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

LABORFORCE, LLC, M&K EMPLOYEE SERVICES,
AND M&K TRUCK CENTERS, AS JOINT EMPLOYERS
AND/OR ALTER EGOS

Respondents

and

13-CA-328585
13-CA-329307
13-CA-344074
13-CA-348431

AUTOMOBILE MECHANICS LOCAL 701,
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, AFL-CIO

Charging Party

Francis Copp Wellin and *Lesly Josary Iglesias, Esqs*., for General Counsel.

Donald Vogel and Jack Finklea, Esqs., for Respondents.

William Joseph LePinske, for Charging Party.

Decision

STATEMENT OF THE CASE

LISA FRIEDHEIM-WEIS, Administrative Law Judge.

Upon an initial unfair labor practice charge filed on October 25, 2023[1] by the Automobile Mechanics' Local 701, International Association of Machinists and Aerospace Workers, AFL-CIO (Union or Charging Party) against Laborforce, LLC, M&K Employee Services, and M&K Truck Centers, as joint employers and/or alter egos (Respondents), Counsel for the General Counsel (General Counsel) alleged Respondents violated Sections 8(a)(1) and (3) of the National Labor Relations Act (the Act) by discharging employees Edward Dusek, Jason Haller, Jim Volpe, and

[1] Unless otherwise noted, all dates hereinafter refer to 2023.

William Peterson in June 2024 because they engaged in concerted activities.[2] General Counsel also alleges that Respondents violated Sections 8(a)(1) and (5) of the Act by engaging in the following activities between July 27 and November 25:

(1) bargained without intent, bargained with no intention of reaching agreement, insisted upon proposals that were predictably unacceptable to the Union, refused to bargain about mandatory subjects of bargaining, reneged on tentative agreements, unlawfully declared impasse and refused to meet at reasonable times for bargaining;[3]
(2) Unilaterally changed employees' health insurance around October 24;[4]
(3) Unilaterally changed mandatory terms and conditions of employment by implementing their last, best, and final offer on November 1, including changes to employees' wages and 401(k) plans;[5] and
(4) Withdrew recognition of the Union on August 25, 2024.[6]

Respondents, through a timely Answer and Affirmative Defenses to the Consolidated Complaint and arguments presented at trial, have denied that they violated the Act.

The trial was conducted in this matter in person on May 11-13, 2026 in Chicago, Illinois. The General Counsel and Respondents filed posttrial briefs in support of their positions on July 15, 2026.

On the entire record, including my observation of the demeanor of the witnesses and after considering the briefs filed by the General Counsel and Respondents, I make the following findings, conclusions of law, and recommendations.

FINDINGS OF FACT[7]

I. JURISDICTION

A. Commerce

Respondents Laborforce, LLC and and M&K Quality Truck Sales of Alsip, LLC

[2] See Order Consolidating Cases, Consolidated Complaint and Notice of Hearing dated January 23, 2026 (GC Exh. 1(q), paragraphs VII and XI)). Further, references throughout the decision shall read as: Tr. is transcript; GC Exh. is General Counsel's exhibit; CP Exh. is Union's exhibit, and R. Exh. is Respondents' exhibit. The Act refers to the National Labor Relations Act. The Board refers to the National Labor Relations Board.

[3] See GC Exh. 1(q), paragraphs IX and XII.
[4] Id.
[5] Id.
[6] See GC Exh. 1(q), paragraphs X and XII.
[7] Although I have included several citations in this decision to highlight particular testimony or exhibits in the evidentiary record, I emphasize that my findings and conclusions are not based solely on those specific citations, but rather are based on my review and consideration of the entire record for this case.

(d/b/a/ M&K Truck Centers – Alsip), are Illinois Limited Liability companies with offices and a place of business in Alsip, Illinois. Respondents M&K Employee Services, Inc. is also a corporation with a place of business in Alsip, Illinois. Respondents Laborforce, LLC and M&K Employee Services have been in the business of leasing employees to Respondents M&K Truck Centers – Alsip. During the calendar year 2023, Respondents Laborforce LLC and M&K Employee Services, in conducting their operations, provided services valued in excess of $50,000 to M&K Truck Centers – Alsip within the State of Illinois. In addition, during that same time period, Respondents M&K Truck Services – Alsip purchased and received goods valued in excess of $50,000 at its Alsip, Illinois facility directly from points outside the State of Illinois.[8] I find that Respondents Laborforce, LLC, M&K Employee Solutions, and M&K Truck Centers – Alsip are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Furthermore, Respondents admit, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

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

B. Joint Employers and/or Alter Ego

The General Counsel alleges in its Consolidated Complaint (GC Exh. 1(q) paragraphs, II and III), that Respondents are joint employers and/or alter egos, respectively. In an almost identical case,[9] Administrative Law Judge Melissa Olivero ruled in JD-79-25 on September 18, 2025, that Respondents are joint employers and alter egos under the Act. (Jt. Exh. 1). The General Counsel, Charging Party, and Respondents stipulated on the record that Judge Olivero's findings and conclusions of law as to Respondents' joint employer status and/or alter ego status, subject to the pending exceptions to the Board and any subsequent ruling on this issue from the Board, will be the law of the case. (Jt. Exh. 2).

Therefore, pursuant to Joint Exhibit 2, and in reliance on my colleague's thorough analysis of the issue, I agree with Judge Olivero and find that Respondents are joint employers and alter egos under the Act. (Jt. Exhs. 1, 2).[10]

[8] See also Respondents' Answer (GC Exh. 1(t)) in which they admit to being in commerce under the Act.

[9] In that case, Respondents are the same but for the name of the entity who receives the Labor M&K Truck Centers – Summit. Respondents Summit facility is located approximately 11 miles from the Alsip facility

[10] See *Voith Industrial Services*, 363 NLRB 1020 (2016); *Detroit Newspapers*, 326 NLRB 782 (1998) (an administrative law judge can consider another administrative law judge's findings from an earlier case that is pending before the Board with the understanding that the Board will make the final decision, which will then apply as to this issue in the instant case. (Tr. 28-29).

II. ALLEGED UNFAIR LABOR PRACTICES

A. Respondents' Operations and the Parties' Bargaining Relationship

Respondents M&K Truck Centers (Truck Centers) operates between 33 and 39 truck dealerships across six to nine states. (Tr. 389, 458).[11] These dealerships sell and service semi-trucks and trailers. Each location is an independent profit center and run by a general manager. The general manager of Truck Centers Alsip location is Kevin Bouder.[12] These dealerships enter into franchise agreements with truck manufacturers to sell and service trucks from other manufacturers, such as Mack, Volvo, Hino, Isuzu, and others. (Tr. 389-391, 458-461). These other manufacturers are referred to as OEMs in the industry – original equipment manufacturers. (Tr. 403).

Respondents M&K Employee Services (Services) is the leasing company that supplies employees to the dealerships. Ted Pileki is the president of Services. Joshua Wolf is the chief executive officer of Services. Faith Smock is the human resources director of Services. Teresa Strayer is the human resources manager at its Chicago location, which includes Respondents' Alsip facility. Erin Boersma was Wolf's executive assistant. (Tr. 389-390, 458-459).[13]

Since at least the 1990's, the Union has represented all employees at Respondents' Alsip location (Tr. 41). The most recent collective-bargaining agreement between Respondents and the Union ran from January 1, 2019 through August 31, 2023. (Jt. Exh. 3).[14] The unit is not specifically set forth in the Alsip agreement, which only states that the Union represents all covered employees in the bargaining unit at the Alsip facility located at Truck Centers Alsip, Illinois location. The job classifications listed in the "Wage Rates By Classification" section of the collective-bargaining agreement are: shop leadman; journeyman (mechanic); parts leadman (grandfathered); partsman (grandfathered); parts leadman (hired after 11/13/11); partsman (hired after 11/13/11); warehouseman; semi-skilled technician; utility (grandfathered); utility (hired after 10/19/14); detailer

[11] Ted Pileki, President of M&K Services, testified that there were 33 M&K Truck Centers across six states (soon to be 38 locations across 8 states), while M&K Services Chief Operating Officer Joshua Wolf testified that there were 38 locations across eight, soon to be nine, states. (Tr. 389, 458). I do not find the slight difference in testimony on this fact to be consequential.

[12] The parties stipulated that Bouder performs the functions, reports to the same people, and supervised Respondents' employees at the Alsip location in the same fashion as did the general manager of the Summit location as detailed in Administrative Law Judge Olivero's decision (Jt. Exhs. 1, 2).

[13] Respondents admit in their Answer to the Consolidated Complaint (GC Exh. 1(t), paragraph VI) that Bouder was a supervisor under Section 2(11) and an agent under Section 2(13) of the Act, and that Pilecki, Wolf, Smock, and Boersma were agents under Section 2(13) of the Act. I further find that, pursuant to my earlier reliance on facts from Judge Olivero's decision for the reason I have explained, Wolf, and Smock are supervisors and agents of Respondents within the meaning of Sections 2(11) and 2(13) of the Act, respectively. (Jt. Exh. 1).

[14] The parties stipulated that the 2019-2023 Alsip collective-bargaining agreement operated in the same manner as the Summit location collective-bargaining agreement for Respondents' Summit employees as delineated in Judge Olivero's, decision, and I so find. (Jt. Exhs. 1, 2).

(grandfathered); parts helper. (Jt. Exh. 3). More broadly, the unit description covers all parts and service employees at Respondents' Alsip facility.

B. Bargaining for a Successor Contract

At some point in summer 2023, Respondents and the Union both provided written notice to the other with their intent to bargain for a successor agreement. Respondents also submitted a written notification to the Union's Health & Welfare Fund (Fund), with a copy to the Union, of their intent to cancel the participation agreement with the Fund on or around August 31. (Tr. 42-43, 466).[15] Union representative Ryan Haehnlein[16] testified that receipt of the Fund termination letter put pressure on the Union to agree to a successor contract because termination of the Fund participation agreement would mean that the bargaining unit employees would lose their healthcare. (Tr. 43).

The Union entered bargaining with approximately 24 proposals, which will be discussed below. Those proposals addressed classifications, wages, health insurance, retirement contributions, shift and leadman differentials, vacations, holidays, discipline, training, and contract duration.

1. The July 27 Initial Bargaining Session

The parties first met on July 27, 2023. Respondents' bargaining team included attorney Donald Vogel, Pilecki, Wolf, Smock, and Boersma. The Union's team included Union representatives Haehnlein and Joseph Scheer, along with bargaining-unit representatives. (Tr. 44, 466-467). Pilecki testified that seemed like there was some animosity right at the beginning of the negotiations, and that at least part of it was due to Haehnlein's presence at the bargaining table. According to Pilecki, Haehnlein "seemed to have a chip on his shoulder" and that he was there to "put the company in its place." (Tr. 404-405).

The Union presented a 10-page opening proposal, patterned off the then-current 2019-2023 collective-bargaining agreement. (Tr. 47-48). Respondents made no counterproposal at that meeting because it wanted time to analyze the proposal and its economic consequences. (Jt. Exhs. 3, 4; Tr. 45; 410-411; 469-470).

The parties reviewed Joint Exhibit 4 proposal by proposal. Though the witnesses did not testify in any detail about the Union's initial proposals for a successor CBA at the July 27 meeting, Jt. Exh. 4 delineates all the Union's proposed changes, the most substantial of which I have distilled here:

[15] None of the parties offered the notice to bargain letter or the termination letter to the Fund.

[16] Haehnlein is currently employed by the International Union. During the bargaining for a successor contract that is at issue, he was the Assistant Directing Business Representative for Local 701 of the Union. Prior to May 2001, Haehnlein was a parts counterman employed by Respondents at the Alsip facility. (Tr. 39-40).

The Union sought certain deletions, revisions, and additions to Article 7 job classifications. It proposed eliminating the semi-skilled and parts-helper classifications, revising other classifications, and separating parts-driver work from the utility classification. (Jt. Exh. 4, Union Proposals 3–4; Tr. 45-46)

The Union sought increases in the leadman and master-technician premiums. The leadman increase initially sought was $1 per hour. The master-technician premium, which applied to an employee holding the original equipment manufacturer's master-technician designation, was proposed to increase from 25 cents to $1 per hour, an increase of 75 cents per hour. (Jt. Exh. 4, Union Proposal 5).

The Union sought higher differentials for employees working second and third shifts. The proposal described those increases as an effort to bring the contract closer to the industry standard. (Jt. Exh. 4, Union Proposal 6; GC Exh. 2).

The Union proposed updated employer contribution rates for the Union-sponsored Fund. The proposal preserved the existing Union plan rather than substituting an employer plan. Health insurance was a central bargaining-unit concern communicated to the Union by the unit employees before negotiations, along with retirement benefits, vacation and sick time, elimination of the parts wage tiers, and wage increases. (Jt. Exh. 4, Union Proposal 7; GC Exh. 19.; Tr. 54)

The Union sought annual increases in Respondents' hourly contributions to the Union-sponsored 401(k) plan. It also proposed extending employer contributions to all employees in every covered classification. Under the expiring agreement, utility employees and parts helpers hired after January 2019 received no employer 401(k) contribution. The proposal therefore had two economic components: an increase in the contribution rate for participating employees and a new contribution obligation for employees in previously excluded classifications. (Jt. Exh. 4, Union Proposal 9).

The Union sought expanded vacation benefits. Its opening position included allowing employees with at least 2 weeks of vacation to divide a portion of that leave into individual vacation days. It also sought an additional week of vacation for eligible employees. (Jt. Exh. 4, Union Proposal 10.)

The Union proposed general wage increases for the covered classifications and sought to eliminate the two-tier wage structure in the parts department. Under the existing structure, employees in the same classification could receive different rates for the same work depending on whether they were hired before or after the contractual cutoff date. (Jt. Exh. 4, Union Proposal 15; Tr. 54-55).

The Union proposed a three-year agreement and that Respondents participate in the Union training fund. (Jt. Exh. 4, Union Proposals 17–18.)

2. The August 16 Bargaining Session and Successive Exchanges on that Date[17]

The parties reconvened on August 16 and made successive proposals.

a. Respondents' First August 16 proposal in response to Union's July 27 proposal

Respondents presented Joint Exhibit 5 on August 16 as their response to the Union's opening proposal. Although Joint Exhibit 5 bore a July 27 date, it was exchanged on August 16. The document responded sequentially to the Union's demands. (Jt. Exh. 5).

Respondents rejected the proposed elimination of the semi-skilled classification and addressed the proposed separation of parts-driver work from the utility classification. Respondents rejected other proposed classification changes. (Jt. Exh. 5, Union Proposals 3–4.)

Respondents did not accept the requested premium and shift-differential increases. (Jt. Exh. 5, Union Proposals 5–6.)

Respondents proposed replacing the Union-sponsored Fund plan with its company-sponsored health plan. Respondents viewed the substitution as a cost-control measure and believed that it could provide similar benefits for less money. Respondents' witnesses did not identify from memory the deductibles or other principal cost-sharing terms of either plan, and Wolf testified that he personally received only an overview from human resources rather than reviewing the plans' complete side-by-side terms. (Tr. 50, 413; 478, 492-493). Haehnlein testified that this was a particularly difficult proposal for the Union because if there was a switch to a company-controlled health insurance plan, Respondents would have complete control of the plan. (Tr. 51).

Respondents rejected the Union's request to provide a contribution to every employee in every classification. It retained the existing exclusions and proposed additional classification exclusions. Respondents also held rather than accepted the Union's proposed contribution increases. (Jt. Exh. 5, Union Proposal 8; Tr. 52-53.)

Respondents held on the Union's requested general wage increases while it evaluated the economics of the package. It did not present a wage counteroffer. (Jt. Exh. 5, Union Proposal 15.)

[17] As I will describe in detail in the Credibility section below, neither Pilecki nor Wolf testified in detail about the bargaining sessions and proposals that were exchanged between the parties in July and August 2023 despite the fact that they were both present at the bargaining sessions, received all the proposals and counter proposals, and had said proposals in front of them on the witness stand at trial. The details of the parties' bargaining in July and August 2023 came in large part from Haehnlein and from the proposals themselves. (Jt. Exhs. 4-7 and 9-12).

b. Union's August 16 Counter Proposal to Respondents' August 16 Proposal

The Union responded with Joint Exhibit 6 on August 16. That document recorded Union withdrawals and revisions through comments placed beside the affected proposal language. (Jt. Exh. 6).

Specifically, the Union withdrew its request to eliminate the semi-skilled and parts-helper classifications, leaving those classifications as stated in the expiring agreement. (Jt. Exh. 6, Union Proposal 3). The Union also withdrew its request that employees with at least 2 weeks of vacation be permitted to divide that leave into individual days. (Jt. Exh. 6, Union Proposal 10.) The Union also withdrew its proposed change relating to the use of sick time in conjunction with an emergency-room absence. (Jt. Exh. 6, Union Proposal 16). Haehnlein testified that the Union withdrew these proposals to advance negotiations and bring negotiations to a close. (Tr. 56-59).

c. Respondents' Second August 16 Counter Proposal

Respondents then presented Joint Exhibit 7 on August 16. Respondents withdrew their proposed change to the payday schedule from weekly to biweekly payments and to delete language providing for an automatic 3-percent employee withholding for the 401(k). (Jt. Exh. 7, Union Proposal 8.). (Tr. 61) Those withdrawals represented movement by Respondents, but neither resolved the disputed employer contribution rates nor the treatment of excluded classifications.

d. Union's Second August 16 Counter Proposal

The Union made a second August 16 bargaining proposal. (GC Exh. 2). In this proposal, the Union made several concessions.

The Union reduced its proposed leadman differential increase from $1 to 75 cents per hour, a 25-cent-per-hour concession from its opening demand. (Tr. 63; Jt. Exhs. 2 and 9, Union Proposal 5.)

After Haehnlein requested clarification as to the scope of management-assigned training and testing, the Union accepted the Respondents' language. (Tr. 64; Jt. Exhs. 2, 7 and 9, Company Proposal to Article 6.)

The Union reduced the increases it sought for second- and third-shift differentials. Haehnlein testified that the Union did so in an effort to reach figures Respondents would accept. (Tr. 65; Jt. Exhs. 2, 7 and 9, Union Proposal 6.)

The Union reduced the hourly increases it sought in Respondents' contributions to the Union-sponsored 401(k). The revised figures appeared as underlined amounts beside the struck opening amounts for January 1, 2024, 2025, and 2026. (Jt. Exh. 2, 9). The Union lowered the contributions it was seeking. Respondents did not mention during this exchange

about the Union 401(k) that it intended to leave the Union 401(k) plan entirely. (Tr. 65-66; Jt. Exhs. 2, 7, and 9, Union Proposal 8.)

The parties discussed whether the existing holiday letter of understanding already accomplished the Union's objective. After concluding that both sides shared the same understanding of that letter, the Union withdrew its proposal to add the language to the collective-bargaining agreement. (Tr. 67; Jt. Exhs. 2, 7 and 9, Union Proposal 9.)

The Union withdrew its request that Respondents participate in the Local 701 Union training fund. Haehnlein testified that the Union did so after deciding to focus bargaining on other priorities. (Tr. Jt. Exhs. 2, 7 and 9, Union Proposal 18).

These August 16 exchanges therefore produced identifiable concessions by both sides. The Union withdrew vacation, sick-leave, holiday, classification, and training-fund demands; accepted Respondents' clarified training language; reduced its leadman and shift-differential demands; and reduced its requested 401(k) increases. Respondents withdrew its proposed biweekly-pay schedule and its proposed deletion of the automatic 3-percent 401(k) withholding. The parties remained apart, however, on health insurance, the amount and coverage of employer 401(k) contributions, wages, and duration.[18]

3. The August 17 Bargaining Session

The parties resumed bargaining on August 17 using Joint Exhibit 9, the "cleaned up" version of the Union's preceding response and all of the prior August 16 proposals and counter proposals (Tr. 68; GC Exh. 9). The Union had advised Respondents that it would clean up the increasingly cluttered proposal document and transmit the revisions electronically; Joint Exhibit 9 was that cleaned document. Id. Respondents proffered Jt. Exh. 10 as its next proposal on August 17, and the parties bargained from Jt. Exhs. 9 and 10 that day. (Tr. 68, 72-73)

The Union conceded slightly on wages, separately listing grandfathered parts employees and parts employees hired after November 13, 2011 with different rates of pay at the beginning of the progression but converging after three years, thereby eliminating the two-tier parts structure over time. (Tr. 73-75; Jt. Exh. 9, Union Proposal 15.) Respondents rejected the Union's proposed wage progression as presented. (Tr. 73; Jt. Exh. 10).

No complete agreement resulted on August 17. The Union's proposed path for eliminating the wage tiers, the health-plan dispute, the 401(k)-contribution structure, and other economic terms remained open.

[18] Respondents seek to introduce hearsay evidence of a purported conversation between Respondents' lead counsel Vogel and Union representative Sheer on August 16 during a break in bargaining, during which Sheer allegedly told Vogel that the Union wanted to pattern the Alsip facility contract after the Summit facility contract in terms of economics. I decline to rely on this hearsay evidence. Neither Vogel nor Sheer testified at hearing (Respondents did not subpoena Sheer to testify). Further, the Summit CBA provides health and welfare Fund coverage by the Union to the employees, whereas here, Respondents insisted on removing the Fund from the Alsip contract throughout bargaining, so the purported hearsay conversation, even if countenanced, is inherently contradictory and unreliable. (Tr. 415-416, 479-481).

4. The August 18 Supposal and Bargaining Session

The parties met again on August 18. The Union presented Joint Exhibit 11 as a "supposal." Haehnlein testified that a supposal was a complete package identifying tentative agreements, revisions, and proposals that the Union believed the parties could withdraw in response to how Respondents reacted in order to reach an overall tentative agreement. (Tr. 75-76). In the August 18 supposal, the Union offered several additional concessions:

The Union withdrew its remaining request for increased second- and third-shift differentials. That concession followed its earlier reduction of the requested increases. (Tr. 76; Jt. Exh. 11, Union Proposal 6). Haehnlein testified that the Union withdrew this bargaining demand in an effort to reach agreement. (Tr. 76).

The Union revised its demand for employer 401(k) contributions. Its opening position required the same contribution for employees in every classification. The proposal on August 18 instead proposed two contribution structures based on classification. Employees in classifications that previously received no contribution would receive a contribution, but not necessarily at the same rate as the classifications already covered. The Union regarded this as a compromise because it reduced the cost of extending coverage to the previously excluded classifications. Haehnlein testified that the Union made this change to offer a path to a contract and a compromise and did not make the same economic impact on Respondents. (Tr. 77-79; Jt. Exh. 11, Union Proposal 8.) Though this proposal was discussed specifically at the bargaining table that day, Respondents said nothing about moving out of the Union's 401(k) plan. Id.

The Union revised its wage demands and added another year[19] to the wage schedule. Haehnlein testified that the Union revised proposal reduced the wage increases sought in the package while preserving the objective of improving wages and addressing the parts tiers. (Tr. 80-81; Jt. Exh. 11, Union Proposal 15).

5. The August 30 Exchanges and Contract Extension

a. Respondents' August 30 Proposal

On August 30, the parties met and Respondents presented Joint Exhibit 12 as its response to the Union's August 18 supposal. Although Joint Exhibit 12 bore an earlier date, the testimony establishes that Respondents delivered it on August 30. (Tr. 83; Jt. Exh. 12.) Respondents rejected the Union's August 18 supposal and the parties bargained from their new August 30 document. (Tr. 82-83).

For the first time, Respondents changed items which had been agreed on by both sides in earlier exchanges. Specifically, Respondents introduced revised duties for the semi-skilled classification. The Union had already withdrawn its proposal to eliminate the semi-

[19] I note that, in addition to the proposals described above, the parties also bargained over the length of the contract. Respondents initially proposed a 10-year agreement. On this day, the Union proposed a 4-year agreement. (Tr. 81; Jt. Exh. 5).

skilled and parts-helper classifications, which would otherwise have left the existing descriptions unchanged. Respondents' August 30 language placed a new revision of the semi-skilled job description on the table. (Tr. 84; Jt. Exh. 12, Union Proposal 3.) In addition, Respondents added a comment on the August 30 proposal that it reserved the right to revert to include biweekly pay in its last, best and final offer. Respondents had initially pressed for a biweekly pay structure but had withdrawn that proposal and accepted the Union's demand for weekly pay in a previous session. (Tr. 86-87; Jt. Exh. 12).

Respondents also rejected any increase in 401(k) contributions above $5.25 per hour and proposed additional exclusions from the plan. (Tr. 88; Jt. Exh. 12). Respondents did not discuss switching to their own 401(k) plan or withdrawing from the Union's 401(k) plan. Id.

Respondents reduced their proposed agreement term from 10 years to 8 years. (Jt. Exh. 12, Union Proposal 17; GC Exh. 2.)

b. Union's August 30 Counter Proposal

The Union answered Respondents' August 30 proposal with Joint Exhibit 13.

The Union revised Respondents proposed semi-skilled job description and offered new language, even though this subject had previously been agreed to. (Tr. 90-91; Jt. Exh. 13, Union Proposal 3.)

The Union rejected Respondents' proposed exclusion of additional classifications from employer 401(k) contributions and again revised the contribution amounts it sought, though it lowered the contribution amounts further. (Tr. 91-92; Jt. Exh. 13, Union Proposal 8.) The Union thus continued to seek some retirement contribution for employees who had received none under the expiring agreement, while modifying the economic structure through which that objective would be achieved.

The Union made further concessions. It withdrew language regarding required language prior to employee termination; it increased its offer of the length of the contract to five years; and it lowered the hourly wages for the employees. (Tr. 92-95; Jt. Exh. 13, Union Proposals 12 and 17).

c. Respondents' Second Proposal on August 30

Respondents presented the last proposal of August 30 with Joint Exhibit 14. Respondents stood on their rejection of any increases to the Union 401(k) in excess of $5.25 or to add any classifications of employees who would be eligible for the Union 401(k). (Tr. 94-95; Jt. Exh. 14). Haehnlein testified that the parties discussed the Union 401(k) plan and the proposed contributions throughout the day on August 30, and he stated that Respondents never mentioned that it was withdrawing from the Union's 401(k) plan. (Tr. 95-96). The parties made no further progress toward a successor contract on August 30.

d. Contract Extension Signed on August 30

Because the agreement was due to expire on August 31, the parties executed a 60-day extension, set to expire on October 31. (Tr. 97-99, 483; GC Exh. 3, p. 3). The parties remained divided principally over health insurance, retirement contributions, wages, and contract duration. Wolf testified the Respondents did so to avoid a work stoppage, to have enough time to bargain, and to come to an agreement. (Tr. 483-484).

In addition, Respondents and the Fund signed a fresh participation agreement for 60 days, wherein Respondents agreed to make contributions to the Fund under the current collective-bargaining agreement while the parties continued to bargain for a successor contract, and thus providing the employees with health insurance. (Tr. 98-100; GC 3, p. 2).

On September 1, the Union received an email from Respondents giving the Fund 60 days' notice of termination of Respondents' participation in the Fund. (GC Exh. 3). The email detailed that as of October 31, coextensive with the expiration of the August 31 extension agreement, the Fund would no longer be able to accept payments from Respondents, thereby leaving the employees without healthcare. (Tr. 100; GC Exh. 3, p. 1).

Haehnlein testified that the receipt of the 60-day notice of termination of Union healthcare for the employees put pressure on the Union and created a timeline under which the Union had to reach a successor agreement. (Tr. 100).[20]

6. The September 26 Bargaining Session

The parties next met on September 26. The Union presented Joint Exhibit 15 as its offer at that session. The document incorporated the parties' earlier tentative agreements, identified the proposals on which the Union continued to hold, and preserved the remaining economic issues for further bargaining. (Jt. Exh. 15). The Union memorialized the language the parties had verbally agreed to on August 30. Respondents had proposed expanding the semi-skilled duties after the Union withdrew its original request to eliminate that classification, and the Union had refined the language until Respondents accepted it. The Union similarly recorded the August 30 tentative agreement on the revised leadman language (though not on the wage). On September 26, the Union marked these language issues as "TA'd 8/30/2023". (Tr. 102-104; Jt. Exh. 15, Union Proposals 3 and 5).

The Union continued to hold on to retention of the Union-sponsored Fund. (Jt. Exh. 15, Union Proposal 7.)

The Union continued to propose participation in the Union-sponsored 401(k) plan. By September 26, however, the Union was no longer insisting on its opening retirement proposal. It had reduced its requested annual contribution increases, abandoned its demand

[20] As I will discuss in further detail in the Credibility section below, Pilecki characterized the entirety of the bargaining sessions between the parties from July 27 through August 30 as "different." Pilecki testified that whenever Respondents brought up a rationale for a proposal, that rationale was dismissed as not having any validity to it. (Tr. 417).

that every classification receive the same contribution, and proposed a lower contribution structure for classifications that previously received none. (Jt. Exh. 15, Union Proposal 8).

The Union continued to narrow its demands as to employee vacation time. It had already withdrawn its opening request to permit employees with at least 2 weeks of vacation to divide that leave into individual days. The remaining vacation issue concerned additional vacation eligibility and a more limited request concerning the use of vacation in 8-hour increments. (Jt. Exh. 15, Union Proposal 10).

The parties remained apart on wages and elimination of the parts-department tiers. The Union had revised its wage tables more than once and had extended the proposed progression by an additional year. Respondents had offered their own wage table on August 30. Neither side accepted the other's complete wage schedule at the September 26 session. (Jt. Exhs. 12, 13, and 15, Union Proposal 15.)

After the Union reviewed its complete proposal at the table, Respondents caucused and returned. Haehnlein testified that, upon Respondents' return to the table, lead counsel Vogel stated that "we would never get them to agree to our offer." Pilecki commented that a 401(k) was important to some people and not as important to other people. (Tr. 422, 485).[21]

7. The October 16 Bargaining Session

The parties reconvened on October 16. Between September 26 and October 16, Respondents did not send any proposals to the Union in response to its September 26 written proposal.

a. Respondents' October 16 Morning Proposal

Respondents presented Joint Exhibit 16 as its proposal on the remaining subjects. Respondents' proposal included its insistence on moving the bargaining-unit employees from the Fund and move them to Respondents' health plan, and also included two new substantial propositions: (1) that employee withholdings from their paychecks would increase from $4.00 to $14.00 per week; and (2) that the employees be moved from the Union 401(k) plan to Respondents' 401(k) plan. (Tr. 107-109, 423-424, 487-488; Jt. Exh. 16).

On the employee benefit contribution, Respondents proposed increasing the employees' payment from 10 cents to 35 cents per hour, subject to a maximum of 40 hours per week. The existing 10-cent contribution equaled no more than $4 per week; the proposed 35-cent contribution equaled no more than $14 per week. The increase was therefore 25 cents per hour, or as much as $10 more per week for an employee credited with 40 hours. Wolf and Pilecki acknowledged that this was the first time Respondents proposed this material change,

[21] As I will discuss in further detail in the Credibility section below, I place no weight on Pilecki's comments concerning the value of the 401(k) to employees in that he purportedly gathered this information from employees at Respondents' Summit facility, and that he gathered it right after they had voted to decertify the Union (which was subject to Judge Olivero's decision finding that the withdrawal of recognition was illegal. (Jt. Ex. 1).

and that he did so because it mirrored what was in the Respondents' Summit agreement and based on the hearsay comments of Summit employees.[22] (Tr. 420-421; 519-520).

As to the Respondents' 401(k), Haehnlein testified that Respondents had not ever suggested switching from the Union's 401(k) plan and moving to Respondents' 401(k) plan up to this date – less than two weeks before the expiration of the extension agreement for the collective-bargaining agreement – and that the Union knew nothing about Respondents' 401(k) plan. (Tr. 110-111). Haehnlein immediately requested the plan specifications (called SPDs, or Summary Plan Details) for Respondents' 401(k). (Tr. 111). Respondents emailed their 401(k) SPDs to the Union later that day. (Tr. 111-113; GC Exh. 4).

In addition, Respondents presented a new wage schedule to the Union that morning, suggesting that the lost 401(k) contributions would be made up for in increased wages. Haehnlein testified, and the wage schedule shows that this was not the case. Under the old Alsip collective-bargaining agreement (Jt. Exh. 3), employees received $5.25 per hour for 401(k) contributions. In Respondents' most recent proposal on August 30 (Jt. Exh. 14), Respondents had proposed that a journeyman receive a $1.75 per hour increase for the first year of the contract. (Tr. 97, 115-116). However, removing the $5.25 401(k) Union contribution actually provided an increase of only $1.23 per hour[23] for the first year of a new contract, reflecting almost 30% less than Respondents' August 30 offer. (Tr. 114-116; Jt. Exh. 14, 19). Finally, Respondents jumped from insisting on a lengthy contract (from an initial proposal of 10 years to a more recent proposal of 7 years) to a 2-year agreement. (Tr. 117; Jt. Exh. 16).

The parties recessed at approximately 9:50 a.m.

b. Union's October 16 Afternoon Proposal

The Union returned at approximately 2:55 p.m. with Joint Exhibit 17 as its counter proposal to Respondents' Joint Exhibit 16 from that morning. (Jt. Exhs. 16–17; GC Exh. 18.)

The Union rejected the proposed increase to 35 cents and countered by proposing elimination of the existing 10-cent contribution. The Union also rejected Respondents' proposals to switch from the Union Fund and 401(k) plan to Respondents' plans.

The Union also made several concessions in this October 16 afternoon proposal. The Union accepted a 2-year contract. The Union removed the contribution years that would have fallen outside Respondents' proposed term and presented rates covering only the 2-year period. The Union revised its retirement proposal to account for Respondents'

[22] Respondents' own brief acknowledges that Wolf and Pilecki made the decision to move the Alsip employees out of the Union plan prior to the October 16 meeting based on "feedback" they received from "Summit parts employees who had recently decertified…and other considerations." R. Brief, p. 7. See also Tr. 518-519.

[23] The math reflects $6.48 wage minus Respondents' proposed $5.25 for its 401(k), resulting in a wage increase of $1.23. (GC Exh. 14 and 19).

previously stated limits. Respondents had rejected hourly contributions exceeding $5.25 and opposed adding classifications that did not receive contributions under the expiring agreement. The Union countered by removing amounts above $5.25 and conforming its proposal to Respondents stated objections concerning the additional classifications. This was a substantial movement from the Union's opening proposal, which had sought annual increases above the existing rate and equal contributions for every classification. (Tr. 117-124; Jt. Exh. 17).

The Union further narrowed its vacation demand. Earlier proposals had sought both an additional week of vacation and the ability to use as many as 40 vacation hours in 8-hour increments. The Union withdrew the 40-hour incremental-use proposal and retained only the request for an additional week of vacation for eligible employees. That withdrawal followed the Union's August 16 withdrawal of its broader request permitting employees with at least 2 weeks of vacation to divide part of that leave into individual days. Id.

The Union also withdrew additional proposed sick-leave language shown as struck from Joint Exhibit 17. That withdrawal further reduced the leave-related proposals remaining in its package. Id.

The Union responded with a new wage table structured around Respondents' proposed 2-year term. Joint Exhibit 17 therefore reduced the number of years covered by the Union's preceding wage schedule and stated the increases the Union sought during those 2 years. The Union did not accept Respondents' separate wage handout, and Respondents did not accept the Union's revised table. Id.

In sum, the Union revised its health and wage schedules to 2 years, eliminating its request for retirement contributions above $5.25 per hour, relinquishing its effort to add previously excluded classifications to the Union-plan contribution structure, withdrawing the 40-hour vacation-use proposal, and striking additional leave language. It continued, however, to insist that employees remain in the Union-sponsored health plan and, at that point, the Union-sponsored 401(k) plan. Id.

Respondents informed the Union that it had no further room to move on its remaining proposals. Haehnlein testified that Respondents' counsel stated the parties were at impasse and that he replied they were not, as Respondents had just made new proposals that the Union had never seen before and there were still items they could address. (Tr. 124-125). Counsel Vogel told Haehnlein that he wanted the Union to take its last offer to the bargaining unit for a vote and see how the members wanted to proceed.[24] Id. The Union requested another session, and Respondents agreed to meet on October 17.

[24] Though Wolf testified that Respondents' October 16 proposal (Jt. Exh. 16) was not its last, best, and final proposal (Tr. 520-521), Respondents acknowledge in their brief that Respondents indicated there was no more room to move on any proposals as of the end of the day on October 16. (R. Brief, p. 7).

8. The October 17 Session and Respondents' Final Proposal

The Union opened the October 17 session by presenting Joint Exhibit 18, another revised offer. The Union preserved the tentative agreements reached during earlier sessions while making additional changes to the unresolved economic provisions. (Jt. Exh. 18.)

The Union continued to propose retention of the Union-sponsored plan. It did not accept enrollment in Respondents' plan. The Union's written proposal used a 2-year contribution structure corresponding to Respondents' proposed duration. (Jt. Exh. 18, Union Proposal 7.)

The Union continued to reject Respondents' proposed increase from 10 to 35 cents per hour and continued to seek deletion of the existing 10-cent payment. The parties therefore remained $14 per week apart on that provision for an employee credited with 40 hours: Respondents sought a $14 maximum weekly payment, while the Union sought no employee payment. (Jt. Exh. 18.)

The Union also made two economic concessions. The Union withdrew its prior vacation demand. (Tr. 126-127; Jt. Exh. 18, Union Proposal 10.) The Union continued to use a wage table keyed to a 2-year agreement but lowered its proposed wage increases. (Tr. 127; Jt. Exh. 18, Union Proposal 15.). Haehnlein testified that the Union made these concessions on October 17 in an effort to get to agreement with Respondents. (Tr. 127). The Union also attempted to discuss why it wanted to retain the Union Fund and the Union 401(k), especially that Respondents could change health benefits at any time under a company plan. (Tr. 128).

Respondents did not make any additional concessions or offer any other proposals. Respondents counsel Vogel repeated that he believed they were at impasse and this was their last, best, and final proposal. (Tr. 129, 427-428, 523).

The Union requested a break. During that break, Haehnlein testified that he and Scheer asked Vogel to meet with them separately. Haehnlein proposed another potential compromise: the employees would remain in the Union-sponsored Fund but would relinquish the Union 401(k) and move to Respondents' company-sponsored 401(k) plan. Haehnlein told Vogel that, if Respondents offered that combination, they would submit it to the bargaining unit for a vote. (Tr. 130).

Vogel consulted Respondents' representatives, rejected the Union's compromise on the outstanding Fund and 401(k) issues, and reported that Respondents would adhere to its complete package. Id. Vogel asked Haehnlein when the Union was going to vote on the contract. Haehnlein requested that Respondents produce a clean last, best, and final offer in writing as well as the SPD and summary benefit coverage (SBC) information for Respondents' healthcare plan. (Tr. 130-131).[25]

[25] Haehnlein testified that he had asked for Respondents' SPD documents as early as August 16, and that he asked again on October 17 because he did not believe the documents he received were accurate or complete. (Tr. 131). Wolf testified that he did not believe that the Union requested any information from Respondents on October 17 or at any other time. (Tr. 485, 524). However, Respondents' bargaining notes from August 16 regarding company healthcare reflect that "a summary of offerings was distributed to all

The parties discussed when a vote could be taken. Respondents refused to permit the vote to take place at the Alsip facility during shift times, so the Union scheduled the vote for Sunday, October 29. (Tr. 131-132).

C. Vote on Last, Best, Final, Strike, and Implementation

1. Lead Up to Vote, Status of Employees' Health Insurance, and the Vote on Respondents' Last, Best, and Final Offer

On October 20, counsel Vogel emailed the Union, stating that it was attaching a copy of Respondents' last, best, and final offer to the Union. (GC Exh. 5; Jt. Exh. 19).

Haehnlein replied that "as I requested on 10/17/23 the Union still needs an accurate up to date SPD and SBC of the company's health care plan." Id. Vogel responded that he did not have a complete SPD document, but he would send it next week. Id.

On or around October 23, the Union received pictures from employees that they received from Respondents showing that they were in an open enrollment period (as Respondents' counsel Vogel alluded to in his October 24 email, GC Exh. 5) and that there were four days left to enroll, from October 23-27. Haehnlein noted that October 27 was the deadline for employees to enroll in Respondents' healthcare. (Tr. 139-141, 144; GC Exh. 6). Wolf acknowledged that Respondents were mailing healthcare information out to the bargaining unit employees around October 26 in the event they had a lapse in their current coverage and so they would understand how to enroll in Respondents' plan. (Tr. 525-526; GC Exh. 12).

On October 24, counsel Vogel sent Haehnlein and Scheer an email attaching the SPD for Respondents' healthcare plan, stating that Respondents did not have an SBC, and stating that he was attaching a handout that was made available to Alsip employees during the enrollment process this week.[26] Vogel also stated in this email chain that this was not an interactive process and he did not intend to go back and forth with the Union. (GC Exh. 5).

Respondents refused to sign another participation agreement for employees' healthcare. Pilecki testifies testified that there was no point in signing it because, "we had one extension 60 days and made, in my opinion, zero progress." (referring to GC 3 signed August 30). (Tr. 135, 446).

At the October 29, the Union held a ratification meeting to vote on Respondents' last, best and final offer as presented on October 16 and cleaned up and re-presented on October 24. The bargaining unit unanimously rejected Respondents' last, best, and final offer and

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participants." (R Exh. 7). Moreover, as wil be discussed, Respondents provided their healthcare SPD to the Union on October 24. (GC Exh. 5).

[26] GC Exh. 12 is an example of healthcare and 401(k) packets of information that were sent to all employees on or around October 26. (GC Exh. 12).

voted 56 to 1 to authorize a strike. The extension agreement and the participation agreement governing the Union-sponsored benefits expired on October 31. (Tr. 144; Jt. Exh. 19).

On October 30, Haehnlein emailed Vogel and told him that bargaining unit voted unanimously (with 57 of 58 members in attendance) to reject Respondents' last, best, and final offer, and voted to authorize a strike by a vote of 56-1. Haehnlein told Vogel "the Union believes that there is a path forward to ratification of an agreement that is acceptable to all parties. The Union has several days available to meet and discuss the obstacles that brought a rejection, and bargain a deal for successful ratification. If appropriate, the Union can be available October 31st to meet if the company can make a meeting." (Tr. 144-146; GC Exh. 7).

On October 30, Haehnlein and Vogel spoke by phone. During that call, Haehnlein offered another extension agreement as well as new participation agreements in the Fund and Union 401(k) since they were set to expire on October 31, but Vogel declined. (Tr. 147).

2. The Strike

The strike began on the morning of November 1. Approximately 50 to 58 bargaining-unit employees initially participated, and the entire bargaining unit was off work at the outset. The employees established a picket line outside the Alsip facility on Plattner Drive. They generally picketed during the hours corresponding to their regular work schedules. Some employees picketed Monday through Friday, while others picketed Tuesday through Saturday, and employees assigned to different shifts maintained the line during different portions of the workday. (Tr. 147, 268, 300, 342, 268).

Later the same evening, Vogel emailed Haehnlein. In that email, Vogel confirmed that Haehnlein had asked for an extension agreement of the collective-bargaining agreement and a participation agreement, and confirmed that he declined to sign either. Vogel continued:

"As we repeatedly said at our last bargaining session on October 17, 2023 (our ninth meeting for a replacement CBA), the parties are at impasse."

"…the Company made its Last, Best and Final Proposal on October 16…"

"As of a result of this impasse, the Company is implementing its Last, Best and Final Proposal effective today, November 1, 2023." (GC Exh. 8).

3. Post Strike Attempts at Bargaining and Implementation of Terms and Conditions of Employment

It is undisputed that Respondents implemented its last, best, and final proposal to the bargaining unit on November 1, which included the loss of the Union healthcare Fund and the Union 401(k), wage rate changes, and every other term and condition in Respondents' October 16 (clean copy sent on October 24) final proposal. (Jt. Exh. 19).

On November 7, Haehnline emailed Vogel "As we stated numerous times at our last session on October 17, we are not at impasse." (GC Exh. 8, p.2). Vogel replied on November 8 that "[i]mpasse does not require your agreement that we are at impasse…this certainly sounds like impasse to me. If you don't think we are at impasse, then you should call off the strike and bring the bargaining unit back to work." (GC Exh. 8, p. 2).

At the Union's request, the parties met again on November 15. The Union explained that the bargaining unit had rejected Respondents' package because of the proposed restructuring of health and retirement benefits. Haehnlein asked Respondents if they would be open to Union proposals using Respondents' healthcare – that the Union would accede to Respondents' healthcare but propose not changing it for the duration of the 2-year agreement. (Tr. 149-150). Respondents said they would all ears if the Union wanted to make a proposal, but also that they would not bargain line-by-line. (Tr. 150-151). Haehnlein testified that he told Respondents he still did not have the SBC for Respondents' healthcare and could not intelligently bargain and compare coverages without that information. Vogel stated his answer was going to be the same on insurance. (Tr. 151). Wolf testified that the parties met on November 15, but he did not recall any changes from where things were left during the October 17 meeting. (Tr. 533). Respondents did not rescind implementation, and the parties did not reach an agreement.

On November 20, the Union emailed Vogel, requesting another meeting during the week of November 27 and proposed the involvement of a federal mediator. Respondents did not agree to another session. (GC Exh. 9.). The same day, Vogel replied and stated that it was clear the parties were at impasse and that Respondents were justified in implementing their last, best, and final offer. Vogel stated, "I see no purpose in meeting further." (GC Exh. 9, p. 2).

On December 1, Haehnlein emailed Vogel and insisted that the parties were not at impasse. Haehnlein detailed that the Respondents' 401(k) plan, copay for health insurance, and eliminating the two-tier pay structure were never brought up in a written proposal until the Respondents' last, best, and final offer and that the Union never had a meaningful chance to bargain about these issues. Haehnlein wrote that, during the November 15 negotiations, Respondents had agreed to meet during the week of November 27-30, but that Respondents had not followed through on any of these dates. Haehnlein closed out his email that the Union remained prepared to meet. (Tr. 153-154; GC Exh. 9, p.2).

On December 8, Haehnlein sent another email to Vogel to follow up since he had not received a response and offered to sit down and discuss the open issues between the parties. Vogel replied that same day, stating "Your email did not require a response." (GC Exh. 9, p. 1).

The strike continued after the November 15 meeting, although participation in the physical picket line diminished over time. Respondents' witnesses were unaware of any written, unconditional offer by the Union or the remaining strikers to return to work between November 1, 2023, and August 15, 2024. The Union witnesses, for their part, did not equate

declining attendance at the picket line, removal of the physical line, or acceptance of interim employment with resignation from Respondents or abandonment of the strike.

D. The Discharges of Peterson, Dusek, Volpe, and Haller

William Peterson, Edward Dusek, James Volpe, and Jason Haller were bargaining-unit employees who joined the strike on November 1. Each had worked for Respondents or its predecessors before the strike, and none submitted a resignation to Respondents. During the strike, Respondents discharged each employee in writing on June 3, 2024 (June 6 for Peterson) after deciding that he had obtained other employment, was either competing with or working for a customer of Respondents, and was no longer regularly picketing or reporting to work at the Alsip facility. (GC Exhs. 10, 13, 15, 17).[27]

1. Peterson

Peterson has been a truck mechanic for 43 years. He worked at the Alsip facility since 2005. (Tr. 263-264). Peterson testified that he voted down Respondents' last, best, and final offer because there was no Union-supplied healthcare or pension, which he had enjoyed under previous contracts while working for Respondents. (Tr. 266-268). Peterson participated in the strike at Respondents' facility in Alsip starting on November 1. He stood on the strike line for the days and hours of his work shifts – Mondays through Fridays from 7:00 am to 3:30 pm. (Tr. 268). Peterson testified that he walked the picket line daily during his shift times from November to February 2024. In February 2024, Peterson accepted work from Kriete Truck Center in Madison, Wisconsin as the assistant shop manager. (Tr. 270, 275). Peterson held no position with the Union and did not attend any of the bargaining sessions. (Tr. 272). Respondents then notified Peterson that they were terminating his employment. (GC Exh. 10). Peterson had not tendered a resignation before Respondents acted. The relevant part of the June 6 termination letter Respondents sent to Peterson (as well as the June 3 letters it sent to Dusek, Volpe, and Haller) states:

"Rather than return to work or engage in protected activity, we have discovered that you are performing customer work for someone other than Laborforce in violation of Article 22 of the implemented agreement.

As a result of your violation of the implemented agreement, Laborforce is removing you from its list of active, striking employees and we will consider your employment to be terminated effective immediately."

(GC Exh. 10, 13, 15, 17).

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[27] In discharging these four employees Respondents relied on Article 22 of the expired Alsip collective-bargaining agreement, which remained unchanged in its implemented last, best, and final offer:

Outside Customer Work

Any employee covered by this Agreement who performs customer work outside of their regular working hours other than for the Company, or at any time solicits work other than for the Company, shall be subject to discharge. (Jt Exh. 3; Jt Exh 19).

Wolf testified that he asked Alsip manager Bouder to conduct an investigation if any strikers who had not resigned were working for a direct competitor or customer of Respondents. (Tr. 540-541). Wolf did not identify when he asked Bouder to start this investigation, how Bouder should go about the investigation, and what parameters were to be used in the investigation. Bouder did not testify at hearing. Pilecki testified that he was not involved with the termination of the four employees and that Wolf was the one who took point on the terminations. (Tr. 432).

Wolf testified without explanation that he considered Kriete Truck Centers to be a competitor of Respondents. (Tr. 558).

2. Dusek

Dusek was a lead parts counterman at the Alsip facility since 1995, facilitating day-to-day sales of parts. (Tr. 290-291).

Dusek testified that he voted down Respondents' last, best, and final offer because it had no Union-sponsored health insurance or pension. (Tr. 299). Dusek participated in the strike beginning November 1 during his first shift, from 6 am to 2:30 pm. (Tr. 300-301). Dusek had a direct encounter with Bouder on the strike line a few weeks after it began in November, when Bouder came out to the strike line and tried to present a stack of papers for Dusek to disseminate to all the strikers. Dusek declined and Bouder returned inside Respondents' Alsip facility. (Tr. 302-303, 327-328). Dusek obtained employment at Rush Truck Centers on or around February 12, 2024 because he had to seek supplemental income for his family. (Tr. 304). Dusek was mailed the same letter as Peterson, with the same reference to violating Article 22 of the implemented agreement. (GC Exh. 13; Tr. 305-308). Dusek testified that he had not resigned and did not intend his interim employment to terminate his employment relationship with Respondents.

The work Dusek performed for Rush starting in February 2024 was selling light Ford truck parts for a Ford dealership that serviced pickup trucks, while he serviced and sold Class D heavy duty truck parts for Volvo and Mack trucks when he worked for Respondents. Dusek testified that Ford and Volvo and Mack are different companies with different parts, and that he did not sell the same class of parts for Rush that he did for Respondents. (Tr. 316-317).

Wolf testified that he directed the termination letter to be sent to Dusek because he considered Ford Freeway (owned by Rush) to be a competitor of Respondents. Wolf made the decision because Bouder purportedly saw Dusek working behind the counter at Rush. (Tr. 540). Wolf did not testify as to what, if anything, Bouder saw Dusek doing at Rush or what types of parts he was servicing or selling. Bouder simply told Wolf that he saw Dusek working at Freeway Ford (Rush), and Wolf posited "I don't know that he can." (Tr. 540).[28]

[28] Respondents assert that they did not fire everyone who obtained outside employment during the strike and used Dusek's own brother, Mike Ducek, as their example of someone who obtained outside employment, but who did not compete with Respondents in violation of Article 22 of the contract. Wolf testified without explanation as to how he obtained this information (other than that Bouder told him) that

3. Volpe

Volpe was a mechanic at Respondents' Alsip facility repairing vehicles and had worked there since 2007. Like the other employees at issue, Volpe participated regularly in the strike starting on November 1. Volpe manned the picket line at the Alsip facility every Tuesday through Saturday from 6 am to 2:30 pm on Mondays through Fridays, and from 7 am to 3pm on Saturdays. During the initial months of the strike, Volpe's vehicle that he had always driven to work was used to secure a Union strike banner, a flag from a 20-foot flagpole, and an inflatable rat at the picket line. (GC Exh. 14; Tr. 342-344).

Volpe participated in the strike on the picket line through June 24, 2024, when he obtained other employment at a UPS as a mechanic.

Volpe received his letter of termination, as did the other three employees, on June 3, 2024. (GX Exh. 15; Tr. 351). However, Volpe testified without contradiction that he did not start working at UPS until June 24, 2024. Volpe testified that he did not undergo any training with UPS prior to June 24, 2024. (Tr. 354). Wolf testified "we were told that Volpe was working at UPS." (Tr. 542). There is no record evidence of how Respondents found out that Volpe was taking a job with UPS. Further, Wolf acknowledged that he had no explanation as to why Volpe was terminated on June 3 when he did not start working for UPS until June 24, and that if he did not truly start until June 24, "the investigation on his case was inaccurate." (Tr. 554, 587-588).

4. Haller

Haller worked at Respondents' Alsip facility since November 2006, most recently as a diesel technician who repaired any and all trucks as assigned. (Tr. 363). Haller likewise voted down Respondents' last, best, and final offer and joined the strike on November 1. (Tr. 367). He regularly picketed at Respondents' Alsip location Mondays through Fridays from approximately 3:30 pm until midnight, and he testified that Bouder observed him doing so on or around November 17 when he came out to tell the picketers they could not have a propane heater on the line. (Tr. 368-372; GC Exh. 16). Haller stopped appearing regularly on the picket line on or about January 15, 2024, and obtained other employment at All Chicago Fleet as a diesel technician. (Tr. 362-363). Respondents later notified him by certified mail dated June 3, 2024 that it had terminated his employment. (GC Exh. 17; Tr. 373-376). Haller did not submit a resignation before receiving that notice. All Chicago Fleet is located next door to Respondents' Alsip facility, and, according to Wolf, Bouder had seen Haller in the truck next door. (Tr. 540-542).

Respondents acknowledge they did not meet with Peterson, Dusek, Volpe, or Haller before terminating them. The record does not establish that Respondents had warned the strikers that obtaining interim employment, reducing their picket-line attendance, or ceasing

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Mike Ducek was working for a Buick dealership that dealt only in light parts and that did not compete with Respondents in any way. (Tr. 542). Dusek testified that his brother Mike Ducek obtained employment at a GMC car dealership and that he was a parts counterman for Respondents. (Tr. 331). Mike Ducek was not discharged by Respondents.

to appear at the physical line would be treated as a resignation or as an independent basis for discharge. Respondents proffered that they had not located any documents concerning other employees discharged for reasons the same as or similar to the reasons given for these four discharges. (GC Exh. 22). Wolf acknowledged that he relied completely on Bouder to coordinate with human resources, to conduct investigations and to verbally relay the information to him about the employees who were discharged during the strike. (Tr. 585-588). No written information was collected or proffered to Wolf about Peterson, Ducek, Volpe, or Haller. Id.

E. The Withdrawal of Recognition

On August 15, 2024, Respondents sent the Union a letter withdrawing recognition from the Union effective immediately after human resources manager Teresa Strayer received a stack of decertification petitions from a majority of employees working for Respondents at the Alsip facility at that time.[29] (GC Exh. 20; Tr. 562-563).

III. DISCUSSION AND ANALYSIS

A. Credibility Findings

A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, 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. *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622 (2001), citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996), enfd. 56 Fed.Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Daikichi Sushi*, supra; *Farm Fresh Co., Target One, LLC*, 361 NLRB 848, 860 (2014) (noting that an administrative law judge may draw an adverse inference from a party's failure to call a witness who may reasonably be assumed to be favorably disposed to a party, and who could reasonably be expected to corroborate its version of events, particularly when the witness is the party's agent). Where the testimony of witnesses conflicted, I resolved those conflicts based on the foregoing factors.

I found Haehnlein to be a credible witness. Haehnlein testified in a candid and straightforward manner. Most of his testimony was uncontroverted. When he was unsure of a date or did not have notes to enhance his memory of a discussion at the bargaining table, he said as much. His testimony did not waver on cross-examination. I found him to be thorough and measured throughout his testimony. As such, I credit Haehnlein's testimony.

I also found that the four discharged employees were credible witnesses. Peterson, Dusek, Volpe, and Haller all testified in a frank, earnest and direct fashion. Of the group, Dusek testified in a somewhat hostile manner during cross-examination, but his answers to

[29] The evidence shows that, as of August 15, 2024, the Alsip bargaining unit was down from 58 employees in October 2023 to 39 employees, 28 of whom signed decertification petitions. (R Exh 1; Tr. 463-465, 562).

those questions were nonetheless complete and his hostility understandable given that he was fired after 30 years of employment at the Alsip facility. Even on cross-examination, Dusek, as well as the other three employees, provided candid answers in a straightforward manner. Thus, I credit the testimony given by former employees Peterson, Dusek, Volpe, and Haller.

I found Pilecki to be a somewhat credible witness. His recall of the bargaining sessions from July through the end of August was detailed, though his testimony was internally inconsistent on some occasions, and I decline to credit him on those occasions (i.e. that the Union never asked for an SPD until the last bargaining session before the strike; that the Union never offered any further concessions after Respondents made their offer on October 16). As described in the Facts section above, I find these assertions not credible. Respondents' own Exhibit 7 shows that the Union requested the healthcare SPD by August 16, and I have detailed in Section B(7)(b) several concessions the Union made even on October 16). Pilecki was straightforward in that he acknowledged he played no part in the discharge of the four employees at issue or in the decertification petitions and withdrawal of recognition of the Union. However, I find it inherently improbable that Pilecki, a seasoned bargainer, would not have retained the spreadsheet he testified that he created to compare the Union's benefits to Respondents' benefits and to use in the October bargaining sessions. Moreover, I find it implausible that Pilecki did not retain any documents to support his testimony that Respondents' healthcare plan saved Respondents a significant amount of money - Pilecki testified that he conducted a census to see how many employees were single coverage versus family coverage and what the cost savings would be but that he did not retain this census. Finally, I do not credit Pilecki's repeated testimony that he merely wanted to match the Alsip contract with the Summit contract given that the Summit contract contained the Union's Fund for healthcare. I find this testimony to be internally inconsistent, and therefore I do not credit it.

Finally, I found Wolf to be a less than credible witness. Wolf's testimony about the bargaining sessions after August 30 lacked detail, and he admitted that he lacked any direct knowledge on how and why his employees were discharged. Since Wolf had no direct knowledge about the four discharged employees and relied on the word of his manager Bouder, I do not credit Wolf's testimony as to the reasons for or the circumstances giving rise to those four discharges. As to Wolf's testimony that Respondents did not save any of its internal cost-savings charts of documents that it created for the Alsip bargaining, I find it (as I find Pilecki's testimony on these spreadsheets and cost-savings documents) surprising and unconvincing.[30] As such, I do not credit Wolf's (or Pilecki's) testimony on these issues.

[30] During on and off the record discussions, the parties vigorously debated whether Respondents had a reason to retain any bargaining charts showing their internal comparisons between the Alsip facility and the Summit facility, between the Union's Fund and 401(k) plans and Respondents' plans, and Respondents' cost savings. The General Counsel subpoenaed all of these documents (GC Exh. 22), and Respondents replied that it had not retained any of these spreadsheets and documents on which it relied on for making proposals and counter proposals because it was not served with the original charge in this case for over 2 years. For reasons described in Section II(B), I find that the charges were filed timely in this case and any purported lack of service fails and does not excuse the failure to retain critical bargaining materials. Therefore, while I need not make an adverse inference against Pilecki or Wolf as

B. Respondents' Bargaining Spreadsheet and Service of the Charges

In this case, Respondents assert that neither the Union nor the Board served the initial underlying ULP charge (13-CA-328585) on Respondents within 6 months of the alleged unfair labor practice. That charge was filed on October 25 and mailed to Respondents and their counsel at their known business addresses on October 26. (GC Exh. 1(a) and (b)). That charge alleges that Respondents failed and refused to bargain in good faith with the Union since on or about October 23. Respondents assert they never received the charge, and their counsel Vogel asserts he never received it until he received a letter requesting information about that initial charge from the Board's regional office on May 21, 2025. (R Exh. 36-37). Respondents assert that they would not and could not have known to preserve bargaining evidence because they did not receive this charge until 2 years after it was filed.

I find this line of argument to be entirely disingenuous. First, Respondents and the Union were responding to and litigating unfair labor practice charges about similar issues at the Summit facility (using the same attorney) during the same time period. Moreover, the Union filed a second similar charge in the instant case on November 3 in Case 13-CA-329307, asserting that Respondents failed to bargain in good faith with the Union since on or about November 1 and unilaterally implemented changes in the unit employees' terms and conditions of employment by unlawfully declaring impasse. (GC Exh. 1(c)). The General Counsel mailed that charge to Respondents on November 6, and the Union courtesy copy emailed a copy to Respondents' counsel Vogel on the day that charge was filed – November 3. (CP Exh. 1). In addition, Vogel filed a notice of appearance in the 13-CA-329307 charge on November 10. (GC Exh. 23).

For Respondents to argue that it could not have known to retain any bargaining spreadsheets prior to November 3 (when the 13-CA-329307 charge was filed), and further that the spreadsheet in question was only used at one bargaining session on October 16, somehow obviating the need to preserve and provide it pursuant to subpoena, is preposterous.

Respondents had timely notice that the Board was investigating the pattern of bargaining for the Alsip facility. Respondents' suggestion that it need not retain bargaining documents prior to the date mentioned in the charge it received (November 1) days after it was filed is not supported by any bargaining case law. Further, Respondents damage their own argument in that they retained all bargaining notes from their bargaining sessions with the Union going back to July. (R Exh. 6-13). If Respondents retained bargaining notes from July through October 17, it does not track that the one spreadsheet which explained Respondents' cost savings by using its own plans would not be similarly retained through the normal course of business.

I find that Respondents were not prejudiced by any purported defect in service of the initial charge, as they clearly received the second charge only days later and which alleged almost the identical allegations.

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the General Counsel urges in its Brief (GC Brief, 25-27), I do not credit Pilecki or Wolf's testimony as it relates to a bargaining spreadsheet created by Respondents for the Alsip facility.

C. Did Respondents Bargain in Bad Faith?

Section 8(d) of the Act defines the duty to bargain collectively as "the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment...but such obligation does not compel either party to agree to a proposal or require the making of a concession." *Garden Ridge Management, Inc.,* 347 NLRB 131, 132 (2006). The duty to bargain in good faith under Section 8(d) of the Act requires 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). In determining whether a party has violated its statutory duty to bargain in good faith, the Board examines the totality of the party's conduct, both at and away from the bargaining table. From the context of an employer's total conduct, it must be decided whether the employer is engaging in hard but lawful bargaining to achieve a contract that it considers desirable or is unlawfully endeavoring to frustrate the possibility of arriving at any agreement. 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. *District Hospital Partners, L.P. d/b/a The George Washington University Hospital,* 373 NLRB No. 55, slip op. at 1-2 (2024); *Public Service Co. of Oklahoma (PSO),* 334 NLRB 487 (2001).

The statutory duty to bargain in good faith encompasses the entire bargaining process, from beginning to end (whether agreement or lawful impasse). *District Hospital Partners, L.P.,* 373 NLRB at slip op. 7. Additionally, a union cannot fairly be expected to bargain indefinitely while waiting for the employer to begin bargaining in good faith. *Id.*

I rely on several specific actions to support my finding that Respondents bargained with no intent to reach a successor agreement with the Union from July 27 through November 15, 2023.

In response to the Union's initial July 27 proposal, Respondents first counter proposal on August 16 took the employees out of their Union healthcare, but purportedly also withdrew its initial proposal to move employees from a weekly pay structure to a biweekly pay structure. Respondents also engaged with the Union regarding its 401(k) plan for the employees, initially withdrawing its initial proposal to stop making employees automatically contribute 3% of their pay to the 401(k) plan.

That same day, the Union responded in king, showing good faith by agreeing to Respondents' proposed language for training and testing, and also withdrew or decreased its proposals regarding shift differential pay, employer contribution amounts to the Union 401(k), holiday days off, and training fund contributions.

By August 18, the Union withdrew several additional requests, including the increase for shift differential pay for leadmen, and that CDL drivers receive additional compensation. The Union also lowered its wage proposal across the board, and raised the number of years for the contract duration to four instead of three.

Starting on August 30, Respondents started to make increased, rather than compromised, demands. Respondents made a brand-new proposal about wage classifications. I find this particular proposal to be regressive in that the parties had already withdrawn earlier proposals regarding this issue. Respondents permitted the Union to make concessions on this issue in the past few iterations of proposals, but then for the first time inserted a new demand into the bargaining. In addition, I find that Respondents engaged in regressive bargaining in regard to the pay structure on this date in that they added a comment into their proposal that they reserved the right to withdrawal the pay structure proposal in its last, best, and final proposal. This comment evidences that Respondents had no intention of reaching agreement and, just one month into bargaining, were looking at steps it planned to take when it made its last, best, and final offer. Finally, Respondents again led the Union down an illusory path that it was bargaining over the Union's 401(k) by making a proposal with a contribution ceiling for Respondents' contribution to the Union 401(k).

As discussed at length in the Findings of Fact above, the parties met on several more occasions and exchanged seral more proposals. However, during the bargaining sessions September 26, October 16, and October 17, the evidence shows that Respondents became entrenched in their proposals and never wavered from that stance. Respondents' counsel warned that Respondents would never agree to the Union's offer. Pilecki counseled the Union that younger employees did not care about having a 401(k). Respondents raised (by three times the amount) the proposed withholding from employees' paychecks. Most telling was Respondents' late day October 16 proposal that not only walked back all the back-and-forth proposals the parties had made about the Union's 401(k), but went in completely opposite direction by proposing a change to Respondents' 401(k). No supporting documents were provided to the Union to show why this late-breaking new proposal would benefit the employees.

Despite the fact that Respondents were now making inconsistent and regressive proposals, the Union continued to bargain in good faith by withdrawing more demands in an effort to reach a contract. Later on October 16, the Union withdrew its proposal for vacation time and the two-tier wage system. The Union also offered a compromise in order to keep its 401(k) – it agreed to keep the contributions as they were under the expiring agreement with no increases.

Respondents came back to the table, rejected all of the Union's proposals, and declared that the parties were at an impasse.

On October 17, in another effort to compromise and reach a contract, the Union offered more concessions and withdrew more proposals, but Respondents repeated that the parties were at impasse (despite making a major change from the Union's 401(k) to their own 401(k) for the first time just one day before).

The Union made its boldest move yet and suggested that it would take the contract to the members with Respondents' 401(k) if the Union could keep its own healthcare for the employees. Respondents rejected this massive proposal after a brief conversation and insisted that the Union take its October 16 end of day proposal as a last, best, and final to the membership.

Respondents then proceeded to enroll unit employees in their healthcare from around October 23-27.

From October 24 through November 15, Respondents rebuffed all attempts by the Union to get the bargaining back on track or to make any additional proposals.

Respondents came to the Alsip successor bargaining with no intention of reaching agreement. It insisted on its own healthcare for employees even though they had been under the Union's healthcare for years, withdrew previously agreed-upon items, made inconsistent proposals on issues like contract duration – first insisting on a 10-year agreement and then suddenly insisting on 2-year agreement without explanation. Respondents refused to provide the SBCs for its healthcare to the Union despite repeated requests. Respondents lured the Union into believing progress was being made as to its 401(k), only to do an about face and refuse to consider the Union's 401(k) plan just 2 weeks before the contract and participation agreements were to expire.

Respondents' bargaining positions reflected a closed mind and pretense in negotiations, indicative of bad faith bargaining.

Under the totality of circumstances, I find Respondents bargained in bad faith with no intent to reach a successor agreement with the Union from around July 27, 2023 through November 15, 2023 in violation of Section 8(a)(5) of the Act as alleged in Sections IX 9(b), (g) and XII of the Complaint.[31]

D. Did the Parties Reach Impasse?

A bargaining impasse occurs when good-faith negotiations have exhausted the prospects of reaching an agreement. *Taft Broadcasting Co.*, 163 NLRB 475, 478 (1967), review denied sub. nom. *Television Artists AFTRA v. NLRB*, 392 F.2d 622 (D.C.Cir. 1968). To determine whether impasse has been reached, the Board considers the totality of the circumstances, including "[t]he bargaining history, the good faith of the parties in negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, [and] the contemporaneous understanding of the parties as to the state of negotiations." *Stein Industries, Inc.*, 365 NLRB No. 31, slip op. at 3 (2017) (quoting *Taft Broadcasting Co.*, supra); *Centinela Hospital Medical Center*, 363 NLRB 411, 413 (2015).

Impasse is defined as the point in time in negotiations when the parties are warranted in assuming that further bargaining would be futile. *PRC Recording Co.*, 280 NLRB 615, 635 (1986) (citations omitted). "Both parties must believe they are at the end of their rope." *Nexeo Solutions, LLC*, 364 NLRB No. 44, slip op.at 12 (2016) (quoting *Larsdale, Inc.*, 310 NLRB 1317, 1318 (1993)).

[31] With the exception that I do not find that Respondents refused to meet at reasonable times for bargaining. The evidence shows that Respondents did not cancel bargaining sessions from July through November 2023. The fact that it did not choose to meet during the last week of November (presumably the basis of the general Counsel's allegation) does not rise to the level of a violation.

Since impasse is a defense to allegations of bad-faith bargaining, it must be proven by the party asserting it and it will not be lightly inferred. *Sacramento Union,* 291 NLRB 552, 556 (1988). A party claiming impasse carries the burden of proving that, at the time of its impasse declaration, "no realistic possibility that continuation of discussions. . . would have been fruitful." *Truserv Corp. v. NLRB*, 254 F.3d 1105, 1114 (D.C. Cir. 2001) (quoting *Television Artists AFTRA v. NLRB* 395 F.2d at 628 (alteration in *Truserv*), cert. denied 534 U.S. 1130 (2002)). The party claiming impasse bears the burden of demonstrating its existence. *Dish Network Corp.*, 366 NLRB No. 119, slip op. at 2 (2018).

Not all these factors, however, carry equal weight; as the Board has explained, one of them--the declarant's good faith during bargaining--may be dispositive, in that it is required for a lawful impasse to occur. *NLRB v. Noah's Ark Processors*, LLC, 98 F.4th 896, 899 (8th Cir. 2024) ("impasse presupposes a reasonable effort at good -faith bargaining" as it is a "prerequisite" to impasse); *Corporation for General Trade (WKJG-TV 33)*, 330 NLRB 617, 627 (2000) ("good-faith bargaining is a prerequisite to reaching bona fide impasse"). This is because the Board's impasse regime creates an incentive for "unscrupulous employers...[to] sabotage[e] the negotiations to manufacture an impasse while making a show of negotiating in good faith," a practice known as "surface bargaining" that violates § 8(a)(5) of the Act. *ConAgra, Inc. v. NLRB*, 117 F.3d 1435, 1444 (D.C. Cir. 1997) (citing *Horsehead Resource Dev. Co.,* 321 NLRB 1404, 1407 (1996)).

Applying the *Taft Broadcasting* factors here, I conclude the parties did not reach a bargaining impasse.

First, the parties' bargaining history shows that the parties were used to last, best and final offers. Pilecki testified at length about the history of bargaining at the Alsip facility since 2012, detailing that in each of those contract renewal negotiations, it had come down to Respondents implementing its last best and final offer. The only thing that was different under those prior contracts is that the employees did not strike. (Tr. 393-397). However, Pilecki also testified candidly that the successor negotiations that took place in 2023 for the Alsip facility felt different to him from the start because Haehnlein was present as a Union representative (he was a former employee at the Alsip facility) and that it seemed like there was animosity right at the beginning of negotiations and that Haehnlein had a chip on his shoulder. (Tr. 404 -405). I find that the parties bargaining history at Alsip does not favor or disfavor a finding of impasse.

Second, my analysis of the good faith bargaining of the Union and the bad faith bargaining by Respondents is addressed directly above in Section II(C). For those reasons, I find that Respondents' bad faith bargaining in negotiations supports a finding that the parties had not reached impasse in bargaining. *Newcor Bay City Division of Newcor*, 345 NLRB 1229, 1238-1239 (2005).

Third, the parties exchanged several proposals prior to Respondents declaring impasse after only three months of bargaining. However, Respondents provided only five iterations of its proposal before it submitted its last, best, and final proposal to the Union on October 16 (which would go on to be implemented on November 1). Moreover, as discussed in detail above,

Respondents made only the most minor language adjustments in their proposals. Discussion of subjects such as the Union's health insurance or 401(k) or wage rates fell on deaf ears. Negotiations of such a short duration and involving such limited discussion of the most important bargaining subjects weigh against a finding that the parties were at impasse. *Ead Motors Eastern Air Devices, Inc.*, 346 NLRB 1060, 1064 (2006).

Fourth,, there were core important issues on which there was disagreement when Respondents declared impasse, so this factor might be interpreted in favor of finding impasse. Admittedly, the employees' health insurance, retirement/401(k), and wages were very important to both sides. However, at the time of the impasse declaration, the Union had not said it would never agree to Respondents' proposal to move the employees out of all of its plans. To the contrary, Haehnlein specifically took Vogel aside on October 17 and asked him to wait so he could talk to the employees about trading the Union's 401(k) plan for Respondents' plan as a way to keep the employees in the Union's healthcare Fund. Thus, despite the importance of the issues in dispute, the parties (certainly not the Union) were not at the end of their respective ropes when Respondents declared impasse. *Stein Industries*, supra, slip op. at 4-5.

Fifth, regarding the contemporaneous understanding of the parties as to the state of negotiations, the Union did not believe the parties were at impasse. Haehnlein immediately and repeatedly responded to Vogel's November 1 impasse assertion by telling him that the Union did not agree the parties were at an impasse, that there were still issues to discuss and proposals to make, requesting a federal mediator to drive the parties forward, and offering to meet on multiple additional dates. This factor also weighs in favor of finding no impasse had been reached. *Ead Motors*, supra at 1064.

Respondents have not proved that, at the time of impasse declaration, there was no realistic possibility that continuation of discussions would have been fruitful. Given the *Taft* factors and the totality of the circumstances, I conclude Respondents prematurely declared impasse as early as October 16 in violation of Section 8(a)(5) of the Act as alleged in Sections IX(f) and XII of the Complaint.

E. Did Respondents Unilaterally Change Employees' Terms and Conditions of Employment

The law is well settled that an employer violates Section 8(a)(5) when it unilaterally changes represented employees' wages, hours, and other terms and conditions of employment without providing their bargaining representative with prior notice and a meaningful opportunity to bargain over the changes. *Lincoln Lutheran of Racine*, 362 NLRB 1655, 1656 (2015) (citing *NLRB v. Katz*, 369 U.S. 736, 742-743 (1962)). Where, as here, parties are engaged in contract negotiations, an employer's obligation to refrain from unilateral changes extends beyond the mere duty to provide notice and an opportunity to bargain about a particular subject matter. It encompasses a duty to refrain from implementation at all, absent overall impasse on bargaining for the agreement as a whole. *RBE Electronics of S.D., Inc.*, 320 NLRB 80, 81 (1995); *Bottom Line Enterprises*, 302 NLRB 373, 374 (1991).

It is not in dispute that Respondents enrolled employees into their own healthcare between October 23-27, and that it implemented the remainder of its last, best, and final offer as of November 1 (including wage provisions and Respondents' 401(k).

Since I have found there was no impasse (on either October 16 or November 1), Respondents were not privileged to make unilateral changes to the employees' terms and conditions of employment. Per Katz, supra, I find that Respondents unilaterally changed employees' health insurance in late October and all other terms and conditions of employment as of November 1 in the absence of a good faith impasse on a successor contract with the Union in violation of Section 8(a)(5) of the Act as alleged in Sections IX (c) and (d) and Section XII of the Complaint.

F. Were the Four Employee Discharges Unlawful?

In mixed-motives cases, where an employer defends against an allegation that it has terminated or taken other adverse action against an employee because of their union activity by asserting that the termination or adverse action was for legitimate reasons, the Board applies the analysis set forth in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). Under this framework, the General Counsel has the initial burden to provide evidence supporting the inference that union activity was a motivating factor in the employer's decision. See, e.g., *Intertape Polymer Corp.*, 372 NLRB No. 133, slip op. at 6 (2023), enfd. 2024 WL 2764160 (6th Cir. 2024). The elements required to sustain the General Counsel's initial burden are: (1) union or other protected activity by the employee, (2) employer knowledge of that activity, and (3) employer animus against union or other protected activity. Id.

Evidence of the employer's hostility toward union activity may be circumstantial, and may include, among other things: (1) the timing of the employer's adverse action in relationship to the employee's protected activity; (2) the presence of other unfair labor practices; (3) statements and actions showing the employer's general and specific animus; (4) disparate treatment of the discriminatees; (5) departure from past practice; and (6) evidence that an employer's proffered explanation for the adverse action is a pretext. See *Golden Day Schools v. NLRB*, 644 F.2d 834, 838 (9th Cir. 1981); *NLRB v. Rain-Ware, Inc.*, 732 F.2d 1349, 1354 (7th Cir. 1984) (timing); *Mid-Mountain Foods, Inc.*, 332 NLRB 251, 260 (2000), enfd. mem. 169 LRRM 2448 (4th Cir. 2001); *Richardson Bros. South*, 312 NLRB 534, 540 (1993) (other unfair labor practices); *NLRB v. Vemco, Inc.*, 989 F.2d 1468, 1473-1474 (6th Cir. 1993); *Affiliated Foods, Inc.*, 328 NLRB 1107, 1110 (1999) (statements showing animus); *Wright Line* at 1089; *Naomi Knitting Plant*, 328 NLRB 1279, 1283 (1999) (disparate treatment); *JAMCO*, 294 NLRB 896, 905 (1989), affd. mem. 927 F.2d 614 (11th Cir. 1991), cert. denied 502 U.S. 814 (1991) (departure from past practice); Another indicator of unlawful motivation is shifting explanations for a personnel action. See *City Stationery, Inc.*, 340 NLRB 523, 524 (2003) (nondiscriminatory reasons for discharge offered at the hearing were found to be pretextual where different from those set forth in the discharge letters); *GATX Logistics, Inc.*, 323 NLRB 328, 335 (1997).

The Board will infer an unlawful motive or animus where the employer's action is "'baseless, unreasonable, or so contrived as to raise a presumption of unlawful motive." *J. S. Troup Electric*, 344 NLRB 1009, 1016 (2005) (citing *Montgomery Ward & Co.*, 316 NLRB 1248, 1253 (1995)); See also *ADS Electric Co.*, 339 NLRB 1020, 1023 (2003); *Shattuck Denn*

Mining Corp. v. NLRB, 362 F.2d 466, 470 (9th Cir. 1966). The lack of meaningful investigation into the incident is further evidence of unlawful motivation. "The failure to conduct a meaningful investigation and to give the employee who is the subject of the investigation an opportunity to explain are [likewise] clear indicia of discriminatory intent." *See New Orleans Cold Storage & Warehouse Co., Ltd.*, 326 NLRB 1471, 1477 (1998), enfd. 201 F.3d 592 (5th Cir.2000). Delay can be evidence of unlawful motivation. *Doctors' Hospital of Staten Island, Inc*. 325 NLRB 730, 738 (1998); *New Haven Register*, 346 NLRB 1131, 1143 (2006) (suspension on January 7, 2005 for events that occurred on December 23-24, 2004).

If the General Counsel has established the employee's protected conduct was a motivating factor in the employer's decision, the burden of persuasion shifts to the employer to demonstrate, by preponderant evidence, that it would have taken the same action even in the absence of the protected conduct. The employer cannot meet its burden merely by showing that it had a legitimate reason for the action; rather, it must demonstrate that it would have taken the same action even in the absence of protected conduct. *Wright Line*, above; *Intertape Polymer*, above.

In this matter, it is uncontroverted that employees Peterson, Dusek, Volpe, and Haller engaged in Union activities by going out on the picket line starting November 1, and that Respondents knew that they did so (they were not present for their shifts and at least some of them were seen on the picket line by supervisors or managers). Respondents knew that the entire bargaining unit went on strike as of November 1. Moreover, Respondents' counsel stated on the record that Bouder saw all four employees on the picket line. (Tr. 606).

As for animus, the myriad of other unfair labor practices as described above in Section II above is strong evidence of animus. Respondents contend that most employees who went out on the picket line were not discharged, and that animus therefore cannot be established. This is unavailing. "[A] discriminatory motive, otherwise established, is not disproved by an employer's proof that it did not weed out all union adherents." *Nachman Corp*., 337 F.2d 421, 424 (7th. Cir. 1964); see also *Smyrna Ready Mix Concrete, LLC*, 371 NLRB No. 73 slip op. at 20 (2022) ("antiunion animus otherwise established is not disproved by an employer's failure to retaliate against all known union supporters.").

Moreover, an unlawful motive and animus are inferred under these circumstances given that Wolf's actions were baseless, unreasonable, and contrived. J.S. Troup Electric, 344 NLRB at 1016, supra. Wolf's testimony about each of the four discharged employees was purportedly based on things he heard from general manger Bouder, who was not called to testify in this proceeding. Wolf conceded that he did no independent investigation, never spoke to any of the four employees, had no written proof that they were working at new locations or what type of work they were doing. In Peterson's case, his new job was over 2 hours away in a different state. In Volpe's case, the record is clear that he did not start working for UPS until June 24 even though Respondents issued his discharge letter on June 3 (which Wolf admitted at trial would be a mistake if the date of employment was correct). There was not only no meaningful investigation of where and when these four employees took other jobs, there was no investigation at all. This failure to conduct a meaningful investigation and give the employees an

opportunity to explain are clear indicia of discriminatory intent. *See New Orleans Cold Storage & Warehouse Co., Ltd.*, 326 NLRB 1477, supra.

I find the General Counsel has met their initial *Wright Line* showing.

Respondents assert that all four employees were discharged because they took outside employment with competitors or customers of Respondents in violation of Article 22 of the collective-bargaining agreement. For the reasons discussed in detail above, I find that the General Counsel has established that Respondents' asserted reasons for discharged the four employees for violating the contract are pretext. I find it unsupported and untrue that Respondents discharged the four employees because they were competing against or working for customers of Respondents. There is no direct record evidence, no documentation, and in Volpe's case, it simply was not true that he was working for any other company at the time he was terminated. Thus, it is impossible for Respondents to show they would have taken the same action in the absence of the employees' protected conduct because I find the reason proffered is fallacious.

Because the General Counsel established that the four employees' union activity was a motivating factor in their discharges, and because the Respondents' asserted competition/contract violation justifications were pretextual, unsupported by any documentation, grounded in hearsay, and resting on no actual investigation, the Respondents did not carry their *Wright Line* burden, and I find the discharges of employees Peterson, Dusek, Volpe, and Haller violated Section 8(a)(3) and (1) of the Act as alleged in paragraphs VII and IX of the Complaint.

G. Did Respondents Unlawfully Withdraw Recognition from the Union?

Respondents assert in its brief[32] that *Johnson Controls*, 368 NLRB No. 20 (2019) controls the issue of whether Respondents' withdrawal of recognition of the Union on August 15, 2024 was lawful. However, Respondents' reliance on *Johnson Controls* in this matter is misplaced as Johnson Controls focuses on anticipatory withdrawal, when a union may choose to file an election petition, and the resolution of "dual signers" signatures. *Id. Johnson Controls* does not address the issue of whether a disaffection petition is tainted by an employer's unfair labor practices. Respondents also summarily conclude that "[t]here is no evidence that any actions taken by Laborforce could possibly have tainted the disaffection petition, as there is no allegation or indication that Laborforce played any role in the disaffection process." (R Brief, p. 30). The Union's August 16, 2024 charge, 13-CA-348341, specifically alleges that Respondents violated the Act by unlawfully withdrawing recognition from the Union on August 15, 2024. (GC Exh. 1(g)). Whether or not an employer's own unfair labor practices caused or meaningfully contributed to the withdrawal of recognition requires a different standard.

To be clear, not all unremedied violations preclude a lawful withdrawal. The unremedied unfair labor practices must be of such a character as to either affect the union's status, cause employee disaffection, or improperly effect the bargaining relationship itself. *AT Systems West*, 341 NLRB 57, 59-60 (2004).

[32] R Brief, pp. 29-30.

In *Master Slack Corp*., 271 NLRB 78, 84 (1984), the Board considered four factors in determining whether a causal relationship exists between an employer's unfair labor practices and a subsequent petition for recognition: (1) the length of time between the unfair labor practices and the withdrawal of recognition; (2) the nature of the illegal acts, including the possibility of their detrimental or lasting effect on employees; (3) any possible tendency to cause employee disaffection from the union; and (4) the effect of the unlawful conduct on employee morale, organizational activities, and membership in the union. It is *objective* evidence of the commission of unfair labor practices that has the tendency to undermine the union, not the subjective state of mind of the employees. *AT Systems West*, 341 NLRB at 60.[33]

Applying factor 1, the unfair labor practices show a refusal to bargain in good faith since at least October 25, 2023 (though as described above in Section II(C)) the evidence shows that Respondents had no intention of bargaining in good faith since at least October 16), and that Respondents withdrew recognition from the Union on August 15, 2024, less than 1-year later. I find that factor 1 weighs in favor of finding a causal link between the unfair labor practices and the withdrawal of recognition.

Applying factor 2, the nature of the violations objectively would tend to have a lasting effect on the employees. Respondents refused to bargain with the Union in good faith, engaged in regressive bargaining, and implemented its last, best, and final offer in the absence of an impasse. The Alsip employees lost the Union-sponsored health insurance and Union-sponsored 401(k). Four long-time employees from the picket line were fired without any shred of an investigation. Only 15 of the 58 Alsip employees remained employed by Respondents as of August 2024 (R Exh. 1). The nature of these unfair labor practices is objectively severe and long-lasting. I find that factor 2 weighs in favor of finding a causal link between the unfair labor practices and the withdrawal of recognition.

Applying factor 3, the violations discussed above would tend to cause disaffection from the Union for the same reasons I outlined in factor 2. As such, and for those same reasons, I find that factor 3 weighs in favor of finding a causal link between the unfair labor practices and the withdrawal of recognition.

Factor 4 also weighs in favor of finding a causal link. By the time Respondents withdrew recognition, only 15 of the 58 unit members remained employed by Respondents. Though support on the picket line was strong for several months after the Union went on strike on November 1 and most employees went to the picket line for the entirety of the shifts every day, that support dwindled by June 2024 as described above in Section II(C)(2). Four strikers were fired. Respondents implemented terms and conditions which shunted employees out of the Union's healthcare plan and 401(k) plan. There can be no dispute that Respondents' unlawful conduct would denigrate the Union and have an effect on union membership and employee morale.

[33] Respondents mistakenly rely on subjective evidence rather than objective evidence when they argue that "not a scintilla of evidence was submitted demonstrating that the disaffection resulted from anything Laborforce did or said." (R Brief, p. 31).

Thus, I find that all four *Master Slack* factors weigh in favor of finding a causal nexus between Respondents' unlawful actions and the decertification effort. Respondents withdrew recognition from the Union in an environment tainted by their unfair labor practices. As such, I find that the August 15, 2024 withdrawal of recognition from the Union violated Section 8(a)(5) and (1) of the Act as alleged in paragraphs X and XII of the Complaint.

H. Respondents Affirmative Defenses Lack Merit

In its answer, Respondents raised fifteen affirmative defenses. Affirmative defenses 1-6 have been addressed in this decision. During the hearing and in its brief, it neglected to present any evidence or arguments regarding defenses 7-10. Thus, Respondents failed to meet their burden to establish those affirmative defenses. *Starbucks Corp.,* 373 NLRB No. 48 slip op. at 9 fn. 6 (2024). Respondents raised three challenges to these proceedings under the U.S. Constitution in affirmative defenses 11-13, contending that: (1) Board members and ALJs operate without the constitutionally required degree of electoral accountability, thereby violating the separation of powers under Article II of the Constitution; (2) the proceedings violate Respondents' Seventh Amendment right to a jury trial; and (3) the proceedings violate Respondents' due process rights and transgress separation of powers because the NLRB exercises prosecutorial, legislative, and adjudicatory authority within the same proceeding. The Board rejected similar constitutional challenges in *Commonwealth Flats Development Corp. d/b/a Seaport Hotel Boston*, 373 NLRB No. 142, slip op. at 1 fn. 1 (2024), and I am bound by that authority. Further, since ruling on Respondents' constitutional challenges could entail halting (at least in part) the operation of the agency, and such a step would be in tension with my duty to faithfully administer the Act, I deny Respondents' constitutional challenges with the understanding that federal courts will likely address the issues at some point in the future. See *National Association of Broadcast Employees & Technicians--Broadcasting & Cable Television Workers Sector of the CWA, AFL-CIO, Local 51 (NABET)*, 370 NLRB No. 114, slip op. at 1-2 (2021) (setting forth similar reasoning in declining to rule on a challenge to the constitutionality of the President's removal of the General Counsel and the appointment of an Acting General Counsel). Affirmative defenses 14-15 are catchall reservation of rights to supplement their defenses – none were raised in Respondents' brief. Therefore, I reject Respondents' affirmative defenses.

CONCLUSIONS OF LAW

1. Respondents, Laborforce, LLC and and M&K Quality Truck Sales of Alsip, LLC (d/b/a/ M&K Truck Centers – Alsip) are employers within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Charging Party Union is a labor organization within the meaning of Section 2(5) of the Act.
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:

   All full-time and regular part-time employees in the classifications of Shop Leadman, Journeyman, parts leadman, Partsman, Warehouseman, Semi-Skilled

technician, Utility, Detailer, and Parts Helper employed by Respondents at their Alsip, Illinois facility, but excluding all other employees, guards and supervisors as defined in the Act.

4. Respondents have been joint employers and alter egos of each other within the meaning of the Act and are jointly and severally liable for the unfair labor practices found in this case.
5. Respondents violated Section 8(a)(3) and (1) on June 3, 2024 by discharging employees Edward Dusek, Jason Haller, and Jim Volpe.
6. Respondents violated Section 8(a)(3) and (1) on June 6, 2024 by discharging employee William Peterson.
7. Respondents violated Section 8(a)(5) and (1) by refusing to bargain in good faith with the Union for the Unit from July 27, 2023 to November 15, 2023, specifically by:
    a. Bargaining with no intention of reaching agreement;
    b. Making regressive bargaining proposals;
    c. Reneging on tentative agreements.
    d. Unlawfully declared impasse when there was no impasse.
8. Respondents violated Section 8(a)(5) and (1) of the Act between October 23, 2023 and October 27, 2023 when it unilaterally changed health insurance for the Unit without providing the Union with notice or an opportunity to bargain.
9. Respondents violated Section 8(a)(5) and (1) of the Act on November 1, 2023 when it unilaterally implemented its last, best, and final offer for a successor contract on the Unit without providing the Union with notice or an opportunity to bargain.
10. Respondents violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from the Union for the Unit on August 15, 2024 when it was unlawful to do so.
11. The unfair labor practices committed by the Respondents affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

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

Having found that Respondents violated Section 8(a)(3) by unlawfully discharging Edward Dusek, Jason Haller, Jim Volpe, and William Peterson, I order that Respondents must offer them reinstatement to their former jobs or if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority and other rights and privileges they would have enjoyed absent the discrimination against them. Respondents shall also make whole Edward Dusek, Jason Haller, Jim Volpe, and William Peterson for any loss of earnings and other benefits.

Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with *Thryv, Inc.*, 372 NLRB No. 22 (2022), the Respondents shall also compensate

the discriminatees for any other direct or foreseeable pecuniary harms incurred as a result of the unlawful conduct, including reasonable search-for-work and interim employment expenses, regardless of whether those expenses exceed interim earnings; compensation for these harms shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

The Respondents shall compensate the discriminatees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and shall file with the Regional Director for Region 13, within 21 days of the date the amount of backpay is fixed either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years. *Latino Express*, Inc., 359 NLRB No. 44 (2012); *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

Respondents shall also remove from their files any reference to the discharges and shall notify each affected employee in writing that this has been done and that the unlawful actions will not be used against them in any way.

Having found that Respondents violated Section 8(a)(5) by unilaterally changing mandatory terms and conditions of employment for the Unit, I order that Respondents rescind the changes that were unilaterally implemented from October 23-27, 2023 and on November 1, 2023, and make all affected employees whole for any loss of earnings and other benefits suffered as a result of the unilateral changes. That includes reimbursing unit employees for any expenses resulting from Respondents' unlawful changes to their contractual benefits (including changes to health insurance benefits), as set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), affd. 661 F.2d 940 (9th Cir. 1981).

The make-whole remedy for the unilateral changes shall be computed in accordance with *Ogle Protective Service,* 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB 6 (2010). Consistent with *Thryv, Inc.*, 372 NLRB No. 22, slip op. at 14 (2022), enf. denied in part on other grounds, 102 F.4th 727 (5th Cir. 2024), Respondents shall also compensate employees for any other direct or foreseeable pecuniary harms incurred as a result of the unlawful unilateral change to healthcare and all changes resulting from its November 1, 2023 last, best, and final offer, including reasonable search-for-work and interim employment expenses, if any, regardless of whether these expenses exceed interim earnings. Compensation for those harms shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

In addition, the Respondents shall compensate employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 13, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years, in accordance with *AdvoServ of New Jersey, Inc.,* 363 NLRB 1324 (2016). In accordance with *Cascades Containerboard Packaging–Niagara*, 370 NLRB No. 76 (2021), as modified in 371 NLRB No. 25 (2021), the Respondents shall also be required to file with the Regional

Director for Region 13 a copy of each backpay recipient's corresponding W–2 form reflecting the backpay award.

Upon request of the Union, Respondents shall rescind the unlawful unilateral changes and put into effect the corresponding terms and conditions of employment set forth in the collective-bargaining agreement that expired on October 31, 2023, and shall maintain those terms in effect until the parties have bargained to agreement or a valid impasse, or the Union has agreed to changes. In addition, Respondents must make its employees whole for any loss of earnings and other benefits that resulted from its unlawful unilateral changes. Backpay for these violations shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). This includes reimbursing unit employees for any expenses resulting from Respondents' unlawful changes to their contractual benefits (including changes to health insurance benefits), as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), affd. 661 F.2d 940 (9th Cir. 1981), with interest as set forth in *New Horizons* and *Kentucky River Medical Center*, supra. I further recommend that Respondents be ordered to make all contributions to any fund established by the expired collective-bargaining agreement (including the Union 401(k)), which contributions the Respondents would have made but for the unlawful unilateral changes, in accordance with *Merryweather Optical Co*., 240 NLRB 1213, 1216 (1979).

The Board has previously held that an affirmative bargaining order is the traditional, appropriate remedy for a Section 8(a)(5) refusal to bargain with the lawful collective-bargaining representative of an appropriate unit of employees.[34] *Caterair International*, 322 NLRB 64, 68 (1996). However, the U.S. Court of Appeals for the District of Columbia Circuit has required the Board to justify, on the facts of each case, the imposition of an affirmative bargaining order. See, e.g., *Vincent Industrial Plastics, Inc. v. NLRB*, 209 F.3d 727, 738–739 (D.C. Cir. 2000). In *Vincent*, supra at 738, the court stated that an affirmative bargaining order must be justified by a reasoned analysis that includes an explicit balancing of three considerations: (1) the employees' Section 7 rights; (2) whether other purposes of the Act override the rights of employees to choose their bargaining representative; and (3) whether alternative remedies are adequate to remedy the violations of the Act. Although the Board has indicated that it disagrees with the requirements that the court identified in *Vincent*, the Board has followed a practice of examining whether an affirmative bargaining order is justified according to the standard set forth in *Vincent.*

[34] If the withdrawal of recognition was unlawful solely because Respondents withdrew recognition prematurely in violation of the contract bar (i.e., without the decertification petition also being tainted), Board precedent indicates that an affirmative bargaining order would not be warranted. See *Burger Pits, Inc.*, 273 NLRB 1001, 1002 (1984) (finding that the employer violated Section 8(a)(5) and (1) of the Act by prematurely withdrawing recognition of the union, but declining to impose an affirmative bargaining order or extend the make-whole remedy beyond the expiration date of the contract), enfd. 785 F.2d 796 (9th Cir. 1986). Since the decertification petition here was tainted by serious unremedied unfair labor practices that Respondents committed, an affirmative bargaining order is appropriate for the reasons set forth in this section.

Following the Board's approach, I have analyzed the facts of this case under the three-factor balancing test outlined by the U.S. Court of Appeals for the District of Columbia Circuit.

(1) An affirmative bargaining order in this case will vindicate the Section 7 rights of the unit employees who were denied the benefits of collective bargaining through their designated representative by Respondents' withdrawal of recognition and resultant refusal to bargain with the Union. As discussed above, Respondents' own unfair labor practices contributed to the disaffection of employees from the Union and tainted the decertification petition. An affirmative bargaining order, with its attendant bar to raising a question concerning the Union's majority status for a reasonable time, does not unduly prejudice the Section 7 rights of employees who may oppose continued representation by the Union because the duration of the order is no longer than is reasonably necessary to remedy the ill effects of the violation. Since the Union was unfairly deprived of an opportunity to represent members of the bargaining unit for the full two–year length of the collective-bargaining agreements (including representing members about wages), as well as the opportunity to bargain for successor agreements, it is only by restoring the status quo ante and requiring Respondents to bargain with the Union for a reasonable period of time that the employees will be able to fairly assess the Union's effectiveness as a bargaining representative free of Respondents' unlawful conduct. The employees can then determine whether continued representation by the Union is in their best interest.

(2) An affirmative bargaining order also serves the policies of the Act by fostering meaningful collective-bargaining and industrial peace. It removes Respondents' incentive to delay bargaining in the hope of further discouraging support for the Union. It also ensures that the Union will not be pressured by the possibility of another decertification petition or by the prospect of an imminent withdrawal of recognition to achieve immediate results at the bargaining table following the Board's resolution of its unfair labor practice charges and the issuance of a cease-and-desist order.

(3) A cease-and-desist order, without a temporary decertification bar, would be inadequate to remedy Respondents' withdrawal of recognition and refusal to bargain with the Union because it would permit another challenge to the Union's majority status before the taint of Respondents' previous unlawful withdrawal of recognition has dissipated. Allowing another challenge to the Union's majority status without a reasonable period for bargaining would be particularly unjust in circumstances such as those here, where given the passage of time since Respondents withdrew recognition the Union needs to reestablish its representative status with unit employees. Further, Respondents' withdrawal of recognition would likely have a continuing effect, thereby tainting any employee disaffection from the Union arising during that period or immediately thereafter. In such circumstances, permitting a decertification petition to be filed immediately might very well allow Respondents to profit from their own unlawful conduct. I find that those circumstances outweigh the temporary impact that the affirmative bargaining order will have on the rights of employees who oppose continued union representation.

For all of the foregoing reasons, I find that an affirmative bargaining order with its temporary decertification bar is necessary to fully remedy the violations in this case, and I shall include such an order as a remedy here.

Respondents shall post an appropriate informational notice, as described in the attached appendix. This notice, on a form provided by the Regional Director for Region 13, after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the Respondents shall distribute the notice electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondents customarily communicate with their employees by such means. Reasonable steps shall be taken by Respondents to ensure that the notice is not altered, defaced, or covered by any other material. If the Respondents have gone out of business or closed their facility, the Respondents shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondents at the Alsip facility at any time since July 27, 2023.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[35]

ORDER

Respondents, Laborforce, LLC and and M&K Quality Truck Sales of Alsip, LLC (d/b/a/ M&K Truck Centers – Alsip), their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees for supporting the Union or any other labor organization.

(b) Failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(c) Refusing to bargain with the Union in good faith as the exclusive collective-bargaining representative of Unit employees.

(d) Engage in regressive proposals and renege on tentative agreements.

(e) Unilaterally implementing a last, best and final offer at a time when the parties were not at impasse.

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

(f) Withdrawing recognition from the Union unlawfully.

(g) Unilaterally changing the terms and conditions of employment of its unit employees.

(h) Discharging employees because of the union or protected activity.

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

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

(a) Within 14 days from the date of this Order, offer Edward Dusek, Jason Haller, Jim Volpe, and William Peterson full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Edward Dusek, Jason Haller, Jim Volpe, and William Peterson whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms, suffered as a result of the discrimination against them in the manner set forth in the remedy section of this decision.

(c) Compensate Edward Dusek, Jason Haller, Jim Volpe, and William Peterson for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 13 within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year(s).

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges and, within 3 days thereafter, notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(e) Rescind the unlawful unilateral decisions made to health insurance in late October 2023 and all changes from the November 1, 2023 implementation of the last, best, and final offer.

(f) Restore the status quo ante as it existed before October 16, 2023, and continue in effect all thew terms and conditions of employment contained in the Unit agreement expiring October 31, 2023 unless and until Respondents bargain with the Union to agreement or impasse on different terms and conditions.

(g) Recognize and, on request, bargain with the Union as the exclusive collective bargaining representative of the employees in the Unit concerning terms and conditions of employment, and, if an understanding is reached, embody the understanding in a signed agreement.

(h) Make Edward Dusek, Jason Haller, Jim Volpe, and William Peterson whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms, suffered as a result of the Respondents' unlawful unilateral changes, in the manner set forth in the remedy section of this decision.

(i) Make whole employees in Unit for any loss of earnings and other benefits suffered as a result of Respondents' unlawful decision to modify the collective-bargaining agreement without the Union's consent, in the manner set forth in the remedy section of this decision.

(j) Compensate bargaining unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 1, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year(s).

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

(l) Within 14 days after service by the Region, post at its Alsip, Illinois facility copies of the attached notice marked "Appendix."[36] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondents customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since July 27, 2023.

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

(m) Within 21 days after service by the Region, file with the Regional Director for Region 13 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

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

Lisa Friedheim-Weis
U.S. Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO:

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

WE WILL NOT discharge or otherwise discriminate against you because you engage in union or other protected activity.

WE WILL NOT refuse to bargain in good faith with the Automobile Mechanics Local 701, International Association of Machinists, AFL-CIO (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 full-time and regular part-time employees in the classifications of Shop Leadman, Journeyman, Parts Leadman, Partsman, Warehouseman, Semi-Skilled technician, Utility, Detailer, and Parts Helper employed by Respondents at their Alsip, Illinois facility, but excluding all other employees, guards and supervisors as defined in the Act.

WE WILL NOT unilaterally cease to pay the health insurance premiums of Unit employees without bargaining about it to an agreement or a good faith impasse.

WE WILL NOT unilaterally implement our last, best, and final proposal on the Unit at a time when we are not at a good faith impasse.

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

WE WILL NOT withdraw recognition from the Union as the exclusive representative of the Unit.

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

WE WILL, within 14 days from the date of the Board's Order, offer Edward Dusek, Jason Haller, Jim Volpe, and William Peterson full reinstatement to their former jobs or, if those jobs

no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Edward Dusek, Jason Haller, Jim Volpe, and William Peterson whole, with interest, for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms, suffered as a result of our unlawful conduct against them.

WE WILL compensate the affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and **WE WILL** file with the Regional Director a report allocating the backpay awards to the appropriate calendar years.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges, and WE WILL, within 3 days thereafter, notify each affected employee in writing that this has been done and that the unlawful actions will not be used against them in any way.

WE WILL rescind our unlawful, unilateral decisions as to healthcare and all provisions from our November 1, 2023 last, best, and final offer, and WE WILL make bargaining unit employees whole for any losses attributable to those unilateral decisions.

WE WILL restore the status quo ante of the employees' collective-bargaining agreement (as it existed before October 31, 2023), and WE WILL continue in effect all the terms and conditions of employment contained in the employees' collective-bargaining agreement unless and until we bargain with the Union to agreement or impasse on different terms and conditions.

WE WILL make whole employees in the Unit for any loss of earnings and other benefits suffered as a result of our decision to modify the service and maintenance employees' collective-bargaining agreement without the Union's consent.

WE WILL, on request, bargain with the Union as the exclusive representative of the Unit in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody it in a signed agreement.

WE WILL compensate unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 13, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

WE WILL file with the Regional Director for Region 13, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of each backpay recipient's corresponding W-2 forms reflecting the backpay awards.

LABORFORCE, LLC, M&K EMPLOYEE SERVICES, AND M&K TRUCK CENTERS, AS JOINT EMPLOYERS AND/OR ALTER EGOS
(Employer)

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.nlrb.gov.

Region 13
National Labor Relations Board
Dirksen Federal Building
219 South Dearborn Street
Suite 808
Chicago, Illinois 60604
Fax: (312)886-1341
Telephone: (312) 353-7570, **Hours of Operation:** 8:30 AM-5:00PM CT

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/13-CA-328585 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 (312) 353-7170.