UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

K/BTF BROADWAY LLC

and Case 29-CA-340889

LOCAL 2 BUILDING SERVICE EMPLOYEES &
FACTORY WORKERS USWU IUJAT

*Jacob Frisch, Esq.,* for the General Counsel
*Jonathan D. Farrell and Ana Getiashvili, Esqs.*
*(Meltzer, Lippe, Goldstein & Breitstone, LLP),*
Mineola, NY, for the Respondent
*Lauren M. Kugielska and Abrahim Assaily, Esqs.*
*(Barnes Iaccarino & Shepherd LLP),*
Hempstead, NY, for the Charging Party

# DECISION

## STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried in Brooklyn, New York on August 11 and 12, 2026. Based on timely filed charges by Local 2 Building Service Employees & Factory Workers USWU IUJAT (Union), the General Counsel issued a complaint on May 21, 2026 alleging that K/BTF Broadway LLC (Respondent) and Loyal Building Services, Inc. (Loyal), as joint employers of cleaning service employees at the Broadway Commons mall in Hicksville, New York, violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act)[1] by: (1) failing and refusing to recognize and bargain with the Union and making unilateral changes to employees' terms and conditions of employment; and (2) laying off all unit employees without notice and opportunity to bargain over the decision or its effects with the Union.[2]

Respondent denies the material allegations that it was an employer at any time within the meaning of Section 2(2), (6) and (7) of the Act, a successor employer to the previous mall owner, or a joint employer of the unit employees.

On the entire record,[3] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

---

[1] 29 U.S.C. § 158(a).

[2] On May 20, 2026, the Regional Director approved an Informal Settlement Agreement resolving Loyal's liability. Pursuant to that agreement, the complaint does not seek any remedy with respect to Loyal.

[3] Counsel for the General Counsel's (General Counsel) unopposed motion to correct the record, dated October 20, 2026, is granted. The motion clarified that Jeffrey N. Naness, Esq., counsel for Loyal, did not enter an appearance for Respondent.

## FINDINGS OF FACT

### I. JURISDICTION

Respondent, a Delaware limited liability company with an office and place of business in Englewood, New Jersey, has been engaged in the investment in and ownership of, and—through several companies—operation of Broadway Commons, a retail mall in Hicksville, New York. In conducting its operations at Broadway Commons, Respondent annually derives gross revenues of more than $100,000, and purchases and receives goods valued at more than $25,000 directly from points outside the State of New York. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

#### A. *Broadway Commons' Previous Ownership and Management*

##### 1. KRE's Service Providers

The Broadway Commons Mall (Broadway Commons), also known as the Broadway Mall, is a two-level mall with retail shops and food vendors. It consists of approximately 480,000 square feet of retail space, not including the Target and IKEA department stores, 95,000 square feet of interior common area (common area), and 4,500 square feet of office space.

Prior to February 1, 2024, Broadway Commons was owned and operated by KRE Broadway Mall Owner, LLC (KRE). Josh McCord was KRE's General Manager and William Devlin was operations manager.[4] During KRE's ownership, it retained contractors and vendors to perform services throughout the mall.

Since at least 2015, Respondent contracted with Loyal Building Services, Inc. (Loyal) to perform cleaning services for the "common area" (interior and exterior spaces) at Broadway Commons.[5] KRE's last contract with Loyal covered the period from February 21, 2022 to December 31, 2023 (the cleaning contract).[6]

On September 26, 2023, Devlin informed Kevin Henninger, Loyal's President, to prepare to renew the cleaning contract: "Not that this is going to be an issue next year but let's go through

[4] McCord and Devlin were subpoenaed by Respondent but neither appeared. Respondent preserved its objection to any adverse inference from their absence. Tr. 227. The complaint alleged that McCord and Devlin were Section 2(11) supervisors and 2(13) agents. There is no evidence in the record establishing their supervisory status. However, the parties stipulated that they were statutory agents. Jt. Exh. 1, ¶ 7.

[5] Loyal's earliest personnel records confirm that Loyal hired cleaning service workers to work at Broadway Commons in 2015. R. Exh. 1.

[6] GC Exh. 17.

the motions. Thanks."[7] However, a renewal never materialized and, after December 31, 2023, the cleaning contract essentially became a month-to-month agreement.[8]

The cleaning contract obligated Loyal to furnish "a competent and well-trained on-site supervisor" and to "enforce strict discipline and good order among its employees." It also required Loyal's employees to wear Broadway Commons "designated uniforms." It also set forth "Cleaning Specifications" for all parts of the common area, Loyal's total monthly compensation, and the hourly rate for "each additional hour of labor." Additionally, the contract required Loyal to "adhere to all Union increases and directly pass through these costs to [KRE]," and listed those costs for the term of the agreement:

| | |
|---|---|
| Health & Welfare | $5,580.00 |
| Pension (2% of Wages) | $600.00 |
| Vacation Pay | $1,184.36 |
| Sick Pay | $786.92 |

Loyal maintained unit employees' personnel files, hired, supervised, and disciplined them, deducted union dues, performed drug testing and background searches, approved sick leave and time off, and kept track of hours worked. Loyal also paid unit employees' wages, benefits, and their payroll taxes.[9]

2. KRE's Relationship with the Union

Loyal's Broadway Commons' employees were members of the Union. Since at least March 1, 2010, KRE, as "Employer," recognized "the Union as the exclusive bargaining representative for all building service employees, excluding supervisors and managers. . . working at [the Broadway Mall]," and entered into several collective-bargaining agreements regarding the terms and conditions of employment of Loyal's employees at Broadway Commons. All negotiations were conducted between KRE General Manager McCord and Union Vice President Mary Clanton.[10] Loyal was never involved in any of those negotiations, had no input as to the terms thereof, and was not a signatory to the CBA. The CBA essentially created a pass-through mechanism determining the rates and amounts of compensation and benefits. Loyal was to pay unit employees and then be reimbursed by KRE.[11] Clanton and Henninger, Loyal's President, only interacted with respect to billing and payments, and the Union never filed a grievance with Loyal.[12]

---

[7] GC Exh. 21.

[8] Henniger's completed commerce questionnaire indicated that Loyal provided services valued in excess of $50,000 to retail concerns, purchased and received goods valued in excess of $50,000 from outside New York, and had gross revenues in excess of $1,000,000. GC Exh. 16; Tr. 132.

[9] Tr. 186, 190, 195-97, 200, 202; R. Exh. 2.

[10] GC Exhs. 5-6; Tr. 32.

[11] Tr. 29, 113-114, 133-135, 155; GC Exh. 19; R. Exh. 6.

[12] Clanton had scant knowledge of the unit employees' daily operations and supervision. She maintained on cross-examination that the unit employees "were employed by the mall," but did not know which entity did the hiring paperwork or payroll or withheld taxes from unit employees. Tr. 65, 67-68, 75. Clanton conceded, however, Loyal was listed as the company in most of the employees' Union files, "ran the day-to-day operations," paid their vacation days, and deducted union dues. Loyal also remitted the dues,

McCord was also the point of contact for the unit employees regarding any issues that arose regarding their terms and conditions of employment. For example, around 2023, Clanton communicated with McCord regarding break times and succeeded in negotiating an additional break for the employees. Clanton and Henninger, on the other hand, only interacted for billing and payment purposes.[13]

KRE and the Union entered into an initial collective-bargaining agreement covering the period from March 1, 2010 to February 28, 2013. That agreement was renewed for the period from April 1, 2013 to March 31, 2016.[14] The Union's file for each employee-member listed the "Company Name" as either Loyal Building Services or Broadway Commons Mall with a "Building Address" of Broadway Commons Mall or Broadway Mall.[15]

The final collective-bargaining agreement between KRE and the Union covered the period from July 1, 2017 to February 29, 2020 (the CBA). It listed "Broadway Mall, Hicksville, NY 11801" as the "Employer" and "Local 2 of Building Service Employees & Factory Workers, USWU, IUJAT" as the "Union."[16] The CBA specified the hourly wages of unit employees, health insurance coverage or a health insurance stipend of $620 a month, a pension contribution of 2% of wages, seven (7) sick/personal days per year, and six (6) paid holidays. All of those costs were directly paid by Loyal to unit employees but were passed through to KRE.[17] As required by the CBA, the Union also sent monthly invoices for union dues to "Broadway Commons Mall c/o Loyal Building Services." Loyal deducted union dues from unit employees' paychecks and remitted those amounts to the Union.

The CBA, at Article XXX, "Terms of Agreement Reopening," also provided for automatic renewal if KRE and the Union were unable to renew or terminate it by December 31 of each year:

> C. In the event that either party does not give written notice to the other by certified mail, return receipt requested, at least sixty (60) days prior to the termination date hereof of desire to terminate the Agreement, this Agreement shall be automatically renewed and shall remain in full force and effect for an additional period of one (1) year, from said termination anniversary date and the reopening provisions as set forth in subdivision (B) hereof shall be applicable.

---

pension and health contributions to the Union. Tr. 66-68, 70-72, 104-105, 114-115. Henninger confirmed that he interacted with Clanton "[f]or billing-wise and payment stuff." Tr. 154-155.

[13] The Union never filed a grievance but had "talks about lunch hour breaks and stuff like that" with "the "general manager of the mall [McCord]." Tr. 73. 112-113, 154.

[14] GC Exh. 4.

[15] R. Exh. 1.

[16] GC Exh. 2.

[17] Henninger, subpoenaed by the General Counsel, was a very credible witness. He testified spontaneously and answered every question literally. He testified that the information about how much in wages and benefits to be paid unit employees was determined "by the Broadway Mall," Tr. 135-137. On recross, he clarified that Loyal could have given more in wages and/or benefits if it chose to but would not have been reimbursed by the Broadway Mall above the contracted amounts. Tr. 225-226.

3. KRE and the Union Continued the Terms of the CBA After it Expired in 2020

With disruptions to Broadway Commons' operations and temporary layoffs of unit employees caused by the COVID-19 pandemic, KRE and the Union were unable to enter into a renewal agreement before the CBA expired on February 29, 2020. However, pursuant to the reopener at Article XXX, the CBA automatically renewed each year and remained in full force and effect through February 29, 2024. Although the cleaning contract expired on December 31, 2023, KRE and the Union continued to abide by the terms of the CBA until February 1, 2024.

Loyal deducted the dues and remitted them to the Union until February 1, 2024. Loyal continued to pay its unit employees' wages, health insurance stipends, and sick/personal days pursuant to the terms of the CBA. It then invoiced KRE for "monthly service" (covering wages), "Union Health Benefits," "Union Pension Payments," and sick/personal days. KRE paid the invoices. The Union continued sending monthly invoices for union dues to "Broadway Commons Mall c/o Loyal Building Services." As of February 1, there were 12 unit employees: Maria Pari Motta**,** David Ramirez, Jose Quinones, Jose Turcios, Maria Ramos, Leandro Figueroa Mendez, Gloria Carcamo, Jose Alvarez, Yessenia Otero Hernandez, Julio Benitez, Esdras Hernandez, and Alex Hernandez.[18]

4. Subsequent Bargaining Developments

In the meantime, negotiations between the Union and KRE dragged along until October 28, 2022, when Clanton sent McCord a proposed four-year contract renewal, from March 1, 2020 to February 29, 2024. The proposal included increases to the hourly wage rate, sick days, and pension contributions, and added a 15-minute daily break. On May 17, 2023 McCord sent KRE's counterproposal. It proposed a contract term of January 1, 2024 through December 31, 2027. It also countered the Union's proposal with respect to increased sick days and pension contributions but agreed to 3% wage increases and an additional daily 15-minute work break. The Union accepted KRE's May 2023 proposal but requested a one-time signing bonus of $500 for unit employees to compensate for the gap between the proposed contract terms.[19]

Several months passed without a response by KRE. On August 22, 2023, Clanton expressed her concerns about the delayed response. McCord responded later that day, apologized for the delayed response, and explained: "We are in the middle of a lot of internal moves with our company. Please be patient. I will try and get a response as soon as possible." On September 20, 2023, Clanton requested an update. Shortly thereafter, McCord replied: "The property is in the middle of being sold. Once the property transacts we can continue communication on the CBA. We are expecting it to close by the end of December." Clanton responded soon thereafter, expressing dismay at the sudden disclosure. She characterized KRE's conduct as possible "bad faith bargaining" or "surface bargaining," insisted the parties "move forward with the process,"

[18] GC Exhs. 2, 12-13, 18-20, 26, 28-30; Tr. 55-56 58, 135-145, 222-223.
[19] GC Exhs. 5-7; Tr. 35-40.

and reiterated "that all terms and conditions for a renewal CBA . . . were negotiated and approved by both parties—with the exception of the pending one time signing bonus for the workers."[20]

On December 12, 2023, Clanton emailed McCord requesting "a status update on the renewal agreement." One minute later, McCord responded that "the sale date was extended to the end of January 2024. We will have direction at that point."[21]

*B. Respondent Purchase of the Broadway Mall*

Respondent is owned by BTF Hicksville, LLC, K Broadway Member LLC, and AJM BRE Broadway. K Broadway Member LLC is an investment group whose members include KABR Real Estate Investment Partners V LLC and KABR Real Estate Investment Partners VI LLC. On August 30, 2023, it agreed to purchase Broadway Commons from KRE. The "Purchase and Sale and Escrow Agreement" had an "Approval Date" of October 4, 2023 and a "Closing Date" of December 4, 2023. Section 5 of the purchase agreement, included the following relevant "Representations and Warranties" apprising Respondent of the fact that there were union relationships associated with Broadway Commons:[22]

> **5.1.23.** There are no employment contracts or agreements (written or oral) affecting the Property and there are no employees of Seller, at the Property or otherwise, who, by reason of any federal, state, county, municipal or other law, ordinance, order, requirement or regulation, or by reason of any union or other employment contract, written or otherwise, or any other reason whatsoever, would become employees of Purchaser as a result of the purchase of the Property by Purchaser.
>
> **5.1.24.** Purchaser understands that there are at least two or more unions associated with the property. Seller shall provide all of the collective bargaining agreements for all of the unions associated with the Property for Purchaser's review. Purchaser will not agree to assume any collective bargaining agreements and will unilaterally set its initial terms and conditions of employment for all employees it plans to employ at the Property. Purchaser also will not pay for or indemnify for any costs or fees related to the foregoing or in connection with the assessment of any of the withdrawal liabilities.

After the purchase agreement was signed, Respondent performed a due diligence review of Broadway Commons' operations and obligations. Over the next five months, KABR Chief Operating Officer Michael Goldstein, Property Accountant Winston Magill, and Respondent's attorneys investigated the feasibility of the purchase, the details involved, and determined what, if anything else, Respondent needed to know.[23] As part of that process, Respondent was aware that

[20] GC Exh. 7; Tr. 40-41.
[21] GC Exh. 8; Tr. 44-45.
[22] GC Exh. 36.
[23] Tr. 231, 294-295.

unions were associated with the property and represented certain employees,[24] including the unit employees employed by Loyal.[25]

*C. Respondent's Preparations Prior to Assuming Ownership*

During the due diligence review period, Respondent's representatives met with KRE's service providers. Adam Cazaz was an employee of Curbcut, another LLC with partial ownership of Respondent. On November 3, 2023, Goldstein directed Cazaz to meet with KRE operations manager Bill Devlin to "review each of the contractors and get [Devlin's] feedback." On November 6, 2023, Cazaz reported to Goldstein that he and others met with Devlin on November 3, 2023 and "[w]e reviewed the existing vendors at the property" and Devlin "provided feedback on each vendor, their productiveness & his overall thoughts on them." With respect to Loyal's cleaning services, Cazaz noted that Devlin reported "[n]o issues."[26]

On November 29, 2023, Goldstein and Cazaz met with McCord and Devlin at Broadway Commons. The following day, Cazaz emailed his notes of the meeting to Goldstein, McCord, and Devlin.[27] Under the Vendors & Service Contracts section, Cazaz's note confirmed that Respondent was informed by McCord and/or Devlin that the unit employees were represented by the Union: "Loyal – under union local 2 – **KABR to discuss**." (emphasis in original).[28]

[24] Goldstein acknowledged that inquiring whether there were unions or represented employees at Broadway Commons fell within the due diligence process. Tr. 280-281. Pressed as to whether he received or requested copies of the collective-bargaining agreements referenced at Section 5.1.24 of the purchase agreement, Goldstein could not recall. Tr. 283, 296, 309. However, his memory lapse was a transparent attempt to minimize the significance of Section 5.1.23, which he interpreted to mean that Respondent was "not inheriting any agreements . . . that have nothing to do with us going forward in our ownership of the property." Tr. 295-296.

[25] Acknowledging that "every detail matters" during the due diligence process and the CBA could have bound Respondent, Magill reviewed KRE's agreements but purportedly overlooked the CBA: "Actually I learned I did not during this process. I - - we didn't - - it wasn't a contract that we were - - that I looked at." Tr. 252-253. However, Magill's attempt to fall on the proverbial sword was far from convincing. Magill, an experienced property accountant who had reviewed many contracts worth over a billion dollars during due diligence investigations, reviewed KRE's vendors and the service contracts. That included Loyal's service agreement, which referenced pass through costs for health insurance stipends, pension contributions, and vacation pay. Tr. 253-255.

[26] GC Exh. 37.

[27] GC Exh. 38.

[28] Goldstein attempted to distance himself from Cazaz's recap of the meeting was not credible. He conceded that he was at Broadway Commons on November 29, 2023, but purported to lack any recollection of attending the meeting: "I don't know if I was actually in it. There was a lot of things going on that day, but it was notes from a meeting." Tr. 300-301. He equivocated in claiming that "it wasn't something that pertained to us as the new purchaser of the agreement, so it wasn't something that we spent a lot of time on, because it didn't really pertain to us as the new purchaser." Tr. 299. Equally as incredible, when asked if he understood that Cazaz's note stated that Loyal's employees were represented by the Union, he responded, "No, not necessarily." He rejected the notion that it was important to follow up with Loyal about the Union and purported to lack any recollection of doing so. Tr. 301-302.

Later that day, Devlin emailed KRE's service providers, including Loyal, notifying them of the sale of Broadway Commons:[29]

> Effective February 1[,] 2024 we will have new owners.[30] None of my vendors will change. I will be sending contracts to all of you by year end with all the new information contracts, where to send invoices and new company information.

Devlin's email was the first time that Henninger learned that Broadway Commons was being sold. However, Loyal continued to perform the scope of work in its cleaning contract with the same workforce of 12 employees.[31]

On December 28, 2023, Goldstein emailed Devlin confirming their discussion that "we will need three maintenance personnel at the property."[32] He also asked three questions:

1. Is it necessary to have three people full time? Or a hybrid of full time for 2 and as needed?
2. Do you know what Loyal charges per hour for its maintenance person that you want to retain?
3. Are you ok if we decided to use Loyal as a vendor to provide Maintenance personnel (to be interviewed and approved by us)

On December 29, 2023, Devlin responded that he preferred to have three full-time cleaning staff but could work with two and "currently have 1 handyman already on Loyal payroll." As Devlin was sick and out of the office that week, he provided Henninger's cell phone number.

On January 1, 2024, Goldstein emailed Henninger, copying McCord, Devlin, and two other KABR employees, Aaron Malinsky, and Kenneth Holz, about the change in ownership and his plan going forward:

> We will schedule a meeting together in January to discuss Loyal's role at Broadway Commons and how we can work together to improve. In the interim, please work with [Devlin] to put together a proposal for one additional maintenance person, to be approved by our ownership group.

On January 3, Henninger emailed Goldstein, Devlin, McCord, Malinsky and Holz to report that he met that day with Devlin and McCord "to discuss the maintenance team/requirements/expectations" and would "send over the numbers by End of business Friday."[33]

---

[29] GC Exh. 22.

[30] All dates hereinafter are in 2024 unless stated otherwise.

[31] As was the case with KRE, Respondent understood that it was not going to hire Loyal's employees, pay them, grant them leave, discipline or transfer them. Those personnel matters were handled by Loyal. Tr. 147, 205-207, 235-236, 270-272; GC Exhs. 26, 28; R. Exh. 3.

[32] GC Exh. 23.

[33] GC Exh. 23.

*D. Broadway Commons' Operations Remained the Same After February 1*

On February 1, Respondent closed on the purchase of Broadway Commons and took over operations.[34] On the same day, Respondent contracted with KABR Professional Services LLC to provide human resources and staffing services at Broadway Commons. KABR Professional Services LLC is affiliated with other "KABR" companies such as KABR Real Estate Investment Partners V LLC and KABR Real Estate Investment Partners VI LLC and was created to pay expenses including payroll for the KABR companies. At the same time, Respondent contracted with Riverwest Management LLC (Riverwest), also a KABR affiliated company, to handle Broadway Commons' property management.

Also on February 1, KABR Professional Services LLC assigned Devlin, who was retained as Operations Manager for the KABR Group, LLC, to continue handling the management services at Broadway Commons. He remained in that capacity until June 24, when he began a leave of absence. KABR Professional Services LLC also assigned McCord, who was retained as Asset Manager for the KABR Group, LLC, to perform management services at Broadway Commons. He remained in that capacity until May 27.[35]

In order to facilitate the transition after taking over on February 1, Respondent did not make any changes to Broadway Commons' operations.[36] It remained a mall with the same retail tenants, while Respondent reviewed Broadway Commons' expenses and contractual

[34] Goldstein described Broadway Commons as a "terrible failure" of an asset which resulted in the prior owners losing "close to $60 million." Tr. 263–264. Winston Magill, Respondent's property accountant, described Broadway Commons as a large, complicated, cash-negative, and failing property of roughly 1,075,000 square feet. Tr. 230–233.

[35] Devlin and McCord acted as agents of Respondent within the meaning of Section 2 of the Act. Jt. Exh. 1; GC Exhs. 9, 31. However, I deny the General Counsel's motion for an adverse inference based on Respondent's failure to call McCord and Devlin as witnesses. Respondent subpoenaed them and they failed to appear. Moreover, although the General Counsel failed to demonstrate that McCord were still under their control as employees.

[36] Contrary to Goldstein's assertion, Respondent did not terminate the vendor's contracts at closing. Tr. 265–266. Goldstein and Magill testified that Respondent decided to maintain current operations at the outset in order to avoid service disruptions. Tr. 240-241. According to Goldstein, it was a "turbulent" transition and he needed to "keep everything consistent so the tenants and customers have a good experience while we transition as owners." Tr. 273-274. Respondent's representatives needed to introduce themselves to the tenants, enroll them in Respondent's billing system, and maintain current services. Tr. 264. "Just keeping the lights on, literally, at the property. There's thousands of bills. It just - - it's an enormous undertaking taking over these properties." Tr. 273.

obligations.[37] In the meantime, Respondent also continued to utilize, and honor the service agreements with, the same contractors and service providers, including Loyal.[38]

The scope of Loyal's work did not change, and unit employees continued to perform the same cleaning services required in the cleaning contract. None were laid off or told that their terms and conditions of employment changed. Nor were they required to interview for their positions.[39] Although he was not asked to sign a new contract, Henninger was told that Respondent would keep the "status quo."[40] Loyal did, however, get onboarded into Respondent's accounts-payable system in order to invoice the pass through costs of the cleaning contract to Respondent, which Respondent paid.[41] As such, the same 12 unit employees employed by Loyal before February 1 continued to be compensated by, and receive health insurance stipends, pension contributions, and vacation time from, Loyal, which were passed through to, and paid by, Respondent in accordance with the CBA.[42] Finally, Loyal continued to deduct union dues from unit employees' paychecks for February and March and remitted them to the Union.[43]

### *E. Union Requests to Bargain With Respondent*

#### 1. Clanton Attempts to Contact Respondent

On February 7, Clanton received confirmation from KRE representative Matthew Ehrie that Broadway Commons was sold. Ehrie provided Clanton with McCord's email address at Riverwest and suggested she contact him there. Clanton then emailed McCord at his Riverwest email address "about the renewal contract for the Mall workers. I await your response." About two hours later, McCord forwarded Clanton's email to Goldstein and Malinsky: "See below from union rep of Local 2. They are the union group for Loyal, our Housekeeping vendor. They are looking to renew the CBA that has expired a few years ago."[44]

On February 9, McCord emailed Goldstein: "I could not find the CBA for local 2. I may be able to have someone from Pacific send it to me.[45] Would you like me to ask? Also, I was not

[37] Respondent's review of Broadway Commons' expenses included property taxes, insurance costs, and contracts with service providers. Tr. 233, 265. Magill testified that the process took "months and months" to complete. Tr. 233. However, again, despite Magill's claim that vendors and costs would be reviewed during the transition period, he never reviewed Loyal's Agreement during this period. Tr. 256. Rather, Magill blindly accepted and paid whatever invoices that Loyal submitted, without ever knowing what the monthly contract fee or other costs were. Tr. 233, 256-257, 265.

[38] Tr. 150-151, 254, 287-288.

[39] Tr. 53-54, 151-152, 220-221, 235, 254-255, 288-289.

[40] Tr. 184, 220.

[41] GC Exh. 24; R. Exh. 6; Tr. 152-153, 172, 246.

[42] Once again, Magill claimed to be oblivious to KRE's obligations as they pertained to Loyal. Asked about the nature of the invoices submitted by Loyal during the transition and paid by Respondent, he feigned ignorance: "Not that I - - I wasn't - - that - - that contract wasn't something we - - that I reviewed heavily, so - - " Tr. 254-257.

[43] GC Exhs. 12-13, 19, 26, 28-29; R. Exh. 6; Tr. 56, 151, 160-161, 168, 170-171, 258.

[44] GC Exh. 35.

[45] KRE's 2022 agreement with Loyal listed the "Owner" as "KRE Broadway Owner, LLC, c/o Pacific Retail Partners LLC." GC Exh. 17 at 7.

on the email chain with the attorneys we spoke with last night."[46] Although there is no evidence in the record of a written response by Goldstein, coupled with the fact that McCord mentioned the CBA on February 7, it is clear that the subject of the CBA came up when they spoke with attorneys the night before.[47]

On February 14, Clanton followed up with McCord, copying Henninger and Ehrie. The email was titled, "Bad Faith Bargaining – Mall Workers Renewal CBA:"[48]

> The Union is still awaiting feedback from the Mall pertaining to the workers renewal contract. The Union negotiated with you as the Mall representative in good faith for over 2 years, but if we do not hear back from you regarding the workers renewal contract, we will be forced to file a "bad faith bargaining" charge with the National Labor Relations Board (NLRB).

McCord replied that he would forward the email to his supervisor. Around the same time, Henninger texted Devlin a screenshot of Clanton's email, with the following exchange:[49]

> Henninger: "FYI I just received this[.] They have [McCord's] new email also[.]"
>
> Devlin: "Are you currently paying dues to union? Probably security[.] When I was at Roosevelt we had both union and non union[.] Non union was food court and bathrooms."
>
> Henninger: "Yes, we have been paying all dues[.] Never an issue[.] I have not spoken to the union at all just so you know and to be clear[.]"
>
> Devlin: "I know[.] I don't talk with anyone except you[.]"
>
> Henninger: "Me neither[.] Josh wrote back and said he [forwarded] to his supervisor."

On February 15, McCord, operating on the assumption that the existing "vendors" were being retained, emailed Goldstein and Magill, copying Devlin:

> Michael/Winston, I have the templates to send all the vendors new agreements but I need a copy of the agreements which show the contract duties and compensation.
>
> I believe you have this as part of the due diligence process. Can you please send me Kone, Loyal and PSC. Word format preferred.

---

[46] GC Exh. 46.

[47] Asked again if he had seen the CBA after being shown the emails, Goldstein testified that he "may have seen it during prep [for his testimony], but aside from that, not to my recollection, no." Goldstein also purported to lack any recollection as to whether: (1) he asked McCord to get a copy of the CBA; (2) responded to McCord's email; (3) saw a copy of the CBA after taking over on February. Tr. 297-298, 303. However, the February 9 email was further evidence that his attempt to distance himself from any discussion is inconceivable.

[48] GC Exh. 9.

[49] GC Exh. 25.

> For the remaining vendors we are reaching out to get the contract duties and compensation in writing, as they have never had a contract before.

Less than an hour later, Magill provided McCord with copies of the "contracts I found in our files." However, on February 16, Goldstein instructed McCord and Magill, copying Devlin: "DO NOT SEND TO LOYAL."

On February 16, still not having heard from McCord, Clanton followed up, this time copying Henninger:

> Please provide the Union with the name and contact information of the individual you are referring [to]. And have you provided your supervisor with the information and details pertaining [to] our negotiations?

A few hours later, Henninger followed up with McCord regarding Clanton's email but did not copy Clanton, asking "if we should keep paying these union dues etc. We have been paying this whole time and you just let me know what to do." Almost immediately, McCord replied: "Everything to remain the same until further notice." Henninger responded: "Roge[r] that." Henninger complied with McCord's instruction and continued deducting union dues and calculating pension contributions.[50]

Around the same time, Henninger also texted a screenshot of the latest exchange between Clanton and McCord as an "FYI." Devlin replied, "Nice." Henninger replied, "Yes sir[.] This [definitely isn't] on loyal with the union shit[.] You know that[.]" Devlin replied, "Yup but I don't think KABR understands that."

2. Respondent Rejects the Union's Request for Recognition

Later that day, Clanton finally received communication from Carmelo Grimaldi, Esq., Respondent's attorney, rejecting her claim that Respondent was bound by the CBA:[51]

> Please be advised this firm represents K/BTF Broadway LLC in connection with its labor and employment relations matters including its recent acquisition of the Broadway Commons located in Hicksville, New York ("Broadway Commons"). A copy of your email addressed to Mr. Josh McCord, respectively dated February 7, 2024 and February 14, 2024 have been forwarded to our attention for response. All future communications should be directed to our attention.
>
> On behalf of Local 2, Building Service Employees & Factory Workers, USWU, IUJAT ("Local 2") your email states, in pertinent part: *"the Mall was sold to a company and to contact you at your new email address about the renewal contract for the Mall workers."* Broadway Mall Management, LLC, previously managed Broadway Commons and it is our understanding this entity contracted with Loyal Building Services, Inc. for cleaning services. Be advised K/BTF Broadway LLC has never executed a collective bargaining

[50] Tr. 156.
[51] GC Exh. 10.

> agreement with Local 2 and has not employed Local 2 members. As such, the collective bargaining agreement or "renewal agreement" referenced in your email are not applicable to K/BTF Broadway LLC. (emphasis in original)

If you have any questions, please contact me or my partner Gary Meltzer, Esq.

On February 20, Devlin emailed Goldstein, Malinsky, Magill and McCord in response to Goldstein's instructions not to send a contract to Loyal:[52]

> Just my 2 cents, Loyal has been a good partner with us. Not only do they do the cleaning that everyone's happy with. Loyal also does other work for us here to keep costs down like HVAC, Landscaping etc. Loyal doesn't hold any agreement with local 2. [KRE] was the one who signed the agreement. Although there's been no contract with the union for over 2 years, Loyal has been paying the union wage until he received direction to [not] (sic) continue paying the wages. If it was a big issue Local 2 would have made issues 2 years ago? Again just my 2 cents.

On February 21, Devlin informed McCord, copying Goldstein and Malinsky, that several contracts were sent out that day but "[we're] holding off on LOYAL and [KRE] contracts."[53]

3. Respondent's Representatives Meet with Henninger

On February 26, Devlin or McCord informed Henninger that Respondent's executives were at Broadway Commons and wanted to meet with him. Henninger immediately went there and met with McCord, Devlin, Goldstein, and another individual representing Respondent. During the meeting, Henninger was told that there is no more union at Broadway Commons.[54]

The following day, Henninger texted Devlin, reminding him to "email me about not paying anymore union dues as per yesterday[']s meeting[.] Thank you and talk to you later." About an hour later, Devlin replied, "Done," after emailing Henninger the following: "As you know effective February 1, 2024 UBS sold the property to KABR. Kabr has no contract with Local 2. If they should have any questions, they should feel free to contact UBS."[55]

4. The Union Responds to Respondent and Requests to Bargain

---

[52] Goldstein's receipt of this email was further evidence that he was aware of the CBA. GC Exh. 41.

[53] GC Exh. 42.

[54] Although Henninger did not identify which of Respondent's four representatives in attendance made the statement, I credit his detailed rendition of the meeting, corroborated by the substance of Devlin's February 27 email. Tr. 173-174, 283-285, 292-293; GC Exh. 30. Goldstein, who was present during Henninger's testimony, denied that anyone said there would be no union at Broadway Commons. However, Goldstein purportedly had little recollection as to what transpired in the meeting and premised his denial on the assertion that, "at that point in time, we didn't make any decisions which vendors we were or weren't going with." Tr. 285. That statement was false, as Respondent already sent out contracts on February 21 but held off "on LOYAL and [KRE] contracts." GC Exh. 42.

[55] Notwithstanding his reference to "union dues," Henninger clarified that "I might have just put 'union dues,' but it's all the above, pensions, sick, vacation, all in." GC Exh. 30-31; Tr. 174-175.

On February 26, Lauren Kugielska, Esq., the Union's attorney, responded, disputing Grimaldi's rejection of the CBA and demanding that Respondent enter into negotiations:[56]

> This firm represents Local 2, Building Service Employees & Factory Workers, USWU, IUJAT ("Local 2" or the "Union"). As you are aware, Local 2 and Broadway Mall, Hicksville, NY 11801 (the "Broadway Commons") are parties to a collective bargaining agreement (the "CBA"). I am in receipt of your February 16, 2024 correspondence, attached hereto, regarding the recent acquisition by K/BTF Broadway LLC ("K/BTF Broadway") of the Broadway Commons and denying the application of the CBA to K/BTF Broadway. As detailed below, K/BTF Broadway is bound to the CBA, and is therefore, obliged to negotiate a renewal contract with the Union.
>
> Article XXIX, Section B. of the CBA provides that
>
> > If the Employer shall sell, transfer, or otherwise dispose of its business, merge or consolidate it with any other person, firm or corporation, the employer must provide in the agreement by which such sale, transfer, assignment subletting, disposition, merge or consolidation is made that the person, firm or corporation thereafter operating the business *shall assume all of the terms and conditions of this agreement*, including but not limited to, vacation, holidays, sick leave and all other monetary obligations. (emphasis in original)
>
> Based on the foregoing, the CBA is indeed applicable to K/BTF, and therefore, K/BTF must negotiate a renewal contract with Local 2.
>
> Please feel free to contact me to confirm date(s) and time(s) of availability for K/BTF to negotiate renewal terms with the Union. I appreciate your time and attention to this matter. Thank you.

5. Loyal Stops Deducting Union Dues and Paying Employee Benefits

Based on Respondent's statement that there would be no union at Broadway Commons, Loyal stopped deducting union dues from unit employees' paychecks after February 27. Without Loyal or Respondent informing the Union, Loyal also stopped paying unit employees' health insurance stipend and making pension contributions. Loyal remitted the last payment to the Union for dues on March 18. On May 24, the Union sent Respondent a "Delinquency Notice" for April and May, a total amount due of $1,100.00.[57] On August 22, 2025, the Union sent Respondent an invoice for "outstanding and delinquent" pension contributions for "February-July 2024" totaling $2,370.72.[58]

6. Respondent Terminates Loyal's Cleaning Contract

[56] GC Exh. 11.
[57] GC Exh. 13-14; Tr. 57-61, 175-176, 179-180.
[58] GC Exh. 15.

At some point after February 27, Goldstein asked Henninger to send a bid for Broadway Commons' cleaning services. Henninger submitted a bid on about March 1. On March 4, Goldstein asked Henninger for his calculations for the manpower, hours, and hourly charges. On March 6, Henninger provided the information.[59] On March 7, Goldstein responded as follows:[60]

> We will be processing the invoices provided by Loyal shortly. K/BTF Broadway, LLC does not currently have a contract with Loyal and does not necessarily agree with the categorization of the charges. In the spirit of keeping the payment amount consistent as we evaluate all service [providers], K/BTF Broadway, LLC will make the payment amount provided. Thank you.

On March 11, Henninger followed up with Goldstein and asked, "Are we ok to proceed with the contract?" On March 12, Goldstein replied that, "[a]s of now, we are keeping status quo while bidding out every vendor contract. Same for cleaning. We received your quote and are obtaining others. We would like to make a decision ASAP on how to proceed."

On April 11, Henninger emailed Goldstein for an update, noting that his "current staff is being very patient with the loss of the extra $620/month [for health insurance stipend] which is a good thing." He also noted that "we are keeping the billing rate super low for now in hope to keep the contract going and keep the same level of service."[61] Goldstein replied that Respondent was "still getting all our ducks in a row in terms of property management. Appreciate your patience and we will provide an update ASAP."

On June 10, Goldstein notified Henninger "that Broadway Commons is going in a different direction with cleaning and officially providing termination notice today." He listed the last day of service as July 14.[62] On June 11, Henninger replied that he "kind of assumed it was going in this direction but would have loved the opportunity to bid it apples to apples with the other company. Have a good day and you won't have any issues from my end." Shortly thereafter, Goldstein forwarded Henninger's email to Scott Kaplan, the new cleaning contractor, stating, "See below. No issue with Loyal. Assume your start date of July 15th." Kaplan replied, "Received, we will be ready to start on 7/15."

On July 14, Loyal's cleaning contract was terminated and all but one of the unit employees were laid off that day; the remaining unit employee worked on July 16 to collect Loyal's supplies and equipment. Neither Respondent nor Loyal notified the Union that Loyal's cleaning contract

---

[59] GC Exh. 32; Tr. 176-177, 267.

[60] Although Goldstein did not elaborate, Respondent confirmed that he was referring to the "categorization of charges" for a one-time only payment of invoices 133164, 133356, and 133362 for unit employees' health insurance stipend, pension contributions, and vacation pay. GC Exh. 33; R. Exh. 6; Tr. 310-311. Magill referred to the invoices as "weird to me, because we have - - we don't pay anything like that. We pay a vendor their cost, and that's it." Tr. 247.

[61] GC Exh. 34.

[62] Goldstein's testified that the replacement was "highly recommended" by Respondent's partners in the Long Island market and its cost proposal was "50 percent or a little more cheaper" than what Respondent was paying for Loyal's services. GC Exh. 45; Tr. 267-270.

had been terminated or that the unit employees had been laid off. The Union only learned of the layoffs after being notified by a unit employee, Maria Ramos, sometime in July.[63]

## LEGAL ANALYSIS

### I. KRE AND LOYAL WERE JOINT EMPLOYERS

#### *A. The Joint Employer Rule*

In determining whether Respondent violated the Act, the initial issue is whether its predecessor, KRE, was a joint employer with Loyal. Section 103.40 of the Board Rules and Regulations, effective April 27, 2020,[64] sets the standard for determining whether two employers are "joint employers." It defines a joint employer as an entity that possesses and exercises substantial direct and immediate control over one or more essential terms or conditions of another employer's employees**.** Essential terms include wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction**.** Evidence of indirect control, reserved authority, or control over non-essential matters may support a finding of joint employer status but is insufficient alone to establish joint-employer status. Finally, determination of joint-employer status must be based on "the totality of the relevant facts in each particular employment setting" and the party asserting joint-employer status has the burden of proof. Sec. 103.40(a)-(b).

Section 103.40(c) explains what "direct and immediate control" means in the context of each of the essential employment terms and conditions. Section 103.40(d) defines control as "substantial" if it "has a regular or continuous consequential effect on an essential term or condition of employment of another employer's employees," but not "if only exercised on a sporadic, isolated, or de minimis basis." Section 103.40(e) explains that "indirect control" does not include "control or influence over setting the objectives, basic ground rules, or expectations for another entity's performance under the contract." Section 103.40(f) defines "contractually reserved authority over essential terms and conditions of employment" of another employer as contractual authority "that has never been exercised."

#### *B. Application of the Joint-Employer Rule to the KRE-Loyal Relationship*

Loyal exercised direct and immediate control over hiring, discharge, discipline, supervision, and direction. It hired the unit employees, handled payroll and related taxes, supervised and trained the employees, disciplined employees as necessary, and had the authority to discharge employees. KRE, on the other hand, exercised direct and immediate control over the wage rates, benefits (health

[63] Clanton's hearsay testimony notification about the layoffs is corroborated by Henninger's testimony that he terminated the employees on or before July 14. Tr. 107-108, 182. It is undisputed that neither Respondent nor Loyal notified the Union that Loyal's cleaning contract was being terminated or that unit employees were being laid off. Tr. 61-62, 168-170, 182, 267-268. However, I do not credit Clanton's uncorroborated testimony that she emailed Henninger and McCord regarding the layoffs or tried to call McCord at Loyal. Tr. 81-91, 108-109.

[64] On February 27, 2026, the Board formally withdrew the court-vacated 2023 rule and readopted the narrower framework promulgated in 2020 at 29 C.F.R. § 103.40, emphasizing predictability and limiting joint-employer liability to entities with actual direct control.

insurance stipends, pension contributions, vacation and sick pay), and hours of work (based on the mall's operating hours), including work breaks,[65] of Loyal's employees.

Since at least 2010, those unit employees' wages, benefits, and hours of work were determined in bargaining between KRE and the Union, which also required KRE to deduct the employees' union dues and remit them to the Union. Loyal was neither involved in any of those negotiations nor a party to any of the collective bargaining agreements that resulted. KRE's cleaning contracts with Loyal mirrored the wages, benefits, and hours of work stated in the CBA. Loyal paid those wages and benefits to its employees for the contracted number of hours of work and passed through those costs to KRE.[66] Additionally, as required by the CBA, Loyal deducted employees' union dues and remitted them to the Union.

Based on the totality of relevant facts, I conclude that KRE was a joint employer of the unit employees. The General Counsel met his burden by establishing that KRE exercised substantial direct and immediate control over one or more essential terms and conditions of employment, as those terms are defined in Section 103.40: wages, benefits, and hours of work.

## II. RESPONDENT AND LOYAL WERE SUCCESSOR EMPLOYERS

### *A. Applicable Board Law*

Where a successor employer continues its predecessor's operation substantially unchanged and hires, as a majority of its workforce, the predecessor's union-represented employees, it has a duty to recognize and bargain with the incumbent union. *NLRB v. Burns International Security Services*, 406 U.S. 272, 277-281 (1972); *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 42-44, 46-47 (1987). Once the new employer is deemed a *Burns* successor, the obligation to recognize and bargain with the union is triggered when the union makes a bargaining demand. *Fall River Dyeing*, 482 U.S. at 52.

In determining the continuity of the business, the Board considers: "whether the business of both employers is essentially the same; whether the employees of the new company are doing the same jobs in the same working conditions under the same supervisors; and whether the new entity has the same production process, produces the same products, and basically has the same body of customers." *Fall River Dyeing*, 482 U.S. at 43. These factors are analyzed from the perspective of unit employees and whether they "understandably view their job situations as essentially unaltered." Id. (quoting *Golden State Bottling Co*., 414 U.S. 168, 184 (1973)).

### *B. There was Substantial Continuity of Operations*

Applying the relevant factors, the evidence established that there was a substantial continuity in operations. As noted above, KRE, Respondent's predecessor, was a joint employer

[65] Although there is only one instance where KRE and the Union agreed to provide unit employees with an additional daily work break, it had a "regular or continuous consequential effect" as to the hours of work.

[66] Respondent asserts that the compensation figures were a floor and Loyal could have paid its employees more than the wages and benefits negotiated between KRE and the Union. However, there is no evidence in the record that it ever did.

with Loyal. After Respondent purchased Broadway Commons' from KRE on February 1, Loyal continued to have responsibility for employee hiring, discipline, discharges, supervision and direction. Respondent took over operations on that day and maintained the "status quo." Thus, Respondent determined to continue, and had direct and immediate control over, the initial terms and conditions set forth in the CBA between KRE and Loyal: Loyal's cleaning services, including hours of work, remained unchanged; Respondent paid the February 2024 invoice payments for wages, health insurance stipend, sick pay, and vacation pay; and Respondent deducted union dues and remitted them to the Union. Also, McCord and Bill Devlin were also retained in the same roles, managing Broadway Commons' operations. *Fall River Dyeing*, 482 U.S. at 47-48.

*C. Respondent Continued to Employ a Majority of the Unit Employees*

The evidence also established that Respondent's substantial continuity of Broadway Commons' operations on February 1 resulted in a majority, in fact, the entirety, of Loyal's 12-person union-represented workforce being retained. Respondent's arguments to the contrary, that it was merely maintaining the "status quo" during the "transition" and subsequently disavowed any contract with Loyal, is unavailing. "As a general rule, the relevant measuring day to determine if the Company employed a majority of union members is the initial date it began operating." *Vermont Foundry*, 292 NLRB 1003, 1009 (1989).

*D. Respondent's Defenses*

Respondent contends that it negotiated an arm's-length purchase with KRE that expressly refused to assume any union contract or any employees. Section 5.1.23 stated that none of KRE's employees would become employees of Respondent "by reason of any federal, state, county, municipal or other law, ordinance, order, requirement or regulation or by reason of any union or other employment contract . . ." Section 5.1.24 provided that "there are at least two or more unions associated with the property" and KRE would "provide all of the collective bargaining agreements for all of the unions associated with the Property for Purchaser's review. Purchaser will not agree to assume any collective bargaining agreements and will unilaterally set its initial terms and conditions of employment for all employees it plans to employ at the Property."

Respondent's argument fails for several reasons. First, as the Board explained in *Transmontaigne, Inc.*, 337 NLRB 262, 263 (2001), the issue of whether a new employer is required to recognize and bargain with the Union is statutory:

> [T]he law is clear that the Union's right to recognition, as well as the Respondent's corresponding duties, are statutory, not contractual, in nature, regardless of whether the Respondent is regarded as a successor or the continuation of the same legal entity. Absent a waiver by the union, then, the Respondent would be required to recognize and bargain with the Union, regardless of whether it was bound by the agreement.

Second, it is well settled that "the Board does not give effect to private agreements that purport to limit the exercise of its remedial powers in the public interest." *County Agency, Inc*., 369 NLRB No. 62, slip op. at 2 (2020). See also *JSK Parsippany, LLC d/b/a Fairfield Inn & Suites by Marriott and Fairfield Parsippany, LLC d/b/a Fairfield Inn & Suites by Marriott as its Successor*, 374 NLRB No. 124, slip op at 17 (2026) (adopting judge's decision rejecting

contention that indemnification agreement exempted purchaser from successor status). As the Board explained in *Kelly Services*, 368 NLRB No. 130, slip op. at 5 (2019), "the Board's remedial powers are an aspect of its broader power to prevent unfair labor practices, and Congress has provided that this broader power 'shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise.'"

Third, Respondent argues that Section 5.1.23 precluded KRE and Loyal's employees from becoming Respondent and Loyal's employees "as a result of the purchase of the Property." However, they became Respondent and Loyal's employees when Respondent chose to maintain a continuity of the enterprise and retained all 12 unit employees. See *County Agency Inc.*, supra at 1-2 (new hotel operator found to be a successor employer after making "a conscious decision to maintain generally the same business and to hire a majority of [their] employees from [their predecessors]") (quoting *Fall River Dyeing*, 482 U.S. at 40-41).

Finally, Section 5.1.24 of the purchase agreement, executed on August 30, 2023, notified Respondent that "there are at least two or more unions associated with the property," and that KRE will provide "all of the collective bargaining agreements" for Respondent's review. However, Respondent contends that it: (1) failed to properly perform a due diligence review of Broadway Commons' vendor contracts; (2) was misled by KRE and was unaware that there had been a CBA between KRE and the Union; and (3) did not request collective bargaining agreements from KRE because they did not apply to Respondent. I did credit Goldstein's testimony that he believed, albeit erroneously, that Respondent "was not inheriting any agreements" and the CBA had "nothing to do with us going forward in our ownership of the property." However, Respondent's attempt to hide behind putative failures to perform due diligence or nondisclosures by KRE only go as far as November 29, 2023 when McCord and/or Devlin informed Goldstein that the unit employees were represented by the Union: "Loyal – under union local 2 – **KABR to discuss**." (emphasis in original).

## III. RESPONDENT FAILED AND REFUSED TO RECOGNIZE AND BARGAIN WITH THE UNION

Section 8(a)(5) of the Act requires an employer "to bargain collectively with the representatives of [its] employees." On February 7, Clanton, the Union's representative, emailed McCord, Respondent's statutory agent, "about the renewal contract for the Mall workers. I await your response." On February 14, Clanton followed up with McCord. The email was titled, "Bad Faith Bargaining – Mall Workers Renewal CBA:

> The Union is still awaiting feedback from the Mall pertaining the workers renewal contract. The Union negotiated with you as the Mall representative in good faith for over 2 years, but if we do not hear back from you regarding the workers renewal contract, we will be forced to file a "bad faith bargaining" charge with the National Labor Relations Board (NLRB).

On February 16, Respondent rejected the Union's request for recognition and to bargain. Respondent asserted that it was not bound by the CBA: "Be advised K/BTF Broadway LLC has never executed a collective bargaining agreement with Local 2 and has not employed Local 2 members. As such, the collective bargaining agreement or 'renewal agreement' referenced in your email are not applicable to K/BTF Broadway LLC." (emphasis in original)

A successor employer has a duty to recognize and bargain with an incumbent union when, as here, it assumed the business of a predecessor and maintains a continuity of the enterprise and the work force with the presumption of majority support in an appropriate unit. *NLRB v. Burns International Security Services, Inc*., 406 U.S. at 281 (1972); *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. at 47-48. As found above, Respondent and Loyal were successor employers of Loyal's union-represented employees. By refusing the Union's request for recognition and to bargain, Respondent violated Section 8(a)(5) and (1) of the Act.

## IV. RESPONDENT AND LOYAL UNILATERALLY CHANGED UNIT EMPLOYEES TERMS AND CONDITIONS OF EMPLOYMENT

An employer has the duty to bargain with a union that represents its employees over matters of wages, hours, and other terms and conditions of employment, which are mandatory subjects of bargaining. *NLRB v. Katz*, 369 U.S. 736 (1962). A unilateral change regarding a mandatory subject of bargaining violates the Act absent a good-faith impasse or waiver. *Asociacion de Empleados del Estado Libre Asociado de Puerto Rico*, 370 NLRB No. 71, slip op. at 3 (2021); *Richfield Hospitality, Inc.*, 368 NLRB No. 44, slip op. at 3 (2019).

Having decided to maintain the status quo on February 1, retain a majority of the unit employees, and not impose its own terms with respect to employees' conditions of employment, Respondent had a duty to bargain with the Union before making any unilateral changes. *S*ee *Tramont Manufacturing, LLC*, 369 NLRB No. 136, slip op. at 1, 5 (2020) ("a bargaining obligation attaches with respect to any subsequent changes to terms and conditions of employment"); *Adams & Associates*, Inc., 363 NLRB 1923, 1925 (2016), enfd. 871 F.3d 358 (5th Cir. 2017) ("[T]he bargaining obligation attaches when a successor expresses an intent to retain the predecessor's employees without making it clear that employment will be conditioned on acceptance of new terms."), enfd. 871 F.3d 358 (5th Cir. 2017). *N.K. Parker Transport, Inc.*, 332 NLRB 547, 550 (2000).

In addition to wages, the CBA required Respondent and Loyal, as successor employers, to pay unit employees a monthly health insurance stipend and pension contribution and remit dues to the Union. Those items were mandatory subjects of bargaining that required Respondent and Loyal to bargain with the Union before making a material, substantial, and significant change. See *Des Moines Cold Storage, Inc.*, 358 NLRB 488, 498 (2012) (health insurance benefits are a mandatory subject of bargaining); *In re Paul Mueller Co.,* 335 NLRB 808 (2001) (pension benefits were a mandatory subject of bargaining because they constituted future wages); *Tribune Publishing Co.*, 351 NLRB 196, 197-198 (2007), enfd. 564 F.3d 1330 (D.C. Cir. 2009) (direct-deposit arrangement for transmittal of union dues).

After Respondent took over operations on February 1, Loyal continued to pay unit employees their health insurance stipend and pension contributions, and deducted union dues, all as required by the CBA. Loyal paid the health insurance stipend on February 1 and, on February 6, sent the Union a check for pension contributions, Respondent reimbursed Loyal a few weeks later. It also deducted union dues for February and remitted them to the Union. However, after Respondent informed Loyal on February 26 that there was no union at Broadway Commons and on February 27 that it had no contract with Loyal, Loyal stopped making any more payments for

the health insurance stipend or pension contribution. It also stopped deducting dues and remitting them to the Union.

Although Respondent and Loyal ceased paying unit employees' benefits and processing union dues after February, Respondent continued to use Loyal as a cleaning contractor for several more months. On June 10, Respondent notified Loyal that it was terminating the cleaning contract and bringing in another company, effective July 14. On July 14, all unit employees were laid off. Respondent or Loyal provided no notification to the Union that they stopped paying the contractual benefits and processing dues, terminated the cleaning contract, and laid off unit employees and transferred their work to another company.

By unilaterally making material changes to health insurance stipends, pension contributions, and the dues checkoff arrangement, and transferring the unit work to another company, all mandatory subjects of bargaining, without providing the Union prior notice and an opportunity to bargain, Respondent violated Section 8(a)(5) and (1) of the Act. *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203, 215 (1964) ("replacement of employees in the existing bargaining unit with those of an independent contractor to do the same work under similar conditions of employment" is a mandatory subject of bargaining); *Whitewood Maintenance Co.*, 292 NLRB 1159, 1169 (1989) (holding that one joint employer "is liable for all the 8(a)(5) violations" of the other joint employer).

## CONCLUSIONS OF LAW

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

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(5) and (1) of the Act by: (a) since February 16, 2024, refusing the Union's request for recognition and to bargain; (b) since about March 1, 2024, unilaterally making material changes to health insurance stipends, pension contributions, and the dues checkoff arrangement; and (c) since about June 14, 2024, unilaterally transferring the work of unit employees to another company.

4. Respondent's unfair labor practices affected commerce within the meaning of Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices at its Broadway Commons facility, 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 Respondent violated Section 8(a)(5) and (1) of the Act by refusing the Union's request for recognition and to bargain, it shall be ordered, upon request, to recognize and bargain with the Union with respect to the terms and conditions of employment of unit employees. Having found that Respondent unilaterally made certain unlawful material changes, Respondent

shall be ordered, upon the Union's request, to rescind those changes and restore the status quo ante. Since Respondent replaced Loyal with another cleaning company, Respondent shall be ordered to make the following unit employees whole, with interest, for any loss of benefits suffered from March 2024 to July 2024 because of the unlawful unilateral changes: Maria Pari Motta**,** David Ramirez, Jose Quinones, Jose Turcios, Maria Ramos, Leandro Figueroa Mendez, Gloria Carcamo, Jose Alvarez, Yessenia Otero Hernandez, Julio Benitez, Esdras Hernandez, and Alex Hernandez. 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). Respondent shall also be ordered to notify the unit employees in writing that this has been done.

In accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014), Respondent shall compensate unit employees for the adverse tax consequences, if any, of receiving a lump sum backpay award, and, in accordance with *AdvoServ of New Jersey, Inc.,* 363 NLRB No. 143 (2016). Respondent shall, within 21 days of the date the amount of backpay is fixed either by agreement or Board order, file with the Regional Director for Region 29 a report allocating backpay to the appropriate calendar year. The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration at the appropriate time and in the appropriate manner. Pursuant to *Cascades Containerboard Packaging*, 370 NLRB No. 76 (2021), Respondent will file with the Regional Director of Region 29 a copy of unit employees' W-2 forms reflecting the backpay award.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[67]

## ORDER

The Respondent, K/BTF Broadway LLC (Respondent), Hicksville, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with the Union as the bargaining representative for the unit employees.

(b) Unilaterally changing unit employees' terms and conditions of employment without notifying the Union and affording it an opportunity to bargain.

(c) 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 policies of the Act:

[67] 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.

(a) On request, bargain with the Union over unit employees' terms and conditions of employment.

(b) Upon the Union's request, rescind the unilateral changes it made to unit employees' benefits, restore the status quo ante, and notify the unit employees in writing that this has been done.

(c) Make the following unit employees whole, with interest, for any loss of benefits suffered from March 2024 to July 2024 because of the unlawful unilateral changes: Maria Pari Motta**,** David Ramirez, Jose Quinones, Jose Turcios, Maria Ramos, Leandro Figueroa Mendez, Gloria Carcamo, Jose Alvarez, Yessenia Otero Hernandez, Julio Benitez, Esdras Hernandez, and Alex Hernandez.

(d) Compensate the unit employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 29 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.

(e) File with the Regional Director for Region 29, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of unit employees' corresponding W-2 forms reflecting their backpay awards.

(f) Within 14 days after service by the Region, mail the notices, at Respondent's expense, to the 12 unit employees.

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



Michael A. Rosas
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 representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

**WE WILL NOT r**efuse to recognize and bargain with the Union as the bargaining representative for the following appropriate unit:

All building service employees, excluding supervisors/managers as defined in the National Labor Relations Act as amended, working at the premises.

**WE WILL NOT** unilaterally change unit employees' terms and conditions of employment without notifying the Union and affording it an opportunity to bargain.

**WE WILL NOT** In any like or related manner interfere with, restraining, or coercing you in the exercise of the rights guaranteed you by Section 7 of the Act.

**WE WILL,** on request, bargain with the Union over unit employees' terms and conditions of employment.

**WE WILL,** on request, rescind the unilateral changes we made to unit employees' benefits, restore the status quo ante, and notify the unit employees in writing that this has been done.

**WE WILL** make the following unit employees whole, with interest, for any loss of benefits suffered from March 2024 to July 2024 because of the unlawful unilateral changes: Maria Pari Motta**,** David Ramirez, Jose Quinones, Jose Turcios, Maria Ramos, Leandro Figueroa Mendez, Gloria Carcamo, Jose Alvarez, Yessenia Otero Hernandez, Julio Benitez, Esdras Hernandez, and Alex Hernandez.

**WE WILL** compensate unit employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 29 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.

**WE WILL** file with the Regional Director for Region 29, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of unit employees' corresponding W-2 forms reflecting their backpay awards.

K/BTF Broadway LLC
(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

One Metrotech Center, 20th Floor, Suite 2000, Brooklyn, NY 11201-3948
(718) 330-7713, Hours: 9:00 a.m. to 5:30 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/29-CA-340889 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 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 (718) 765-6190.