CC 1 Limited Partnership d/b/a Coca Cola Puerto Rico Bottlers *and* Hector Sanchez-Torres *and* Jan Rivera-Mulero *and* Jose Suarez *and* Luis J. Rivera-Morales *and* Miguel Colon *and* Carlos A. Rivera-Rivera

Union De Tronquistas De Puerto Rico, Local 901, International Brotherhood of Teamsters *and* Migdalia Magriz *and* Silvia Rivera. Cases 24–011018, 24–CA–011035, 24–CA–011044, 24–CA–011057, 24–CA–011059, 24–CA–011065, 24–CA–011193, 24–CA–011194, 24–CB–002706, and 24–CB–002707

June 18, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA AND JOHNSON

On September 18, 2012, the Board issued a Decision and Order in this proceeding, which is reported at 358 NLRB 1233. On January 24, 2013, the Board issued an Order Denying Motion for Reconsideration. Thereafter, the Respondent Employer filed a petition for review of both decisions in the United States Court of Appeals for the District of Columbia Circuit.

At the time of the Decision and Order and the Order Denying Motion for Reconsideration, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. Thereafter, the Board issued orders setting aside the Decision and Order and the Order Denying Motion for Reconsideration and retained this case on its docket for further action as appropriate.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, supra, we have considered de novo the judge's decision and the record in light of the exceptions and briefs. We have also considered the now-vacated Decision and Order reported at 358 NLRB 1233 and the January 24, 2013 Decision Denying Motion for Reconsideration. We agree with the rationale set forth therein, as further explained below. Accordingly, we affirm the judge's rulings, findings, and conclusions and adopt the judge's recommended Order to the extent and for the reasons stated in the Decision and Order reported at 358 NLRB 1233, which we incorporate by reference.[1] The Order, as further modified here, is set forth in full below.[2]

1. The Union and the Employer except to the judge's finding that the employees were engaged in protected concerted activity when they participated in a 3-day strike to protest the Employer's suspension and termination of the shop stewards. Citing *Emporium Capwell Co. v. Western Addition Community Organization*, 420 U.S. 50, 63 (1975), they argue that the strike was an unprotected "wildcat" strike.[3] We agree that the strike was not authorized, but we do not agree that it was unprotected.

Not all wildcat strikes—i.e., strikes not authorized by the employees' collective-bargaining representative—are unprotected. See *East Chicago Rehabilitation Center*, 710 F.2d 397, 400 (4th Cir. 1983), cert. denied 465 U.S. 1065 (1983), and *Jones & McKnight, Inc. v. NLRB*, 445 F.2d 97, 105 (7th Cir. 1971).[4] In assessing whether em-

[1] We have also considered the vacated Order Denying Motion for Reconsideration, which we incorporate by reference. We agree with and adopt the findings (a portion thereof) and rationale it sets forth.

The Employer's motion to sever and remand Cases 24–CA–011018 (a portion thereof), 24–CA–011032, 24–CA–011034, 24–CA–011041, 24–CA–011042, 24–CA–011045, 24–CA–011046, 24–CA–011047, 24–CA–011048, 24-CA–011050, 24–CA–011058, 24–CA–011059, 24–CA–011072, 24–CA–011081, 24–CA–011088, 24–CA–011095, 24–CA–011116, and 24–CA–011189 to the Regional Director for further processing pursuant to a non-Board settlement agreement between the Respondent Employer and the Charging Parties in these cases is granted. Accordingly, these cases are remanded to the Regional Director for Region 12 of the National Labor Relations Board for further appropriate action. The caption and the Order and notice have been amended to reflect the severance of the foregoing cases.

The settled charges include the allegations that the Employer violated Sec. 8(a)(3) and (1) by suspending and then discharging shop stewards Carlos Rivera, Francisco Marrero, Romian Serrano, and Felix Rivera. Accordingly, we need not pass on the parties' exceptions to the judge's dismissal of those allegations.

[2] Consistent with our decision in *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014), we shall modify the judge's recommended Order to require the Respondent Employer and Respondent Union to reimburse the discriminatees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and to require that the Respondent Employer file a report with the Social Security Administration allocating the backpay to the appropriate calendar quarters. We shall also substitute a new notice to conform to the Order as modified and in accordance with our decision in *Durham School Services*, 360 NLRB 694 (2014).

[3] In *Emporium Capwell*, a minority group of employees, dissatisfied with the contractual grievance procedure, refused to participate in it. Contrary to the union's advice, the employees picketed their employer's store in an attempt to circumvent the union and bargain separately with the employer. 420 U.S. at 50. The Court found such conduct unprotected because it undercut the principle of exclusive representation set forth in Sec. 9(a) of the Act.

[4] As the court explained in *Jones & McKnight*,

> [T]he fact that none of the strike activity was sanctioned by the Union is of no import . . . By authorizing a bargaining agent to represent them, the employees cannot be said to have waived all rights to protect

ployees who engage in an unauthorized strike lose the protection of the Act, two factors are controlling: (1) whether the employees are attempting to bargain directly with the employer and (2) whether the employees' position is inconsistent with the union's position. See *Silver State Disposal Service*, 326 NLRB 84, 85 fn. 8, 103–104 (1998); see also *Sunbeam Lighting* Co., 136 NLRB 1248, 1253 (1962), enf. denied 318 F.2d 661 (7th Cir. 1963); *NLRB v. R. C. Can Co.*, 328 F.2d 974, 978–979 (5th Cir. 1964). Here, the Employer and the Union have failed to establish that the employees were attempting to bargain directly with the Employer or that their position was inconsistent with the position of the Union. Therefore, we affirm the judge's finding that the striking employees were engaged in protected concerted activity, that the Employer violated Section 8(a)(3) and (1) by suspending and/or terminating them for that activity, and that the Union violated Section 8(b)(1)(A) by imposing sanctions on three of the stewards for that activity.

a. On September 9, 2008, the employees engaged in a walkout to protest the Employer's unilateral change of its off-duty employee access policy. No party contends that the walkout was unprotected. The next day, the Employer suspended all five of the shop stewards. Subsequently, the Union met with the Employer to discuss the suspensions and made the following demands: (i) the shop stewards must immediately be reinstated; (ii) the Employer must agree not to file any unfair labor practice charges against the Union for engaging in the work stoppage; and (iii) the Employer must agree to immediately return to the negotiating table. The Employer flatly rejected the demands. The Union then filed a grievance over the suspensions, but there is no evidence that the Union took any action to process the grievance or informed the employees that it was working on a settlement. At a meeting with bargaining unit employees on September 15, the Union discussed its demands and conducted a strike vote, which was approved unanimously. The Union then requested strike funds from its parent international, the International Brotherhood of Teamsters.

On October 10, the Employer escalated the dispute by terminating the five shop stewards. On October 12, the terminated stewards held a meeting with the bargaining unit employees at which the bargaining unit employees again authorized a strike in support of the Union's three demands to the Employer. No union officers were present at the meeting, but on October 14, the stewards faxed the strike authorization petition to the Union.[5] Upon learning of the second strike vote, the Union did not advise the employees that a strike would be inconsistent with the position of the Union or that a strike was not authorized at that time. Instead, on October 15, the Union wrote to the Employer, demanding that negotiations resume as soon as possible and threatening to take "legitimate actions, protected by law, in order to protect [employee] rights." The Employer agreed to resume negotiations, but did not agree to the Union's other two demands—that it reinstate the stewards and refrain from filing Board charges against the Union for the September 9 walkout. There is no evidence that the Union followed up on the Employer's request for bargaining dates, intended to resume negotiations absent an agreement on the other demands, or informed the bargaining unit of the Employer's response or that negotiations were set to resume.

The employees commenced the strike they had authorized on the morning of October 20. About 109 employees participated, and the strike lasted 3 days. The same three demands that had been made by the Union were again made by the employees during the strike. The Union never informed the employees that their strike was unauthorized or that it was inconsistent with the Union's position regarding the terminated stewards or with any other union objective.[6] The Employer terminated 34 employees and suspended 52 others for participating in the strike.

b. The judge found that the terminations and suspensions violated Section 8(a)(3) and (1), and we agree. See, e.g., *National Steel Supply*, 344 NLRB 973, 976 (2005), enfd. 207 Fed.Appx. 9 (2d Cir. 2006) (finding an 8(a)(3) violation where employees were terminated for engaging in lawful strike); *Flat Dog Productions*, 331 NLRB 1571, 1573 (2000), enfd. 34 Fed.Appx. 548 (9th Cir. 2002) (same).

Our dissenting colleague does not take issue with the legal principles regarding wildcat strikes set forth above. He asserts, however, as a factual matter that the strikers

> themselves against an employer's unlawful actions, since their individual action in such circumstances is not an attempt to undermine their representative's position, but to protect the employer's circumvention of the policies of the Act.

445 F.2d at 105.

[5] Prior to the October 12 meeting, a union officer asked shop steward Colon not to "divide the membership" by voting to authorize a strike at the Employer. We do not, however, view this conversation as indicating that a strike would be in opposition to the Union's position. Strikes can have serious economic consequences, and employees may be hesitant to authorize one even when they have been wronged. Moreover, in an earlier conversation with one of the Union's attorneys, the attorney informed Colon that the only way to have the shop stewards reinstated was to engage in a strike.

[6] The Union sent a letter to the Employer stating that the strike was not authorized, but it was the Employer, not the Union, that photocopied the letter and asked security guards to give it to the strikers.

acted in direct opposition to the Union's position and strategy and that the strike was therefore unprotected. The evidence simply does not support that argument. Rather, the evidence shows that the Employer committed a serious unfair labor practice by suspending (and later terminating) a shop steward because he engaged in a protected concerted walkout.[7] The Union immediately demanded reinstatement of the suspended shop stewards and conducted a strike vote. When the Employer terminated the stewards, the employees again voted to strike in support of the Union's demands and informed the Union of their intention. The Union neither said anything against it nor did it do anything to dissuade the employees; in fact, it threatened to take action against the Employer if the Employer did not agree to negotiate over the matter. Later that week, the employees made good on the strike threat. The fact that, by then, the Employer had offered to resume negotiations for a new collective-bargaining agreement does not establish that the Union had changed its position regarding a strike.[8] Indeed, the employees continued to voice the Union's demands on the picket line, and the Union made no effort to halt their conduct or disavow those demands.

The Employer also argues that the strike was illegal because the employees demanded that the Employer negotiate with the shop stewards rather than the Union, and because the stewards were acting as a labor organization. We reject those arguments. The record shows only that the strikers demanded that the Employer reinstate the stewards, who by then had been terminated, and acknowledge them as the Union's representatives on the bargaining committee.[9] The evidence does not show that the employees demanded that the Employer bypass the Union and deal directly with the shop stewards. And there is no evidence that the shop stewards were acting as a "labor organization."[10]

In sum, although the strike was not authorized by the Union, the Employer and the Union have not established that the employees were attempting to bargain directly with the Employer or that the employees' position was inconsistent with the position of the Union. Thus, the strike was not illegal. We adopt the judge's finding that the employees were engaged in a protected unfair labor practice strike and that the Employer violated Section 8(a)(3) and (1) of the Act by suspending and/or terminating them for their participation in the strike.[11]

2. We agree with the judge, for the reasons stated in the Decision and Order reported at 358 NLRB 1233, that the Respondent Union violated Section 8(b)(1)(A) by fining and expelling union members Migdalia Magriz, Maritza Quiara, and Silvia Rivera. We shall order the Union to reinstate their seniority rights and to make them whole for any loss of earnings and other benefits suffered as a result of their lost seniority. We leave the specifics of the seniority-reinstatement remedy to compliance. Contrary to the judge, we do not order the Respondent Union to reinstate them to full membership and their shop steward positions or to rescind the fines levied against them. Those remedies are beyond the scope of Section 8(b)(1)(A).

ORDER

A. The National Labor Relations Board orders that CC 1 Limited Partnership d/b/a Coca Cola Puerto Rico Bot-

[7] We have adopted the judge's finding that the Employer violated Sec. 8(a)(3) and (1) by terminating shop steward Miguel Colon for his participation in the walkout. As stated above, the remaining four shop stewards have settled the charges pertaining to them, so we have made no findings regarding the lawfulness of their terminations. However, we refer to all of the affected stewards in describing the relevant events.

[8] The evidence does not show that employees were aware that the Union and the Employer had discussed resuming negotiations. At the time of the strike, the employees knew only that the Union had agreed to strike if their demands were not met.

The facts here are distinguishable from those in the cases cited by the Employer. In *Energy Coal Partnership*, 269 NLRB 770 (1984), the union and the employer were engaged in contract negotiations, and, despite an interim agreement on many issues, employees became frustrated with the slow-moving process. Against the recommendation of the union, the employees voted to strike. Picketing continued for 2 days, despite the union's refusal to sanction the strike and its efforts to persuade the strikers to cease. Only after the employer secured a temporary restraining order did the strikers cease their activities. In *NLRB v. Shop Rite Foods, Inc.*, 430 F.2d 786 (5th Cir. 1970), the court found that employees who walked out to protest a coworker's discharge waited until after the walkout began to notify the union and seek its approval. Thus, the union did not have an opportunity even to consider whether and how to protest the discharge. Id. at 791. Here, by contrast, the Union had decided that redressing the suspension and termination of the shop stewards was a key union objective, it discussed its goals with regard to the suspensions and terminations (including the reinstatement of the stewards) with the unit employees, and it took a vote to authorize a strike if those objectives were not met.

[9] We disagree with our dissenting colleague that the strikers sought to "usurp the Union's choice of representatives." There is no evidence that the Union had already selected a new bargaining committee or informed the Employer that a new committee was ready to bargain. The evidence shows only that the Union held a meeting for the purpose of selecting a new committee.

[10] Sec. 2(5) of the Act defines a "labor organization" as follows:

> The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

No evidence supports the claim that the shop stewards were acting as an organization or committee for the purpose of dealing with the Employer concerning conditions of employment.

[11] In the absence of exceptions, we adopt the judge's finding that none of the employees accused by the Employer of sabotage or violence during the October strike engaged in such conduct, and therefore none of them lost the protection of the Act.

tlers, Cayey, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging, suspending, or otherwise discriminating against employees because they engaged in union or protected concerted activities and/or encouraged other employees to do so.

(b) Coercing employees into signing overbroad "last chance" agreements as a condition of their reinstatement.

(c) Discharging, suspending, or otherwise discriminating against employees because they participated in a protected strike.

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

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

(a) Within 14 days of the date of this Order, offer unfair labor practice strikers Hector Sanchez-Torres, Jan Rivera-Mulero, Jose Suarez, Luis J. Rivera-Morales, and employee Miguel Colon, reinstatement to their former positions, or if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make whole Miguel Colon, from September 10, 2008, and the unfair labor practice strikers listed above in paragraph 2(a) from October 20, 2008, for any loss of earnings and other benefits suffered as a result of the discrimination against them, plus interest in the manner set forth in the amended remedy of the Decision and Order reported at 358 NLRB 1233, as amended in this decision.

(c) Compensate employees entitled to backpay under the terms of this Order for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful suspensions and/or discharges of Miguel Colon, and the unfair labor practice strikers listed above in paragraph 2(a), and within 3 days thereafter, notify the employees in writing that this has been done and that the unlawful actions will not be used against them in any way.

(e) Within 14 days of the date of this Order, remove any reference to the last chance agreement from the files of all employees who signed the agreement as part of their reinstatement, and within 3 days thereafter, notify them in writing that this has been done, and that the last chance agreement will not be used against them in any way.

(f) 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.

(g) Within 14 days after service by the Region, post at its facility in Cayey, Puerto Rico, copies of the attached notice marked "Appendix A."[12] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent Employer's authorized representative, shall be posted by the Employer in English and Spanish and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Employer customarily communicates with its employees by such means. Reasonable steps shall be taken by the Employer to ensure that the notices are not altered, defaced, or covered by any other material. If the Employer has gone out of business or closed the facility involved in these proceedings, the Employer shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Employer at any time since September 9, 2008.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 12 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent Employer has taken to comply.

B. The National Labor Relations Board orders that the Union De Tronquistas De Puerto Rico, Local 901, International Brotherhood of Teamsters, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Imposing unlawful sanctions on members that affect their terms and conditions of employment.

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

[12] If this Order is enforced by a judgment of the 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."

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

(a) Restore the seniority rights of Migdalia Magriz, Maritza Quiara, and Silvia Rivera.

(b) Make whole Migdalia Magriz, Maritza Quiara, and Silvia Rivera for any loss of earnings and other benefits suffered as a result of their lost seniority plus interest in the manner set forth in the amended remedy of the Decision and Order reported at 358 NLRB 1233, and this decision.

(c) Compensate members entitled to backpay under the terms of this Order for the adverse tax consequences, if any, of receiving lump-sum backpay awards.

(d) Within 14 days after service by the Region, post at the Respondent Union's office copies of the attached notice marked "Appendix B."[13] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Union's authorized representatives, shall be posted in English and Spanish and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Union customarily communicates with its members by such means. Reasonable steps shall be taken by the Union to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Within 14 days after service by the Region, sign and return to the Regional Director sufficient copies of the notice for posting by the Respondent Employer, if willing, at all places where notices to employees are customarily posted.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 12 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that it has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

MEMBER JOHNSON, dissenting in part.

I disagree with the majority's conclusion that the 3-day October 2008 strike was protected. The strike's participants were employees in a dissident union faction that supported a losing candidate slate for union office but nevertheless sought to usurp the incumbent leadership's negotiating authority and its power to determine whether or when to strike in support of bargaining demands. Both the Respondent Employer and the Respondent Union have clearly established that the employees' actions were in direct opposition to the Union's position and strategy. Accordingly, I would dismiss allegations that the Employer violated Section 8(a)(3) and (1) by disciplining those employees who engaged in the unprotected wildcat strike and that the Union violated Section 8(b)(1)(A) by fining and expelling members working for another employer because they participated in the unprotected strike.

In evaluating the protected nature of an alleged wildcat strike, the Board "distinguish[es] between wildcat strikes that undermine the union's position as exclusive collective bargaining representative and ones that do not." *East Chicago Rehabilitation Center v. NLRB*, 710 F.2d 397, 402–403 (7th Cir. 1983). In drawing these distinctions, we must be particularly cognizant of the Supreme Court's observation that a union serving as the exclusive bargaining representative of an employee unit "has a legitimate interest in presenting a united front on [bargaining] issues and in not seeing its strength dissipated and its stature denigrated by subgroups within the unit separately pursuing what they see as separate interests." *Emporium Capwell Co. v. Western Addition Community Organization*, 420 U.S. 50, 70 (1975). In other words, free allowance of wildcat strikes is an affront to not just the Union, but also the Act and its statutory command of exclusive representation contained in Section 9.

In this case, it is undisputed that the Union did not authorize and opposed the October 20 strike. Further, unlike my colleagues, I would find that the strike clearly undermined the Union's position as the unit employees' exclusive bargaining representative. The Union's position here must be evaluated based on the actions and authority of its legitimate leadership. Although that leadership called for an employee strike authorization vote on September 15, 2008, and thereafter sought required approval from its International for funding, it did so on a contingent basis. The Union would initiate a strike only if the Employer failed to agree to (1) resume contract negotiations, (2) reinstate the five stewards who were suspended and subsequently discharged as the result of a September 9 work stoppage, and (3) not file charges against the Union based on that incident.

The incumbent union leadership did not commit to a deadline for achieving these goals or otherwise specify a strike date. It certainly did not leave the final decision to strike in the hands of the Respondent's employees and the stewards who would then go on to unsuccessfully

[13] If this Order is enforced by a judgment of the 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."

oppose this leadership in the subsequent early October union election. The losing slate of candidates was also supported by Jose Adrian Lopez, who was the Local 901 business representative and chief negotiator for the Respondent's unit employees. The discharged stewards were the other members of the prior bargaining committee. The Union terminated Lopez on October 6, replacing him with Angel Vãzquez.

No union officials were present when the dissident group, led by the stewards, convened a meeting on October 12 to authorize a strike on their own. In fact, the Union conducted a separate meeting with employees on that day at a different location for the purpose of selecting a new bargaining committee. Three days earlier, newly-appointed Union Business Agent Vasquez approached the stewards as they distributed flyers announcing their meeting. Vasquez, the Union's legitimate representative, expressly asked them *not to divide the membership* by voting to authorize a strike. In defiance of that request, the stewards held their meeting with about 50 employees, who thereupon signed a petition to Secretary-Treasurer Vasquez to "request once again

> 1. The immediate reinstatement of the delegates [i.e., the 5 stewards].
>
> 2. The solution of the collective bargaining agreement *through the bargaining committee chosen by the membership*. [emphasis added]
>
> 3. If the company does not agree to the previous requests, the Union will be obligated to implement any of the two (2) strike votes almost unanimously that we voted on 9/15/08 and 10/12/08."

On October 13, the Employer's Operations Director Carlos Trigueros met with first-shift employees and told them the Employer was willing to resume contract negotiations, upon the Union's request. Union Secretary-Treasurer Vasquez made this request in writing on October 15. On the next day, the Employer's attorney-negotiator, Miguel Maza, replied, "Please let us know the time, date, and place, and we shall be there to reinitiate said negotiations." Accordingly, the Union was on the verge of achieving one of its stated bargaining demands.

Meanwhile, the October 12 petition was faxed to the Union's office. No union official acknowledged or replied to it; nor did the steward group attempt to discuss the matter with union officials. On October 19, the stewards met with about 30–40 employees and determined to strike the next day. They did not notify the Union of the meeting or of their intention to strike.

When the strike and picketing began on October 20, the Employer faxed a letter to Secretary-Treasurer Vasquez, stating in relevant part

> As we let you know in our phone conversation, at this very moment an illegal strike is taking place at the Coca Cola Puerto Rico Bottlers facility in Cayey. This is not in accordance with what we discussed at our recent meeting, where you assured me there would be no strike. Furthermore, last Thursday we confirmed in writing your letter from the previous day where you invited us to negotiate and we replied that we were available immediately for said negotiation.

In a reply letter on the same day, Vasquez assured the employer that the strike was not authorized and that the Union opposed it:

> Our interest is, and we have so informed the company, to negotiate a collective bargaining agreement for the benefit of employees who work there. We want to clarify that we have not sent or authorized the presence of Officers or Union members in said stoppage; therefore, the presence there of any Union member would have been of their own accord, not official, and in violation of the statutes of the Union. Likewise, if any person claimed he/she was representing the Union, said claim would be a false representation. It is clear to us that the actions that took place there were outside the Union and its Constitution, and that the only ones responsible for the legal consequences are those who participated in and abetted said actions. Jeopardizing the employment of fathers and mothers with this clearly illegal activity is a wrong and irresponsible decision. It is those who decided to do this that will eventually have to legally respond, both financially and to the Union, for their foolish actions.
>
> Finally, I want to let you know that we shall be taking legal and union action against those who seeking to be false leaders try to play with the fate of the workers of Coca Cola. We will not allow this small group to continue threatening and undermining the welfare of the great majority of these workers in order to promote their own ignoble interests.

It is undisputed that the Employer's security guards distributed the Union's letter to striking employees. Nevertheless, the strike continued for 2 more days. During this period, the strikers were joined by nonemployee union members Migdalia Magriz, Maritza Quiara, and Silvia Rivera. When the strike ended, the Employer discharged or suspended a number of former strikers. Subsequently, the Union fined and expelled Magriz, Quiara, and Rivera for their participation in the strike.

In sum: (1) The Union, through new Business Agent Vasquez, informed the discharged stewards on October 12 that it considered their separate group activity and

strike vote to be divisive of the membership. (2) There is no evidence that the stewards, who were not officials of the Union, had any reason to believe they had a continuing role on the negotiating committee after lead negotiator Lopez was terminated and the Union convened a meeting to establish a new committee on October 12. Thus, at least by October 12, the Union intended to select a new bargaining committee which would not include the discharged stewards and would have a lead negotiator other than discharged Business Agent Lopez. Yet the stewards and their supporters demanded that both the Union and the Employer negotiate with a committee including the stewards. (3) The stewards and employee supporters continued to plan a strike, independent of any union involvement, even knowing that the Employer was willing to restart negotiations. (4) In agreeing to resume bargaining, the Union, through Secretary-Treasurer Vasquez, had assured the Employer there would be no strike. (5) The Union's letter to the Employer did more than indicate that the strike was not authorized. It conveyed the Union's adamant opposition to a strike undertaken by "false leaders" who were acting contrary to the Union's policy and bargaining strategy. (6) Finally, the striking employees were aware of this letter and, if they did not already know, that they were striking in opposition to their exclusive bargaining representative's position.

Adopting the rationale of the vacated Board decision, my colleagues apparently agree that the superficial congruence of the Union's and strikers' bargaining demands and the failure of the Union to directly communicate its opposition to the strike prior to or during its occurrence somehow defeats the argument that the strike was not inconsistent with the Union's position and did not undermine its status as the exclusive bargaining representative. The evidence is overwhelmingly to the contrary. The wildcat strike initiated by the steward group was clearly inconsistent with the Union's position not to strike at that time, jeopardized its success in achieving the goal of restarting contract negotiations, and sought to usurp the Union's choice of representatives on the bargaining committee.[1] To the extent that the strikers' knowledge of these facts is even relevant to finding their strike was unprotected, distribution of the Union's letter to them proved knowledge regardless of whether it was the Employer rather than the Union who distributed it.

In my view, the Board must take great care not to give such weight to individual Section 7 rights as to erode the majoritarian principles embodied in Section 9. To this point, the Fourth Circuit long ago cogently stated

> It is perfectly clear not only that the 'wild cat' strike is a particularly harmful and demoralizing form of industrial strife and unrest, the necessary effect of which is to burden and obstruct commerce, but also that it is necessarily destructive of that collective bargaining which it is the purpose of the act to promote. Even though the majority of the employees in an industry may have selected their bargaining agent and the agent may have been recognized by the employer, there can be no effective bargaining if small groups of employees are at liberty to ignore the bargaining agency thus set up, take particular matters into their own hands and deal independently with the employer. The whole purpose of the act is to give to the employees as a whole, through action of a majority, the right to bargain with the employer with respect to such matters as wages, hours and conditions of work. Section 9 of the act.[2]

In the circumstances of this case, my colleagues' promotion of the short-term interests of the dissident steward employee group in striking is "necessarily destructive" of the collective-bargaining process and the Union's role as the exclusive bargaining representative. Unlike them, I would find that the Employer and Union lawfully disciplined the strikers, and I would dismiss the complaint allegations relating to these actions.

APPENDIX A

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.

[1] In order to find the wildcat strike to be unprotected, it is not necessary to find, as the Employer contends, that the stewards group sought recognition as a labor organization.

[2] *NLRB v. Draper Corp.*, 145 F.2d 199, 203 (4th Cir. 1944).

WE WILL NOT discharge, suspend, or otherwise discriminate against you for engaging in union or protected concerted activities and/or encouraging other employees to do so.

WE WILL NOT coerce you into signing overbroad "last chance" agreements as a condition of your reinstatement.

WE WILL NOT discharge, suspend, or otherwise discriminate against you for participating in a protected strike.

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

WE WILL, within 14 days from the date of the Board's Order, offer unfair labor practice strikers Hector Sanchez-Torres, Jan Rivera-Mulero, Jose Suarez, Luis J. Rivera-Morales, and employee Miguel Colon full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed

WE WILL make the above-named individuals whole for any loss of earnings and other benefits resulting from their suspension or discharge, less any net interim earnings, plus interest.

WE WILL compensate employees entitled to backpay under the terms of the Board's Order for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

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

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the last chance agreement from the files of all employees who signed the agreement as part of their reinstatement, and WE WILL, within 3 days thereafter, notify each employee in writing that this has been done and that the last chance agreement will not be used against them in any way.

CC 1 LIMITED PARTNERSHIP D/B/A COCA-COLA PUERTO RICO BOTTLERS

The Board's decision can be found at www.nlrb.gov/case/24-CA-011018 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273–1940.

APPENDIX B

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 impose unlawful sanctions on you that affect your terms and conditions of employment.

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

WE WILL restore the seniority rights of Migdalia Magriz, Maritza Quiara, and Silvia Rivera.

WE WILL make the above members whole, with interest, for any loss of earnings and other benefits suffered as a result of their loss of seniority.

WE WILL compensate members entitled to backpay under the terms of the Board's Order for the adverse tax consequences, if any, of receiving lump-sum backpay awards.

UNION DE TRONQUISTAS DE PUERTO RICO, LOCAL 901

The Board's decision can be found at www.nlrb.gov/case/24-CA-011018 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.