

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

SUTPHEN CORPORATION

and

Cases 09-CA-366492
09-CA-367418

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS (IBT), LOCAL UNION NO. 284

Austin J. Wishart, Esq. for the General Counsel.

Jonathan C. Wentz, Esq. and James Petroff, Esq.
(Wentz McInerney Peifer & Petroff, LLC)
of Columbus, Ohio for the Charging Party.

Aaron Tulencik, Esq. (Tulencik Law Firm, LLC)
of Columbus, Ohio for the Respondent.

DECISION

CHARLES J. MUHL, Administrative Law Judge. Section 8(d) of the National Labor Relations Act defines the duty to bargain collectively as the mutual obligation of an employer and a union to:

[m]eet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder . . . but such obligation does not compel either party to agree to a proposal or require the making of a concession.

The tension in this language is obvious. On the one hand, the statute imposes a duty to bargain in good faith. That duty presupposes a sincere purpose by parties to find a basis to reach agreement on a contract. A party cannot merely go through the motions

during bargaining. On the other hand, the statute permits a party to refuse to make concessions, even though compromise typically is an essential component to reaching an agreement. Because of this tension, the National Labor Relations Board looks to the totality of a party's conduct, both at and away from the bargaining table, to determine if bad-faith bargaining has occurred. Given that standard, the line between unlawful "surface bargaining" and lawful "hard bargaining" long has been a difficult one to draw.

This case involves the breakdown of a 40+ year bargaining relationship between Respondent Sutphen Corporation and Charging Party International Brotherhood of Teamsters, Local 284. The parties' last collective-bargaining agreement for employees working out of the Respondent's Dublin, Ohio facility expired on October 12, 2024. In the two years since the expiration, the parties have not reached agreement on a successor contract. Their negotiations initially took place in September and October 2024. Just prior to contract expiration, the Respondent refused to meet face-to-face with the Union and instead passed a proposal through a mediator which contained numerous cuts to existing contract terms. When the Union filed an unfair labor practice charge alleging the Respondent engaged in bad-faith bargaining, the Respondent then refused to bargain with the Union for a period of eight months.

On April 15, 2025, the General Counsel approved an informal settlement agreement executed by the Respondent and the Union that resolved the alleged unfair labor practices in September and October 2024. In the agreement, the Respondent was required, among other things, to bargain in good faith with the Union at reasonable times and places going forward until the parties reached a successor contract.

The General Counsel's complaint in this case alleges that, instead of bargaining in good faith as required by Section 8(d) and the settlement agreement, the Respondent doubled down on its bad-faith bargaining strategy and prevented the parties from reaching a contract. To support the bad-faith bargaining conclusion, the General Counsel's complaint specifically alleges that the Respondent engaged in surface bargaining from September 4, 2024 through January 7, 2026, including by making regressive proposals; unlawfully ceasing to pay health insurance premiums for employees who went on strike; twice failing to provide information that the Union requested and was relevant to its duties as the collective-bargaining representative; and refusing to meet at reasonable times in two different time periods.

I find merit to nearly all of the General Counsel's allegations. Under the totality of the circumstances, I conclude that the Respondent unlawfully refused to bargain in good faith with the Union for a successor contract. I also conclude that special remedies are warranted to restore the parties to the status quo at the bargaining table prior to the unfair labor practices.

From March 9 through March 12, 2026, I heard this case in Columbus, Ohio. On April 30, 2026, the General Counsel, the Charging Party, and the Respondent filed posthearing briefs, which I have read and carefully considered. On the entire record, I make the following findings of fact and conclusions of law.¹

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FINDINGS OF FACT

ALLEGED UNFAIR LABOR PRACTICES

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I. BACKGROUND²

The Respondent is engaged in the business of manufacturing fire trucks, including at its Dublin, Ohio facility. Shelby Sutphen-Chambers is the president of the Respondent. B.J. Laney is its vice president of operations. Among his duties is to oversee all operations at the Dublin facility.

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For at least 40 years, the Union has been the exclusive collective-bargaining representative of the Respondent's truck drivers, production workers and stockroom employees, including shipping, receiving and warehouse employees, at the Dublin facility. The Union's president is Mark Vandak. The most recent collective-bargaining agreement between the Respondent and the Union ran from October 13, 2020, through

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¹ On September 30, 2025, the General Counsel, through the Regional Director for Region 9 of the National Labor Relations Board (the Board), issued a consolidated complaint and notice of hearing against Sutphen Corporation ("the Respondent") in Cases 09-CA-366492 and 09-CA-367418. The complaint was premised upon unfair labor practice charges and an amended charge filed by Charging Party International Brotherhood of Teamsters (IBT), Local Union No. 284 ("the Union") on May 28, June 11, and June 30, 2025. On November 26, 2025, the Respondent filed an answer to the complaint, denying the substantive allegations and asserting numerous affirmative defenses. On January 8, 2026, the General Counsel filed an amended complaint, which the Respondent timely answered on January 22, 2026.

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

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

October 12, 2024. The Respondent and the Union have been operating under the terms of that contract since its expiration.

II. SUCCESSOR CONTRACT NEGOTIATIONS IN SEPTEMBER AND OCTOBER 2024

With the collective-bargaining agreement set to expire on October 12, 2024, the parties met to negotiate a successor contract on September 4, 5, 9, 24, 27, and October 10, 2024. The Respondent's then-attorney, Matt Austin, attended these sessions. Michael Moses was the attorney for the Union who participated in the first four sessions.

Jonathan Wentz took over as the lead negotiator for the Union beginning September 27, 2024. A mediator was present for each session.³

At the September 4 meeting, the Union passed a package proposal to the Respondent. The Union proposed that nearly all of the existing contract provisions remain the same. Beyond that and for Article 6 on Seniority, the Union proposed that the Respondent maintain a minimum staffing level of 100 bargaining-unit employees at the Dublin facility. Although the Respondent had a ground rules proposal and a comprehensive non-economic proposal ready, it chose not to pass those proposals to the Union.⁴

On September 5, the company passed a response reducing the minimum staffing level to 90 employees.⁵

At the September 24 meeting, the Union submitted its first economic proposal on wages and hours. The Union sought a four-year contract term with a \$4.50 per hour increase in the first year and 6 percent increases in years two through four.⁶

On September 27, the Union was expecting a written response from the Respondent but did not receive one. Austin told Wentz that the Respondent was unable to respond to the Union's wage proposal. Austin said that the Respondent's chief financial officer was unavailable and could not review the Union's economic proposals. Austin added that the Respondent wanted to negotiate ground rules and the non-economic proposals before the economic proposals. However, Austin did not pass

³ At the trial in this case, Wentz acted as the Union's attorney and also testified on behalf of the General Counsel and the Union. The Board permits this dual role and does not police the canons of ethics of the various bar associations. See *Operating Engineers Local 9 (Fountain Sand Co.)*, 210 NLRB 129 fn. 1 (1974).

⁴ Jt. Exh. 4; Tr. 49-50. The collective-bargaining agreement does not contain a minimum staffing level provision. The parties discussed this possibility in June 2024 during mediation of a grievance over the alleged transfer of bargaining-unit work prior to the start of successor contract negotiations. (Tr. 387, 458, 461-462.) The parties continued discussions on such a provision in negotiations. (Jt. Exhs. 4 (p.6), 5-7.)

⁵ Jt. Exh. 5.

⁶ Jt. Exh. 7.

any such proposal to the Union that day. Instead, the Union provided the Respondent with a “supposal”⁷ in which it changed its ask for the minimum staffing level to 90 employees and added language that the Respondent would not close the Dublin facility during the term of the contract.⁸

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At the October 10 bargaining session, the Respondent refused to meet face-to-face with the Union and instead would only talk and pass proposals to the mediator. No explanation was provided. The proposal submitted by the Respondent was its first comprehensive contract “supposal.” In it, the Respondent deleted the union security clause; increased a new employee’s probationary period from 30 to 90 days; reduced vacation pay; put limitations on union access to the facility; removed its handbook from being a part of the contract; transferred employee health insurance from the Union’s plan to the Respondent’s plan; and required the Union to agree that it would not represent employees at any other Respondent facility. On wages, the Respondent proposed a \$2.00 per hour increase in year 1 and reopeners in years 2 and 3. The Respondent did not agree to any of the Union’s prior proposals.⁹

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On that same date, the Union submitted a response limited to the contract provisions the parties previously had discussed. The response also stated that “Any Company proposal from October 10, 2024 not accepted above is rejected.” That included the Respondent’s wage proposal.¹⁰

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Following the session that evening, the Union filed an unfair labor practice charge against the Respondent. The charge alleged that the Respondent engaged in bad-faith bargaining based upon its conduct and proposals that day. After the Union provided Austin with a courtesy copy of the charge that same night, Austin responded: “Because of this charge, Sutpehn (sic) will seek advice from the NLRB Division of Advice on how to proceed in negotiations. Bargaining is cancelled for tomorrow. We will be in touch to schedule additional bargaining dates after the Advice process.”¹¹

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⁷ A “supposal” is defined as the act or process of supposing or something supposed, whereas a “proposal” is an act of putting forward or stating something for consideration or something proposed. “Supposal” and “Proposal,” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/supposal> and <https://www.merriam-webster.com/dictionary/proposal>. Accessed Oct. 13, 2026. In collective bargaining, a party making either a supposal or proposal offers a roadmap for reaching an agreement on a disputed issue. The supposal acts as a pre-proposal.

⁸ Jt. Exh. 8; R. Exh. 91; Tr. 122–125, 203–204.

⁹ Jt. Exh. 9; Tr. 48, 53, 125–128.

¹⁰ Jt. Exh. 10.

¹¹ GC Exh. 31. The General Counsel’s Division of Advice offers guidance to NLRB regional offices—not private parties—directing dismissal of charges or the issuance of complaints. See *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975); “Research,” <https://www.nlr.gov/cases-decisions/cases/research>, visited Oct. 13, 2026. Certain of the advice memos are released to the public. “Advice Memos,” <https://www.nlr.gov/guidance/memos-research/advice-memos>, visited Oct. 13, 2026.

The Union and the mediator showed up for the bargaining session on October 11, 2024. The Respondent did not. From October 11, 2024 through April 15, 2025, the Respondent refused to bargain with the Union, despite attempts by the Union and the mediator to schedule dates.¹²

III. THE INFORMAL SETTLEMENT AGREEMENT AND SUBSEQUENT SCHEDULING OF BARGAINING DATES

On April 15, 2025¹³, the General Counsel, through the Regional Director of Region 9, approved an informal settlement agreement between the Respondent and the Union. The settlement resolved the Union's prior unfair labor practice charge against the Respondent dealing with the latter's conduct in September and October 2024.¹⁴

As part of the settlement, the Respondent agreed to cease and desist from engaging in bad-faith surface bargaining; refusing to meet and bargain at reasonable times and reasonable intervals; unilaterally ending bargaining sessions early; refusing to make or respond to proposals; making regressive proposals; refusing to identify non-economic articles for bargaining; and refusing to schedule bargaining dates with the Union. The Respondent also agreed to affirmatively bargain in good faith with the Union at reasonable times and places until a complete agreement was reached or a bona fide impasse in bargaining occurred. The agreement did not contain a non-admissions clause.

On April 24, Union President Vandak emailed Sutphen-Chambers and Laney and asked for dates in May when the Respondent was available for bargaining.¹⁵

On May 1, the Respondent, by Laney, filed a certification of compliance with Region 9. Laney wrote that, on April 24, counsel for the parties were scheduling dates in May to bargain. At this time, Austin still represented the Respondent. On that same date, the Respondent read the settlement notice posting to employees at the Dublin facility, with Vandak and Laney among others in attendance. After the reading, Vandak told Laney in front of employees that the Union needed to know when the company would return to the bargaining table.¹⁶

On May 12, Vandak appeared at a public meeting of the Columbus, Ohio city council. Vandak urged the city to vote against an ordinance to authorize the purchase

¹² Tr. 130; GC Exhs. 33, 44. The record evidence is insufficient to establish whether or not Austin ever contacted the Division of Advice and, if so, what the Division's response was.

¹³ All dates hereinafter are in 2025 unless otherwise noted.

¹⁴ Jt. Exh. 2.

¹⁵ GC Exh. 35, p. 2.

¹⁶ Jt. Exh. 33, p. 2; Tr. 75. The record does not contain additional information supporting Laney's assertions in the compliance update.

of a fire truck from the Respondent for \$2.5 million, due to the lack of a successor contract. Vandak also protested the absence of wage increases for the Respondent's employees. The city council voted the proposed ordinance down.¹⁷

On May 14, Laney responded to Vandak's April 24, 2025 email. This was three weeks after Vandak's request for dates to resume bargaining and two weeks after Laney had informed Region 9 that the parties were scheduling dates. Laney stated: "Thanks for reaching out about prospective dates to resume bargaining. The past several weeks were very full with end of fiscal year wrap up activities and transitions within the organization. We are working to deconflict schedules to provide options to connect over the next few months. We can discuss more tomorrow when we meet for the hearing at Dublin." Vandak responded the next day. He accused the Respondent of violating the settlement agreement by not offering a bargaining date sooner than June 23 and that the Union had notified Region 9 of this refusal to bargain. Vandak also confirmed that the parties had agreed the prior day to bargain on June 23 and 25, as well as July 8, 21, and 23.¹⁸

On May 16 and 28, Laney filed additional certifications of compliance with Region 9 stating that, on May 14, the parties agreed to meet on June 23 and 25, as well as July 8, 21 and 23.

Also on May 28, the Region 9 compliance assistant notified Austin and Laney: "The Employer waited nearly three weeks to respond to the Union's request to bargain and then provided dates for bargaining more than 2 months after approval of the Settlement Agreement. To this date, the Employer has failed to comply with the terms of the Settlement Agreement in the above cases." She went on to set forth the obligations in the settlement and then asserted that the Region had not received any evidence of the Respondent's compliance with the affirmative provision to bargain in good faith. Finally, the assistant stated that the Respondent had 14 days, to June 11, to fully comply with that obligation. If compliance did not occur, the compliance officer stated she would recommend to the director that the agreement be revoked and a complaint issued against the Respondent.¹⁹

IV. UNIT EMPLOYEES STRIKE AND THE RESPONDENT CEASES MAKING FUND CONTRIBUTIONS

Also on May 28, the Union filed an unfair labor practice charge with Region 9 which alleged: "Within the past 6 months, the above-named Employer has refused to meet and bargain at reasonable times and intervals in violation of the Act and an informal settlement agreement approved by the Regional Director of Region 9. To wit,

¹⁷ Tr. 210, 216-218; R. Exh. 67.

¹⁸ GC Exh. 35, p. 1.

¹⁹ GC Exh. 42, pp. 2-4.

on April 24, 2025, the Union requested that the Employer provide the Union with dates that it was available to bargain during the month of May 2025. In response, the Employer refused to bargain in May, claiming it is not available for bargaining until June 23, 2025. The Employer has refused to bargain since October 10, 2024.”²⁰

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On that same May 28 date, bargaining-unit employees went on strike. In its notification to the Respondent of the strike, the Union attributed it to the Respondent’s unfair labor practices.²¹

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As a result of the strike, the Respondent ceased making its contribution to employees’ health insurance premiums. The Respondent did not notify the Union of its cessation of these payments.²²

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The expired collective-bargaining agreement contained a provision entitled “Group Insurance” in Article 19. The provision stated:

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Section A. Company will provide contribution to health insurance premiums for Local 284 Members under the Michigan Conference of Teamsters Welfare Fund [MCTWF] for Base Medical Benefits, Benefit Rider, and Prescription Drug Benefits at the following rate:

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Year 1: Sutphen will pay 93% and Employee will pay 7%.
 Year 2: Sutphen will pay 93% and Employee will pay 7%.
 Year 3: Sutphen will pay 93% and Employee will pay 7%.
 Year 4: Sutphen will pay 92% and Employee will pay 8%.²³

The collective-bargaining agreement also contained a “Duration of Agreement” provision in Article 28. The provision stated:

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This agreement shall become effective October 13, 2020 and shall continue in effect through the 12th day of October 2024 and thereafter shall renew itself automatically for a period of (1) one year unless either of the parties serves written notice upon the other not less than (60) sixty days before the end of the initial period or any subsequent period thereafter of its desire to terminate this agreement.²⁴

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To provide health insurance to unit employees through the MCTWF, the Respondent and the Union entered into a Participation Agreement with the fund, which

²⁰ GC Exh. 1(a).

²¹ Tr. 333–334; GC Exh. 38.

²² Tr. 192–193, 451; GC Exh. 3, 40. Laney testified that the Respondent stopped making the contributions because the employees went on strike. (Tr. 78.)

²³ Jt. Exh. 1, pp. 15, 16; Tr. 246, 339–340.

²⁴ Jt. Exh. 1, p. 16.

was governed by the agreement's terms, as well as an associated Summary Plan Description (SPD) and Employee Accounts – Policies and Procedures policy (EAPP). The language in those documents enabled striking employees to use "benefit bank" weeks previously earned to temporarily extend their health insurance coverage if, when the employees went on strike, the employer did not make contributions to the fund. The language also enabled striking employees to obtain up to eight weeks of extended coverage after they exhausted their benefit bank weeks. This continuation and extension of health insurance coverage was contingent on the strike being sanctioned by the International Brotherhood of Teamsters, which did not occur here.²⁵

V. THE UNION'S FIRST REQUEST FOR INFORMATION

On May 30, Vandak emailed Laney a request for information based upon the Union receiving notification that the Respondent transferred bargaining-unit work from its Dublin facility to its non-union Hilliard facility. Laney responded shortly thereafter and told Vandak that the Respondent had moved three trucks off the Dublin property per its normal practice of facilitating customer final inspections. He added that employees at Dublin would complete all of the bargaining-unit work in the manufacturing process. Vandak responded that night and said Laney had not provided requested documents. He asserted that two of the trucks that were moved still had bargaining-unit work to complete before final inspection. He reiterated his request for information about the third truck. Laney responded the next morning. This time, he told Vandak that two of the trucks that were moved were undergoing testing by a third party. He added that the third truck was complete and moved for final inspection to the customer. He stated no further bargaining-unit work was required for that truck. Laney also reiterated that the Dublin employees would perform all bargaining-unit work. Laney did not provide any documents to Vandak.

Vandak then submitted the following information request to Laney:

1. Identify the third apparatus referred to in your email by type and customer.
2. Identify the current location(s) of the 3 apparatuses.
3. Provide documents evidencing the bargaining unit work completed and that remains to be performed on each apparatus.
4. If applicable, provide documents identifying the date of the "customer final inspections" to [be] performed on these apparatuses.

²⁵ GC Exh. 3; R. Exhs. 85, 88.

5. If applicable, provide documents identifying the specific "third party testing" to be performed on these apparatuses, what this testing entails, the name of the vendor that will perform the testing, the location of the testing and the date the testing will occur.

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6. Provide documents demonstrating that it is typical for Sutphen to conduct "third party testing" on unfinished trucks including but not limited to prior reports from this "third party testing."

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7. If Sutphen changes its explanation again, provide supporting documentation to verify its explanation.

Vandak stated that the reason for the requests was to verify the Respondent's explanation for moving three fire trucks to a non-union facility to complete customer final inspections. The Respondent did not provide any documents in response to requests three through six.²⁶

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On June 5, Laney responded to the compliance support assistant's May 28 notification of the Respondent's non-compliance with the settlement. He told her that the Respondent had retained a new attorney to bargain with the Union. Given the new hire, he asked her if the Respondent could have time to regroup and prepare to bargain on June 23 or if it was necessary to meet on or before June 11. In the alternative, he asked if they could get another date between June 11 and 23 to bargain. The compliance assistant responded that the Respondent should bargain with the Union on or before June 11. Laney also told her the Respondent fully intended to comply with the settlement agreement.²⁷

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VI. THE PARTIES' RESUMPTION OF BARGAINING A SUCCESSOR CONTRACT

For the first time since October 10, 2024, the parties resumed bargaining on June 11. At this session, the Respondent changed attorneys and was represented by Aaron Tulencik, not Austin, as lead negotiator.²⁸ The Respondent also had an additional representative, Tulencik's office manager Julie Rogers, who typed notes on a computer keyboard concerning what was being said during the session. Wentz asked Rogers if she was making a transcript of the negotiations. He asked to see a copy of any transcript. Tulencik said it was not a transcript and would not be provided to the

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²⁶ GC Exh. 1(n); Tr. 81-83.

²⁷ GC Exh. 42, pp. 1-2. Additional emails between the Region and the Respondent concerning settlement compliance also were entered into evidence. (R. Exhs. 22-24.)

²⁸ Tr. 133. Tulencik also served as the Respondent's counsel at the trial in this case, but did not testify.

Union.²⁹

The Respondent passed a non-economic proposal to the Union. It did not pass an economic proposal. Wentz stated that the only three issues which were outstanding as of the October 10, 2024, bargaining session were wages, health insurance, and seniority and those were the subjects they needed to negotiate. However, the Respondent's non-economic proposal included numerous new changes. They included modifying the grievance procedure to require mediation of a grievance with the Federal Mediation and Conciliation Service (FMCS) at step 3 before proceeding to arbitration at step 4. In addition, if any time deadline was not met, the grievance would not be further processed. The changes also included that employees could not engage in a sympathy strike and could not honor a primary picket line. Beyond these modifications, the Respondent maintained certain proposals from October 10, 2024, including changing an employee's probationary period from 30 to 90 days, and restricting the Union's ability to access the Respondent's Dublin facility.³⁰

The next bargaining session occurred on June 13. The Respondent made a new proposal on wages, which included an increase of \$0.75 per hour in years 1 and 2 of the contract and \$0.50 per hour in year 3. This compared to \$2.00 per hour in year one and reopeners in years 2 and 3 in the Respondent's October 10, 2024 offer. The Respondent also proposed a merit pay option, giving it discretion to reward larger increases to employees it deemed to be high performers. Finally, the Respondent resubmitted its earlier October 10, 2024 proposal to change its health insurance plan from that provided by the Union to the Respondent's plan, with the percentages to be paid by the Respondent and an employee remaining the same.³¹

At the June 16 bargaining session, the Respondent passed a proposal on minimum staffing levels stating: "The bargaining unit staffing level may go below 90 total bargaining unit employees because of natural attrition, economic exigent circumstances, or act of God, including but not limited to resignations, retirements, terminations, or a pandemic. This language is not meant to be all inclusive."

²⁹ Tr. 133-134, 419-420; GC Exhs. 7-23. I issued a sequestration order at the start of the trial. (Tr. 27-28.) Rogers testified briefly about her note taking of the bargaining sessions. (Tr. 418-427.) Prior to being called as a witness by the Respondent, Rogers was in the hearing room during the testimony of other witnesses. Those witnesses did not testify about Rogers' note taking at the sessions. The General Counsel moves to have Rogers' testimony stricken. Although the Respondent committed a technical violation of the sequestration order, I decline the General Counsel's request, as Rogers' testimony was very limited and dealt only with her note taking. She did not testify about the subjects of the other witnesses' testimony.

³⁰ GC Exh. 7; Jt. Exh. 11; Tr. 135-136.

³¹ Jt. Exhs. 12, 13, 33 (p. 7); GC Exh. 8; Tr. 137. Also on June 13, Laney filed another certification of compliance stating that, on June 10, 2025, the parties agreed to meet on June 11, 13, 16, 18, 23, 25, as well as July 8, 21 and 25, 2025.

On June 17, Wentz submitted a second request for information to Tulencik. Wentz requested:

1. A description of the corporate relationship between Sutphen Corporation and Sutphen Towers.
2. A description of any board or other governing body of Sutphen Corporation, including the names and titles of all members.
3. A description of any board or other governing body of Sutphen Towers, including the names and titles of all members.
4. A description of the duties of each board or other governing body member referenced above related to collective bargaining and labor relations.
5. A list of all individuals who have an ownership or other financial interest in Sutphen Corporation and a detailed description of that interest.
6. A list of all individuals who have an ownership or other financial interest in Sutphen Towers and a detailed description of that interest.
7. Identification of all members of the management team and/or leadership group referred to by Ms. Sutphen Chambers on June 16, 2025, including their job titles and locations where they maintain offices.
8. A description of the duties of each member of the management team/leadership group referenced above related to collective bargaining and labor relations.

Wentz stated that he was making the request because, in the bargaining session the day before, Kevin Kuszmaul, Vice President of Operations at the Respondent's facility in Hilliard, Ohio (Sutphen Towers-Hilliard), participated in collective bargaining negotiations on behalf of Sutphen Corporation-Dublin. Wentz further stated that, during the bargaining session, Sutphen-Chambers represented that Kuszmaul was a member of the management team and/or leadership group. Wentz concluded by saying, based on the statements made by Sutphen-Chambers, the Union was investigating the relationship between Sutphen Corporation and Sutphen Towers for

purposes of collective bargaining.³²

On June 18, Wentz requested that Tulencik provide the Union with the “notes” the Respondent was taking during bargaining because the Union believed they were a transcript of the sessions. Tulencik refused to provide the notes. The Union again advanced its position that the only contract provisions the parties could negotiate were the ones open at the start of the bargaining hiatus in October 2024. The Union asserted that it was rejecting the Respondent’s attempt to bring new issues into bargaining after the 8-month hiatus.³³

On June 23, Tulencik responded to Wentz’ second information request, stating that the Respondent would not provide the information sought by the Union because it did not relate to employees’ terms and conditions of employment and thus was not relevant to the Union’s bargaining responsibilities. The Respondent never provided the requested information to the Union.³⁴

On June 25, the parties met again. The Respondent withdrew its prior proposal of a minimum staffing level of 90 employees. Tulencik explained that it was a permissive subject of bargaining. The Respondent also asserted that it withdrew the proposal because of the Union’s discussions with the Columbus, Ohio city council which, it accused, was an attempt to interfere with its business. Wentz responded that the Union had the right to petition the city council.³⁵

Also on that date, Wentz sent an email to Tulencik, in which he stated that the Respondent had refused to bargain in good faith since it returned to the bargaining table on June 11 and that the Union’s ongoing strike was over that refusal. He cited the Act, the informal settlement agreement, and the Union’s most recent unfair labor practice charges as the source of the Respondent having to bargain in good faith.³⁶

On June 30, the Respondent sent a bargaining update to unit employees. In it, the Respondent detailed its proposals on paid holidays, paid time off, wages, overtime, and health insurance benefits. The Respondent stated that the existing Good Friday holiday would be changed to a floating holiday, the date of which the Respondent would choose at the start of a year. On paid time off, the Respondent explained that it had proposed to change PTO from daily to hourly and made improvements in how fast

³² GC Exhs. 1(n), 9; Jt. Exh. 14. Wentz testified at the hearing that the Union requested the information because the Respondent had an individual who worked at a different facility than Dublin as part of its bargaining team on June 16. He further stated that the Union wanted to determine with whom it was bargaining and what role the individual from another facility was playing in bargaining. (Tr. 143–146.)

³³ GC Exhs. 10, 11, 46; Jt. Exh. 15, 16, 17; Tr. 146–152.

³⁴ GC Exh. 1(n), 11; Jt. Exh. 17; Tr. 146, 151.

³⁵ Tr. 153–155, 228–229; Jt. Exh. 19; GC Exh. 12.

³⁶ GC Exh. 54.

employees could accrue PTO. On wages, the Respondent announced that it proposed a \$0.80 per hour increase in year one, \$0.75 per hour in year two, and \$0.50 per hour in year three. It also noted that it proposed that employees could receive merit pay raises. On overtime, the Respondent said it proposed transitioning from the existing 9th hour guarantee of overtime to the Respondent offering overtime as required by its business needs. Finally, the Respondent stated that it proposed moving health insurance from the existing Union plan to the Respondent's plan with no change in cost.³⁷

On July 8, the Union proposed that the parties move to interest-based bargaining. It provided the Respondent with a list of its five most important topics and the Union's position on them to initiate interest bargaining. In that same meeting, Wentz stated that the parties were in a serious labor dispute and the Union may reach out to other cities that might be interested in it. On July 21, the Respondent provided responses to each of the Union's five areas of interest but did not submit its own list of five topics that it was prioritizing in bargaining. It did not affirmatively agree to move to interest bargaining.³⁸

Bargaining between the Respondent and the Union continued from August 6 through January 7, 2026. In total, the parties met 17 times from June 11 through January 7, 2026, but for a total time of only 15+ hours.³⁹

At the time that bargaining ceased, the Respondent maintained its positions that:

³⁷ GC Exh. 5; Jt. Exh. 31.

³⁸ Tr. 157-164, 262-263, 309-311, 343-348, 363; GC Exhs. 13, 14, 26, 39; R. Exhs. 31, 32; Jt. Exh. 32. The Union also made another information request to the Respondent on July 21 concerning the Respondent's wage and health insurance proposals. The Respondent did not fully respond to that request.

On August 6, Vandak proposed that he and Sutphen-Chambers meet one-on-one with no attorneys present, but the Respondent refused that request. (Jt. Exh. 15.)

On August 8, the Union advised the Respondent that the international Teamsters union was ready to announce a United States and Canada boycott of Sutphen until the strike was resolved and that the Union would advise politicians and customers. On September 24, the Union implemented the boycott and notified other municipalities. (Tr. 231, 486; GC Exh. 15, p. 1; R. Exhs. 93, 94.)

During the strike and negotiations, the Union also utilized an electronic traveling billboard with messages concerning union busting by the Respondent, as well as pictures of Sutphen-Chambers and Laney. The Union sometimes stationed the billboard outside the homes of Sutphen-Chambers and Laney. The Union also sent out a number of flyers about the labor dispute. (Tr. 232-233, 405-407, 482; R. Exhs. 5, 6, and 92.)

³⁹ The time figure is based upon entries in the Respondent's notes of the sessions. (GC Exhs. 7-23.)

The findings of fact do not further detail the parties' negotiations after July 21 because the General Counsel's legal arguments concerning the Respondent's alleged surface bargaining only rely upon the bargaining in September and October 2024, and May through July 2025.

- (1) The probationary period for new employees was 90 days (up from 30 in the expired contract);
- (2) The agreement would not include minimum staffing levels/job protections;
- (3) An existing holiday would be changed to a floating holiday at the Respondent's discretion;
- (4) Mediation is added to the grievance and arbitration provision; and
- (5) Existing language that permitted employees to honor a primary picket line is deleted.⁴⁰

With respect to wages, the Respondent's only change since its first proposal back in June was to increase the year 1 wage increase from 75 cents initially to 82 cents. The increases in years 2 and 3 remained the same, 75 cents in year 2 and 50 cents in year 3. The Respondent also proposed no retroactivity to any wage increases. The Respondent never re-proposed its wage proposal from October 10, 2024, where it offered a \$2.00 per hour increase and wage reopeners in years 2 and 3.⁴¹

On February 18, 2026, the Union ended its strike, without a successor contract in place.⁴²

LEGAL ANALYSIS

I. DID THE RESPONDENT'S CESSATION OF FUND CONTRIBUTIONS TO PAY FOR STRIKING EMPLOYEES' HEALTH INSURANCE PREMIUMS VIOLATE SECTION 8(A)(1), (3), AND (5)?

The General Counsel's complaint alleges that the Respondent violated Section 8(a)(1), (3), and (5) on May 28, 2025, when it ceased paying health insurance premiums for unit employees who went on strike.

Although it is well established that an employer is not required to finance a strike against itself, it is equally well established that it may not withhold accrued benefits from strikers based on their participation in the strike. *Hawaiian Telcom, Inc.*, 365 NLRB 348, 349 (2017). The framework for determining whether an employer's withholding of benefits is unlawful is set forth in *Texaco, Inc.*, 285 NLRB 241 (1987) and *NLRB v. Great Dane Trailers*, 388 U.S. 26 (1967). Under the test, the General Counsel bears the initial burden of proving at least some adverse effect of the benefit denial on employee rights. The General Counsel can meet this burden by showing that (1) the benefit was accrued and (2) the benefit was withheld on the apparent basis of a strike.

⁴⁰ Jt. Exh. 29, pp. 2-3, 5-6, 10, 14, 22.

⁴¹ Jt. Exh. 29 pp. 14-15; Tr. 187.

⁴² Tr. 191; R. Exh. 7. During the strike, the Union repeatedly stated in communications to employees and the press that the strike was an unfair labor practice strike. (R. Exh. 4, p. 2; R. Exh. 72, p. 3.; R. Exh. 75, p. 1; R. Exh. 76 p. 1.)

Once the General Counsel makes an initial showing of at least some adverse effect on employee rights, the burden shifts to the employer to establish a legitimate and substantial business justification for its cessation of benefits. One way an employer may meet this burden is by demonstrating reliance on a nondiscriminatory contract interpretation that is “reasonable and . . . arguably correct,” and thus sufficient to constitute a legitimate and substantial business justification for its conduct. Moreover, as under *Great Dane*, even if the employer proves business justification, the Board may nevertheless find that the employer has committed an unfair labor practice if the conduct is demonstrated to be “inherently destructive” of important employee rights or motivated by antiunion intent.

As to the GC’s initial burden here, no dispute exists that unit employees went on strike on May 28, 2025, and the Respondent stopped making health insurance benefit payments to the MCTWF because the employees did so. The question is whether the employees’ health insurance benefits were accrued.

An accrued benefit is one that is already owing; an employee’s entitlement to it does not depend on a return to work or future employment, but rather stems from past work for or established employment relationship with the employer. *Murphy Oil USA, Inc.*, 286 NLRB 1039 (1987). A benefit is accrued if it is due and payable on the date on which the employer denied it. Proof of accrual on a case-by-case basis most often turns on interpretation of the relevant collective-bargaining agreement, benefit plan, or past practice. *Hawaiian Telcom*, above.

In *Hawaiian Telcom*, the Board held that an employer violated Section 8(a)(1), (3), and (5) by cancelling striking employees’ medical benefits that were accrued because of their participation in a strike. There, the collective-bargaining agreement contained a broad eligibility clause providing medical benefits to all employees and did not contain a time-in-service requirement to receive the benefits. Thus, employees were entitled to the benefits simply by virtue of their employment with the company. The contract also specified two circumstances where the employer could discontinue health benefits: by agreement between the employer and the union or upon 30 days after an employee left employment. No mention was made of ceasing benefits if employees went on strike. Moreover, although the contract had expired, that expiration did not permit the employer to withhold an accrued benefit from its employees or to unilaterally change their terms and conditions of employment. See also *Gulf & Western*, 286 NLRB 1122, 1124 (1987); *Litton Financial Printing Division v. NLRB*, 501 U.S. 190, 206 (1991).

The situation in this case is the same as in *Hawaiian Telcom*. The collective-bargaining agreement between the Respondent and the Union stated only that the Respondent “will provide contribution to health insurance premiums for Local 284 Members under the [MCTWF]”, then set forth the percentage of the premium the Respondent would pay each year. This language mandates that the Respondent make the contributions (“will provide”) for all bargaining-unit employees. The provision

contains no time-in-service requirement to receive benefits. The contract also does not contain any exceptions that would permit the Respondent to stop contributions because employees went on strike. That the contract had expired some months before the payment cessation did not justify the Respondent's action.

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To combat this conclusion, the Respondent first argues that the benefits are not accrued because the collective-bargaining agreement in *Hawaiian Telcom* contained a provision that the health benefits could not be altered without the consent of the employer and the union, but the contract here does not have such a provision. This argument misses the boat because the Board did not rely upon that contract provision when reaching its conclusion that the benefits accrued. Instead, the Board relied upon the broad eligibility clause providing the benefits to employees. The provision relied upon by the Respondent was one of two exceptions that permitted the employer to cease making contributions. Neither party had done so. Here, the contract language does not even contain any exceptions that would permit the Respondent to cease making contributions.

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The Respondent also argues at length that language in the fund Participation Agreement and associated Summary Plan Description and Employee Accounts – Policies and Procedures policy establish that the Respondent did not owe any payments to the fund for the striking employees. But the Respondent's obligation to make the payments arises out of the collective-bargaining agreement, not the fund documents. The General Counsel does not, as the Respondent claims, rely upon the fund documents to establish the violation.

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In any event, the fund documents do not state that the Respondent could cease making contributions if employees went on strike. Instead, the language addresses how striking employees can continue to receive health insurance if the Respondent ceased making contributions. In that regard, striking employees can use "benefit bank" weeks previously earned to temporarily extend their health insurance coverage if, as happened here, the employer did not make contributions to the fund. The language also enabled striking employees to obtain up to eight weeks of extended coverage after they exhausted their benefit bank weeks. The continuation and extension of health insurance coverage was contingent on the strike being sanctioned by the International Brotherhood of Teamsters, which did not happen here.

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The Respondent's reliance on this language is misplaced, as it has nothing to do with whether the Respondent was required to make fund contributions for striking employees. The language addresses how such employees could maintain health insurance coverage during a strike, not who was paying for it. The Participation Agreement and supporting documents make no assertion that the Respondent did not have to make fund contributions when employees were on strike.

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Accordingly, I conclude that the benefits are accrued and the General Counsel met the initial *Texaco/Great Dane* burden.

Thus, the burden shifts to the Respondent to demonstrate it had a legitimate and substantial business justification for ceasing payments for employees' health insurance. The Respondent argues it had a "nondiscriminatory contract interpretation that was reasonable and arguably correct." It again relies upon the Participation Agreement and associated documents. For the same reasons discussed above, I conclude that the Respondent's interpretation of the documents and their impact on whether fund payments were due is not a reasonable one.

Finally, the Respondent argues that the General Counsel's allegation is barred by Section 10(b) of the Act. That section states that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board..." 29 U.S.C. § 160(b). The Section 10(b) period does not begin to run until the charging party has "clear and unequivocal notice," either actual or constructive, of facts necessary to support a ripe unfair labor practice. *St. Barnabas Medical Center*, 343 NLRB 1125, 1126 (2004). A charging party has constructive notice of an unfair labor practice "where it could have discovered the alleged misconduct through the exercise of reasonable diligence." *Id.* at 1126-1127.

On December 10, 2025, the Union filed its charge alleging that the Respondent unlawfully ceased making health insurance contributions to the fund. Thus, the 10(b) period runs back to June 10, 2025. The Respondent contends the Union knew the Respondent would not pay striking employees as early as September 27, 2024, well outside the 10(b) period. On that date, the Union filed a charge alleging that the Respondent unlawfully told employees that they would not have health insurance coverage beginning on the first day of a strike. Even if the Respondent said this to employees, it is theoretical. It is not notification to the Union that the Respondent ceased paying premiums on June 1, 2025 after the Union went on strike three days earlier. The Respondent did not contemporaneously notify the Union of its contribution cessation. Thus, the Respondent has not established that the Union had clear and unequivocal notice of that cessation. *Taylor Ridge Paving & Constr., Co.*, 365 NLRB 1839, 1842 (2017) (a threat of future action does not constitute clear and unequivocal notice that an employer has unilaterally changed working conditions); *Howard Electrical & Mechanical*, 293 NLRB 472, 475 (1989) ("Notice of an intent to commit an unlawful unilateral implementation . . . does not trigger the 10(b) period with respect to the unlawful act itself."), *enfd.* 931 F.2d 63 (10th Cir. 1991).⁴³

⁴³ R. Exh. 91; Tr. 192-193; 238-239. Under the fund Participation Agreement, payments are due the first of each month.

The Respondent violated Section 8(a)(1), (3), and (5) by ceasing to make health insurance fund contributions due to its bargaining-unit employees going on strike.⁴⁴

II. DID THE RESPONDENT VIOLATE SECTION 8(A)(5) AND (1) BY REFUSING TO
PROVIDE THE UNION WITH RELEVANT, REQUESTED INFORMATION?

The General Counsel's complaint alleges that, since about May 31 and June 18, 2025, the Respondent violated Section 8(a)(5) and (1) by refusing to provide the Union with relevant, requested information.

An employer has the statutory obligation under Section 8(a)(5) of the Act to provide, on request, relevant information that a union needs for the proper performance of its duties as a collective-bargaining representative. *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979); *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-436 (1967) (citing *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152 (1956)). Those duties include the negotiation of collective-bargaining agreements. *West Penn Power Co.*, 346 NLRB 425, 427-428 (2006).

⁴⁴ On the fourth day of the hearing and after having already called its first witness in its case-in-chief, the Respondent moved to dismiss on 10(b) grounds the General Counsel's complaint allegation concerning the cessation of fund payments. The Respondent relied upon Wentz's testimony in the General Counsel's case-in-chief that the Union did not file a charge alleging that the Respondent unlawfully ceased making contributions until December 10, 2025 but the complaint alleged that the cessation occurred on May 28, 2025, outside the 10(b) period. The General Counsel responded with a request to reserve argument on this issue for the parties' post-hearing briefs. The Respondent did not object to doing so. Thus, I granted the General Counsel's request and deferred ruling on the Respondent's motion. (Tr. 396-397, 435-436, 505.)

The Board's very recent decision in *BNF Painting*, 375 NLRB No. 60 (Oct. 8, 2026), suggests that I should have taken a different approach. In that case, an employer moved to dismiss an allegation due to a lack of sufficient evidence immediately after the General Counsel rested the case-in-chief. The judge deferred ruling on the motion until the final decision. The Respondent objected to the deferred ruling because of the potential need for it to present evidence to defend against the allegation that the General Counsel failed to enter to sustain the initial burden. The Board noted that, in *Yale University*, 330 NLRB 246, 247 (1999), it ruled that, to overcome a motion to dismiss at the close of the case-in-chief, the General Counsel must satisfy the duty to establish a prima facie case by presenting evidence sufficient to demonstrate the occurrence of an unfair labor practice. The Board stated that the General Counsel had not sustained that burden and the judge could have granted the motion to dismiss when it was made. Although the Board said it was "troubled" by the judge's failure to provide an explanation for deferring ruling on and ultimately denying the Respondent's motion, the Board did not find that the judge abused her discretion in doing so.

In retrospect, I would have denied the Respondent's motion when it was made, because Wentz's testimony in the General Counsel's case-in-chief established that the Respondent ceased making fund contributions without notifying the Union it was doing so. Thus, the General Counsel met the *Yale University* burden. In any event, I deny the Respondent's motion now for the reasons stated herein in finding that its payment cessation was unlawful. I further note that the Respondent did not object to the deferred ruling. It also presented extensive evidence on the merits of the complaint allegation and, thus, was not denied due process.

Where the union's request is for information pertaining to employees in the bargaining unit, that information is presumptively relevant and the employer must provide it. *Palace Station Hotel & Casino*, 368 NLRB No. 148, slip op. at 4 (2019). To demonstrate relevancy, a liberal, discovery-type standard applies, and the union's initial burden is "not exceptionally heavy." *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982), enfd. 715 F.2d 473 (9th Cir. 1983). Even so, "[t]he union's explanation of relevance must be made with some precision; and a generalized, conclusory explanation is insufficient to trigger an obligation to supply information." *Disneyland Park*, 350 NLRB 1256, 1258 fn. 5 (2007); *Island Creek Coal Co.*, 292 NLRB 480, 490 fn. 19 (1989).

A. The Union's May 30 Information Request

On May 30, the Union made seven requests for information based upon its suspicion that the Respondent was performing bargaining-unit work at a different facility. The Respondent admittedly did not provide any documents in response to the requests. The Respondent also did not tell the Union that no responsive documents existed.

Requests for information based upon a reasonable suspicion that bargaining-unit work was being relocated or performed by non-unit personnel are presumptively relevant to the Union's bargaining duties. *CenturyTel of Montana, Inc.*, 373 NLRB No. 128, slip op. at 3-4 (2024); *Boeing Co.*, 363 NLRB 651, 656 (2015). At the time that Vandak made the requests, Laney already confirmed to him that the Respondent moved three trucks to a different facility. This formed the basis of the information requests.

The Respondent's only defense to this allegation is that Laney provided Vandak with all the information Vandak requested in their email discussions. The Respondent does not identify what language constituted a response to the request and a review of the communications establishes that the Respondent's assertion is not accurate.

The Respondent violated Section 8(a)(5) and (1) by refusing to provide information in requests 3, 4, 5, and 6 of the Union's May 30 information request.

B. The Union's June 17 Information Request

Where an information request concerns non-unit employees, the union bears the burden of establishing relevancy. *Public Service Electric & Gas Co.*, 323 NLRB 1182, 1186 (1997).

At the negotiation session on June 16, the Respondent added Kevin Kuszmaul to its bargaining team. Kuszmaul is the Vice President of Operations at Sutphen Towers-Hilliard, a different Respondent facility that is not unionized. President Sutphen-

Chambers told the Union that Kuszmaul was a member of the management team and/or leadership group.

Kuszmaul's presence at the bargaining session combined with Sutphen-Chambers' statement as to his role with the Respondent raised a question concerning the relationship between Sutphen-Dublin and Sutphen Towers-Hilliard. The information sought went to that issue. Furthermore, Wentz stated in the information request that the Union was investigating the relationship between the two facilities for purposes of collective bargaining. As a result, the Union established the relevancy of the information requested.

Relying on *United Parcel Service of America*, 362 NLRB No. 22, slip op. at 3 (2015), the Respondent argues that the General Counsel failed to demonstrate the relevance of the requested information. Specifically, the Respondent points to its response to the Union that the information requested was not relevant and the Union's failure to reply and explain the relevance. But Wentz already explained the relevance of the information in the request itself. Beyond that, the Respondent did not explain the basis of its claim that the information was not relevant and did not offer to cooperate with the union to reach a mutually-acceptable accommodation. The Respondent's defense is meritless.

The Respondent violated Section 8(a)(5) and (1) by refusing to provide information requested by the Union on June 17.

III. DID THE RESPONDENT VIOLATE SECTION 8(A)(5) AND (1) BY FAILING TO MEET AT REASONABLE TIMES TO REACH A SUCCESSOR CONTRACT?

The General Counsel's complaint alleges that the Respondent violated Section 8(a)(5) and (1) by refusing to meet for collective bargaining during the months of April and May 2025, despite the Union's request to meet. The complaint also alleges that the Respondent refused to meet with the Union more than twice per month in the months of July, August, and September 2025, despite the Union's request to meet more frequently.

Section 8(d) of the Act requires that an "employer and the representative of the employees . . . meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment. . . ." Thus, parties have a duty to bargain in good faith by conferring at reasonable times and at reasonable intervals. *Kuna Meat Co.*, 304 NLRB 1005 (1991), *enfd.* 966 F.2d 428 (8th Cir. 1992). In addition, "[t]he Act does not permit a party to hide behind the crowded calendar of his negotiator, whether he be a busy labor attorney or an overworked company officer." *Radiator Specialty Company*, 143 NLRB 350, 369 (1963). The Board considers the totality of the circumstances when determining whether a party has satisfied its duty to meet at reasonable times. *Bemis Co., Inc.*, 370 NLRB No. 7 (2020); *Garden Ridge Management, Inc.*,

347 NLRB 131, 132 (2006) (citing to *Calex Corp.*, 322 NLRB 977, 978 (1997), *enfd.* 144 F.3d 904 (6th Cir. 1998)).

Here, I conclude the Respondent refused to meet for bargaining at reasonable times from April 15 through June 11, 2025. On April 15, the parties signed off on the informal settlement agreement. On April 24, the Union sent a request to the Respondent to schedule bargaining dates. The Union reiterated that request on May 1. The Respondent did not respond until May 13, some three weeks after the initial request. The only reason the Respondent gave for the delayed response was that it was working to “deconflict” schedules and its representatives had been too busy to meet. Its reliance on the busy attorney excuse is unavailing. That the Respondent went two months before sitting down at the bargaining table does not conform to its Section 8(d) duty to meet at reasonable times.

However, I conclude the Respondent met at reasonable times and intervals during the months of July, August, and September 2025. The parties met twice in July, twice in August, and three times in September, or seven times over three months. While not the most robust number of sessions, the total is not, on its face, indicative of an unlawful failure to meet. In addition, the bargaining notes from their sessions reveal a significant back and forth on disputed terms and conditions of employment. They also reveal that the Union spent considerable time talking about topics other than employees’ terms and conditions of employment. This included the potential for the Union to contact other municipalities concerning the Respondent’s conduct in negotiations. It also included the Union discussing a potential boycott of the Respondent. In the totality of these circumstances, I find that the Respondent met at reasonable times in July, August, and September 2025.

IV. DID THE RESPONDENT REFUSE TO BARGAIN IN GOOD FAITH?

The General Counsel’s complaint alleges that, by its overall conduct over the period from September 4, 2024 to the present (January 7, 2026), the Respondent failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of unit employees. The specific acts of bad faith pled are:

- (1) unilaterally ceasing the payment of health insurance premiums for striking employees;
- (2) refusing twice to provide relevant, requested information to the Union;
- (3) refusing to meet for collective bargaining for the months of April and May 2025, despite the Union’s requests to meet;

(4) refusing to meet with the Union more than twice per month in July, August, and September 2025, despite the Union's requests to meet more frequently;

(5) engaging in bad-faith, surface bargaining not intended to reach a final agreement by, among other things

a. on June 11, 2025, resubmitting several proposals from its October 10, 2024 proposal package along with numerous other new non-economic proposals and refusing to make economic proposals;

b. on June 13, 2025, changing its October 2024 wages proposal from \$2 per hour to \$0.75 per hour in the first year of the contract; and

c. eliminating its prior proposal that guaranteed the Respondent would maintain 90 bargaining-unit jobs.

As will be detailed below, the General Counsel also relies on other, unpled conduct by the Respondent to support these pled allegations.

A. Legal Framework

The duty to bargain in good faith under Section 8(d) of the Act requires both the employer and the union to negotiate with a "sincere purpose to find a basis of agreement," *Atlanta Hilton & Tower*, 271 NLRB 1600, 1603 (1984) (quoting *NLRB v. Herman Sausage Co.*, 275 F.2d 229, 231 (5th Cir. 1960)). Although the statute cannot compel a party to make a concession, an employer is, nonetheless, "obliged to make some reasonable effort in some direction to compose his differences with the union, if [Section] 8(a)(5) is to be read as imposing any substantial obligation at all." *Ibid.* (quoting *NLRB v. Reed & Prince Mfg. Co.*, 205 F.2d 131, 135 (1st Cir. 1953), cert. denied 346 U.S. 887 (1953)). (Emphasis in original.) Therefore, "mere pretense at negotiations with a completely closed mind and without a spirit of cooperation does not satisfy the requirements of the Act." *Mid-Continent Concrete*, 336 NLRB 258, 259 (2001), *enfd. sub nom. NLRB v. Hardesty Co.*, 308 F.3d 859 (8th Cir. 2002) (quoting *NLRB v. Wonder State Mfg. Co.*, 344 F.2d 210 (8th Cir. 1965)).

In determining whether a party has violated its statutory obligation to bargain in good faith, the Board examines the totality of the party's conduct, both at and away from the bargaining table. *Bemis Co., Inc.*, 370 NLRB No. 7 (2020); *Public Service Co. of Oklahoma (PSO)*, 334 NLRB 487, 487 (2001), *enfd.* 318 F.3d 1173 (10th Cir. 2003); *Overnite Transportation Co.*, 296 NLRB 669, 671 (1989), *enfd.* 938 F.2d 815 (7th Cir. 1991). From the context of the party's total conduct, the Board must decide 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. *PSO*, above.

The Board considers several factors when evaluating a party's conduct for evidence of surface bargaining. These include delaying tactics, the nature of the bargaining demands, unilateral changes in mandatory subjects of bargaining, and efforts to bypass the union. *Atlanta Hilton & Tower*, above at 1603. It has never been required that an employer must have engaged in each of those enumerated activities before it can be concluded that bargaining has not been conducted in good faith. *Altorfer Machinery Co.*, 332 NLRB 130, 148 (2000).

“Although the Board does not evaluate whether particular proposals are acceptable or unacceptable, the Board will examine proposals when appropriate and consider whether, on the basis of objective factors, bargaining demands constitute evidence of bad-faith bargaining.” *PSO*, above (citing *Reichhold Chemicals*, 288 NLRB 69 (1988), *affd.* in relevant part 906 F.2d 719 (D.C. Cir. 1990), *cert. denied* 498 U.S. 1053 (1991)). An inference of bad-faith bargaining is appropriate when the employer's proposals, taken as a whole, would leave the union and the employees it represents with substantially fewer rights and less protection than provided by law without a contract. *PSO* at 487-488. This includes proposals that require a union to cede its representational functions. *Regency Service Carts*, 345 NLRB 671, 675 (2005).

B. Discussion

Before analyzing the substance of the General Counsel's complaint allegations, a preliminary matter must be addressed: the proper timeframe to evaluate the Respondent's conduct. The complaint alleges that the Respondent engaged in bad-faith bargaining from September 7, 2024 through January 7, 2026. The parties' settlement agreement was finalized on April 15, 2025. Thus, the pled time period includes both presettlement and postsettlement conduct and the General Counsel relies upon presettlement conduct as part of its argument that the Respondent engaged in bad-faith bargaining. The question then is whether the General Counsel can rely upon presettlement conduct and, if so, for what purpose.

As a general rule, a settlement, if complied with, will be held to bar subsequent litigation of all prior violations. *Hollywood Roosevelt Hotel Co.*, 235 NLRB 1397 (1978). Nonetheless, it is well settled that conduct that has been the subject of a settlement agreement may be litigated in a subsequent proceeding where the settlement agreement specifically reserved the right to litigate the conduct. *Midwestern Personnel Services*, 331 NLRB 348, 352 (2000), *enfd.* 322 F.3d 969 (7th Cir. 2003). Further, a judge, the Board, and the courts may find that presettlement conduct supports allegations of postsettlement unfair labor practices where the settlement agreement explicitly permits them to make “findings of fact” and “conclusions of law” with respect to the settled

conduct. *Id.*; see also *Outdoor Venture Corp.*, 327 NLRB 706, 708 (1999) (settled alleged direct dealing and plant closure threats constituted unfair labor practices that prolonged a strike, thereby converting it to an unfair labor practice strike); *Council's Center for Problems of Living*, 289 NLRB 1122, 1141-1143 (1988) (settled alleged unlawful discharges constituted unfair labor practices, such that subsequent strike was an unfair labor practice strike), *enf. denied* on other grounds 897 F.2d 1238 (2d Cir. 1990).

The settlement agreement in this case contained a "Scope of the Agreement" provision which states in relevant part:

The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned cases for any relevant purpose in the litigation of this or any other cases, and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

This is the same language at issue in *Midwestern Personnel Services* and *Outdoor Venture Crop.*, above. Thus, the General Counsel is permitted to litigate the substantive lawfulness of presettlement conduct and use any violations to establish postsettlement unfair labor practices. The Respondent's conduct in September and October 2024 is fair game to establish that it engaged in bad-faith bargaining.⁴⁵

Turning to that presettlement conduct, the Respondent's then-attorney Austin told the Union at a bargaining session on September 27, 2024, that the Respondent could not respond to union wage proposals because its CFO was unavailable and could not review those proposals. Thus, Austin lacked the authority to discuss or enter into an agreement on wages. Austin also said that the Respondent wanted to negotiate ground rules and non-economic proposals first, but he failed to pass any such proposals to the Union.

At the bargaining session on October 10, Austin refused to meet face-to-face with the Union and instead would only pass documents to or communicate with the mediator. He gave no explanation as to why. The Respondent submitted its first

⁴⁵ Even if this was not the case, presettlement conduct underlying the settlement agreement also can be entered as background evidence establishing the motive or object of a respondent in its postsettlement activities. See, e.g., *Host International*, 290 NLRB 442, 442 (1988); *Electrical Workers Local 13 (M.H.E. Contracting)*, 227 NLRB 1954, 1954 fn. 1 (1977); *Northern California District Council (Joseph's Landscaping Service)*, 154 NLRB 1384, 1384 fn. 1 (1965), *enfd.* 389 F.2d 721 (9th Cir. 1968); *Steves Sash & Door Company*, 164 NLRB 468, 476 (1967), *enfd.* in pertinent part 401 F.2d 676, 678 (5th Cir. 1968). That it is proper to admit this evidence is further substantiated by the Respondent addressing the parties' presettlement conduct in its brief. *East End Bus Lines, Inc.*, 366 NLRB No. 180 (2018). Finally, I note that the Regional Director did not revoke the settlement agreement.

comprehensive contract “supposal.” In it, the Respondent deleted the union security clause; increased new employees’ probationary period from 30 to 90 days; reduced vacation pay; put limitations on union access to the facility; removed its handbook from being a part of the contract; transferred employee health insurance from the Union’s plan to the Respondent’s plan; and required the Union to agree that it would not represent employees at any other Respondent facility. The Respondent provided no justification for these proposals. Without question, these proposals, in combination, were draconian.

After the Union filed a charge on that same date alleging that the Respondent engaged in bad-faith bargaining based upon its conduct and proposals that day, Austin unilaterally cancelled the bargaining session scheduled for the next day. He told Wentz that the Respondent was going to seek information from the NLRB’s Division of Advice about the impact of the charge filing on negotiations. The Union and the mediator showed up for the October 11 session, but the Respondent did not.

The filing of an unfair labor practice charge does not toll a party’s obligation to engage in good-faith negotiations. *RBE Electronics of San Diego*, 320 NLRB 80, 83 (1995) (employer violated Section 8(a)(5) and (1) of the Act by refusing to meet and negotiate in good faith with the Union while an unfair labor practice charge was pending). Austin had no basis for cancelling the session or failing to appear thereafter. Moreover, the Division of Advice is an office of the General Counsel and only provides advice on novel legal questions submitted by Regional Directors. It is not a source of advice for private practitioners. Any legal research regarding the (non) impact of a charge filing was Austin’s responsibility, not the Division of Advice’s.

The Respondent then ghosted the Union for 8 months. It did not respond to requests to continue bargaining from the Union and the mediator. It refused to bargain until the informal settlement agreement was finalized.

Based on the totality of the circumstances described above, the Respondent engaged in bad-faith bargaining that violated Section 8(a)(5) and (1) from September 27, 2024 through April 15, 2025.

The Respondent’s postsettlement conduct leads to the same conclusion for the time period from April 15, 2025 through January 7, 2026. First, it committed other unfair labor practices. The Respondent violated Section 8(a)(5), (3), and (1) by unilaterally ceasing its contribution to employees’ health insurance premiums. It also violated Section 8(a)(5) by twice refusing to provide requested, relevant information that would have assisted the Union with the negotiations. These are per se breaches of the duty to bargain. The Respondent also refused to meet at reasonable times from April 15 through June 11, 2025.

Next, the proposals submitted by the Respondent upon the resumption of bargaining in June 2025 show a pattern of regression and establish that the Respondent was engaged in surface bargaining. The Respondent provided no explanation for its regressive proposals.

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Its wage proposal on October 10, 2024 was an increase of \$2 per hour in the first year and wage reopeners in years 2 and 3. Its June 13, 2025 wage proposal reduced the first year wage increase to \$0.75 per hour and provided increases of \$0.75 and \$0.50 per hour in years 2 and 3. Thus, the proposal took away the immediate \$2.00 per hour increase the first year and replaced it with the \$2.00 spread across three years with no reopener possible to increase that amount. In that same June 13 proposal, the Respondent sought the inclusion of merit pay in the contract, subject to its own discretion in determining the employees who would receive such increases and what amounts they would be. It also sought the implementation of mediation to the grievance and arbitration procedure with no fixed timeframes and the potential for significant cost increases.

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On June 16, 2025, the Respondent proposed what the General Counsel and the Union correctly label a “force majeure” clause on job protection. Despite the parties having already exchanged proposals on the seniority provision which would have required a 90-person minimum of bargaining-unit employees, the Respondent now proposed that staffing levels could go below that number “because of natural attrition, economic exigent circumstances, or act of God, including but not limited to resignations, retirements, terminations, or a pandemic. This language is not meant to be all inclusive.” As worded, the provision gave the Respondent unlimited discretion to reduce the job guarantee until it no longer existed.

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Just nine days later on June 24, 2025, the Respondent abandoned its regressive job security proposal and replaced it with something even more oppressive: the elimination of the job security provision altogether. The Respondent did so because the Union had petitioned the Columbus city council for assistance in resolving its labor dispute with the Respondent, a protected activity under the First Amendment.

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Finally, the lack of progress being made at the bargaining table over the course of negotiations is noteworthy. The parties have met 17 times and have almost nothing to show for it. The total amount of time they have been in bargaining during those 17 meetings is only 15+ hours. This is due in large part to the Respondent’s lack of movement in its proposals, leaving little to discuss. The Respondent continues to refuse to re-offer its original wage proposal from October 2024, instead increasing its initial offer of \$0.75 per hour to \$0.82 per hour. It has refused to alter its proposed 90-day probationary period for new employees. It has maintained its deletion of the job protections provision. It has maintained its proposal on the floating holiday. It has maintained its proposal to replace the existing vacation provisions with an entirely new PTO system. It has maintained its proposal that mediation be added to the grievance

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and arbitration procedure. It has maintained its proposal to eliminate employees' ability to honor a primary picket line. The only impression left from the Respondent's conduct is that it is going through the motions and is not making a sincere effort to reach an agreement.

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To support its defense, the Respondent repeats ad nauseum that the Board does not have the authority to require it to agree to a proposal or to make a concession. Without question, that is the law. But the Board does have the authority to find that the Respondent's bargaining positions reflect a closed mind and pretense in negotiations, indicative of bad-faith bargaining. That is the proper legal conclusion here.⁴⁶

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Under the totality of the circumstances, the Respondent refused to bargain in good-faith from September 27, 2024 through January 7, 2026 in violation of Section 8(a)(5) and (1).⁴⁷

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V. WAS THE UNION'S STRIKE CAUSED, AT LEAST IN PART, BY THE
RESPONDENT'S UNFAIR LABOR PRACTICES?

The final legal question that must be resolved is whether the Union's strike from May 28, 2025 until February 18, 2026, was an unfair labor practice strike.

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⁴⁶ The Respondent also argues that its more stringent, postsettlement proposals were justified by its weathering the Union's strike. This argument is belied by the timing of the strike and postsettlement proposals. The strike began on May 28 and the Respondent's first regressive wage proposal was submitted to the Union on June 13. Other regressive proposals were submitted on June 16 and 25. At the time these proposals were made, the strike was barely 2-4 weeks old, hardly much to weather.

⁴⁷ At the hearing, the General Counsel sought to amend the complaint to include an allegation that the Respondent violated Section 8(a)(5) by contemporaneously creating a transcript of what was said at the bargaining sessions without notifying the Union. (Tr. 147-149, 279-283; GC Exh. 7-23, 46.) I deferred ruling on the motion, now grant it, but find no violation under extant Board law. The General Counsel relies upon the Board's decision in *Bartlett-Collins Co.*, 237 NLRB 770 (1978), *enfd.* 639 F.2d 652 (10th Cir. 1981), *cert. denied* 452 U.S. 961 (1981). There, the Board held that the presence of a court reporter during negotiations is a permissive subject of bargaining in which neither party can insist to impasse. Here, the General Counsel is seeking to extend *Bartlett-Collins* to treat a party's surreptitious recordings of collective-bargaining sessions as a *per se* violation of Section 8(a)(5). (See GC Memo 25-07.) An NLRB administrative law judge's duty is to apply established Board precedent which the U.S. Supreme Court has not reversed. It is for the Board, not me, to determine whether Board precedent should be extended in the manner sought by the General Counsel.

Even if I did consider the merits, I would conclude that Rogers' note taking, while detailed, did not amount to a transcript of the negotiations. The Respondent was entitled to take notes of the sessions. *NLRB v. Bartlett-Collins Co.*, 639 F.2d at 656 fn. 3 (court of appeals rejected employer's claim as "exaggerated" and "frivolous" that Board order meant no record of bargaining could be made, not even notes).

“It is well settled that if a strike is caused in part by an employer's unfair labor practice, the strike is an unfair labor practice strike.” *RGC (USA) Mineral Sands, Inc.*, 332 NLRB 1633, 1633 (2001), enfd. 281 F.3d 442 (4th Cir. 2002). Indeed, “[a]n unfair labor practice strike occurs even when the employer's unfair labor practice is not the sole or major cause or aggravating factor; it need only be a contributing factor.” *Id.* “[S]o long as an unfair labor practice has anything to do with causing the strike, it will be considered an unfair labor practice strike.” *Dorsey Trailers, Inc.*, 327 NLRB 835, 855 (1999) (internal citations omitted), enfd. in relevant part, 233 F.3d 831, 839 (4th Cir. 2000) (“A strike that is caused in whole or in part by an employer's unfair labor practices is an unfair labor practice strike.”). The causal connection between unfair labor practices and a strike may be inferred from the record as a whole. *Child Development Council of Northeastern Pennsylvania*, 316 NLRB 1145, 1145 (1995), enfd. 77 F.3d 461 (3d Cir. 1996). “It is not sufficient, however, merely to show that the unfair labor practices preceded the strike.” *Golden Stevedoring Co.*, 335 NLRB 410, 411 (2001). “Rather, there must be a causal connection between the two events.” *Id.*

The Union initiated its strike on May 28, 2025. At that point, the Respondent had not bargained with the Union for six weeks despite the requirement in the settlement that it do so. The Union sent the following email to the Respondent the night before:

This is to notify you that effective at midnight on May 27, 2025, Sutphen Corporation bargaining unit employees represented by Teamsters Local 284 are on strike. This is an unfair labor practice strike over Sutphen Corporation's refusal to bargain in good faith at reasonable times and intervals, as required by the National Labor Relations Act, and specifically, over its refusal to bargain for the entire month of May 2025.

The Respondent's response to the strike initiation was to immediately cease making health insurance premium payments for striking employees, an act that constituted a new unfair labor practice. Following the strike initiation, the Union referred to the strike as an unfair labor practice strike in press releases concerning the labor dispute. Picket signs also stated the strike was an unfair labor practice strike.⁴⁸ These communications establish that the strikers were motivated, at least in part, by the Respondent's prestrike and simultaneous unfair labor practices. *Rieth-Riley Construction Co., Inc.*, 374 NLRB No. 13 (2024); *Detroit Newspapers*, 326 NLRB 700, 707 (1998), revd. on other grounds sub nom. *Detroit Typographical Union No. 18 v. NLRB*, 216 F.3d 109 (D.C. Cir. 2000).

The Respondent argues that the strike was an economic one based upon an affidavit given by a union official in separate litigation. In the affidavit, the official stated that the strike “was caused primarily by lack of job security due to transfer of

⁴⁸ GC Exh. 38; R. Exh. 4, p. 2; R. Exh. 72, p. 3; R. Exh. 75, p. 1; R. Exh. 76 p. 1.

bargaining unit work.”⁴⁹ This argument misses the mark, because the Respondent’s unfair labor practices only have to be a part of the reason employees went on strike. It need not be the primary or only reason.

5 The Union’s strike was an unfair labor practice strike.⁵⁰

CONCLUSIONS OF LAW

- 10 1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
- 15 3. The following employees constitute a unit (the Unit) appropriate for the purposes of collective bargaining within the meaning of Section 9(a) of the Act:

20 All truck drivers, production workers and stock room employees, including shipping, receiving and warehouse employees of the Employer at its location at 6450 Eiterman Road, Dublin, Ohio, and excluding chemists, professional employees, salesman, office clerical employees, guards and supervisors as defined under the National Labor Relations Act.

25 4. The Respondent violated Section 8(a)(5) and (1) by refusing to bargain in good faith with the Union in the Unit from September 27, 2024, through January 7, 2026.

30 5. The Respondent violated Section 8(a)(5), (3), and (1) on June 1, 2025, by ceasing to pay the health insurance premiums of Unit employees who were on strike.

35 6. The Respondent violated Section 8(a)(5) and (1) by refusing to provide information to the Union requested on May 30 and June 17, 2025 that was relevant to the Union’s role as the collective-bargaining representative of Unit employees.

 7. The Respondent violated Section 8(a)(5) and (1) by refusing to meet at

⁴⁹ Tr. 402; R. Exh. 86.

⁵⁰ In light of my conclusions of law and the substantial support in the record for those conclusions, I decline the General Counsel’s request to draw adverse inferences against the Respondent for its lack of compliance with the General Counsel’s document subpoena.

reasonable times with the Union to bargain from April 15 through June 11, 2025.

8. The Respondent violated Section 8(a)(5) and (1) by engaging in surface bargaining with no intention of reaching mutual agreement in regard to wages and other terms and conditions of employment, from September 27, 2024, through January 7, 2026.
9. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

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

In this regard, I conclude that special remedies are warranted given the Respondent's unfair labor practices. The Respondent first engaged in bad-faith bargaining from September 27, 2024, through April 15, 2025. When the parties entered into the settlement agreement on that latter date, it should have sent them on to a different path in negotiations. Instead, the Respondent doubled down on its bad-faith bargaining strategy, bargained in bad faith from April 15, 2025 to January 7, 2026, and prevented any chance of the parties reaching a collective-bargaining agreement. To order nothing more than an affirmative bargaining order would simply put the parties back to April 15, 2025, when the Respondent first agreed it would bargain in good faith going forward. That remedy, standing alone, is inadequate.

As a result, and having found that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain in good faith with the Union, I shall order the Respondent to meet with the Union on request and bargain in good faith concerning the terms and conditions of employment of the bargaining-unit employees and, if an agreement is reached, embody such agreement in a signed contract. I shall also order that the Respondent bargain on request by the Union for a minimum of 24 hours per month and a minimum of six hours per session until an agreement or lawful impasse is reached or until the parties agree to a respite in bargaining. I shall also order the Respondent to submit written bargaining progress reports every calendar month and submit them to the Regional Director and the Union, with the latter having the option to file a reply.

I shall also order the Respondent to reimburse the Union for all bargaining expenses incurred from September 27, 2024, through January 7, 2026. *Bemis Co., Inc.*, 370 NLRB No. 7, slip op. at 4-5 (2020). Such an order is warranted both to make the

Union whole for the resources that were wasted because of the unlawful conduct, and to restore the economic strength that is necessary to ensure a return to the status quo ante at the bargaining table. This approach reflects the direct causal relationship between the Respondent's actions in bargaining and the Union's losses. *Frontier Hotel & Casino*, 318 NLRB 857, 859 (1995), enfd. in relevant part sub nom. *Unbelievable, Inc. v. NLRB*, 118 F.3d 795 (D.C. Cir. 1997).

I shall also order the Respondent to reimburse the Union for the economic assistance it provided employees who participated in the unfair labor practice strike. *Spike Enterprises, Inc.*, 373 NLRB No. 41 (2024), citing *Alwin Manufacturing Co.*, 326 NLRB 646, 647 & fn. 5 (1998) (quoting *Frontier Hotel & Casino*, 318 NLRB 857, 859 (1995)), enfd. 192 F.3d 133 (D.C. Cir. 1999). An award to the Union of the costs and expenses it incurred in connection with the unfair labor practice strike, including any picketing costs, strike benefits, and other assistance paid to striking employees during the strike, will make the Union whole for the resources that were wasted because of the Respondent's unlawful conduct, and to restore the economic strength that is necessary to ensure a return to the status quo at the bargaining table. *Frontier Hotel*, above.

In addition, having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally ceasing to pay Unit employees' health insurance premiums while they were striking, I shall order the Respondent to make unit employees whole for any loss of earnings or other benefits suffered as a result of its unlawful unilateral implementation of changed terms and conditions of employment. Such amounts shall be computed in accordance with *Ogle Protection Service, Inc.*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In addition, in accordance with *Thryv, Inc.*, 372 NLRB No. 22 (2022), I shall order the Respondent to compensate employees for any other direct or foreseeable pecuniary harms incurred as a result of its unlawful unilateral change. Compensation for these harms shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, above, compounded daily as prescribed in *Kentucky River Medical Center*, above.

I shall also order the Respondent to compensate unit employees for any adverse tax consequences of receiving lump-sum backpay awards in accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014), and to file a report with the Regional Director for Region 9 allocating the backpay award to the appropriate calendar years for each employee in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016). In addition to the backpay allocation report, I shall order the Respondent to file with the Regional Director for Region 9 a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award, in accordance with *Cascades*

Containerboard Packaging-Niagara, 370 NLRB No. 76 (2021), as modified in 371 NLRB No. 25 (2021).⁵¹

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁵²

ORDER

The Respondent, Sutphen Corporation, Dublin, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- a. Refusing to bargain in good faith with the Union in the following bargaining unit appropriate for the purposes of collective bargaining within the meaning of Section 9(a) of the Act:

All truck drivers, production workers and stock room employees, including shipping, receiving and warehouse employees of the Employer at its location at 6450 Eiterman Road, Dublin, Ohio, and excluding chemists, professional employees, salesman, office clerical employees, guards and supervisors as defined under the National Labor Relations Act.

- b. Unilaterally ceasing to pay the health insurance premiums of Unit employees who were on strike.
- c. Refusing to provide information to the Union that is relevant to its role as the collective-bargaining representative of Unit employees.
- d. Refusing to meet at reasonable times to bargain with the Union.
- e. Engaging in surface bargaining with no intention of reaching mutual agreement in regard to wages and other terms and conditions of employment.

⁵¹ I decline to order additional, special remedies requested by the General Counsel and the Union, as I conclude that the remedies I am ordering are sufficient to remedy the Respondent's violations of the Act.

⁵² 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.

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

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

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- a. Within 14 days from the date of this Order, bargain on request with the Union for a minimum of 24 hours per month (a minimum of six hours per day) until an agreement or lawful impasse is reached or until the parties agree to a respite in bargaining.

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- b. Prepare written bargaining progress reports every month and submit them to the Regional Director and the Union, with the latter given an opportunity to reply.

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- c. Provide the Union with the information it requested on May 30 and June 17, 2025.

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- d. Reimburse the Union for all bargaining expenses incurred from September 27, 2024 through January 7, 2026.
- e. Reimburse the Union for all payments it made to striking employees from May 28, 2025 through February 18, 2026.

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- f. Make health insurance premium payments for striking employees for the period from May 28, 2025 through February 18, 2026.

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- g. Post at its facility in Dublin, Ohio, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by e-mail, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall

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duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 27, 2024.

- 5 h. Within 21 days after service by the Region, file with the Regional Director of Region 9 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.

10 Dated, Washington, D.C. October 21, 2026

Chase

Charles J. Muhl
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Mailed by Order of the
National Labor Relations Board
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT REFUSE to bargain in good faith with International Brotherhood of Teamsters, Local Union No. 284 (the Union) in the following bargaining unit (the Unit) appropriate for the purposes of collective bargaining within the meaning of Section 9(a) of the Act:

All truck drivers, production workers and stock room employees, including shipping, receiving and warehouse employees of the Employer at its location at 6450 Eiterman Road, Dublin, Ohio, and excluding chemists, professional employees, salesman, office clerical employees, guards and supervisors as defined under the National Labor Relations Act.

WE WILL NOT unilaterally cease to pay the health insurance premiums of Unit employees who are on strike.

WE WILL NOT refuse to provide information to the Union that is relevant to its role as the collective-bargaining representative of Unit employees.

WE WILL NOT refuse to meet at reasonable times to bargain with the Union.

WE WILL NOT engage in surface bargaining with no intention of reaching mutual agreement in regard to wages and other terms and conditions of employment.

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

WE WILL, within 14 days from the date of this Order, bargain on request with the Union for a

minimum of 24 hours per month (a minimum of six hours per day) until an agreement or lawful impasse is reached or until the parties agree to a respite in bargaining.

WE WILL prepare written bargaining progress reports every month and submit them to the Regional Director and the Union, with the latter given an opportunity to reply.

WE WILL provide the Union with the information it requested on May 30 and June 17, 2025.

WE WILL reimburse the Union for all bargaining expenses incurred from September 27, 2024 through January 7, 2026.

WE WILL, reimburse the Union for all payments it made to striking employees from May 28, 2025 through February 18, 2026.

WE WILL make health insurance premium payments for striking employees for the period from May 28, 2025 through February 18, 2026.

SUTPHEN CORPORATION

(Respondent)

Dated _____ By _____
(Representative) (Title)

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

John Weld Peck Federal Building, 550 Main Street, Room 3003, Cincinnati, OH 45202-3271
(513) 684-3686, Hours: 8:00 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/09-CA-366492 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, (513) 684-3733.