no reduction of pay, it seems likely that Wilson told Combs he was stupid for filing a Union grievance regarding the same.

I do not credit Joseph's testimony that she was unaware until she was preparing for the instant unfair labor practice case that unit employees were entitled under the CBA to be paid their unused PTO when the facility closed. (Supra p. 17) (Tr. 246, 313) In February 12-13, 2024 meetings, Wilson admittedly asked employees not to take days off and assured them they would be paid their contractual PTO when the facility closed. (Tr. 212-214) Joseph was present at those meetings and, at hearing, answered "Yes" when asked whether there was a discussion of "paying out PTO banks, like Mr. Wilson testified[?]"¹⁴ (Tr. 281) I note also that Joseph attended an October 11 grievance meeting in which Wilson raised and argued with the Union over what he believed was employees' excessive use of PTO. It is hard to believe Joseph would not be familiar with the contractual PTO provisions at the time, particularly since Joseph was admittedly more familiar than Wilson with the CBA and he relied on her regarding contractual matters. I note also that, in a February 28, 2024 position statement submitted to the Board, Joseph represented that "[t]he company offered the 21 union members severance pay due to their being no language in the contract regarding closure of the business" (G.C. Exh. 20) Joseph's statement suggests she reviewed the entire CBA for language regarding closure and would have been familiar with any contractual language requiring payment to unit employees of PTO upon termination. (G.C. Exh. 20)

I credit Brocks' testimony that, during the March 21, 2024 bargaining session regarding the effects of the plant closure, the Respondent's representatives denied they had authority over the proposal to pay employees outstanding vacation time with no severance. (Supra p. 17) Joseph did not specifically deny the statement. And as noted herein, I did not find Joseph to be a particularly reliable witness. Further, since Joseph had no explanation why the Respondent would retract a severance offer she discussed with the Union just a week earlier on March 13,

¹⁴ In my opinion, Joseph's denial that she was aware of the PTO payout provision in the CBA is so irreconcilably contradicted by other more reliable evidence that it reflects adversely on her overall credibility.

2024, it seems plausible that the Respondent’s representative would deny they had authority to change a new proposal they could not justify on any logical grounds.¹⁵

Legal Analysis

Rules in the Associate Handbook

The General Counsel contends that the Respondent violated Section 8(a)(1) of the Act by maintaining the following alleged overbroad rules in the Associate Handbook.

1. Access Rule

GENERAL REGULATIONS

SUBSECTION A: PLANT CLEANLINESS AND ORDER (G.C. Exh. 3 p. 5) . . .

3. Associates wishing to enter the premises at times other than their scheduled working hours must first obtain permission from the Supervisor or Guard on duty.

The Board has evaluated access rules under the test in *Tri-County Medical Center*, 222 NLRB 1089 (1976) (*Tri-County*).¹⁶ Under *Tri-County*, a rule restricting off-duty employee access to employer property “is valid only if it (1) limits access solely with respect to the interior of the plant and other working areas; (2) is clearly disseminated to all employees; and (3) applies to off-duty employees seeking access to the plant for any purpose and not just to those employees engaging in union activity.” 222 NLRB at 1089. Unlike interior property or other working areas, “except where justified by business reasons, a rule which denies off-duty employees entry to parking lots, gates, and other outside nonworking areas will be found invalid.” *Id.* Here, the Respondent’s access rule did not comply with the *Tri-County* standard because it limits employee access to the “premises” and not just the interior of the plant and other work areas.

The Respondent did not establish that such a broad access prohibition was justified. In briefing the allegations regarding rules, the Respondent did not identify specific reason for each individual rule alleged to be unlawful. Rather, the Respondent relies only on HR Manager

¹⁵ Although Combs did not corroborate Brock’s testimony that Respondent’s representatives denied having authority over the proposal, this type of statement would likely be more meaningful and memorable to a Union representative more familiar with bargaining and labor law. And although Wilson generally denied he was aware of the Respondent’s March 21, 2024 proposal, he was far from categorical in that testimony. (Tr. 207) Further, even if Wilson did not know of or approve the Respondent’s proposal, it would not necessarily follow that the Respondent’s representatives did not tell the Union they did not have authority over the proposal. The Respondent’s bargaining representatives may simply have denied having authority to change the proposal because they had no good explanation for it.

¹⁶ As noted in *Southern Bakeries, LLC*, 368 NLRB No. 59, slip op. at 2 (2019), “Board law on off-duty employee access rules has evolved separately from ‘reasonably construe’ standard[s]” in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004) and *Stericycle, Inc.*, 372 NLRB No. 113 (2023). The current “reasonably construe” standard is used below to analyze other rules alleged to be unlawful.

Joseph’s testimony that the Associate Handbook, as a whole, was generally necessary “for safety on the floor. To keep order out on the floor.” (Tr. 247) However, the Respondent offered no evidence that the no-access rule was necessary in nonwork areas. Further, the no-access rule is not valid because it allows access with permission as rules which require employees to obtain permission from an employer for engaging in protected activity are generally unlawful. See, e.g., *Marriot International, Inc.*, 359 NLRB 144, 144-146 (2012) (rule restricting access to employer property without managerial approval was unlawful).

Based upon the foregoing, I recommend a finding that the Respondent’s access rule violated Section 8(a)(1) of the Act.

2. Solicitation, Distribution, Campaigning, and Posting Rules

GENERAL REGULATIONS

SUBSECTION A: PLANT CLEANLINESS AND ORDER (G.C. Exh. 3 p. 5) . . .

4. Soliciting, taking up collections, holding meetings or distributing literature for any cause or purpose is forbidden on Company premises without written authorization from Management. . . .
9. Campaigning of any type on behalf of public or Union officials is prohibited on Company property.

ARTICLE VI

GROUP 1 OFFENSES . . .

BUILDING VIOLATIONS . . . (G.C. Exh. 3 p. 28)

2. Posting, defacing or removal of notices, signs, or writing in any form on bulletin boards, toilet room areas or other Company property at any time without signed authorization from Management.

ARTICLE IX . . .

GROUP 4 OFFENSES . . .

WORK PERFORMANCE VIOLATIONS (G.C. Exh. 3 p. 32) . . .

4. Unauthorized soliciting of funds or distribution of literature, written or printed matter of any description on Company premises during working hours.

“The Board has long recognized both posting and distribution as fundamental elements of employees’ ability to communicate in the workplace for the purposes of self-organization.”¹⁷ *Intertape Polymer Corp.*, 373 NLRB No. 82, slip op. at 2 (2024), citing *Norris/O’Bannon*, 307 NLRB 1236, 1236, 1245 (1992); *Brunswick Corp.*, 282 NLRB 794, 795, 797-798 (1987); and *Frostburg Village of Allegany County Nursing Home*, 263 NLRB 651 & 664 (1982). The Board has also long held that a rule will be found unlawful on its face if it explicitly restricts activities protected by Section 7 of the Act. *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004) (*Lutheran Heritage*). Accordingly, a no-solicitation/no-distribution rule will generally be found unlawfully overbroad as an explicit restriction on Section 7 activity if it prohibits or requires

¹⁷ Like the *Tri-County* analysis of access rules discussed above, *Stericycle* did “not disturb the Board’s long-established doctrines covering work rules that address union (or other protected) solicitation, distribution, or insignia.” 372 NLRB No. 113, slip op. at 3.

employees to obtain an employer's permission before engaging in solicitation on nonworking time and distribution on nonworking time and in non-working areas. See *Intertape Polymer Corp.*, 373 NLRB No. 82, slip op. at 2 (2024); *Brunswick Corp.*, 282 NLRB 794, 794-795 (1987); *Braden Manufacturing, Inc.*, 315 NLRB 1145, 1146 (1994); *Our Way, Inc.*, 268 NLRB 394 (1983).

Here, the Associate Handbook prohibits solicitation and distribution on company property without authorization and those provisions are not limited to work time and/or work areas. And although General Regulation A(9) references "campaigning" instead of solicitation or distribution, the terms significantly overlap and are therefore appropriately addressed under the same standard. It is particularly appropriate to address the prohibition against campaigning as an explicit restriction on Section 7 activity because the rule references protected campaigning on behalf of Union officials. Accordingly, I find the no-solicitation/distribution/campaigning rules presumptively overbroad.

The Respondent seeks to justify the scope of the Associate Handbook by reliance on HR Manager Joseph's conclusory testimony that the rules contained therein were necessary to maintain safety and order on the floor. Even if such a vague assertion were compelling, the Respondent did not limit its rules to working areas or times. Accordingly, I conclude that the no-solicitation/distribution/campaigning rules violate Section 8(a)(1) of the Act.

As for posting, although similar to distribution, the Board has not always treated distribution and posting the same because the latter involves affixing items to an employer's property. See *Intertape Polymer Corp.*, 373 NLRB No. 82, slip op. at 2 fn. 4 (2024) (rule against posting anywhere on company premises unlawful because it encompasses notices on an employee's own personal property), distinguishing *General Motors Corp.*, 212 NLRB 133, 134-135 (1974), *enfd.* as modified 512 F.2d 447 (6th Cir. 1975) (rule against posting on bulletin boards or company property cannot be equated with a rule prohibiting all unauthorized distribution of literature). See also *Norris/O'Bannon*, 307 NLRB 1236, 1245 (1992) (posting prohibition unlawful because it is so broadly worded that it appears to encompass notices or signs - such as stickers - affixed to an employee's own personal property). The description of the Group 1 no-posting offense is quite similar to the no-posting rule the Board found lawful in *General Motors*. Accordingly, I decline to recommend a finding that the no-posting rule in Group 1, Building Violations ¶ 2 is overbroad and unlawful.

3. **Photography, Videography, and Possession/Use of Smart Devices**

GENERAL REGULATIONS

SUBSECTION B: ELECTRONIC AND SMART DEVICE REGULATIONS

(G.C. Exh. 3 p. 6)

1. All Smart devices including but not limited to cell phones, laptops, smart watches, earbuds, etc. are permitted only during Work Breaks or Lunch Periods in the designated break areas; cafeteria or locker room, unless an event approved by Management arises. Only in the event of an emergency will Supervisors allow associates to take personal calls.
2. The use of photography or videography on Company property will only be permitted when authorized by Management.

ARTICLE VI

GROUP 1 OFFENSES

BUILDING VIOLATIONS . . . (G.C. Exh. 3 p. 27)

2. Utilizing items including but not limited to, cell phones, tablets, smart devices, earphones, or reading material which does not pertain to your work during working hours, not including designated areas during approved lunch or break times. . . .

4. Unauthorized use of photography or videography on Company premises.

The Board’s current standard for evaluating alleged overbroad work rules which are facially neutral (i.e., do not expressly prohibit protected activity) is set forth in *Stericycle, Inc.*, 372 NLRB No. 113 (2023) (*Stericycle*). In *Stericycle*, the Board reversed *Boeing Co.*, 365 NLRB 1494 (2017) (*Boeing*)¹⁸ and *LA Specialty Produce Co.*, 368 NLRB No. 93 (2019), which had, in turn, reversed the “reasonably construe” prong of *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004) (*Lutheran Heritage*). Under *Lutheran Heritage* and *Stericycle*, the General Counsel must “prove that a challenged rule has a reasonable tendency to chill employees in the exercise of their Section 7 rights.” *Stericycle*, 372 NLRB slip op. at 2. However, *Stericycle* clarified *Lutheran Heritage* standard and added a second step defense. 372 NLRB slip op. at 2. *Stericycle* clarified “that the Board will interpret the rule from the perspective of an employee who is subject to the rule and economically dependent on the employer, and who also contemplates engaging in protected concerted activity.” *Id.* The Board noted that by incorporating the perspective of the economically dependent employee into its analysis, the standard “is consistent with the Board’s long-established practice of construing any ambiguity in a work rule against the employer as the drafter of the rule.” *Id.* slip op. at 9. “[T]he employer’s intent in maintaining a rule is immaterial” and the General Counsel will “carry her burden, even if a contrary, noncoercive interpretation of the rule is also reasonable.” *Id.* slip op. at 2.

In *Stericycle*, the Board “return[ed] to a case-specific approach” of “examin[ing] the specific wording of the rule, the specific industry and workplace context in which it is maintained, the specific employer interests it may advance, and the specific statutory rights it may infringe.” 372 NLRB slip op. at 13. However, the Board stated that this “case-by-case approach will not sacrifice clarity and predictability” and it “would aim to ensure that like cases will be decided alike.” *Id.* Thus, “[t]he nearer the wording of a specific rule is to a rule assessed in a prior case, or the nearer the workplace context or employer interests are to those factors previously considered, the more likely the Board’s determination of the rule’s legality will be the same.” *Id.*

Even if the General Counsel proves the rule is presumptively unlawful, “the employer may rebut that presumption by proving that the rule advances a legitimate and substantial business interest and that the employer is unable to advance that interest with a more narrowly tailored rule.” *Id.*

¹⁸ The Respondent objects to application of the *Stericycle* standard because the Associate Handbook was drafted and adopted under *Boeing*. However, the *Stericycle* Board determined that retroactive application of the standard was appropriate. 372 NLRB No. 113, slip op. at 13.

Thus in sum, under *Stericycle*, the following two-part test is used to determine whether a rule is unlawfully overbroad: (1) Whether, from the perspective of an employee who is economically dependent on the employer and contemplates engaging in protected concerted activity, the rule has a reasonable tendency to chill employees in the exercise of their Section 7 rights, and if so, 2) whether the employer could not have advanced legitimate and substantial business interests with a more narrowly tailored rule. The burden at step one is on the General Counsel and, if proved, the burden at step two is on the Respondent. *Id.* slip op. at 2.

Workplace recordings such as photographs and video may, depending on the facts and circumstances of the particular case, constitute protected concerted activity. See *AT&T Mobility, LLC*, 370 NLRB slip op. at 4. In *Boeing Co.*, 365 NLRB 1494, 1510 (2017), the Board, found rules forbidding camera use on employer property to be lawful and reasoned that “the no-camera rule in some circumstances may potentially affect the exercise of Section 7 rights, but this adverse impact is comparatively slight.” In *Stericycle*, the Board overruled *Boeing* and rejected the *Boeing* Board’s conclusion that the adverse impact of a no-camera rule on employees’ Section 7 activity is always “comparatively slight.” 370 NLRB slip op. at 10 fn. 18. Rather, the *Stericycle* Board asserted that, “[i]n a society where smartphone cameras have become ubiquitous and, accordingly, where there is increased utilization of these devices to document complaints with photographs, audio, and videos, a rule that prohibits the use of cameras has a very definite impact on protected activity.” *Id.*

Prior to *Boeing*, under *Lutheran Heritage*, the Board held unlawful those rules which prohibit or require management approval for all workplace recordings. *T-Mobile USA, Inc.*, 363 NLRB 1638, 1641 (2016); *Whole Foods Market, Inc.*, 363 NLRB 800, 802 (2015); *Rio All-Suites Hotel and Casino*, 362 NLRB 1690, 1693 (2015). Accordingly, I conclude that the Associate Handbook was presumptively overbroad to the extent General Regulations, Subsection B ¶ 2 provided that “[t]he use of photography or videography on Company property will only be permitted when authorized by Management” and Group 1 Building Violations ¶ 2 prohibited the “[u]nauthorized use of photography or videography on Company premises.” *Id.*

Similarly, the Board has found presumptively overbroad those rules which prohibit the use of “personal cellular/digital phones” while on duty, even if such use is allowed on break time in break areas. *Rio All-Suites Hotel and Casino*, 362 NLRB 1690, 1693 (2015). Accordingly, I find the Associate Handbook presumptively overbroad to the extent General Regulations, Subsection B ¶ 1 provided that “[a]ll Smart devices including but not limited to cell phones, laptops, smart watches, earbuds, etc. are permitted only during Work Breaks or Lunch Periods in the designated break areas; cafeteria or locker room, unless an event approved by Management arises” and Group 1 Offense, Building Violations ¶ 2 prohibited “[u]tilizing items including but not limited to, cell phones, tablets, smart devices, earphones, or reading material which does not pertain to your work during working hours, not including designated areas during approved lunch or break times.”

In asserting that the rules in question advance a legitimate and subsection business justification, the Respondent relies on HR Manager Joseph’s testimony that the Associate Handbook was necessary “for safety on the floor. To keep order out on the floor.” The

Respondent notes that the General Counsel did not present evidence specifically contesting Joseph’s testimony. However, while safety and order on the floor are legitimate interests, the Respondent did not prove an inability “to advance that interest with a more narrowly tailored rule.” Id. The Respondent did not explain why the possession (not just use) of smart devices should be limited to nonwork times and nonwork areas. Further, the Respondent offers no details why even the limited use of recording devices on working time and in working areas for Section 7 protected activity, such as recording an unsafe working condition, would create a safety problem or disorder on the floor. Thus, the Respondent did not prove the rules in question could not have been more narrowly tailored to protect legitimate and substantial business interests without unnecessarily interfering with employees’ protected activity.

Based upon the foregoing, I recommend a finding that the photograph and recordings rules violate Section 8(a)(1) of the Act.

4. Distraction

ARTICLE VI GROUP 1 OFFENSES

SAFETY VIOLATIONS (G.C. Exh. 3 p. 27)

1. Distracting the attention of others, or causing confusion by shouting, improper use of paging system, catcalls, demonstrations, horseplay, rough housing, scuffling, running or throwing things.

Citing *Advance Transportation Co.*, 310 NLRB 920, 925 (1993), the General Counsel contends that rules prohibiting “distraction” are overbroad. According to the General Counsel, citing *Hawaiian Telecom, Inc.*, 365 NLRB 348 (2017) and *University Medical Center*, 335 NLRB 1318, 1320-1322 (2001), such rules are among other ambiguously negative rules the Board has found unlawful, including rules that prohibit “derogatory statements,” “negative conversations,” and “distraction or disruption of other employees.”¹⁹ The General Counsel notes that any ambiguity in a rule must be construed against the employer who promulgated and drafted it. See *Stericycle, Inc.*, 372 NLRB No. 113, slip op. at 9 (2023); *Palms Hotel Casino*, 344 NLRB 1363, 1368 (2005); *Norris/O’Bannon*, 307 NLRB 1236, 1245 (1992).

Demonstrations are a common form of Section 7 protected activity. See, e.g., *Starbucks Corp.*, 372 NLRB No. 50 (2023); *Consolidated Communications Holdings, Inc.*, 366 NLRB 172 (2018); *Apex Linen Service, Inc.*, 366 NLRB No. 12 (2018). Further, during an October 11 grievance meeting, Wilson discussed work rules and expressed hostility toward any protected Union opposition to the Respondent’s initiatives. This would tend to confirm that a prohibition against distracting demonstrations would include protected union demonstrations.

¹⁹ I do not believe the case law cited by the General Counsel establishes a bright line requirement that, under *Stericycle*, any rule containing the word “distraction” is presumptively overbroad. The instant rule provides certain specific examples of distraction which would not normally encompass protected activity (i.e., “shouting, improper use of paging system, catcalls . . . horseplay, rough housing, scuffling, running or throwing things”). If the rule did not include “demonstrations” among the list of prohibited activities, I might have recommended dismissal.

The Respondent did not limit this rule to working time and areas and did not prove that demonstrations on nonworking time and in nonworking areas would compromise the safety and order on the floor. Accordingly, I recommend a finding that the rule in question is overbroad to the extent it prohibits “distracting the attention of others, or causing confusion by . . . demonstrations[.]”

Based upon the foregoing, I recommend a finding that the rule against distracting demonstrations violates Section 8(a)(1) of the Act.

5. Confidential and other Company Information

ARTICLE VI

GROUP 1 OFFENSES . . .

COMPANY RECORD VIOLATIONS (G.C. Exh. 3 p. 27)

2. Removal from the premises without proper authorization of Associate lists, Company records, or other job-related information of any nature.

ARTICLE IX GROUP 4 OFFENSES

COMPANY RECORD VIOLATIONS (G.C. Exh. 3 p. 32)

3. Unauthorized disclosure, or misuse of Company records, customer lists, processing information, pricing and estimating data or other confidential information of any nature.

In *Rio All-Suites Hotel & Casino*, 362 NLRB 1690, 1691 (2015) (“*Rio All-Suites*”), cited by the General Counsel, the Board found overbroad a rule prohibiting employees from sharing “any information about the Company which has not been shared by the Company with the general public.” As in *Rio All-Suites*, the description of challenged Group 1 Offense, Company Record Violation ¶ 2 is “extraordinarily broad in scope” and “clearly implicates terms and conditions of employment that the Board has found to be protected by Section 7.” *Id.* at 1691. Here, prohibiting removal from the premises of “Company records, or other job-related information of any nature” is arguably even broader than the rule in *Rio All-Suites* since it does not exclude information which has already been made public. And like in *Rio All-Suites*, to the extent the Group 1 offense specifically references “Associate lists” and “job-related information,” it targets information regarding employees and potentially limits protected interaction among employees. Indeed, under this rule, the removal of an *Excelsior* list from the premises would be prohibited. Accordingly, I concluded that the Group 1 offense, Company Record Violations ¶ 2 is presumptively overbroad.

The Respondent has not rebutted this presumption by proving that Group 1 offense, Company Record Violation ¶ 2 could not have been more narrowly tailored to advance legitimate and substantial business interests. The Respondent relies on Joseph’s conclusory testimony that the rules in the Associate Handbook were necessary to promote safety and order on the floor. Here, however, it is unclear how the disclosure of any or all job-related information of any nature would undermine work floor safety and order. Accordingly, I recommend a finding that the Group 1 offense, Company Record Violations ¶ 2 violates Section 8(a)(1) of the Act.

The more serious dischargeable Group 4 Offense, Company Record Violation ¶ 3 appears to differ from the Group 1 offense by prohibiting the disclosure and misuse of “confidential information.” The Board has found lawful certain rules prohibiting the disclosure of private or confidential information, particularly if the rule specifically provides examples of such confidential information as including only business information unrelated to employees’ Section 7 activity. See *Lafayette Park Hotel*, 326 NLRB 824, 826-827 (1998) (rule against “divulging Hotel-private information to employees or other individuals or entities that are not authorized to receive that information” not unlawful); *Mediaone of Greater Florida, Inc.*, 340 NLRB 277, 278 (2003) (despite reference to “employee information,” employees would reasonably understand lawful rule, when read as a whole, to protect confidential proprietary information such as “information assets,” “intellectual property,” “business plans,” “market plans,” “financial information,” patents,” and “copyrights”); *Super K-Mart*, 330 NLRB 263 (1999) (rule not unlawful in stating that “[c]ompany business and documents are confidential,” and prohibiting the disclosure of such information). See contra *DirectTV U.S. DirectTV Holdings, LLC*, 359 NLRB 545, 547 (2013) (rule prohibiting employees from discussing “job,” “DIRECT TV employees” and “employee records” overbroad); *Costco Wholesale Corp.*, 358 NLRB 1100, 1115-1116 (2012) (rule overbroad in prohibiting disclosure of confidential information including employee names, address, and other personal information).

Here, the Group 4 offense, Company Record Violation ¶ 3 appears to be presumptively lawful in referencing “confidential information” and identifying business information generally unrelated to employees’ Section 7 activity (i.e., customer lists, processing information, pricing and estimating data). The only portion of the rule which gives me pause is the broad reference to “Company records” because the term is also used in the unlawful description of Group 1 Offense, Company Record Violation ¶ 2. However, I do not believe a reasonable employee would equate the two references to “Company records,” five pages apart in the description of two different offenses, as identical materials. See *Mediaone of Greater Florida, Inc.*, 340 NLRB 277, 277-278 (2003) (reasonable employees would not rely on broad summary of a rule on page 45 of the handbook to interpret the more detailed and lawful rule on page 69, even though the page 45 summary, standing alone, would be overbroad). Rather, I believe reasonable employees would understand the Group 1 offense to encompass the protected disclosure of company records in the nature of protected job-related information and the Group 4 offense to encompass the unprotected disclosure of company records in the nature of confidential customer, processing, and pricing information. Accordingly, I will not recommend a finding that the rule described in Group 4 offense, Company Record Violation ¶ 3 is overbroad and unlawful.

6. Waivers

ASSOCIATE HANDBOOK ACKNOWLEDGEMENT FORM (G.C. Exh. p 33)

...

By signing below, I agree, unless otherwise provided under the terms of a collective bargaining agreement applicable to me, as a condition of my employment or continued employment, not to commence any action or lawsuit relating to my employment against the Company or its Associates more than one hundred eighty (180) days after the occurrence of the facts giving rise to the claim. I agree to waive any longer statute of limitations to the contrary. In the

event that the statute of limitations applicable to any claim is less than one hundred eighty (180) days, I agree that the shorter statute of limitations shall apply. I understand and agree that any action or lawsuit filed outside this limitations period is barred. I understand and agree that this limitations period (or applicable shorter period) will not be extended for any reason, including continuing violations. This provision does not prohibit the timely filing of a charge with a federal administrative agency, but unless filed within 180 days (or in less time if any applicable law requires), I waive my right to recover money damages or other relief as permitted by law.

The General Counsel contends that the Associate Handbook Acknowledgement Form is overbroad because it requires employees to waive the Section 10(b) statute of limitations for filing unfair labor practice charges to the extent (1) a 180-day limitations period can be shorter than the statutory 6-month limitations period²⁰ and (2) because the rule does not state that any limitations period only begins to run when the charging party obtains clear and unequivocal notice of a violation.²¹ In *ISS Facility Services*, 363 NLRB 1526, 1527 (2016), the Board applied the *Lutheran Heritage* reasonably construe prong to determine that a mandatory arbitration agreement waived and unlawfully interfered with employees' right to file charges with the Board even though the agreement included the following savings clause:

Regardless of any other terms in this Agreement, claims may be brought before and remedies awarded by an administrative agency if, and only if, applicable law permits access to such an agency notwithstanding the existence of an agreement to arbitrate. Such administrative claims include without limitation claims or charges brought before the Equal Employment Opportunity Commission, the U.S. Department of Labor, or the National Labor Relations Board. . . .

In *ISS Facility Services*, 363 NLRB at 1527,²² the Board explained its rejection of the employer's savings clause defense as follows:

²⁰ As an example, the General Counsel notes that a 6-month 10(b) statute of limitations beginning August 1 would be more than 180 days.

²¹ The General Counsel also contends that a "continuing violation could extend the 10(b) period well beyond 180 days to additional months or even years." (G.C. Brf. p. 27) In my opinion, this is inaccurate. The continuing violation theory allows a finding that certain unlawful action occurred within the 10(b) period even though the charging party had knowledge of the same type of conduct outside the 10(b) period. *Farmingdale Iron Works, Inc.*, 249 NLRB 98 (1980) (each failure to make contractually required monthly benefit payments within the 10(b) period constituted a separate and distinct violation which was not time barred). However, the continuing violation theory does not extend the limitations period.

²² In *ISS Facility*, the Board found the challenged agreement vague despite specific language that filing charges with the Board is permitted because that reservation of right was proceeded by confusing language that "the filing of Board charges is permitted 'if, and only if, applicable law permits access to such an agency notwithstanding the existence of an agreement to arbitrate.'" *Id.*, citing *SolarCity*, 363 NLRB 717, 720 fn. 20.

In making that determination, the Board recognizes that “[r]ank-and-file employees do not generally carry lawbooks to work or apply legal analysis to company rules as do lawyers, and cannot be expected to have the expertise to examine company rules from a legal standpoint.” *Ingram Book Co.*, 315 NLRB 515, 516 fn. 2 (1994). As a result, the Board routinely has found insufficient language in workplace rules purporting to except, or “save,” employees’ legal rights from restrictions on their conduct. See *SolarCity Corp.*, 363 NLRB 717, 720 fn. 18 (and cases cited therein) (2015). This is so even where such exceptions referred to the “NLRA” or “the National Labor Relations Act.” See *Id.* at 5 and fn. 19 (and cases cited therein). “The rationale underlying these decisions is that, absent language more clearly informing employees about the precise nature of the rights supposedly preserved, the rule remains vague and likely to leave employees unwilling to risk violating the rule by exercising Section 7 rights.” *Id.* at 5.

In *Anderson Enterprises, Inc. d/b/a Royal Motor Sales*, 369 NLRB No. 70, slip op. at 4 (2020) (*Royal Motor Sales*), after the Board in *Boeing*, 365 NLRB 1494 (2017) overruled the “reasonably construe” prong of *Lutheran Heritage*, the Board rejected and overruled decisions such as *ISS Facility Services* and *Solar City Corp.* to the extent they found certain savings clauses inadequate. See also *Briad Wenco, LLC d/b/a Wendy’s Restaurant*, 368 NLRB No. 72 (2019) (*Wendy’s Restaurant*). In doing so, *Royal Motor Sales* specifically rejected the practice under *Lutheran Heritage* of invalidating “facially neutral rules ‘based on its judgement that such rules could have been written more narrowly to eliminate potential interpretations that might conflict with the exercise of Section 7 rights-interpretations that might occur to an experience labor lawyer but that would not cross a reasonable employee’s mind.’” 369 NLRB slip op. at 4 fn. 7, quoting *LA Specialty Produce*, 368 NLRB No. 93, slip op. at 1-2 (2019). However, as noted above, in *Stericycle*, the Board overruled *Boeing* and reinstated the “reasonably construe” prong of *Lutheran Heritage* as clarified and modified.

For our purposes, however, even under the more lenient *Boeing* standard, the Board has found unlawful those agreements which require employees to forgo the opportunity to recover a monetary remedy from unfair labor practice charges. *Kelly Services, Inc.*, 368 NLRB No. 130 (2019). In *Kelly Services*, the Board determined that such language “belongs squarely within category 3 of *Boeing*” in that “it significantly impair[s] employee rights, the free exercise of which is vital to the implementation of the statutory scheme established by Congress in the National Labor Relations Act[, and n]o legitimate justification outweighs, or could outweigh, the adverse impact of such provisions on employee rights and the administration of the Act.” *Id.*, slip op. at 4, quoting *Prime Healthcare Paradise Valley, LLC*, 368 NLRB No. 10, slip op. at 7 (2019). In light of this finding, the Board found it unnecessary and irrelevant whether the savings clause preserving employees’ rights to file a Board charge was adequate under *Boeing* and *Wendy’s Restaurant*. *Id.*, slip op. at 4. Here, under the more stringent *Stericycle* standard, the Acknowledgement Form waived the ability of an employee to obtain a remedy when a charge is filed within the 10(b) statute of limitations but outside 180 days. Accordingly, at least to that limited extent, the form is overbroad and unlawful.²³

²³ As in *Kelly Services*, 368 NLRB No. 130, slip op. at 3 (2019), I need not determine whether the savings clause is adequate to the extent it states that “[t]his provision does not prohibit the timely filing of a charge with a federal administrative agency . . .”

October 6 – Complaint ¶ 8 – Direction not to Discuss Demotion and Wage Rate

The General Counsel contends that, on October 6, the Respondent, violated Section 8(a)(1) of the Act by directing Combs not to discuss his demotion and/or wage rates with the Union or his coworkers.

Generally, the test for determining if statements “violate Section 8(a)(1) is whether they have a reasonable tendency to coerce employees in the exercise of their Section 7 rights. Intent is immaterial.” *KSM Industries, Inc.*, 336 NLRB 133, 133 (2001), citing *Concepts & Designs*, 318 NLRB 948, 954, 955 (1995) and *Puritech Industries*, 246 NLRB 618, 622-623 (1979). “The Board considers the totality of the circumstances in assessing the reasonable tendency of an ambiguous statement or a veiled threat to coerce.” *Id.* The test is an objective one and, like the employer’s motive, the actual coercive impact on a particular employee is irrelevant. See *Westwood Health Care Center*, 330 NLRB 935, 940 fn. 17 (2000); *Puritech Industries*, 246 NLRB 618, 622-623 (1979).

More specifically, an employer has been found to violate 8(a)(1) by “admonishing employees not to discuss their wages among themselves” even though the employer “made no threats to discharge or discipline employees for violating this instruction[,]” so long as the employer did not have substantial and legitimate business interests which outweighed the employees’ interest in discussing wages. *Waco, Inc.*, 273 NLRB 746, 747 (1984). See also *Ground Zero Foundation d/b/a Academy for Creative Enrichment*, 370 NLRB No. 22, slip op. at 6 (2020) (violation where employee was told “co-workers were not allowed to discuss wages with other co-workers”); *Parexel International, LLC*, 356 NLRB 516, 518 (2011) (Board “precedents provide that restrictions on wage discussions are violations of Section 8(a)(1)”); *Triana Industries*, 245 NLRB 1258, 1258 (1979) (unlawful to tell employees “[n]ot to go around asking the other employees how much they were making, because some of them were making more than others”).

Here, the totality of the circumstances indicates that the Respondent violated 8(a)(1). On October 6, when Wilson demoted Combs without a reduction in pay, Wilson said, “You’re not stupid. You’re just going to make the money.” (Tr. 54) On October 11, Wilson expressed hostility toward the prospect of the Union filing grievances. On October 12, shortly after Combs filed a Union grievance contesting his demotion, Wilson told Combs that “was real stupid of you” and, “effective immediately, you’re . . . going back down to operator pay.” (Tr. 60) This sequence of events would convey to reasonable employees that they were prohibited from discussing wages with the Union or other employees, particularly if such discussions led to the filing of a Union grievance.

The Respondent did not establish a substantial and legitimate interest for Wilson’s direction to Combs not to discuss his demotion or pay with the Union or his coworkers. Wilson admittedly reduced Combs’ pay rate after Combs filed a Union grievance regarding his demotion because, according to Wilson, “I was in violation of the union rules” (Tr. 183). Wilson did so even though Combs’ demotion grievance requested no such wage reduction. It appears that Wilson was angry at Combs for ignoring the direction not to discuss his pay with the Union and

for filing a Union grievance contesting the demotion. This, in turn, suggests Wilson's initial direction to Combs not to discuss his pay with the Union was for the purpose of avoiding such a grievance. Such a purpose was not legitimate.

Based upon the foregoing, I recommend a finding that the Respondent violated Section 8(a)(1) of the Act by directing Combs not to discuss his demotion and/or wage rate with the Union or his coworkers.

October 13 and 17 – Complaint ¶ 9 – Threat of Discharge for Failure to Sign the Associate Handbook Acknowledgment Form.

The General Counsel contends that the Respondent violated Section 8(a)(1) of the Act by threatening employees with discharge if they refused to sign an Associate Handbook Acknowledgement Form.

Like most other alleged unlawful employer statements, “when analyzing alleged threats, the Board asks, ‘whether the threat would reasonably tend to interfere with, restrain, or coerce an employee in the exercise of his Section 7 rights.’” *NCRNC, LLC d/b/a Northeast Center for Rehabilitation*, 372 NLRB No. 35, slip op. at 10 (2022), quoting *Network Dynamic Cabling*, 351 NLRB 1423, 1427 (2007). Applying this standard, the Board has found it unlawful for an employer to condition continued employment on an employee waiving or refraining from engaging in protected activity. See *Marburn Academy, Inc.*, 368 NLRB No. 38, slip op. 14 (2019), citing *Flex Plastics, Inc.*, 262 NLRB 651, 659 (1982); *Lancaster Fairfield Community Hospital*, 311 NLRB 401, 403 (1993); *Denson Electric Co.*, 133 NLRB 122, 129, 131 (1961).

Above, I recommended a finding that the Associate Handbook Acknowledgement Form was unlawful to the extent it waived the right of an employee to obtain a remedy when a charge is timely filed within the 10(b) statute of limitations but more than 180 days after the occurrence of the facts giving rise to the claim. (Supra p. 27) The Respondent required employees to sign the Acknowledgement Form. On October 17, Harrison told Combs, “If you want to work here, my man, you got to sign this” (referring to the Acknowledgement Form). (Tr. 68-69, 266) Threatening employees with discharge and conditioning their employment upon the acceptance of an agreement which waived their right to obtain a remedy for a violation found as a result of a timely filed charge would tend to coerce employees in the exercise of their Section 7 rights. *Id.*

The Respondent contends that Combs was not threatened with termination for failing to sign the Acknowledgement Form but, instead, “was told he would have to go home until he was willing to sign.” (R. Brf. pp. 31-32) I disagree. Joseph admitted that employees were “required to sign the handbook acknowledgement form” and this suggests the Respondent imposed the requirement as a condition of employment. (Tr. 266) Further, a reasonable employee would believe their continued employment was at stake if a manager said (as Harrison told Combs), “If you want to work here, my man, you got to sign this paper.” See *Ford Brothers*, 294 NLRB (1989) (threat that employee “would not be allowed to continue working” for alter ego company unless he gave up seniority and vacation rights was unlawful threat of termination); *Oster Specialty Products*, 315 NLRB 67, 67 (1994) (statements whether an employee “would like to keep working” and “you better think about your job” were threats of discharge and job loss);

However, even if reasonable employees would only understand the Respondent to be threatening them with indefinite suspension, the threat would still be unlawful. See *Caterpillar, Inc.*, 322 NLRB 690, 690 (1996) (threat of indefinite suspension for exercising lawful right to strike violated 8(a)(1)).

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Based upon the foregoing, I recommend a finding that the Respondent violated Section 8(a)(1) of the Act by threatening employees with discharge if they refused to sign an Associate Handbook Acknowledgment Form.

10 **October 13 – Complaint ¶ 11 – Direct Dealing by Soliciting Unit Employees to Sign the Associate Handbook Acknowledgment Form**

15 The General Counsel contends that the Respondent violated Section 8(a)(5) and (1) of the Act by bypassing the Union and dealing directly with unit employees by soliciting them to sign the Associate Handbook Acknowledgment Form.

The Board recently described the standard for evaluating direct dealing allegations as follows:

20 The Act “requires an employer to meet and bargain exclusively with the bargaining representative of its employees,” thus an employer “who deals directly with its unionized employees” violates Section 8(a)(5) and (1) of the Act. *Armored Transport, Inc.*, 339 NLRB 374, 376 (2003). “[D]irect dealing will be found where the employer has chosen ‘to deal with the Union through the employees, rather than with the employees through the Union.’” Id. (quoting *NLRB v. General Electric Co.*, 418 F.2d 736, 759 (2d Cir. 1969)). Unlawful direct dealing occurs when: (1) an employer communicates directly with union represented employees; (2) the discussion was for the purpose of establishing or changing wages, hours, and terms and conditions of employment or undercutting the union's role in bargaining; and (3) such communication was made to the exclusion of the union. *Permanente Medical Group*, 332 NLRB 1143, 1144 (2000) (citing *Southern California Gas Co.*, 316 NLRB 979 (1995)); see also *Metalcraft of Mayville, Inc.*, 367 NLRB No. 116, slip op. at 8, 16–17 (2019).

35 *Southern Ocean Medical Center*, 371 NLRB No. 147, slip op. at 3 (2022).

35

Here, the first and third *Permanente* factors are easily satisfied. On October 13, the Respondent issued the Associate Handbook directly to employees and required that they sign the Associate Handbook Acknowledgment Form without any advance notice to the Union. Respondent did so even though, during a grievance meeting 2 days earlier on October 11, the Union objected to any unilateral issuance of such rules without bargaining.

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Relevant to the second *Permanente* factor, the Respondent asserts that “[a]n employer may distribute a handbook and request acknowledgment of receipt without bargaining, so long as the handbook does not itself effect changes in mandatory subjects of bargaining.” (Resp. Brf. p. 26) According to the Respondent, the direct dealing allegation “fails because the handbook acknowledgment was a routine administrative exercise – requesting employees to confirm

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receipt of a workplace policy document – not a negotiation over terms and conditions of employment that should have been routed through the Union.” (Resp. Brf. p. 26)

5 Contrary to the Respondent’s assertion, the Acknowledgment Form did more than
confirm receipt of a workplace policy document. As discussed above, the Acknowledgement
Form unlawfully purported to eliminate the right of an employee to recover money damages or
other relief as a result of a timely filed Board charge if the charge was not filed within 180 days
of the occurrence of facts giving rise to the claim. As discussed below in my analysis of the
10 unilateral change allegation, it is not entirely clear to me whether a requirement that employees
waive the right to obtain a remedy for certain timely filed charges is a mandatory subject of
bargaining concerning the establishing or changing of wages, hours, and terms and conditions of
employment as opposed to unlawful subject of bargaining.²⁴ However, even if it is not a
mandatory subject, the instant form would satisfy *Permanente* factor 2 because it would undercut
the Union’s role in bargaining by limiting the Union’s ability to obtain a remedy for a charge it
15 filed on behalf of unit employees. See *Dayton Newspapers*, 339 NLRB 650, 653, 664 (2003)
(unlawful direct dealing where employer sought from employees a waiver of the Section 7 right
to support future union strikes or picketing, thereby driving a wedge between the employees and
their representative, threatening to erode the position of the union, and impairing the employees’
enjoyment of the benefit of their collective bargaining power), *affd.* in relevant part 402 F.3d
20 651, 661-662 (2005).

Based upon the foregoing, I recommend a finding that the Respondent bypassed the
Union and dealt directly with unit employees by soliciting them to sign the Associate Handbook
Acknowledgement Form.

25

**October 13 – Unilateral Change of Unit Employees’ Terms of Employment by Requiring
them to Sign the Associate Handbook Acknowledgement Form – Complaint ¶¶ 13, 15**

30 The General Counsel contends that the Respondent violated Section 8(a)(5) and (1) of the
Act by unilaterally requiring unit employees to sign the Associate Handbook Acknowledgement
Form without providing the Union notice or an opportunity to bargain.

35 “It is well established that an employer violates Section 8(a)(5) and (1) of the Act if it
makes material unilateral changes during the course of a collective-bargaining relationship on
matters that are mandatory subjects of bargaining.” *United Cerebral Palsy of New York City*,
347 NLRB 603, 606 (2006) (employer unlawfully issued handbook which unilaterally changed
or eliminated vacation policy, a holiday, scheduling procedures, vacancy postings, disciplinary
policy, grievance procedures, and absenteeism policy, and reserved to the employer the right to
make future changes without notice). Mandatory subjects of bargaining are those described in

²⁴ Below, I conclude that the Respondent’s requirement that employees waive a remedy for certain timely filed Board charges is an unlawful subject of bargaining. It seems unlikely that an employer could lawfully propose to employees an unlawful provision and not be found to have engaged in unlawful direct dealing because the bargaining subject was unlawful rather than mandatory.

Section 8(d) of the Act as concerning the “wages, hours, and other terms and conditions of employment.” See *NLRB v. Borg-Warner*, 356 U.S. 342 (1958); *Axelson, Inc.*, 234 NLRB 414, 415 (1978); *International Union of Operating Engineers, Local Union No. 12 (Associated General Contractors of America, Inc.)*, 187 NLRB 430, 432 (1970). When parties are not negotiating a collective-bargaining agreement, an employer is prohibited from unilaterally changing mandatory subjects of bargaining, but is not prohibited from unilaterally changing nonmandatory permissive subjects of bargaining. See *Finger Lakes Plumbing & Heating Co.*, 254 NLRB 1399 (1981). Other than mandatory and permissive subjects, “illegal subjects are simply those proscribed by federal, or where appropriately applied, state law.” *Hill-Rom Co. v. NLRB*, 957 F.2d 454, 457 (7th Cir. 1992).

As discussed above, it is not clear to me that requiring employees to sign a form waiving the right to obtain a remedy for certain timely filed charges is a mandatory subject of bargaining regarding wages, hours, and other terms and conditions of employment. Further, I do not believe the waivers are legal permissive subjects which could be imposed unilaterally. Rather, I conclude that the remedy waivers were illegal subjects of bargaining. Regarding such a remedy waiver, the Board has stated that, “as a matter of law, there is not and cannot be any legitimate justification for provisions, in an arbitration agreement or otherwise, that restrict employees' access to the Board or its processes.” *Kelly Services, Inc.*, 368 NLRB No. 130, slip op. at 3 (2019), quoting *Prime Healthcare Paradise Valley, LLC*, 368 NLRB No. 10, slip op. at 6 (2019). It seems self-evident that the unilateral implementation of an unlawful provision must be unlawful. Accordingly, I recommend a finding that the Respondent violated Section 8(a)(1) of the Act by doing so.

February 12 – Direct Dealing Regarding the Plant Closure and Severance – Complaint ¶ 12

The General Counsel contends that the Respondent violated Section 8(a)(5) and (1) of the Act by bypassing the Union and announcing directly to unit employees that the facility would be closing and they would receive 4 weeks of severance pay if they worked until closure.

As discussed above, the Board uses the *Permanente Medical Group*, 332 NLRB 1143, 1144 (2000) three step standard to determine whether an employer has engaged in unlawful direct dealing. That is, direct dealing occurs when (1) an employer communicates directly with union represented employees; (2) the discussion was for the purpose of establishing or changing wages, hours, and terms and conditions of employment or undercutting the union's role in bargaining; and (3) such communication was made to the exclusion of the union. *Id.*

Here, all three factors are easily satisfied. On February 12 and 13, 2024, the Respondent held meetings directly with unit employees to announce that the plant was closing and offer them 4 weeks of severance pay if they worked until the plant closed. The issue of severance and other effects of the plant closure are mandatory subjects of bargaining. See *Smurfit-Stone Containers Enterprises*, 357 NLRB 1732, 1732 (2011); *Stevens Intern., Inc.*, 337 NLRB 143, 144, 150 (2001). The Respondent did not notify the Union or invite the Union to the meetings. Although the employees included Union stewards, the Respondent does not contend that stewards were Union agents for accepting notice of the plant closing and severance offer. And even if stewards were such agents, the Respondent did not provide stewards with advance notice of the changes.

The Respondent simply scheduled meetings without any advanced indication as to what would be discussed and announced the plant closure with an offer of severance. See *Southern Ocean Medical Center*, 371 NLRB No. 147, slip op. at 6, fn. 16 (2022) (direct dealing where employer failed to share with union information regarding benefit harmonization plan until the day before the plan was presented to all employees), citing *Overnite Transportation Co.*, 329 NLRB 990, 1993, 1047 (1999) (employer sent agreement to the union, waited one day, and then made presentation directly to employees, 2 days before bargaining was to resume).

Based upon the foregoing, I recommend a finding that the Respondent violated Section 8(a)(5) and (1) of the Act by bypassing the Union and announcing directly to unit employees that the facility would be closing and they would receive 4 weeks of severance pay if they worked until closure.

Failure to Bargain in Good Faith over the Effects of the Plant Closing – Complaint ¶ 16

The General Counsel contends that the Respondent, as evidenced by its overall conduct, violated Section 8(a)(5) and (1) of the Act by failing to bargain in good faith with the Union over the effects of the plant closing.

Section 8(d) of the Act defines the duty to bargain collectively 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 . . . but such obligation does not compel either party to agree to a proposal or require the making of a concession.” “Good-faith bargaining ‘presupposes a desire to reach ultimate agreement, to enter into a collective bargaining contract[,]’” while surface bargaining presupposes a desire to do the opposite. *St. George Warehouse, Inc.*, 349 NLRB 870, 871 (2007), quoting *Public Service Co. Of Oklahoma (PSO)*, 334 NLRB 487, 487 (2001, enf. 318 F.3d 1173 (10th Cir. 2003) (quoting *NLRB v. Insurance Workers*, 361 U.S. 477, 485 (1960)). “From a party’s total conduct both at and away from the bargaining table, the Board determines whether the party 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.* at 872, quoting *Public Service Co.*, 334 NLRB 487, 487 (2001). “A violation may be found where the employer will only reach an agreement on its own terms and none other.” *Hardesty Co., Inc.*, 336 NLRB 258, 259 (2001).

The Board has long held that a party’s regressive negotiating proposals may evidence overall bad-faith bargaining absent an adequate explanation for the same as “it hardly demonstrates an approach to bargaining which seeks to reach a mutually satisfactory agreement . . .” *Pacific Grinding Wheel Co.*, 220 NLRB 1339, 1390 (1975). Here, in February 2024 meetings, Wilson assured employees they would receive their accrued PTO and also offered employees 4 weeks of severance pay if they worked until the plant closed effective March 15, 2024. The Respondent admits that, in a March 21, 2024 bargaining session over effects of the closure, it only offered the PTO payout and did not offer the 4 weeks of severance. Accordingly, the March 21, 2024 proposal was regressive. See *Hardesty Co., Inc.*, 336 NLRB 258, 259 (2001) (employer engaged in regressive surface bargaining where it sought to reduce in bargaining with newly certified union the vacation benefits it already offered employees).

The Respondent's retraction of the 4 week severance proposal, when viewed in full context, also smacks of intransigence. On February 13, 2024, in an email response to a Union demand to bargain over the effects of the closure, HR Manager Joseph denied the Union's demand to bargain and stated, "We will be shutting the plant down and adhering to the rules of the contract in the process." (G.C. Exh. 9) (Tr. 227-230) On March 21, 2024, by reneging on the offer to pay employees severance if they worked until the plant was expected to close on March 15, 2024 (already passed) and offering only to pay accrued PTO as required by the contract, the Respondent effectively returned to the rigid position it was initially taking before the Union filed its first unfair labor practice charge, i.e., an intent to honor the CBA and not bargain with the Union over anything it had not offered directly to unit employees on a unilateral basis. See *Hardesty Co., Inc.*, 336 NLRB 258, 261 (2001) (employer's conduct of dealing directly with employees manifested the objective of frustrating and preventing agreement from being reached). The Respondent's bargaining posture was all the more intractable and unlikely to result in agreement by the admission of the Respondent's bargaining representatives that they did not have authority or control over the regressive proposal. See *Health Care Services Group, Inc.*, 331 NLRB 333, 336 (employer bargaining representative's lack of authority to commit to proposals indicates bad faith); *Bedford Farmers Coop.*, 259 NLRB 1226, 1237 (1982) (employer engaged in bad faith bargaining by sending to the table representatives without sufficient authority to engage in meaningful negotiations by advancing any proposals).

The regressive offer, by its timing shortly after the Union filed a charge to compel bargaining, also suggested the Respondent wanted to punish the Union and employees for taking legal action. See *Quality House Graphics*, 336 NLRB 497, 515 (201) (employer engaged in bad-faith bargaining where regressive proposal was offered to retaliate against the union for having pursued charges); *Whitesell Corp.*, 357 NLRB 1119, 1120-1121 (2011) (employer bargained in bad faith where it was determined that the union's legal success in forcing the company to rescind a unilaterally imposed contract and resume bargaining would rebound to the detriment of employees), modified on reconsideration on other grounds, 2011 WL 5931998 (2011). The Respondent's bad faith in this regard is bolstered by similar conduct away from the bargaining table. In October, CEO Wilson attempted to coerce Combs to refrain from discussing with the Union his demotion or pay and, a week later, reduced Combs' pay after those efforts did not prevent Combs from filing a Union grievance regarding his demotion. Likewise, in October, Wilson expressed hostility towards Union opposition, including the filing of grievances and charges, to a reduction of employees' use of contractual PTO and the unilateral formulation of overbroad rules. Thus, the evidence indicates that the Respondent tended to react in a retaliatory manner inconsistent with good-faith bargaining when the Union opposed its plans. *Id.*

The Respondent's explanations for its regressive retraction of the 4 week severance proposal are inadequate. The Respondent claims it did not take a regressive position by retracting its severance offer because the February 2024 announcement of severance was merely an "operational communication" and not a "proposal" in the context of negotiations with the Union. (R. Brf. pp. 23-24) However, HR Manager Joseph admitted that the Respondent discussed the 4-week severance package with the Union on the first day of bargaining, March 13, 2024. (Tr. 236-237) Further, earlier in February 2024, the Respondent did offer employees an exchange of additional pay for a certain period of work as a proposal in contemplation of mutual

consideration. The subsequent retraction of that offer on March 21, 2024, after unit employees may already have relied upon it to work beyond the contemplated March 15, 2024 closing date, would not be any less acceptable because the retraction was communicated to the Union rather than the employees. Indeed, as noted above, that the initial offer was made to the exclusion of the Union and in a manner likely to undermine the Union and the bargaining process is all the more reason to believe the Respondent had no intention of bargaining in good faith to agreement.²⁵ See *Hardesty Co., Inc.*, 336 NLRB 258, 261 (2001).

The Respondent next claims the retraction of the severance proposal was not regressive because the PTO payout was “about the same” as the 4-week severance proposal for most employees. (R. Brf. p. 24) However, Wilson admitted he always intended to honor the contractual requirement to pay accrued PTO upon closing and told employees they would receive 4-weeks of severance *in addition* to the PTO payout.²⁶ Thus, the retraction of the severance offer was regressive since it was not replaced with any equivalent payment not already required by the CBA.

Finally, the Respondent claims the retraction of the severance offer was justified because “the Company’s financial situation worsened materially during this period [between February 12 and March 21, 2024].” (R. Brf. p. 24-25) However, as noted above, Joseph admittedly discussed the severance offer with the Union on March 13, 2024 and did not claim, at that time, any inability to pay for it. Further, Joseph’s testimony that the Respondent’s financial condition worsened during that period was conclusory and lacking detail. (Tr. 241) The Respondent asserts that it produced financial records to the Union, but those records do not appear to include any information regarding 2024. (R. Exh. 9) And although the Respondent notes that it told the Union it could not afford the Union’s demand for 52 weeks of severance, the Respondent did not tell the Union it could not afford to honor its offer of 4 weeks of severance. The Respondent relies on evidence that the bargaining unit workforce shrank from about 21 to nine or ten employees during the period from February 12 to March 21, 2024 in support of the claim that the company’s financial situation worsened, but the loss of workers would actually have *reduced* the cost of any previously anticipated severance payments.²⁷ Ultimately, the record does not indicate that, on March 21, 2024, the Respondent was unable to pay the severance it promised employees little more than 5 weeks earlier.

In sum, considering the totality of the circumstances, I conclude that the Respondent failed to bargain in good faith over the effects of the plant closing based upon evidence that the

²⁵ The Respondent’s retraction of the severance proposal would likely undermine the Union because it would signal to unit employees that the retraction was the result of the Union’s legal efforts to compel the Respondent to bargain with the Union in good-faith over severance.

²⁶ As discussed above in the credibility section, I do not credit Joseph’s denial that she knew the CBA required the payment of PTO upon closure.

²⁷ Wilson denied that any employees were laid off before March 21, 2024 and, therefore, the workforce must have shrunk from 21 to about nine or ten unit employees because 11 or 12 employees resigned. Since the Respondent only offered employees severance if they stayed until the plant closed, the number of employees potentially eligible for the severance had reduced by about 50 percent by the time Respondent retracted the severance offer.

Respondent's representatives made regressive and retaliatory proposals without any adequate explanation and without any authority to modify those proposals, and in so doing, returned to a previously intractable position of refusing to bargain over effects benefits not already provided for in the CBA or unilaterally offered by the Respondent directly to unit employees.

Based upon the foregoing, I recommend a finding that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to bargain in good faith with the Union over the effects of the plant closing.

CONCLUSION OF LAW

1. The Respondent, Commercial Steel Treating Corporation d/b/a Curtis PriMat, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, Local 174, International Union United Automobile Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act and represents the following bargaining unit:

All machine operators, production employees, shipping and receiving employees, maintenance employees, maintenance helpers and facilities maintenance employees employed by the Employer at its facility located at 31440 Stephenson Highway, Madison Heights, Michigan; but excluding guards and supervisors as defined by the Act.

3. The Respondent violated Section 8(a)(1) of the Act by:

- a. Maintaining overbroad rules in the Associate Handbook.
- b. Directing employees not to discuss their demotion and/or wage rate with the Union or other employees.
- c. Threatening to discharge employees if they did not sign the Associate Handbook Acknowledgement Form.

4. The Respondent violated Section 8(a)(5) and (1) of the Act by:

- a. Bypassing the Union and dealing directly with unit employees by soliciting them to sign the Associate Handbook Acknowledgement Form.
- b. Unilaterally requiring unit employees to sign the Associate Handbook Acknowledgement Form without notifying and offering to bargain with the Union.
- c. Bypassing the Union and dealing directly with unit employees by notifying them of the decision to close the facility and offering them severance packages.

d. Failing to bargain in good faith with the Union over the effects of the plant closing.

5 5. The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

10 Having found that the Respondent, Commercial Steel Treating Corporation d/b/a Curtis PriMat, engaged in unfair labor practices, I shall order the Respondent to cease and desist therefrom and to take certain affirmative actions designed to effectuate the policies of the Act.

15 To remedy the Respondent's unlawful failure to bargain with the Union over the effects of its decision to close the facility, the Respondent shall bargain with the Union, on request, over the effects of that decision. An affirmative bargaining order is “the traditional, appropriate remedy for an 8(a)(5) refusal to bargain with the lawful collective-bargaining representative of an appropriate unit of employees.”²⁸ *Caterair International*, 322 NLRB 64, 68 (1996).

20 As a result of the Respondent's unlawful conduct, certain unit employees have been denied an opportunity to meaningfully bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

25 Accordingly, in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, my recommended order will include a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violations and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. The Respondent shall do so by paying backpay to the unit employees affected by this remedy in a manner similar to that required in

²⁸ The Respondent did not contend in its brief that an affirmative bargaining order was inappropriate if it were found to have failed to bargain in good faith over the effects of the plant closing and, indeed, the finding of such a violation often results in a bargaining order. See, e.g., *Tec-Cast, Inc.*, 372 NLRB No. 90 (2023); *Champaign Builders Supply Co.*, 361 NLRB 1382 (2014). Accordingly, I recommend such an order directing the Respondent to bargain over the effects of the plant closing (and nothing more). However, I am mindful that the Board has, in at least one case, not included “an affirmative requirement that the [employers], upon request, bargain in good faith with the Union regarding the effects that the employers’ decision to close [its] operations had on unit employees” because a restoration remedy was not appropriate and “the unit of truckdrivers formerly employed by [the employer] at its Newburgh facility no longer exists[.]” *Falcon Trucking, LLC*, 373 NLRB No. 124 (2024). Despite this apparent disparity in Board precedent, since a bargaining order is traditionally appropriate and the Respondent has not opposed one, I recommend a bargaining order and leave it to the parties to either resolve the issue or seek clarification from the Board upon exceptions.

Transmarine Navigation Corp., 170 NLRB 389 (1968) (“*Transmarine*”), as clarified by *Melody Toyota*, 325 NLRB 846 (1998).

5 The Respondent asserts that a *Transmarine* remedy is not appropriate because the Union had a meaningful opportunity to bargain over effects of the plant closure before the plant closed. I disagree. The Union did not have a meaningful opportunity to bargain in February 2024 (when the Respondent refused to bargain at all) and in March 2024 (when the Respondent failed to bargain in good faith). See *Transmarine Navigation Corp.*, 152 NLRB 998, 999 (1965) (employer did not satisfy bargaining obligation over effects of closing by rejecting Union proposal that laid off employees could not remain employed at a different facility).

10 Thus, the Respondent shall pay unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of its decision to close the facility; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith. *Transmarine*, 170 NLRB at 390.

20 In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent closed its operation to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the unit employees would normally have received during the applicable period and shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons*, 283 NLRB 1173, compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). Additionally, the Respondent shall compensate unit employees for any adverse tax consequences of receiving lump-sum backpay awards and to file a report with the Regional Director for Region 7 allocating backpay to the appropriate calendar years for each employee, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB 1326 (2016).

35 The Respondent will be required to rescind the Associate Handbook Acknowledgement Form signed by unit employees and notify all unit employees who signed the Associate Handbook Acknowledgement Form that the Associate Handbook Acknowledgement Form has been rescinded.

40 Finally, because the Respondent's facility is currently closed, the Respondent shall mail a copy of the attached notice to the last known addresses of its unit employees who were employed at any time since October 6, in order to inform them of the outcome of this proceeding.

On these recommended findings of fact and conclusions of law and on the entire record, I issue the following recommended²⁹

ORDER

5

The Respondent, Commercial Steel Treating Corporation d/b/a Curtis PriMat, Madison Heights, Michigan, its officers, agents, successors, and assigns, shall

10

1. Cease and desist from

a. Maintaining overbroad rules in the Associate Handbook.

15

b. Directing employees not to discuss their demotions and/or wage rate with the Local 174 International Union United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW), AFL-CIO (the Union) or other employees.

c. Threatening to discharge employees if they did not sign the Associate Handbook Acknowledgement Form.

20

d. Bypassing the Union and dealing directly with unit employees by soliciting them to sign the Associate Handbook Acknowledgement Form.

25

e. Unilaterally requiring unit employees to sign the Associate Handbook Acknowledgement Form without notifying and offering to bargain with the Union.

f. Bypassing the Union and dealing directly with unit employees by notifying them of the decision to close the facility and offering them severance packages.

30

g. Failing to bargain in good faith with the Union over the effects of the plant closing.

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.

35

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

40

a. On request, bargain collectively with the Union, as the bargaining representative of employees in the following bargaining unit, over the effects of the closure of the facility and reduce to writing and sign any agreement reached as a result of bargaining:

²⁹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes due under the terms of this Order.

All machine operators, production employees, shipping and receiving employees, maintenance employees, maintenance helpers and facilities maintenance employees employed by the Employer at its facility located at 31440 Stephenson Highway, Madison Heights, Michigan; but excluding guards and supervisors as defined by the Act.

b. Pay to former unit employees their normal wages for the period set forth in the remedy section of this decision.

c. Compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 7, 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.

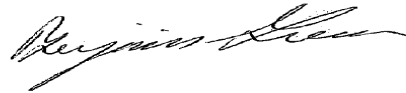
d. File with the Regional Director for Region 7, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay awards.

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

f. Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"³⁰ to the Union and to all unit employees employed at the Respondent's Madison Heights, Michigan facility at any time since October 6, 2023. In addition to the physical mailing of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.

g. Within 21 days after service by the Region, file with the Regional Director for Region 7 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 6, 2026



³⁰ If this Order is enforced by a judgment of a United States court of Appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Benjamin W. Green
U.S. Administrative Law Judge

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 a representative 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 maintain overbroad rules in the Associate Handbook.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Local 174 International Union United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW), AFL-CIO (the Union), as the exclusive collective-bargaining representative of the following unit, over the effects of our decision to close the facility:

All machine operators, production employees, shipping and receiving employees, maintenance employees, maintenance helpers and facilities maintenance employees employed by the Employer at its facility located at 31440 Stephenson Highway, Madison Heights, Michigan; but excluding guards and supervisors as defined by the Act.

WE WILL NOT direct employees not to discuss their demotions and/or wage rates with the Union or other employees.

WE WILL NOT threaten to discharge employees if they did not sign the Associate Handbook Acknowledgement Form.

WE WILL NOT bypass the Union and deal directly with unit employees by soliciting them to sign the Associate Handbook Acknowledgement Form.

WE WILL NOT unilaterally require unit employees to sign the Associate Handbook Acknowledgement Form without notifying and offering to bargain with the Union.

WE WILL NOT bypass the Union and deal directly with unit employees by notifying them of the decision to close the facility and offering them severance packages.

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

WE WILL on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of unit employees concerning the effects of the decision to close the Madison Heights facility, and **WE WILL** reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL pay to former unit employees their normal wages, plus interest, in connection with our failure to bargain in good faith over the effects of the decision to close the facility.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and **WE WILL** file with the Regional Director for Region 7, within 21 days from 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 with the Regional Director for Region 7, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.

**COMMERCIAL STEEL TREATING
CORPORATION D/B/A CURTIS PRIMAT**
(Employer)

Dated: _____ By: _____
(Representative)

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

110 Michigan St. NW Ste 299, Grand Rapids, MI 49503-2313
(616) 456-2679, Hours: 8:15 a.m. – 4:45 p.m. ET

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/07-CA-328161 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF
POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER
MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS
PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE
OFFICER (616) 930-9165.