

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

TITAN TIRE CORPORATION OF BRYAN (OHIO) AND
TITAN TIRE CORPORATION OF FREEPORT (ILLINOIS)

and

Case 13-CA-46757

UNITED STEEL, PAPER & FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL &
SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO, CLC

Lisa Friedheim-Weis and Renee D. McKinney, Esqs.,
for the Acting General Counsel.

Gene R. La Suer, Esq.,
for the Respondents.

John G. Adam and Anthony Alfano, Esqs.,
for the Charging Party.

DECISION

STATEMENT OF THE CASE

GEOFFREY CARTER, Administrative Law Judge. This case was tried in Chicago, Illinois, on April 10-12, 2012. The United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union, AFL-CIO, CLC (the Union or the United Steelworkers) filed the charge on May 19, 2011, and filed an amended charge on August 22, 2011.¹ The Acting General Counsel issued the complaint in this case on August 30, 2011, and amended the complaint on January 31, 2012.

The complaint alleges that Titan Tire Corporation of Bryan (Ohio) and Titan Tire Corporation of Freeport (Illinois) (the Respondents or Titan Tire) violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by: (a) failing and refusing to provide certain information requested on September 21, 2010 that is relevant and necessary for the Union to perform its duties while negotiating with Titan Tire for a new collective-bargaining agreement; (b) failing and refusing to provide certain information requested on December 15, 2010 that is relevant and necessary for the Union to perform its duties while negotiating with Titan Tire for a new collective-bargaining agreement; (c) on or about December 6, 2010, unilaterally failing and refusing to pay employees at its Bryan facility an annual \$25 holiday gift certificate without giving the Union the opportunity to bargain and without first bargaining with the Union to a good-faith impasse; (d) on or about December 17, 2010, unilaterally reducing the hourly

¹ All events occurred in 2010, unless otherwise indicated.

5 contribution that Titan Tire of Freeport makes to the Steelworker Pension Trust on behalf of
 employees at the Freeport facility without giving the Union the opportunity to bargain and
 without first bargaining with the Union to a good-faith impasse; and (e) on or about December
 26, 2010, unilaterally implementing the terms of its last, best and final offer when the parties
 10 were not at a lawful impasse due to unremedied unfair labor practices, and when the parties were
 not otherwise at a good-faith impasse. The Respondents filed a timely answer denying each of
 the alleged violations in the complaint.

15 On the entire record, including my observation of the demeanor of the witnesses, and
 after considering the briefs filed by the Acting General Counsel, the Union and the Respondents,
 I make the following

FINDINGS OF FACT

I. JURISDICTION

20 Titan Tire Corporation of Bryan and Titan Tire Corporation of Freeport manufacture
 specialty and off-road tires at their facilities in Bryan, Ohio and Freeport, Illinois. Both entities
 have purchased and received products, goods and materials valued in excess of \$50,000 from
 outside of the State of Illinois.² The Respondents admit, and I find, that they are employers
 25 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. *Background Facts*

30 Since about January 1, 2006, Union Local 745L has served as the exclusive collective-
 bargaining representative of the following bargaining unit at Titan Tire Corporation of Freeport,
 Illinois:

35 Production and maintenance employees of the Freeport Plant or any local expansion or
 extension thereof. The term ‘employees’ . . . includes all hourly production and
 maintenance employees, but excludes office clerical employees, professional employees,
 guards, supervisor[s], management trainees, salaried quality control inspectors and
 40 control laboratory operators.

45 Union Local 745L and Titan Tire of Freeport have been parties to a collective-bargaining
 agreement that was in effect from January 1, 2006 to November 19, 2010. (Acting General
 Counsel Exhibit (GC Exh.) 1(l), par. 5; GC Exh. 1(q), par. 5; GC Exh. 17, Art. I, Sec. 1).

² The pleadings do not address the extent to which Titan Tire Corporation of Bryan has purchased and received products, goods and materials from outside of the State of Ohio. That issue is moot, however, because the Respondents (including Titan Tire Corporation of Bryan) admit that they are employers engaged in commerce as defined by the Act.

5 Similarly, since August 1, 2006, Union Local 890L has served as the exclusive collective-bargaining representative of the following bargaining unit at Titan Tire Corporation of Bryan, Ohio:

10 All production and maintenance employees in the Bryan plant, or in any local expansion of the existing unit thereof now included in the bargaining unit . . . excluding all Supervisors, timekeepers, plant protection employees, trainees, confidential employees, laboratory employees, office and plant clerical, salaried employees and process inspectors.

15 Union Local 890L and Titan Tire of Bryan have been parties to a collective-bargaining agreement that was in effect from August 1, 2006 to November 19, 2010. (GC Exh. 1(l), par. 5; GC Exh. 1(q), par. 5; GC Exh. 2, Art. 1, Sec. 1.01).

20 The Union also represents employees who work at the Titan Tire of Des Moines (Iowa) facility. As with the other two facilities, the Union and Titan Tire of Des Moines were parties to a collective-bargaining agreement that was in effect until November 19, 2010.

B. Early Communications about the Future of the Bryan and Freeport Facilities

25 1. May 12 letters stating intent to close Bryan and Freeport facilities

30 On May 12, William Campbell, President of Titan Tire Corporation of Freeport and Titan Tire Corporation of Bryan, sent a letter to Local 890 Unit Chair John Bowling to provide 6 months advance notice that Titan intended to close its Bryan facility on or after November 15. (GC Exh. 3; Tr. 28, 378-379). That same day, Campbell sent a virtually identical notice to Local 745 President Kevin Kirk, to advise that Titan intended to close its Freeport facility on or after November 15. (GC Exh. 19; Tr. 167-168, 379). Campbell's May 12 letters were not expected, as Titan Tire and the Union had not yet begun negotiations about new collective-bargaining agreements, and Titan Tire had not previously mentioned the possibility of closing its facilities. 35 (Tr. 28-29, 167-168).

40 In a letter dated May 17, Union District Seven Director James Robinson asked Campbell to participate in a meeting to discuss alternatives to closing the Bryan and Freeport facilities. Robinson also noted that the National Labor Relations Act might require decisional and/or effects bargaining regarding any plan to close the facilities. (GC Exh. 25; Tr. 321-322)

2. August 20 meeting between Local 890 and Morry Taylor

45 On August 20, Bryan Operations Manager Tom Jagielski asked Bowling to meet with Titan Tire Chairman Maurice "Morry" Taylor, who was at the Bryan facility. Bowling agreed, and attended the meeting with Local 890 Vice President Joseph Davis. At the meeting, Taylor told Bowling that he felt sorry for him because Bowling's Union members were not going to be happy with him once bargaining began for a new contract because the new contract would look nothing like the old one. Taylor asserted that the Bryan and Freeport facilities were in trouble, 50 and predicted that the parties would come to impasse, the Union would go on strike, and that

5 Titan Tire would place a full-page advertisement in the newspaper and have no problem bringing
in replacement workers. Bryan and Davis did not respond to Taylor's remarks. (Tr. 29-31, 369-
371).

10 *C. Early Fall 2010 – Negotiations for New Contracts Begin*

1. September 21 kickoff meeting for contract negotiations

15 On September 21, Titan Tire and Union representatives participated in a kickoff meeting
for negotiating new collective-bargaining agreements.³ (Tr. 32-33, 170, 323). Taylor told the
Union representatives that while the Des Moines facility had been making money, the Bryan and
Freeport facilities were a disappointment because they had been losing money, and would be
closed unless they turned things around. Taylor added that he had tried things the Union's way,
and now the Union was going to try things his way. Regarding the negotiations, Taylor warned
20 that Titan Tire would not agree to extend the collective-bargaining agreements if the parties did
not reach a new agreement by November 19. (Tr. 35, 172, 324; see also Respondents (R.) Exhs.
9, 10 (statements of operations, showing that the Bryan facility lost money in 2009, and that the
Freeport facility lost money in 2006, 2007, 2008 and 2009)).

25 Titan Tire presented the Union with three proposed collective-bargaining agreements,
one for each facility. Unlike the expiring agreements, however, Titan Tire's proposed new
agreements were substantially similar to each other since they each were drafted using the
expiring Des Moines collective-bargaining agreement.⁴ (Tr. 36, 172-173; GC Exh. 4; R.
Exh. 2)).

30 2. Union decides to negotiate one contract for all three facilities

In the initial days after the kickoff meeting, the Union proceeded with its plan to
negotiate three separate collective-bargaining agreements, one for each facility. (Tr. 37).
Consistent with that approach, Local 890 (Bryan) representatives sent a contract proposal to
35 Titan Tire that was based on the expiring agreement at the Bryan facility. (Tr. 37-38; GC Exh.
5). However, when Bowling and other Union representatives from the Bryan facility met with
Taylor on October 11, Taylor described Local 890's proposal as a "kiss of death" to the plant,
and declared that the hemorrhaging had to stop. (Tr. 39-40).

³ Taylor and Campbell were present for Titan Tire, and were joined by Human Resources Consultant Joyce Kain and attorneys Gene La Suer and Cherie Holley, Esqs.. Robinson, Bowling and Kirk appeared for the Union, and were joined by the lead Union representative from Titan Tire of Des Moines (Mike Mathis) and other Union representatives. (Tr. 33-34, 170-171).

⁴ When Titan Tire purchased the Freeport facility, the first collective-bargaining agreement at that location was based on the agreement that had been used by Titan Tire of Freeport's predecessor, Goodyear/Kelly Tires. (Tr. 172-173, 324-325). Similarly, when Titan Tire purchased the Bryan facility, the first collective-bargaining agreement at that location was based on the agreement that had been used by Titan Tire of Bryan's predecessor, Continental Tire. (Tr. 36, 324-325). Thus, each of Titan Tire's three facilities had separate and unique collective-bargaining agreements in September 2010, and each agreement was due to expire in November 2010.

5 On October 12, the Union decided to abandon its plan to negotiate separate contracts for
 Bryan, Des Moines and Freeport, and instead use Titan’s proposed contract as a framework for
 negotiating a single collective-bargaining agreement that would apply to all three facilities
 (except for a few facility-specific provisions). (Tr. 40, 173–174, 326–327). Later that same day,
 10 the Union and Titan Tire met for another bargaining session, at which the Union presented its
 first joint counterproposal to Titan Tire. (Tr. 41, 174; GC Exh. 6). Taylor again rejected the
 Union’s proposal, describing it as “kiss of death” and asserting that the Union should go drink its
 Kool-Aid somewhere else because the “goose is dead.” (Tr. 42–43, 175).

15 3. Parties agree to extend contracts to December 17, 2010, and extend
 Steelworkers Pension Trust benefit payments to February 17, 2011

Notwithstanding the contentious start to negotiations, in October and November the
 Union and Titan Tire began reaching tentative agreements on several contract provisions in Titan
 Tire’s September 21 proposal. (Tr. 43–45; GC Exh. 7; see also GC Exh. 4). On November 18,
 20 the parties agreed to extend the Bryan, Des Moines and Freeport collective-bargaining
 agreements for 30 days, from November 19 to December 17 at 11:59 pm central time. (Tr. 45,
 177–178; GC Exh. 8). In addition, the parties agreed that Titan Tire would be obligated to pay
 employee benefits, including a \$1.85 per hour payment to the Steelworkers Pension Trust for
 each bargaining unit employee at the Freeport facility, until February 17, 2011. (Tr. 178–179;
 25 GC Exh. 8).

D. Titan Tire Fails to Give \$25 Holiday Gift Certificate to Bryan Bargaining Unit

Beginning in 2006, as set forth in the collective-bargaining agreement, Titan Tire
 30 provided bargaining unit employees at the Bryan facility with an annual \$25 holiday gift
 certificate to a local grocery store. (Tr. 112; GC Exh. 2, p. 82). Although the collective-
 bargaining agreement called for Titan Tire to distribute the gift certificates at Christmas, Titan
 Tire customarily gave the gift certificates to Local 890 to distribute in the first full week of
 December, to ensure that employees received the certificates before they left for holiday
 35 vacation. (Tr. 115, 371–372; GC Exh. 2, p. 82). In December 2010, however, Titan Tire did not
 give Bryan employees a \$25 holiday gift certificate.⁵ (Tr. 115–116, 372).

E. Mid-December 2010 Negotiations

40 1. December 13–16: negotiations start poorly,
 but then the parties begin to make progress

On December 13, the parties convened for another bargaining session, at which Taylor
 warned that Titan Tire would close all three of its facilities on December 17 if no agreement was
 45 reached by that date. Taylor asserted that the Union was on a suicide mission, and declared that
 Titan Tire would not agree to another contract extension. (Tr. 47, 179, 334). Later on December
 13, the Union presented Titan Tire with a package of “economic proposals” that: called for wage
 increases at all three facilities over a 3-year period; called for gradual increases in the payments

⁵ The Acting General Counsel did not present evidence that the Union ever raised this issue during
 the parties’ negotiations for a new collective-bargaining agreement.

5 that Titan Tire would make to the Steelworkers Pension Trust; outlined the premiums that employees would pay towards their health care plan; and established guidelines for mandatory overtime, 12-hour shifts and vacation scheduling and pay. (Tr. 49-51; GC Exh. 9). Titan Tire immediately rejected the Union's proposals. (Tr. 49).

10 On December 14, the Union presented Titan Tire with another package of economic proposals, but with more modest proposed wage increases and contributions to the Steelworkers Pension Trust. (Tr. 53-57; GC Exh. 10(a)). Once again, Titan Tire immediately rejected the Union's proposal. (Tr. 56-57). Titan Tire, meanwhile, provided the Union with a proposal for employee health insurance that caused the Union to realize that Titan Tire was proposing not
15 only a change in employee insurance costs, but also a change in the employees' insurance plan and carrier.⁶ (Tr. 63-64; GC Exh. 10(f)).

Despite those setbacks, the Union and Titan Tire began making a number of significant, albeit tentative, agreements concerning certain contract provisions. Motivated by a desire to
20 reach an agreement and avoid plant closures, on December 15 the Union agreed to Titan Tire's request for a 2-year freeze on wages (i.e., no increases in hourly wages), and offered to freeze contributions to the Steelworkers Pension Trust at their current levels. (Tr. 66-69; GC Exh. 11(c)). Progress continued on December 16, as the parties reached tentative agreements on a variety of issues, including, but not limited to: military leave; subcontracting; and the length of
25 the new collective-bargaining agreement (2 years). (Tr. 86-90; GC Exhs. 7, 12(a)).

2. Titan Tire announces that facilities will close on December 17

30 In the late evening on December 16, Titan Tire posted the following notice (bearing Campbell's name) at its facilities:

NOTICE

35 The plant will close at 11 PM Friday, December 17 due to the expiration of the Collective Bargaining agreement. The plant will remain closed until a new collective bargaining agreement is ratified or you are otherwise notified.

40 Should the new Collective Bargaining Agreement be ratified, the plant will resume operations on December 26 at 11 PM. Should the new Collective Bargaining Agreement be ratified, all employees will be paid holiday pay.

(GC Exh. 13; see also Tr. 90-92, 186-187, 336). Titan Tire posted the notice while the parties were still engaged in negotiations for a new collective-bargaining agreement. (Tr. 92, 187, 336).

⁶ In its September 21 proposal, Titan Tire specified that bargaining unit employees would be placed in the same health insurance plan that Titan Tire offered to its salaried employees. (GC Exh. 4, Art. 22.1, Sec. A). Titan Tire made the same health insurance plan offer to the Union on December 14, but for the first time provided the Union with specific information about the nature of the salaried employees' insurance plan. (Tr. 64; GC Exh. 10(f).)

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3. Several agreements reached on December 17

On December 17, the parties engaged in a whirlwind of negotiations in an effort to reach an agreement before the 11 pm deadline that Titan Tire imposed. The parties' negotiations proved to be productive, as on December 17 alone, the parties reached the following agreements (among others):

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Contract Provision(s)	Titan Tire's Position	Union's Position	Agreement Reached
Articles 1.2 and 9.1E – probationary period for new employees	365 days	60 days	180 days
Article 6.2 – number of members on Union negotiating committee	4 members	No limitation	No limitation
Articles 8.1 and 23.5 – ability to file grievances based on past practices	No grievances permitted for past practices that pre-date the new collective-bargaining agreement (CBA)	Grievances permitted	Grievances permitted for any past practices set forth in the new CBA
Article 8.5(C) – selection of arbitrator	Arbitration panel to be provided by the Federal Mediation and Conciliation Service (FMCS)	Permanent panel of arbitrators	Arbitration panel to be provided by the FMCS
Articles 10.1(D) and 11.1(B) – length of time away from the company before an employee loses seniority and recall rights	12 to 18 months	60 months	24 months
Article 11.1(D) – FMLA procedures when on personal medical leave	Employees may be required to use vacation time when on FMLA leave	No requirement that employees use vacation time when on FMLA leave for personal medical reasons	No requirement that employees use vacation time when on FMLA leave for personal medical reasons
Article 11.6 – bereavement pay for the death of half or step siblings	Verbal agreement	Verbal agreement	Bereavement pay available for the death of a half or step sibling (verbal agreement reduced to writing in the CBA)
Article 14 –	Verbal agreement	Verbal agreement	Company will,

Contract Provision(s)	Titan Tire's Position	Union's Position	Agreement Reached
equalizing overtime opportunities among shifts			consistent with production demands and schedules and available manning endeavor to equalize overtime among shifts (verbal agreement reduced to writing in the CBA)
Article 14.9 – overtime for employees assigned to 12-hour shifts	Employees working 12-hour shifts may be assigned two additional 12-hour shifts as mandatory overtime	No mandatory overtime for employees working 12-hour shifts	Employees working 12-hour shifts may be assigned one additional 12-hour shift as mandatory overtime, and only to cover an absence
Article 14.16 – weekend overtime for employees assigned to 8-hour shifts	Employees working 8-hour shifts may be assigned overtime every other Saturday and Sunday	No mandatory overtime on Sunday for employees assigned to 8-hour shifts	No mandatory overtime on Sunday for employees assigned to 8-hour shifts
Article 15.2(A) – payment for overtime	Overtime pay of time and a half applies to any hours worked in excess of 40 hours in a week	Overtime pay of time and a half applies to any hours worked in excess of 8 hours in a day	Overtime pay of time and a half applies to any hours worked in excess of 8 hours in a day
Article 15.2(B) – payment for working overtime on a holiday	Holiday overtime pay is double the employee's hourly rate, plus holiday pay.	Holiday overtime pay is triple the employee's hourly rate, plus holiday pay	Holiday overtime pay is double the employee's hourly rate, plus holiday pay.
Article 17.1(A) – vacation hours for employees working 12-hour shifts, who worked 1700 hours or more and have at least 15 years of service	160 hours	168 hours	168 hours
Article 17.1(G) – grandfather clause for employees earning 5 or 6 weeks of vacation	Four weeks of paid vacation	Four weeks of paid vacation, and may take any additional weeks covered by the grandfather clause as unpaid leave	Four weeks of paid vacation, and may take any additional weeks covered by the grandfather clause as unpaid leave
Articles 20.3(A), (C)	Company will	Company will	Company will

Contract Provision(s)	Titan Tire's Position	Union's Position	Agreement Reached
– reimbursement for safety glasses and safety shoes	reimburse employee for safety glasses every 3 years, and will reimburse employee for safety shoes every 2 years up to \$75	reimburse employee for safety glasses every 2 years, and will reimburse employee for safety shoes every 2 years up to \$100 (and up to \$125 for metatarsal shoes)	reimburse employee for safety glasses every 2 years, and will reimburse employee for safety shoes every 2 years up to \$100 (and up to \$125 for metatarsal shoes)
Article 21(B), (D) and (F) – guidelines for supervisors performing bargaining unit work, and grievance procedures	Supervisors may perform unit work when necessary to address production difficulties, and to insure customer delivery and satisfaction Only economic remedy in the event of a grievance about this issue is that the affected employee shall receive an additional opportunity for overtime (unless abuse of this provision is chronic, in which case an arbitrator may fashion a different remedy)	[No position described in the evidentiary record]	Union agreed to company's proposed contract language
Article 22.1(C) – life insurance coverage for employees	Company will provide life insurance coverage for \$30,000	Company will provide life insurance coverage for \$40,000	Company will provide life insurance coverage for \$35,000

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(Tr. 93-104; GC Exhs. 14(a), (b)).

At approximately 10:22 pm on December 17, Titan Tire's attorney gave the Union a list that identified the following issues that Titan Tire believed remained open, or unresolved:

- 10 (a) successorship; (b) the amount of time that Titan Tire would allow for Union business; (c) whether Titan Tire would guarantee employees a minimum number of hours per work week; (d) job placements for janitors; (e) medical insurance continuation; (f) health insurance costs;⁷

⁷ In the evening on December 17, the Union tentatively agreed to accept Titan Tire's proposal that bargaining unit employees use the same health care plan that Titan Tire offered to its salaried employees,

5 (g) Voluntary Employee Benefit Association (VEBA) language; (h) HMO in Des Moines; and
 10 (i) shift differentials/premiums. (Tr. 106; GC Exh. 14(c)). The parties resumed negotiating, and
 reached agreements on the following two items on Titan Tire's list of open issues: successorship
 (the Union agreed to accept the successorship language in the expiring Des Moines agreement);
 and shift differentials/premiums for employees assigned to the night shifts (the parties agreed to
 a reduced premium of 25 cents per hour for employees assigned to the 3 to 11 pm, 11 pm to
 7 am, and night 12-hour shifts). (Tr. 101, 104-105, 106-107).

4. Titan Tire ends negotiations, presents its last, best and final offer, and closes its facilities

15 At approximately 10:45 pm on December 17, Titan Tire abruptly declared that it was
 done negotiating, and presented the Union with its last, best and final offer. (Tr. 107, 211, 338,
 399; GC Exhs. 15, 20). On behalf of the Union, Robinson responded that the Union did not
 believe that the parties were at impasse, noting that the Union wished to continue bargaining and
 had room for movement on the remaining issues. (Tr. 107, 191, 339, 408). Robinson also
 20 advised Titan Tire that the Union would put Titan Tire's last, best and final offer to a Union
 membership ratification vote, but emphasized that notwithstanding the forthcoming vote, the
 Union did not agree that the parties were at impasse. (Tr. 339). At approximately 11 pm, Titan
 Tire closed its three facilities and locked out its employees. (Tr. 107-108, 192, 338; GC Exh.
 21).

25 *F. The Union Holds a Ratification Vote and the Bryan and Freeport Facilities
 Reject Titan's Last, Best and Final Offer*

30 On December 23, Union members at the Bryan and Freeport facilities held votes on
 whether to ratify Titan Tire's last, best and final offer, and voted to reject Titan Tire's offer. (Tr.
 110, 193-194, 339-340; GC Exhs. 16, 22, 26). Union members at the Des Moines facility also
 held a vote and decided to ratify Titan Tire's last, best and final offer. (GC Exh. 26).

35 *G. Bryan and Freeport Facilities Reopen under Terms of Last, Best and Final Offer*

After receiving word that the Bryan and Freeport units rejected its offer, Titan Tire
 notified the Union on December 23 that since the parties were at impasse, Titan Tire would
 implement its last, best and final offer immediately and resume operations at its facilities (with
 Freeport reopening on December 26, and Bryan reopening on December 27). (GC Exhs. 16, 22;
 40 see also GC Exh. 23). The Union responded that it did not believe that the parties were at
 impasse because it had additional room for movement on the remaining issues, and because it
 needed additional information about Titan Tire's proposal. The Union therefore asked Titan Tire
 to agree to resume negotiations for a new collective-bargaining agreement. (GC Exhs. 26, 27).

45 On December 26, Freeport employees returned to work as scheduled. As of that same
 date, Titan Tire of Freeport reduced its contribution to the Steelworkers Pension Trust on behalf
 of Freeport employees from \$1.85 to \$1.25 (per employee per hour worked). (Tr. 198; see also
 GC Exh. 18 (Freeport benefits agreement that took effect in 2006, stating that Titan Tire will

but the parties had not reached an accord regarding the percentage of the costs that employees would pay
 for that health insurance. (Tr. 349).

5 make a \$1.85 contribution to the Steelworkers Pension Trust per employee per hour worked);
GC Exh. 8 (November 18 agreement to pay benefits to Bryan and Freeport employees at the
existing rates until February 17, 2011, unless the parties agreed to an extension or to a new
benefits agreement)).

10 *H. Information Requests*

On September 21, the same day as the kickoff meeting for the parties' negotiations for a
new collective-bargaining agreement, the Union delivered an information request to Titan Tire.
The information request covered a variety of topics under 12 headings. (Tr. 242-243; GC Exh.
15 30). Titan Tire responded to much of the Union's request, but omitted certain materials and
provided some ambiguous responses that prompted the Union to send follow-up information
requests on October 22 and November 17. (Tr. 243-247; GC Exh. 31, 32).

On December 14, the Union received some new information about the health care plan
20 that Titan Tire was proposing for its employees. (See Findings of Fact (FOF), Sec. II(E)(1),
supra). Accordingly, on December 15, the Union delivered another information request to Titan
Tire, in which the Union asked for information about the proposed health care plan, and renewed
its request for information that had not been provided in response to its previous letters. (Tr.
249-250; GC Exh. 33).

25 Although Titan Tire did provide the Union with a variety of information in response to
the Union's requests, it did not provide the following information that the Union requested:

30 (a) Information about whether the 2006-2009 active medical expense data that Titan
Tire provided included or excluded monthly premiums paid by employees, as well as
information about whether the Des Moines benefits expense described as "other" referred
to VEBA contributions (GC Exhs. 30-33, Request 2);

35 (b) Titan Tire's estimate of a compounding (roll-up) table for costing changes in wages
for all plants aggregated⁸ (GC Exhs. 30-33, Request 4);

(c) Layoff information for 2009 (GC Exhs. 31-33, Request 5);

40 (d) Percentage of hours worked by maintenance and non-maintenance employees at the
Des Moines facility, both assigned and plant-wide maintenance, that were overtime hours
(GC Exhs. 30-33, Requests 8(b)-(c));

(e) Regarding the Titan Tire of Bryan pension plan:

45 (i) Individual participant data for actuarial valuation as of January 1, 2010, or the
most recent date (compilation date) for which there is complete and readily
available data;

⁸ In layperson's terms, a compounding table estimates how much an increase in employee wages will
actually cost the company (based not only on the wage increase itself, but also any increases in benefits or
other expenses that result from the higher wage).

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(ii) The actuarial valuation for the three plan years preceding 2010;

(iii) A schedule of pension contributions for the last four plan years, with amounts and dates;

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(iv) The Actuarial Funding Target Attainment Percentage (AFTAP) for the 2009 plan year, including detailed backup calculations and assumptions used by the plan's actuaries to calculate the AFTAP;

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(v) Projections for the next five years of cash contributions required into the pension plan;

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(vi) A tabulation of retirements during each of the last four plan years, grouped by type of retirement (normal, early, special early disability, deferred vested) and plan location, and specifying for each group: the number of retirements; average age and current average pension amount (excluding any pension supplements and before any reduction for election of survivor benefits)

(GC Exhs. 30-33, Requests 9(b)-(h));

25

(f) Regarding the proposed employee health care plan information that the Union received on December 14:

(i) 2011 renewal rates for the current PPO plans in Freeport, Bryan and Des Moines, the POS plan in Freeport, and the HMO in Freeport;

30

(ii) The current administrative costs for each self-funded plan in Bryan, Freeport and Des Moines, as well as the current retention piece of the HMO rate and the retention piece of the proposed PPO for the Des Moines facility;

(iii) A network availability report for primary care physicians, specialists and network medical facilities at both a 5 and 10-mile radius from each employee's zip code for both the current HMO and PPO, and separately for the proposed PPO;

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(iv) Detailed claims utilization reports for the past three years, for the HMO and PPO plans in Des Moines, the PPO plan in Bryan, and the PPO, POS and HMO plans in Freeport;

(GC Exh. 33, Requests 10(1), (3)-(5));

40

(g) Freeport dental claims information for 2006-2010, as well as the dental plan contribution report for 2006-2009 (GC Exh. 33, Request 10);

(h) For each of the last four years for each facility, the quarterly ticket, actual production, and cost per tire, separated by the types of tires/size of tires produced. The cost per tire

5 should be separated into the various categories of expense required to build a tire (material, labor, etc.) (GC Exhs. 30-33, Request 11(b)); and

(I) For each of the last four years, and projected for the next four years for each facility, the amount of capital expenditures and depreciation (GC Exhs. 30-33, Request 11(c)).

10 (See also Tr. 257; GC Exh. 34 (summary of all information requests and responses).

In un rebutted testimony, Union technician Chad Apaliski explained that all of the information requests listed above were relevant to the Union's efforts to represent its members in the ongoing contact negotiations with Titan Tire. In general, the Union sought information from
 15 Titan Tire that would outline the company's current labor costs and expenses, because that information would enable the Union to develop counterproposals that might help Titan Tire reduce its costs while protecting employee wages and benefits. (Tr. 262-265, 267-270, 273-274). Similarly, the Union sought information about Titan Tire's proposed health care plan to enable the Union to assess how the proposed plan would affect its employees' out-of-pocket
 20 expenses and access to medical providers in their geographic area (among other issues), and propose alternative health care plans. (Tr. 251-255, 271-272). Since Titan Tire did not provide the requested information listed above, the Union had to engage in negotiations without it.⁹

DISCUSSION AND ANALYSIS

25

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
 30 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, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. 56 Fed. Appx. 516 (D.C. Cir. 2003); see also *Roosevelt Memorial Medical Center*, 348 NLRB 1016, 1022 (2006) (noting that an ALJ may draw an adverse inference from a party's
 35 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). 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*, 335 NLRB at 622.

40

In this case, credibility is generally not at issue because all six witnesses (five called by the Acting General Counsel and one called by the Respondents) provided testimony that generally was un rebutted, and was corroborated by documentation admitted into evidence. In addition, each of the witnesses was forthcoming in admitting when their memories were
 45 unreliable. The Findings of Fact are accordingly based on the testimony of all six witnesses who testified at trial, to the extent that they testified about matters within their personal knowledge and without equivocation about their memories of the relevant events.

⁹ Periodically, the Union did remind Titan Tire during negotiations about its outstanding requests for information. (Tr. 329; GC Exh. 27)

5

B. *The September 21 and December 15 Information Requests*

1. Complaint allegations and applicable legal standards

10 The Acting General Counsel alleges that Titan Tire violated Section 8(a)(5) and (1) in the following ways:

15 (a) by, on or about September 21, failing and refusing to furnish the Union with necessary information related to the parties' negotiations for a new collective-bargaining agreement (see GC Exh. 1(l), par. 6(c)); and

20 (b) by, on or about December 17, failing and refusing to furnish the Union with necessary information related to the parties' negotiations for a new collective-bargaining agreement (see GC Exh. 1(l), par. 6(f)).

25 An employer's duty to bargain includes a general duty to provide information needed by the bargaining representative in contract negotiations and administration. Generally, information concerning wages, hours, and other terms and conditions of employment for unit employees is presumptively relevant to the union's role as exclusive collective-bargaining representative. By contrast, information concerning extra-unit employees is not presumptively relevant, and thus relevance must be shown. The burden to show relevance, however, is not exceptionally heavy, as the Board uses a broad, discovery-type standard in determining relevance in information requests. *A-1 Door & Building Solutions*, 356 NLRB No. 76, slip op. at 2 (2011).

30 2. Analysis – did Titan Tire violate the Act by failing or refusing to provide the Union with information that the Union requested on September 21 and December 15?

35 Before the parties began negotiating for a new collective-bargaining agreement, and during the negotiations themselves, Titan Tire repeatedly asserted that the Bryan and Freeport facilities were losing money and were at risk of being closed. (See FOF, Sec. II(B)(1), (C)(1)) and (E)(1)). In light of Titan Tire's assertions, the Union's September 21 and December 15 information requests were not only presumptively relevant (to the extent that they sought information concerning the terms and conditions of employment for unit employees), but also were relevant because they sought information that the Union needed to assess the validity of Titan Tire's assertions about its finances and develop viable counterproposals. See *National Extrusion & Mfg. Co.*, 357 NLRB No. 8, slip op. at 2 (2011) (recognizing that an employer's duty to bargain includes a duty to provide information that would enable the bargaining representative to assess the validity of claims the employer has made during contract negotiations).

45

50 The Respondents do not deny that they failed to provide some of the information that the Union requested on September 21 and December 15. (See FOF, Sec. II(H) (listing information that was not provided). Instead, the Respondents suggest that: (a) they provided the Union with enough information to perform its own calculations and essentially fill in the gaps in the Respondents' disclosures; and (b) the Union received sufficient information from the Respondents to bargain effectively, as demonstrated by the fact that the Union was able to reach

5 tentative agreements with the Respondents on contract provisions that were related to the
outstanding information requests. (See R. Posttrial Brief at 17)

10 I do not find the Respondents' arguments to be persuasive. Regardless of the Union's
ability to make certain calculations or estimates in the limited instances where that might have
been possible, the Union's information requests were reasonable and relevant because the Union
needed to review the Respondent's data and calculations to evaluate and reply to the
Respondent's assertions at the bargaining table. See *Castle Hill Health Care Center*, 355 NLRB
15 No. 196, slip op. at 28 (2010) (noting that an employer's duty to provide relevant information in
its possession is not excused by the fact that the information may be obtained elsewhere). In
addition, the Union cannot be faulted for proceeding with negotiations as best as it could with the
incomplete responses to its information requests (in the interest of avoiding further delay and
instead hammering out a contract), and there is certainly no basis for me to treat the Union's
20 decision to forge ahead with negotiations as a waiver of its statutory right to seek compliance
with its lawful requests for information. See *Metal Carbides Corp.*, 291 NLRB 939, 952-953
(1988) (finding that a union did not waive its statutory right to pursue its information requests
when it proceeded on a "Hobson's choice" and attempted to resolve grievances as best it could
with the information that it had); see also *Quality Roofing Supply Co.*, 357 NLRB No. 75, slip
op. at 1 (2011) (observing that waivers of statutorily protected rights must be clear and
unmistakable).

25 Since the Union's information requests were relevant, and the Respondents' admitted
failure to provide complete responses was not justified or excusable, I find that the Respondents
violated Section 8(a)(5) and (1) of the Act by failing or refusing to provide the Union with the
information that the Union requested in its September 21 and December 15 information requests
30 (as set forth in FOF, Sec. II(H)).

C. Unilateral Change Allegations

1. Complaint allegations and applicable legal standards

35 The Acting General Counsel alleges that Titan Tire violated Section 8(a)(5) and (1) in the
following ways:

40 (a) by, on or about December 6, unilaterally failing and refusing to pay its employees at
the Bryan facility the annual \$25 holiday gift certificate (see GC Exh. 1(l), par. 7(a));

45 (b) by, on or about December 17, unilaterally reducing the amount of its hourly
contribution to the Steelworkers Pension Trust on behalf of employees at the Freeport
facility (see GC Exh. 1(l), par. 7(b)); and

50 (c) by, on or about December 26, unilaterally implementing its last, best and final offer at
the Bryan and Freeport facilities when there was no lawful impasse due to previous,
unremedied unfair labor practices, and when the parties were not otherwise at a good-
faith impasse (see GC Exh. 1(l), pars. 8(b)-(c)).

5 “Under the unilateral change doctrine, an employer’s duty to bargain under the Act
includes the obligation to refrain from changing its employees’ terms and conditions of
employment without first bargaining to impasse with the employees’ collective-bargaining
representative concerning the contemplated changes.” *Lawrence Livermore National Security,
10 LLC*, 357 NLRB No. 23, slip op. at 3 (2011). The Act prohibits employers from taking unilateral
action regarding mandatory subjects of bargaining such as rates of pay, wages, hours of
employment and other conditions of employment. *Garden Grove Hospital & Medical Center*,
357 NLRB No. 63, slip op. at 1 fn. 4, 5 (2011). Notably, an employer’s regular and longstanding
practices that are neither random nor intermittent become terms and conditions of employment
even if those practices are not required by a collective-bargaining agreement. *Id.*; see also *Palm
15 Beach Metro Transportation, LLC*, 357 NLRB No. 26, slip op. at 4–5 (2011) (noting that the
party asserting the existence of a past practice bears the burden of proof on the issue, and that the
evidence must show that the practice occurred with such regularity and frequency that employees
could reasonably expect the practice to continue or reoccur on a regular and consistent basis),
enfd. 459 Fed. Appx. 874 (11th Cir. 2012).

20 On the issue of whether the parties bargained to an impasse, the Board defines a
bargaining impasse as the point in time of negotiations when the parties are warranted in
assuming that further bargaining would be futile because both parties believe they are at the end
of their rope. See *Whitesell Corp.*, 357 NLRB No. 97, slip op. at 64 (2011); *Daycon Products
25 Co.*, 357 NLRB No. 92, slip op. at 11 (2011). The question of whether an impasse exists is a
matter of judgment based on the following factors: the 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. *Id.* The party asserting impasse bears the burden of proof on the issue. *Daycon
30 Products Co.*, 357 NLRB No. 92, slip op. at 11 (2011); *Erie Brush & Mfg. Corp.*, 357 NLRB No.
46, slip op. at 2 (2011).

35 Generally, a lawful impasse cannot be reached in the presence of unremedied unfair labor
practices. And, in the absence of a lawful, good-faith impasse, an employer may not unilaterally
implement its final contract offer. Not all unremedied unfair labor practices committed before or
during negotiations, however, will lead to the conclusion that impasse was declared improperly,
thus precluding unilateral changes. Instead, only serious unremedied unfair labor practices that
affect the negotiations will taint the asserted impasse. Thus, the central question is whether the
respondent’s unlawful conduct detrimentally affected the negotiations over a new collective-
40 bargaining agreement and contributed to the deadlock.¹⁰ *Dynatron/Bondo Corp.*, 333 NLRB
750, 752 (2001) (citing *Alwin Mfg. Co.*, 326 NLRB 646, 688 (1998), enfd. 192 F.3d 133 (D.C.
Cir. 1999)).

¹⁰ The Board has recognized two ways (among other possibilities) in which an unremedied unfair
labor practice can contribute to the parties’ inability to reach an agreement. First, an unfair labor practice
can increase friction at the bargaining table. Second, by changing the status quo, a unilateral change may
move the baseline for negotiations and alter the parties’ expectations about what they can achieve, making
it harder for the parties to come to an agreement. *Dynatron/Bondo Corp.*, 333 NLRB at 752 (citing *Alwin
Mfg. Co.*, 192 F.3d 133, 139 (D.C. Cir. 1999)).

- 5 1. Analysis – did Titan Tire unlawfully fail to pay its Bryan facility employees
the annual \$25 holiday gift certificate?

10 In its case in chief, the Acting General Counsel established that under the existing
collective-bargaining agreement, Titan Tire was required to pay its Bryan facility employees
with an annual \$25 holiday gift certificate. The \$25 holiday gift certificate was therefore a
mandatory subject of bargaining. The Acting General Counsel also established that although
Titan Tire had an established practice of distributing the holiday gift certificates in early
December (to avoid any conflicts with holiday vacations), Titan Tire unilaterally decided not to
give Bryan facility employees a holiday gift certificate in early December 2010 (or afterwards).
15 (FOF, Sec. II(D)).

20 Titan Tire did not present any evidence to respond to the Acting General Counsel’s
evidence about the holiday gift certificate, nor did Titan Tire show that its failure to provide the
gift certificate was somehow justified (e.g., by economic exigency, or by a lawful impasse that
arose before the holiday gift certificates should have been distributed).¹¹ The Acting General
Counsel’s case in chief regarding the holiday gift certificate therefore stands unrebutted.

25 Based on the undisputed evidence in the record, I find that Titan Tire violated Section
8(a)(5) and (1) of the Act by unilaterally failing to pay its Bryan facility employees the annual
\$25 holiday gift certificate in early December 2010. See *Waste Management de Puerto Rico*,
348 NLRB 565, 572–574 (2006) (finding that an employer violated Section 8(a)(5) and (1) of the
Act when it unilaterally reduced the annual supplemental bonuses that it paid to employees).

- 30 2. Analysis – did Titan Tire unlawfully reduce the amount of its hourly contribution to the
Steelworkers Pension Trust on behalf of employees at the Freeport facility?

35 The Acting General Counsel established that in a benefits agreement that took effect in
2006, Titan Tire agreed to contribute \$1.85 to the Steelworkers Pension Trust on behalf of each
Freeport employee for each hour that they worked. The contribution to the Steelworkers Pension
Trust was therefore a mandatory subject of bargaining. The Acting General Counsel also
established that on November 18 (while negotiations for a new collective-bargaining agreement
were still in progress), Titan Tire agreed to extend the benefits agreement to February 17, 2011.
Titan Tire does not dispute those facts, nor does it dispute the fact that on December 26, 2010, it
unilaterally reduced its contribution to the Steelworkers Pension Trust from \$1.85 to \$1.25 (per
40 employee, per hour worked) for employees at its Freeport facility.¹² (See FOF, Sec. II(G)).

¹¹ The Respondents’ argument that Titan Tire of Bryan did not have to provide the annual \$25 holiday gift certificates because the old contract expired is without merit. (See R. Posttrial Brief at 18). The evidentiary record demonstrates (via unrebutted testimony) that Titan Tire of Bryan had a past practice of distributing the gift certificates in the first week of December. Based on that past practice, the gift certificates were due several days before the contract expired (on December 17) and several days before the Respondents implemented their last, best and final offer (on December 26). (See FOF, Sec. II(D), (G)).

¹² Although the complaint alleges that Titan Tire reduced its contributions to the Steelworkers Pension Trust on or about December 17, the undisputed evidence shows that the reduction occurred on December 26. (FOF, Sec. II(G)).

5 As with the \$25 holiday gift certificate discussed above, Titan Tire did not present any
 evidence that its unilateral decision to reduce its contribution to the Steelworkers Pension Trust
 for Freeport employees was justified because of economic exigency. Further, Titan Tire cannot
 argue that its unilateral decision was permissible because the parties were at a lawful impasse.
 10 As explained in Discussion and Analysis Section C(3) below, I have determined that the parties
 were not at impasse on December 26, notwithstanding Titan Tire’s decision to leave the
 bargaining table on December 17. Moreover, even if one assumes, arguendo, that the parties
 were at impasse with their negotiations for a new collective-bargaining agreement on December
 26, the fact remains that the parties’ November 18 benefits extension agreement required Titan
 15 Tire to continue paying benefits (including contributions to the Steelworkers Pension Trust) at
 the same rates until at least February 17, 2011. Titan Tire was therefore obligated to bargain
 with the Union if it wished to modify the benefits agreement before the February 17, 2011
 expiration date, and yet it did not do so, opting instead to unilaterally stop paying benefits at the
 \$1.85 rate on December 26, well before the benefits agreement extension expired.

20 Since Titan Tire did not fulfill its duty to bargain with the Union before unilaterally
 deciding to reduce its contributions to the Steelworkers Pension Trust on behalf of employees at
 the Freeport facility, I find that Titan Tire violated Section 8(a)(5) and (1) of the Act. See *Castle
 Hill Health Care Center*, 355 NLRB No. 196, slip op. at 37–38 (2010) (finding that the employer
 violated Section 8(a)(5) and (1) of the Act when it unilaterally stopped making contributions to
 25 the pension fund on behalf of its employees).

3. Analysis – was Titan Tire’s decision to unilaterally implement its last, best and final offer
 unlawful because the parties were not at a good-faith impasse?

30 As set forth in the Findings of Fact, the Union and Titan Tire began negotiating for a new
 collective-bargaining agreement on September 21. While initial negotiations yielded some areas
 of agreement (including the Union’s agreement to negotiate one master contract instead of
 separate contracts for each facility), the negotiations that occurred from December 13–17 were
 the most productive. Spurred on by the threat of plant closures, the Union agreed to freeze
 35 employee wages and freeze the amount of Titan Tire’s contributions to the Steelworkers Pension
 Trust for 2 years. In addition, on December 17 alone (the last day that Titan Tire was at the
 bargaining table), the parties were able to work out agreements on over 15 issues, including
 agreements on issues such as the probationary period for new employees, the length of time that
 an employee on layoff status retains his or her recall rights, and guidelines for when employees
 40 may be assigned mandatory overtime. Even in the final minutes before Titan Tire abruptly
 declared that it was done negotiating, the parties reached agreements on successorship language
 and on reductions to the premiums that employees receive for working one of the night shifts.
 (See FOF, Sec. II(C), (E)).

45 Based on the record as a whole, I find that the parties were not at impasse when Titan
 Tire left the bargaining table on December 17 or when Titan Tire implemented the terms of its
 last, best and final offer on December 26. The Board has recognized that where a party has
 already made significant concessions indicating a willingness to compromise further, “it would
 be both erroneous as a matter of law and unwise as a matter of policy for the Board to find
 50 impasse merely because the party [that made concessions] is unwilling to capitulate immediately
 and settle on the other party’s unchanged terms.” *Grinnell Fire Protection Systems Co.*, 328

5 NLRB 585, 586 (1999) (noting that a finding of impasse under those circumstances “would
 encourage rigid, inflexible posturing in place of the give-and-take of true bargaining”), enfd. 236
 F.3d 187 (4th Cir. 2000), cert. denied 534 U.S. 818 (2001); see also *Royal Motor Sales*, 329
 10 NLRB 760, 772 (1999) (finding that the parties were not at impasse, in part because one of the
 union’s proposals demonstrated flexibility and significant movement, and thus raised the
 possibility that further negotiation might produce other or more extended concessions), enfd. 2
 Fed. Appx. 1 (D.C. Cir. 2001). Thus, even if we accept Titan Tire’s assertion that it reached the
 end of its rope with negotiations on December 17, the evidentiary record shows that the parties
 were not at impasse because the Union remained more than willing to negotiate and, if
 necessary, make additional concessions to reach an agreement. Specifically, the length of
 15 negotiations (approximately 3 months) remained reasonable, and the outlines of a new
 collective-bargaining agreement were taking shape, save for a handful of remaining “open”
 issues (seven, according to Titan Tire) that needed to be resolved after the numerous tentative
 agreements that the parties made on December 17. Rather than hearing the Union out on the
 remaining issues (none of which could be characterized as a deal-breaker, given the Union’s
 20 demonstrated desire to hammer out an agreement and avoid plant closures), Titan Tire left the
 bargaining table the moment the existing collective-bargaining agreement expired in the evening
 on December 17.

Finally, I am not persuaded by Titan Tire’s argument that impasse is demonstrated by the
 25 fact that employees at the Bryan and Freeport facilities rejected Titan Tire’s last, best and final
 offer in ratification votes held on December 23. The Board has held that a negative ratification
 vote does not itself show that the parties are at impasse – instead, one must still consider whether
 further bargaining would be futile because both parties are at the end of their rope. *Ead Motors*
Eastern Air Devices, 346 NLRB 1060, 1063 (2006) (considering the customary factors used to
 30 determine whether the parties are at impasse). Here, the evidence shows that even after the
 ratification vote, the Union remained ready to return to the bargaining table to obtain more
 information about Titan Tire’s offer, and to present Titan Tire with some counterproposals that
 might lead to an agreement. (See FOF, Sec. II(G)). In light of that fact, the Respondents did not
 carry their burden of showing that the parties were at a good-faith impasse when Titan Tire
 35 unilaterally implemented the terms of its last, best and final offer.

Since Titan Tire did not fulfill its duty to bargain with the Union to a good-faith impasse
 before it unilaterally implemented the terms of its last, best and final offer at the Bryan and
 Freeport facilities on December 26, and since the last, best and final offer addressed mandatory
 40 subjects of bargaining, I find that Titan Tire violated Section 8(a)(5) and (1) of the Act as alleged
 in the complaint.¹³

CONCLUSIONS OF LAW

45 1. By, on or about September 21, failing and refusing to furnish the Union with
 necessary information related to the parties’ negotiations for a new collective-bargaining
 agreement, the Respondents violated Section 8(a)(5) and (1) of the Act.

¹³ Since I have found that the parties had not reached a good-faith impasse when Titan Tire
 implemented its last, best and final offer, I need not rule on the Acting General Counsel’s alternate theory
 that any impasse was tainted by the presence of serious unremedied unfair labor practices.

5

2. By, on or about December 6, unilaterally failing and refusing to pay employees at the Bryan facility the annual \$25 holiday gift certificate, when the parties were not at a good-faith impasse, Titan Tire of Bryan violated Section 8(a)(5) and (1) of the Act.

10

3. By, on or about December 17, failing and refusing to furnish the Union with necessary information related to the parties' negotiations for a new collective-bargaining agreement, the Respondents violated Section 8(a)(5) and (1) of the Act.

15

4. By, on or about December 26, unilaterally reducing the amount of Titan Tire of Freeport's hourly contribution to the Steelworkers Pension Trust on behalf of employees at the Freeport facility, when the parties were not at a good-faith impasse, Titan Tire of Freeport violated Section 8(a)(5) and (1) of the Act.

20

5. By, on or about December 26, unilaterally implementing their last, best and final offer at the Bryan and Freeport facilities when the parties were not at a good-faith impasse, the Respondents violated Section 8(a)(5) and (1) of the Act.

25

6. By committing the unfair labor practices stated in Conclusions of Law 1-5 above, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

30

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

35

The Respondents must make their employees whole for any loss of earnings and other benefits that resulted from their unilateral and unlawful decisions to: on or about December 6, fail and refuse to pay employees at the Bryan facility the annual \$25 holiday gift certificate; on or about December 26, reduce the amount of the employer's hourly contribution to the Steelworkers Pension Trust on behalf of employees at the Freeport facility; and on or about December 26, implement their last, best and final offer at the Bryan and Freeport facilities. 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 for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), *enf. denied* on other grounds *sub nom. Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011). This includes reimbursing unit employees for any expenses resulting from Respondents' unlawful changes to their contractual 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 the Respondent be ordered to make all contributions to any fund established by the collective-bargaining agreements with the Union which was in existence on December 17, 2010, and which contributions the Respondents would have made but for the unlawful unilateral changes, in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979).

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On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁴

ORDER

10

The Respondents, Titan Tire of Bryan, Ohio and Titan Tire of Freeport, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

15

(a) Failing and refusing to provide the Union with information that is relevant and necessary to the Union's duties as the collective-bargaining representative of Respondents' employees in the Bryan and Freeport facilities.

20

(b) Unilaterally failing and refusing to pay employees at the Bryan facility the annual \$25 holiday gift certificate.

25

(c) Unilaterally reducing the amount of Titan Tire of Freeport's hourly contribution to the Steelworkers Pension Trust on behalf of employees at the Freeport facility from the amount that was required under the benefits agreement that the parties extended on November 18, 2010.

30

(d) Failing to comply with the terms and conditions of employment that are set forth in the Bryan and Freeport facility collective-bargaining agreements with the Union that expired on December 17, 2010, until the parties agree to a new contract or good-faith bargaining leads to a lawful impasse.

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

35

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

40

(a) On request of the Union, restore, honor and continue the terms of the collective-bargaining agreements at the Bryan and Freeport facilities with the Union that expired on December 17, 2010, until the parties agree to a new contract or good-faith bargaining leads to a lawful impasse.

45

(b) Make whole Bryan and Freeport employees and former employees for any and all loss of wages and other benefits incurred as a result of Respondents' unlawful unilateral modification or discontinuance of contractual benefits, with interest, as provided for in the remedy section of this decision.

¹⁴ 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.

5 (c) Make contributions, including any amounts due, to any fund identified in the Bryan and Freeport collective-bargaining agreements that expired on December 17, 2011, and which Respondents would have paid but for their unlawful unilateral changes, as provided for in the remedy section of this decision.

10 (d) 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.

15 (e) Within 14 days after service by the Region, post at its facilities in Bryan, Ohio and Freeport, Illinois, copies of the attached notice marked "Appendix."¹⁵ Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive
20 days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered,
25 defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since
30 September 21, 2010.

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

35 Dated, Washington, D.C. June 12, 2012

40

Geoffrey Carter
Administrative Law Judge

¹⁵ 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."

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 fail or refuse to provide the Union with information that is relevant and necessary to the Union's duties as the collective-bargaining representative of our employees in the Bryan and Freeport facilities.

WE WILL NOT unilaterally fail or refuse to pay employees at the Bryan facility the annual \$25 holiday gift certificate.

WE WILL NOT unilaterally reduce the amount of Titan Tire of Freeport's hourly contribution to the Steelworkers Pension Trust on behalf of employees at the Freeport facility from the amount that was required under the benefits agreement that the parties extended on November 18, 2010.

WE WILL NOT fail to comply with the terms and conditions of employment that are set forth in the Bryan and Freeport facility collective-bargaining agreements with the Union that expired on December 17, 2010, until the parties agree to a new contract or good-faith bargaining leads to a lawful impasse.

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

WE WILL, on request of the Union, restore, honor and continue the terms of the collective-bargaining agreements at the Bryan and Freeport facilities with the Union that expired on December 17, 2010, until the parties agree to a new contract or good-faith bargaining leads to a lawful impasse.

WE WILL make Bryan and Freeport employees and former employees whole for any and all loss of wages and other benefits incurred as a result of Respondents' unlawful unilateral modification or discontinuance of contractual benefits, with interest compounded daily.

WE WILL make contributions, including any amounts due, to any fund identified in the Bryan and Freeport collective-bargaining agreements that expired on December 17, 2011, and which we would have paid but for our unlawful unilateral changes.

**TITAN TIRE CORPORATION OF BRYAN
(OHIO) AND TITAN TIRE CORPORATION OF
FREEPORT (ILLINOIS)**

(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.nlr.gov.

The Rookery Building, 209 South LaSalle Street, Suite 900, Chicago, IL 60604-5208
(312) 353-7570, Hours: 8:30 a.m. to 5 p.m.

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.