

Nos. 15-2031 & 15-2183

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

KELLOGG CO.

Petitioner/Cross-Respondent

v.

NATIONAL LABOR RELATIONS BOARD

Respondent/Cross-Petitioner

**BAKERY, CONFECTIONARY, TOBACCO WORKERS, AND GRAIN
MILLERS INTERNATIONAL UNION, AFL-CIO, CFC;
BAKERY, CONFECTIONARY, TOBACCO WORKERS, AND GRAIN
MILLERS LOCAL UNION 252-G**

Intervenors

**ON PETITION FOR REVIEW AND CROSS-APPLICATION
FOR ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD**

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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STATEMENT REGARDING ORAL ARGUMENT

The Board believes that oral argument would be helpful in this case to clarify the issues in dispute.

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**ON PETITION FOR REVIEW AND CROSS-APPLICATION
FOR ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD**

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

STATEMENT OF JURISDICTION

This case is before the Court on the petition of Kellogg Co. for review, and the cross-application of the National Labor Relations Board (“the Board”) for enforcement, of a Board Decision and Order issued against Kellogg on May 7, 2015, and reported at 362 NLRB No. 86. Bakery, Confectionary, Tobacco

Workers, and Grain Millers International Union (“the International”) and Bakery, Confectionary, Tobacco Workers, and Grain Millers Local Union 252-G (“Local 252-G”) intervened in the case in support of the Board. The Board had jurisdiction over the proceeding below pursuant to Section 10(a) of the National Labor Relations Act (“the Act”). 29 U.S.C. § 160(a). The Court has jurisdiction over this appeal because the Board’s Decision and Order is final under Section 10(e) and (f) of the Act. 29 U.S.C. § 160(e) and (f). The petition and application are timely, as the Act provides no time limit for such filings. Venue is proper in this circuit because the unfair labor practices occurred in Memphis, Tennessee.

STATEMENT OF THE ISSUES

I. Did the Board reasonably find that Kellogg violated Section 8(a)(5) and (1) of the Act by insisting to impasse upon bargaining proposals that would modify terms and conditions of employment contained in an unexpired collective-bargaining agreement?

II. Did the Board reasonably find that Kellogg violated Section 8(a)(1) by threatening to lock out, and Section 8(a)(5), (3), and (1) by locking out, employees in support of its midterm-modification proposals?

III. Is the Board entitled to summary enforcement of its uncontested finding that Kellogg violated Section 8(a)(5) and (1) by failing to respond to

Local 252-G's request for information necessary and relevant to the performance of its representational duties?

STATEMENT OF THE CASE

I. PROCEDURAL HISTORY

Acting on unfair-labor-practice charges filed by the International and Local 252-G, the Board's General Counsel issued a complaint alleging that Kellogg violated Section 8(a)(5) and (1) of the Act, 29 U.S.C. § 158(a)(5) and (1), by insisting to impasse on bargaining proposals that would constitute midterm modifications of an existing collective-bargaining agreement. The complaint further alleged that Kellogg violated Section 8(a)(1) by threatening to lock out employees in support of its unlawful bargaining objective, and Section 8(a)(5), (3), and (1) by locking them out. 29 U.S.C. § 158(a)(5), (3), (1). Finally, the complaint alleged that Kellogg violated Section 8(a)(5) and (1) by failing to provide relevant information that Local 252-G requested.

The case was heard by an administrative law judge, who issued a decision and recommended order finding the information-request violation, and dismissing the other allegations. On review, the Board adopted the judge's findings and

conclusions regarding the information-request violation, but otherwise reversed the judge and found the remaining violations as alleged.¹

II. THE BOARD'S FINDINGS OF FACT

A. Labor Relations at Kellogg's Cereal Plants Are Governed By a Nationwide Master Agreement and Local Supplemental Agreements

Kellogg produces and distributes food products nationwide, and operates ready-to-eat-cereal processing and packing plants in Memphis, Tennessee; Battle Creek, Michigan; Lancaster, Pennsylvania; and Omaha, Nebraska. Employees at the four cereal plants are represented by various locals of the International, including Local 252-G in Memphis. (JA 1-2; JA 1152-54.)² The employment relationship at each plant is governed by two collective-bargaining agreements. Kellogg, the International, and the four locals are all party to a Master Agreement that sets uniform terms at all four plants. Each local is also a party to a

¹ In a related action, the United States District Court for the Western District of Tennessee granted an injunction against Kellogg on July 30, 2014, under Section 10(j) of the Act, 29 U.S.C. § 160(j), ordering it to, inter alia, cease and desist from insisting to impasse on proposals that “would effectively change the wage rates of new Regular employees, or would allow Kellogg to hire only new Casual employees,” offer interim reinstatement to the locked-out employees, and bargain in good faith with Local 252-G. *McKinney v. Kellogg Co.*, 33 F. Supp. 3d 937 (W.D. Tenn. 2014).

² “JA” cites are to the Joint Appendix and “SA” cites are to the Board’s Supplemental Appendix. References preceding a semicolon are to the Board’s findings; cites following a semicolon are to supporting evidence. “Br.” cites are to Kellogg’s opening brief to the Court.

Supplemental Agreement with Kellogg that covers an individual plant. (JA 2; JA 1154-56.)

Under Section 1.01(f) of the Master Agreement, matters covered in that contract “shall not, unless the parties thereto agree, be subject to negotiation between [Kellogg] and any of the respective Local Unions in an effort to secure changes in or to secure a new Supplemental Agreement.” (JA 2 & n.6; JA 116.) The Master Agreement also provides that, “in the event that any provision of any of the Supplemental Agreements is in conflict with any provision of this Agreement, the provision of this Agreement shall prevail.” (JA 2 n.6; JA 115-16.) The Master Agreement in effect at the time of the events in this case had a term of September 2012 to October 2015. (JA 2; JA 111.) The most recent Memphis Supplemental Agreement expired on October 20, 2013. (JA 3; JA 30, 65.)

B. The Master Agreement Distinguishes Between Regular and Non-Regular Employees, and Sets Terms and Conditions of Employment Regarding Wages, Benefits, Overtime, and Premium Pay

The Master Agreement distinguishes between two different categories of employees—“regular employees” and “non-regular employees, such as temporary and casual employees.” (JA 2; JA 119, 141, 150, 179-81.) Under the Master Agreement’s New Hire Progression Schedule, a newly hired regular employee receives a percentage of the set wage rate for the first four years, and the full rate thereafter. Regular employees also receive an annual cost-of-living adjustment set

forth in the Master Agreement's Wage Appendix. (JA 2; JA 180-81.) The standard wage rates for each category of employee at a particular plant appear in the Supplemental Agreement for that plant. Those rates are incorporated by reference in the Wage Appendix. (JA 2 n.5; JA 180.) The Wage Appendix also provides that non-regular employees, including casual employees, receive six dollars per hour less than regular employees. (JA 2; JA 181.)

The Master Agreement provides that “[a]ll matters pertaining to hourly wages . . . are included as part of this Agreement and are contained in the Wage Appendix.” (JA 2; JA 147.) Across-the-board wage adjustments for all job classifications have been negotiated and implemented at the master level, and adjustments limited to particular job classifications are discussed at the local level. (JA 2 n.5; JA 1684, SA 1749-50, 1755-56.) For example, the progression schedule for all newly hired regular employees was changed during Master Agreement negotiations in 2005 to increase the time for reaching the full wage rate from three years to four. When electricians at the Memphis plant took on additional duties, by contrast, they negotiated for and received wage increases at the local level. (JA 2-3 & n.5; JA 1655-58, SA 1766.)

Section 6.01 of the Master Agreement provides “hospital, medical, surgical, major medical, prescription drug, dental, disability, accidental death and dismemberment, and life insurance coverage for all regular employees.” Non-

regular employees do not receive those benefits. (JA 2; JA 150, 1250, 1253.) In addition, Section 5.04 of the Master Agreement details Kellogg’s overtime and premium-pay policies. Employees receive time and a half for hours worked in excess of a normal eight-hour workday and any time worked on Saturday. Sunday hours pay double. An exception to the Saturday premium-pay policy exists for departments that operate seven days a week. Employees in those departments receive time and a half for hours worked on their first scheduled day off, regardless of what day of the week it is; they receive standard pay on Saturday, if Saturday is a regularly scheduled workday. Those employees still receive double time on Sunday, even if Sunday is not one of their scheduled days off. (JA 2; JA 147-48.) Kellogg refers to schedules in departments that operate seven days a week as “alternative crewing.” (JA 2; SA 1747.)

C. The Parties Discuss Wages and Benefits for Newly Hired Regular Employees and Alternative Crewing During Negotiations for a Master Agreement in 2005, 2009, and 2012

During negotiations for a new Master Agreement in 2005, Kellogg proposed an across-the-board cut in wages and benefits for all newly hired regular employees. It also proposed eliminating double-time premium pay on Sundays for employees in departments that operated on a seven-day, alternative-crewing schedule unless Sunday was their second regularly scheduled day off. In addition, Kellogg proposed establishing a “qualified Casual workforce.” (JA 2; JA 770-73,

SA 1743.) The International expressed concern, but suggested it could compromise if Kellogg provided assurances regarding job security. Kellogg eventually dropped the proposals. (JA 2; JA 1170-71.)

Kellogg raised similar issues prior to Master Agreement negotiations in 2009 and 2012. During negotiations, it again proposed the same change to Sunday premium pay, and explained that an alternative-crewing schedule was economically feasible only if Sunday double time was eliminated. The parties could not reach agreement on the proposals, which ultimately were dropped. (JA 3; JA 757-58, 767, 1172-78, 1180-82, 1615-17, 1642-43.) In 2012, the parties agreed to discuss alternative crewing at a future Union Advisory Committee meeting, but did not do so at the only such meeting held since that agreement. (JA 3 & n.7; JA 1181-83.)

D. The Memphis Supplemental Agreement Provides for a Casual-Employee Program

Since 2010, Section 107 of the Memphis Supplemental Agreement has provided for a casual-employee program, the stated purpose of which is “to provide regular employees with relief from extended work schedules.” (JA 3; JA 36-37, 1157.) The program was intended to cut back on the need for overtime for regular employees by creating a relief work force. (JA 3; JA 1159, 1207.) Under the 2010 Memphis Supplemental Agreement, casual employees are limited to 30 percent of the number of regular employees. Kellogg cannot use a casual

employee if regular employees are on layoff, and generally must offer regular employees the chance to work overtime before using a casual employee for the work. (JA 3; JA 36-37.)

The 2010 Memphis Supplemental Agreement states that “[t]he terms and conditions of the Supplemental and Master Agreements will not apply to Casual employees.” (JA 3; JA 36.) Unlike regular employees, casual employees do not accrue seniority, cannot bid on jobs, and cannot use the contractual grievance procedure to challenge a discharge. Casual employees receive overtime only if they work more than 40 hours per week, whereas the Master Agreement provides for overtime after 8 hours in one day. (JA 3; JA 36-37, SA 1744-45.) Kellogg hired approximately twenty casual employees at the Memphis plant in 2011 and 2012, but no casual employees were working there when the Supplemental Agreement expired in 2013. (JA 3; JA 1487, 1490.)

The Supplemental Agreements at the other cereal plants provide for similar programs, the first of which began in Lancaster in 1981. The Lancaster and Battle Creek Agreements refer to such employees as casual, and the Omaha Agreement labels them Seasonal B. Each Supplemental Agreement describes its program’s purpose in the same manner as the 2010 Memphis Agreement—to provide relief for regular employees and to mitigate their overtime burden. The number of casual employees is capped at each cereal plant—40 percent of the number of regular

employees at Lancaster, 30 percent at Battle Creek, and 20 percent at Omaha.

(JA 3 n.8; JA 577-78, 627-29, 670-72.)

E. Kellogg Proposes a New Casual Workforce and Alternative Crewing During Negotiations for a Successor Memphis Supplemental Agreement in 2013

Kellogg and Local 252-G began negotiations for a successor Memphis Supplemental Agreement in fall 2013. Kellogg explained to Local 252-G that it wanted to “fix the labor costs” and establish a new “cost model” at the Memphis plant and that, going forward, current wage and benefit levels “do[] not work and we are trying to do something about it.” (JA 3-4; JA 276, 330, 343.) One focus of Kellogg’s proposals was the creation of what Senior Director of Labor Relations and lead negotiator Kristie Chorny termed a “new workforce” at the Memphis plant. (JA 4; JA 330, 1198.) The proposals would define casual employees in Section 107 of the Memphis Supplemental Agreement as “any employees hired by Kellogg to perform production or any other bargaining unit work covered by this Supplemental Agreement and under this provision.” (JA 3; JA 492.) Chorny contrasted the proposed new casual employees with the current regular employees, whom she described as “legacy employees.” (JA 17; JA 258.) Under the proposals, Kellogg would not have to hire any new regular employees subject to the Master Agreement, and Chorny stated that all new hires going forward would be casual employees. (JA 3-4; JA 266, 1211, 1235, 1349.) The proposals also

would allow Kellogg to hire new casual employees when regular employees were on temporary layoff, and to do so without first having to offer the laid-off employees a chance to return to work. Kellogg also could bring back laid-off regular employees as casual employees. (JA 3; JA 492, 494, SA 1746, 1752-53.)

Chorny stated that Kellogg's proposals also would "redo the Casual employee to make them the employee of the future." (JA 4; JA 258.) The proposals deleted the Supplemental Agreement language describing the casual-employee program as "designed to provide scheduling relief to regular employees" and expressly provided that "[c]asuals may be employed on an indefinite basis." (JA 3, 5; JA 492.) It also lifted all restrictions on Kellogg's use of casual employees—including the 30-percent cap—and granted those employees the ability to accrue seniority, bid on jobs, and grieve discharges. (JA 3; JA 492-94.) The new casual employees would continue to receive six dollars per hour less than the set rate for regular employees and would continue not to receive the medical, disability, and life insurance benefits provided for in the Master Agreement. They would not receive the Master Agreement's cost-of-living adjustments. And they would continue to receive overtime only for hours worked in excess of 40 per week. (JA 3; JA 492-93, 1205, SA 1754.)

The other focus of Kellogg's proposals was the creation in Memphis of an alternative-crewing schedule, which did not currently exist at that plant. Kellogg

would have the option of establishing alternative crewing, with no limits on its use. (JA 3-4; JA 495-96, 1198, SA 1748.) The proposals gave casual employees preference in scheduling for alternative crewing. It also excluded casual employees who worked such a schedule from the provision in the Master Agreement that provides for double-time premium pay for work on Sunday. (JA 3-4; JA 495-96, SA 1746-47.) Kellogg viewed its proposals on casual employees and alternative crewing as intertwined, and explained that it would “get to the alternative crewing with Casuals being able to work.” (JA 4 n.10; JA 449.)

F. Local 252-G Requests Information Regarding Casual Employees and Job Bidding

During negotiations on October 10, union negotiator Anthony Shelton requested information from Kellogg regarding its use of casual employees and the job-bidding process. Among other items, he asked for the total number of jobs bid in the last three years, the total number of employees who were awarded a job in the past year, and the total number of employees who were awarded more than one new job in the past three years. He also asked who, under Kellogg’s proposals, would make the final decision as to which employee was awarded a job. (JA 20-21; JA 441-43.)

Kellogg later withdrew part of its proposals regarding job bidding, but retained the language stating that casual employees would be eligible to bid. When asked if he still wanted the requested information, Shelton responded, “I want the

part that is relevant and still on the table.” (JA 21; JA 448, 1217-21.) On October 15, Kellogg provided the requested information regarding the use of casuals, but did not provide any information about the number of jobs bid and awarded, or about who would award jobs. (JA 21; JA 483-84.)

G. Kellogg Locks Out Bargaining-Unit Employees at the Memphis Plant

By October 15, the only remaining issues in the parties’ negotiations were Kellogg’s proposals on casual employees and alternative crewing. The parties had reached impasse on those issues. (JA 4; JA 452, 813.) On October 16, Kellogg provided Local 252-G with a “last/best offer” that included its casual-employee and alternative-crewing proposals. Kellogg stated that, if Local 252-G did not accept the offer by October 22, Kellogg would lock out all Memphis bargaining-unit employees. (JA 4; JA 491.) Later that day, Kellogg conveyed the same message in a letter to its employees, and informed them that their healthcare benefits would cease for the duration of the lockout. (JA 4; JA 485-87.) Local 252-G rejected the offer, contending that both proposals had to be bargained as part of the Master Agreement—which had not expired—rather than the Memphis Supplemental Agreement. (JA 4; SA 1757-58.) At 7:00 a.m. on October 22, Kellogg locked out the 226 bargaining-unit employees at the Memphis cereal plant. (JA 4; JA 488.)

III. THE BOARD'S CONCLUSIONS AND ORDER

On May 7, 2015, the Board (Chairman Pearce and Member Hirozawa; Member Johnson, concurring) issued a Decision and Order finding that Kellogg violated Section 8(a)(5) and (1) of the Act by insisting to impasse on proposals that would constitute midterm modifications of the Master Agreement and by refusing to provide Local 252-G with the requested information regarding job bidding. The Board also found that Kellogg violated Section 8(a)(1) of the Act by threatening to lock out employees in order to compel them to accept its unlawful bargaining demands, and Section 8(a)(5), (3), and (1) by locking them out.

The Board's Order requires Kellogg to cease and desist from refusing to bargain in good faith with Local 252-G by insisting to impasse on midterm modifications of the Master Agreement, threatening to lock out and locking out employees in support of its proposed modifications, and refusing to provide relevant information. Affirmatively, the Order directs Kellogg to bargain in good faith with Local 252-G upon request, offer full reinstatement to locked-out employees who have not yet been reinstated, make employees whole for loss of earnings and benefits as a result of the lockout, furnish the requested information to Local 252-G, and post a remedial notice.

STANDARD OF REVIEW

The Court will “uphold the Board’s interpretation of the Act as long as it is a permissible construction of the statute,” *Frenchtown Acquisition Co. v. NLRB*, 683 F.3d 298, 304 (6th Cir. 2012) (internal quotations omitted), and “must accept” the Board’s choice of legal standard if it is “rational and is consistent with the purposes of the Act,” *Tocco Div. of Park-Ohio Indus., Inc. v. NLRB*, 702 F.2d 624, 627 (6th Cir. 1983). The Court “review[s] the Board’s factual determinations and its applications of law to facts under a substantial evidence standard,” and will affirm those determinations if “the record viewed as a whole provides sufficient evidence for a reasonable factfinder to reach the conclusions the Board has reached.” *NLRB v. Galicks, Inc.*, 671 F.3d 602, 607 (6th Cir. 2012) (internal quotations omitted). The Board’s interpretation of a contract is subject to de novo review. *NLRB v. Local 334, Laborers Int’l Union*, 481 F.3d 875, 879 (6th Cir. 2007). The same standard of review applies when the Board reverses an administrative law judge as when it agrees with the judge’s recommendations. *Galicks*, 671 F.3d at 607.

SUMMARY OF ARGUMENT

Parties to a collective-bargaining agreement have a duty to honor their contractual bargain. An employer thus cannot insist to impose on a proposal to modify terms and conditions of employment contained in an existing collective-

bargaining agreement. Nor can an employer lock out employees in support of such a proposal.

The Board reasonably concluded that Kellogg unlawfully insisted upon a midterm modification of the Master Agreement governing terms and conditions of employment at its four ready-to-eat cereal plants. Kellogg's proposals during negotiations for a successor Memphis Supplemental Agreement to cease hiring regular employees at the Memphis plant and instead label all new hires "casual employees" would modify the unexpired Master Agreement's provisions regarding wages, benefits, overtime, and premium pay. Despite the "casual" label, new hires would function as regular employees but with lower wages, fewer benefits, and less opportunity for overtime than the Master Agreement provides for such employees. Kellogg's proposals thus also would erase the Master Agreement's distinction between "regular" and "non-regular"/"casual" employees—a distinction reflected in both bargaining history and common usage. The Board also reasonably found that Kellogg committed further unfair labor practices by threatening to lock out, and locking out, all bargaining-unit employees at the Memphis plant to compel acceptance of its unlawful proposals. Finally, the Board's uncontested finding that Kellogg unlawfully refused to provide relevant information requested by Local 252-G should be summarily enforced.

ARGUMENT

After agreeing to terms and conditions of employment for regular employees in a collective-bargaining agreement covering all of its cereal plants, Kellogg attempted to evade its contractual obligations to its Memphis employees by modifying those terms during the life of the contract. Unable to attain across-the-board wage and benefit cuts and limits on premium pay for newly hired regular employees during negotiations for a new Master Agreement, Kellogg sought to reach the same result in negotiations for a successor Memphis Supplemental Agreement. Kellogg's proposal to relabel all new hires "casual employees" entitled to lower pay and fewer benefits for the same work than the Master Agreement provides for regular employees would modify that contract. When Local 252-G refused to accept those midterm modifications to the Master Agreement, Kellogg locked out all bargaining-unit employees.

I. Kellogg Insisted to Impasse on Proposals That Would Modify Terms and Conditions of Employment in the Unexpired Master Agreement

The Board reasonably concluded that Kellogg violated Section 8(a)(5) and (1) of the Act by insisting to impasse upon proposals that would modify terms and conditions in the unexpired Master Agreement.

A. An Employer Cannot Insist on Midterm Modifications to Terms and Conditions of Employment Contained in a Collective-Bargaining Agreement

An employer has a statutory obligation to bargain in good faith with the representative of its employees over terms and conditions of employment, 29 U.S.C. § 158(d), and violates Section 8(a)(5) of the Act by refusing to do so, 29 U.S.C. § 158(a)(5).³ And if an employer and its employees' union reach agreement on those terms and conditions, they have a duty to honor it. Section 8(d) of the Act provides that no party is required "to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period." 29 U.S.C. § 158(d); *see also Chesapeake Plywood, Inc.*, 294 NLRB 201, 212 (1989) ("A party is not required to rebargain that which has already been secured to him by binding past agreement." (internal quotations omitted)), *enforced in relevant part*, 917 F.2d 22 (4th Cir. 1990). Accordingly, it is an unfair labor practice in violation of Section 8(a)(5) to modify the terms of an existing collective-bargaining agreement unilaterally, or to insist to impasse on a proposal for such a midterm modification. *NLRB v. Ford Bros., Inc.*, 786 F.2d 232, 233 (6th Cir. 1986); *Chesapeake Plywood*, 294 NLRB at 201, 211-12. The prohibition on

³ Conduct that violates Section 8(a)(5) also derivatively violates Section 8(a)(1), *Galicks*, 671 F.3d at 608 n.2, which prohibits employer actions that "interfere with, restrain, or coerce employees in the exercise of the[ir] rights" under the Act. 29 U.S.C. § 158(a)(1).

non-consensual midterm modifications reflects Congress' intent to "stabilize collective-bargaining agreements." *Allied Chem. & Alkali Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 186 (1971); *see also NLRB v. Keystone Steel & Wire*, 653 F.2d 304, 307 (7th Cir. 1981) ("Industrial stability depends, in part, upon the binding nature of collective bargaining agreements.").

Whether a particular term or condition of employment is "contained in" a collective-bargaining agreement within the meaning of Section 8(d) "is primarily a question of discerning the parties' mutual understanding." *St. Vincent Hosp.*, 320 NLRB 42, 42 (1995). To determine that understanding, the Board looks to both the agreement itself and the bargaining history that resulted in the agreement. *Id.* In that analysis, "the parties' intent, when sufficiently manifested, is paramount and will be given reasonable effect." *Id.*

The Board has defined "modification" for Section 8(d) purposes to include "a change that has a continuing effect on a basic contractual term or condition." *St. Vincent Hosp.*, 320 NLRB at 44; *see also C & S Indus., Inc.*, 158 NLRB 454, 458 (1966) (same). Such modifications include both express changes to contractual terms, *St. Vincent Hosp.*, 320 NLRB at 42, and failures to implement such terms so as to "effectively terminat[e]" them, *Link Corp.*, 288 NLRB No. 132, 1988 WL 213934, at *2 (1988), *enforced mem.*, 869 F.2d 1492 (6th Cir. 1989). Even a

temporary suspension of contractual employment terms can constitute a midterm modification. *E.G. & G. Rocky Flats, Inc.*, 314 NLRB 489, 497 (1994).

A change to terms and conditions defined in an agreement thus may be unlawful even if implemented in such a way as to leave the contractual language untouched. For example, an employer makes an unlawful midterm modification by establishing an alternative to contractual terms and conditions for some employees. In *Martin Marietta Energy Systems*, 283 NLRB 173, 174-75 (1987), *enforced*, 842 F.2d 332 (6th Cir. 1988) (table), the Board found a Section 8(a)(5) violation when the employer implemented a new healthcare plan in addition to the plan contained in the collective-bargaining agreement and gave employees the option to choose one or the other. Just because the original plan remained in the contract, the Board found, “it d[id] not follow . . . that there was no change in the collective-bargaining agreement.” *Id.* at 175. And in *Stroehmann Bakeries, Inc.*, 287 NLRB 17, 18-20 (1987), the employer hired new employees under a different title who performed the same work as the employer’s drivers but were subject to different conditions of employment, including a lower rate of pay. The Board found that, even though they had a different label, failing to pay them the contractually mandated rate for “all drivers” was an unlawful midterm modification. *Id.*

Economic necessity or financial difficulty is not a defense to an allegation of unlawful midterm modification, and a stated desire to save jobs or ensure the survival of the business will not justify insistence upon such a modification. *Standard Fittings Co. v. NLRB*, 845 F.2d 1311, 1315 (5th Cir. 1988); *Wightman Ctr.*, 301 NLRB 573, 575 (1991). Likewise, the recipient of a midterm-modification proposal “need not assent to proposed changes in the contract, no matter how necessary to the survival of the enterprise.” *Standard Fittings*, 845 F.2d at 1315.

B. Kellogg Unlawfully Insisted on Proposals That Would Modify the Unexpired Master Agreement

The Board reasonably found (JA 5-6) that Kellogg’s casual-employee and alternative-crewing proposals for the Memphis Supplemental Agreement would modify terms and conditions of employment in the unexpired Master Agreement by permitting Kellogg “to cease hiring all regular employees in the future and replace them with lower paid ‘casual’ employees,” and thereby “stand[ing] th[e Master Agreement] model on its head.” Accordingly, Kellogg’s insistence on those proposals in negotiations was an unfair labor practice in violation of Section 8(a)(5) of the Act. *Chesapeake Plywood*, 294 NLRB at 211-12.

Kellogg’s proposals would replace the Master Agreement’s system of regular and non-regular employees with a “new workforce” (JA 330) in which all new hires at the Memphis plant would be classified as casual employees.

Specifically, the proposals would define “casual employees” in Section 107 of the Memphis Supplemental Agreement as “any employees hired by Kellogg to perform production or any other bargaining unit work . . . under this provision” and would remove the 30-percent cap on the number of employees who could be hired under that provision. (JA 492.) The language of the proposals thus clearly empowered Kellogg to hire only casual employees, and Labor Relations Director Chorny confirmed that hiring all casuals was Kellogg’s intent. She testified that the term “casual employee” in the proposed new Memphis Supplemental Agreement would be defined as any employee hired after that contract went into effect. (JA 1349.) She likewise explained during negotiations that, under the proposals, “new hires would be Casual.” (JA 266.) Going forward, Kellogg would have no obligation to hire any regular employee under the terms in the Master Agreement. (JA 1235.)⁴

As the Board found (JA 6), Kellogg’s proposals to hire only casual employees “would have modified the wage, benefit, overtime, and premium pay provisions of the Master Agreement applicable to new and returning regular employees.” Despite the “casual” label, the new workforce in Memphis would be

⁴ Because the parties’ intent is the touchstone of interpretation, *St. Vincent Hosp.*, 320 NLRB at 42, Kellogg is mistaken (Br. 53-54) in contending that Chorny’s statements are not relevant. And to the extent that the proposals’ language could be considered ambiguous, her statements buttress the Board’s finding that Kellogg’s proposals were for all new hires to be casual.

“regular” in practice—they would constitute the entire complement of new hires, would work full time in permanent positions, and would have no limits on the tasks they could perform. As Chorny herself explained during negotiations, under Kellogg’s proposals the new casual employees would function as what “a new hire is today.” (JA 342.) Yet they would not receive the terms and conditions of employment for regular employees detailed in multiple provisions of the Master Agreement. New hires would not be paid the full wage rate referenced in that contract’s New Hire Progression Schedule, but would receive six dollars per hour less. They would not get the cost-of-living adjustments set forth in the Master Agreement’s Wage Appendix. They would not receive the insurance benefits in Section 6.01. They would not get paid overtime until they worked more than 40 hours per week rather than, as in Section 5.04, 8 hours per day. And if they worked an alternative-crewing schedule, which Kellogg’s proposals encouraged with a bidding preference for casual employees, they would not be eligible for double-time pay on Sunday as provided for in Section 5.04. (JA 492-93, 495-96, 1205, SA 1754.)

As the Board found (JA 5-6), Kellogg’s proposals to “relabel[] new full-time permanent employees ‘casuals’” thus would result in “across-the-board cuts to the wages and benefits that were bargained for newly hired regular employees in the Master Agreement.” Indeed, Kellogg made clear that its proposals were intended

to sidestep those terms going forward, telling Local 252-G that current pay and benefits “do[] not work and we are trying to do something about it.” (JA 343.) Just as the employer in *Stroehmann Bakeries* unlawfully modified a contract by failing to apply its terms to new hires performing the same work under a different title, 287 NLRB at 19-20, Kellogg cannot evade its contractual obligations to its employees through such a change in nomenclature.

Kellogg’s proposals also would impact the terms of employment for at least some current regular employees in Memphis. Kellogg could bring back temporarily laid-off regular employees as casual employees, with lower wages and fewer benefits than they previously had received under the Master Agreement. (SA 1746.) It also could hire new casual employees while those regular employees were on layoff. Kellogg would not, as under the previous Supplemental Agreement, have to offer work to the latter before hiring the former. (JA 492, 494, SA 1746, 1751-53.)⁵ Moreover, Chorny made clear that any current regular employees grandfathered in under the old terms would simply be “legacy employees.” (JA 258.) And just as the new healthcare plan in *Martin Marietta* was an unlawful midterm modification even though some employees continued to

⁵ Although Kellogg’s ability to hire new casual employees when regular employees were on layoff would extend only to temporary layoffs, the length of a “temporary” layoff is undefined. And Employee Relations Manager Lacy Ivy explained that Kellogg could hire new casual employees during any temporary layoff, no matter how long. (JA 1583-84, 1586.)

receive the contractual plan, 283 NLRB at 175, “it does not follow . . . that there was no change in the collective-bargaining agreement” as to new hires because some vestigial regular employees entitled to the contractual terms and conditions in the Master Agreement remained employed at the Memphis plant.⁶

Finally, if the contractual terms “regular” and “non-regular”/“casual” are to have any logical meaning, or one consistent with common usage, the former must predominate in some fashion. By transforming the existing casual-employee program from a supplemental relief corps into the new full-time, permanent workforce at the Memphis plant, Kellogg’s proposals would erase any distinction between the two categories other than their wages, benefits, overtime, and premium pay. It also would modify the Master Agreement’s express designation of casual employees as “non-regular employees.” (JA 181.) Although, as Kellogg asserts (Br. 46), the parties could have defined that term in an unusual manner in their contract, they did not. As the Board noted (JA 6 n.12), nothing in the Master Agreement departs from the ordinary meaning of the phrase.⁷

⁶ Any possibility that Kellogg someday could hire new regular employees (Br. 55) is similarly beside the point, because even a temporary wholesale suspension of hiring regular employees would constitute a midterm modification. *E.G. & G. Rocky Flats*, 314 NLRB at 497.

⁷ Likewise, because the Master Agreement “does not contain a different definition of ‘casual employees,’” the Court “understand[s] that term to carry its common meaning of ‘short term, temporary, sporadic employees.’” *Lewis v. Cent. States, Se. & Sw. Areas Pension Fund*, 484 F. App’x 7, 8 n.1 (6th Cir. 2012) (quoting

Indeed, the history of the Master Agreement’s use of those words reflects their ordinary meaning. For as long as that contract has distinguished between regular and non-regular/casual employees, the latter’s numbers have been capped. In addition, the Master Agreement first adopted the term “casual employee” in 1996, against the backdrop of Supplemental Agreements that described such employees as a relief force supplementing regular employees. (JA 528-31, 657-58, 660-61.) Kellogg points (Br. 6, 47-51) to the amount of work done by casual employees in the past, but the record contains no evidence that Kellogg ever hired more casual employees than regular employees, let alone that it ever hired only casual employees.⁸ Consequently, even though, as the Board acknowledged (JA 5), the Master Agreement “does not guarantee regular employees any minimum hours of work, overtime, or particular schedules,” Kellogg’s proposals

Brown-Graves Co. v. Cent. States, Se. & Sw. Areas Pension Fund, 206 F.3d 680, 683-84 (6th Cir. 2000)); *accord Cent. States, Se. & Sw. Areas Pension Fund v. Ind. Fruit & Produce Co.*, 919 F.2d 1343, 1350-51 (8th Cir. 1990).

⁸ Although Kellogg notes (Br. 8, 51) that the Lancaster Supplemental Agreements contained no cap on the number of casual employees from 1981-1987, that period was before the Master Agreement expressly distinguished between regular and non-regular employees. (JA 530-31.) Moreover, those Agreements *did* limit the use of casual employees, who could not work when regular employees were on layoff or wanted to work overtime, and specified that the program was meant to “provide regular employees with relief.” (JA 657-58, 660-61.) And contrary to Kellogg’s assertion (Br. 8, 49), Kellogg and Local 50-G in Omaha did not “lift all restrictions” on casual/Seasonal B employees in 2013—a 20-percent cap remained in place and casual employees could not work while regular employees were on layoff. (JA 752.)

not to hire *any* regular employees would modify that agreement. Because the Master Agreement’s provisions for newly hired regular employees simply would not apply in Memphis, those provisions would be “effectively terminat[ed].” *Link Corp.*, 1988 WL 213934, at *2.

C. Kellogg’s Defense of Its Proposals Relies on Flawed Analysis and Inapplicable Legal Principles

As demonstrated above, Kellogg’s proposals would modify multiple provisions of the Master Agreement. Kellogg’s arguments to the contrary are based on faulty premises and inapplicable principles.

Kellogg faultily contends (Br. 3-4, 13-14) that its proposals would not modify the Master Agreement because any limits on work allocation in that contract are merely “implicit” or “implied.” The Board’s conclusion that hiring only casual employees would modify the Master Agreement was based on that contract’s express distinction between regular and non-regular/casual employees and the specific “wage, benefit, overtime, and premium pay provisions” (JA 6) that it provides the former.⁹ And because those terms are found in the Master Agreement, Kellogg does not advance its position by invoking (Br. 25-27) the general provisions that describe that contract’s scope. Moreover, Kellogg’s

⁹ Kellogg thus mischaracterizes (Br. 19-23) the Board’s decision by depicting the Board’s reference to a “core work force” as the sole basis for its finding of a midterm modification. In any event, that phrase is an accurate description of Kellogg’s use of regular employees. *See supra* p.26.

argument understates the reach of its proposals. Contrary to its assertion (Br. 5, 8), Kellogg did not propose simply to expand the existing casual program or to reallocate work, but to replace completely the regular program for new hires and to transform the casual employee. Although Kellogg asserts (Br. 53) that it was “willing[] to consider proposals whereby the 30% cap on casuals would gradually increase,” it never actually made such a proposal, or otherwise suggested to Local 252-G that it was interested in negotiating to adjust the casual program in a manner consistent with the Master Agreement. Indeed, even under the more gradual arrangement, the cap ultimately would be eliminated. (JA 416, 1273-75.)¹⁰

Kellogg’s reliance on purported limits on the proposals’ effect on the Master Agreement is likewise unavailing. Kellogg points (Br. 29-30) to language in the proposals’ general savings clause asserting that the use of casual employees would be subject to restrictions in the Master Agreement. But that language is inconsistent with both the proposals’ specific definition of casual employees as “any employees hired by Kellogg” (JA 492) and evidence in the record confirming that Kellogg construed its proposals as setting no restrictions. Because a proposal to eliminate the Master Agreement’s wage, benefit, overtime, and premium-pay

¹⁰ Because Kellogg’s proposals would result in 100 percent of its new hires being casual employees, its concern (Br. 43-44) regarding precisely how many casuals it could propose to hire without effectuating a midterm modification is not implicated here. Regardless of where the line would be drawn in a different case, Kellogg’s proposals crossed it by completely displacing regular employees.

provisions for newly hired regular employees has no application consistent with the Master Agreement, the purported savings clause has no substance. Similarly, the fact that, as Kellogg notes (Br. 27), it had no contractual authority to modify the Master Agreement without the other signatories' agreement does not mean it did not try to do so, or that its effort was lawful. Insisting upon a midterm modification is as unlawful as actually making such a modification. *Chesapeake Plywood*, 294 NLRB at 201, 211-12.¹¹

Kellogg's legal arguments fare no better, as they rely on distinguishable cases and inapplicable principles. Kellogg relies heavily (Br. 31-37) on *Milwaukee Spring*, 268 NLRB 601 (1984), *enforced sub nom. UAW v. NLRB*, 765 F.2d 175 (D.C. Cir. 1985), but that case does not stand for as broad a proposition as Kellogg insists, and is factually distinguishable. *Milwaukee Spring* did not, as Kellogg

¹¹ The other purportedly limiting language that Kellogg quotes (Br. 28-29) is not actually part of the proposals, but rather part of an introduction to the offer sent to Local 252-G (JA 226-27); it would not have been in the contract if the proposals had been adopted and thus would have had no formal constraining effect. Kellogg's bare assurances as to the limits of its proposals are an insufficient safeguard for the policies underlying Section 8(d), particularly in light of its multiple representations confirming the proposals' broad scope. *Ampersand Publishing, LLC*, 359 NLRB No. 127, 2013 WL 2390945, at *3-4 (2013), *adopted by* 362 NLRB No. 26, 2015 WL 1228315 (2015), *petition for review filed*, D.C. Cir. Nos. 15-1074, 15-1130, which Kellogg cites (Br. 28 n.9), does not hold otherwise—that case was not about midterm modifications and does not stand for the broad proposition that a party's statement that it would not violate the law must be believed. Moreover, other evidence buttressed the sincerity of the disclaimer in that case; here, by contrast, other provisions conflict with Kellogg's purported limitation.

contends (Br. 31), “prohibit[] an ‘effective’ modification theory under Section 8(d).” Indeed, the Board has subsequently found unlawful midterm modifications in employer actions that, for example, “effectively terminat[e],” *Link Corp.*, 1988 WL 213934, at *2, existing terms and conditions of employment. *Milwaukee Spring* instead addressed midterm modifications of implicit contractual terms, 268 NLRB at 602, and even its strong suggestion that the Board would not readily find such modifications did not set forth a per se prohibition. See *Bonnell/Tredegear Indus., Inc.*, 313 NLRB 789, 791 (1994) (“An implicit contract term is just as significant for Section 8(d) purposes as an express term.”), *enforced*, 46 F.3d 339 (4th Cir. 1995).¹²

To the extent *Milwaukee Spring* bears on effective modifications in some way, it did not involve the unique situation presented here, where two collective-bargaining agreements govern labor relations, such that changes to one contract can affect the other. The Board simply held that no term in the parties’ single contract had been modified, effectively or otherwise. 268 NLRB at 602. The employer in that case moved one department to a non-union facility not subject to

¹² Kellogg also asserts that an “‘effective’ modification theory” was not alleged in this case (Br. 33, 37), but a midterm-modification violation was alleged (JA 785-87). The Board’s General Counsel need not detail in the complaint every legal argument or theory in support of the allegations. See *Pergament United Sales, Inc. v. NLRB*, 920 F.2d 130, 136 (2d Cir. 1990) (“The due process clause does not require a precise statement of the theory upon which the General Counsel intends to proceed under the Act . . .”).

the collective-bargaining agreement, but “did not disturb the wages and benefits” for employees in the departments that remained. *Id.* at 601-02. Here, by contrast, no new hires in Memphis would receive the wage, benefit, overtime, and premium-pay provisions for regular employees specified in the Master Agreement. And unlike the employees to whom the work was transferred in *Milwaukee Spring*, those new hires would be covered by the Master Agreement. They would function as regular employees, doing the same work under the same contract, but would not be subject to its provisions for such employees.¹³

Kellogg’s arguments (Br. 37-43) regarding the relevant legal standard are likewise misplaced. Because Kellogg had no right to bargain over proposals that would modify the Master Agreement, the “clear and unmistakable waiver” standard for determining whether a party has waived its right to bargain (Br. 39-43) is, as the Board found (JA 6 n.14), inapplicable; if no right to bargain exists, there is no right to be waived.¹⁴ Kellogg’s framing of the issue in this case as

¹³ *Milwaukee Spring* overruled *Boeing Co.*, 230 NLRB 696, 698-700 (1977), *enforcement denied*, 581 F.2d 793 (9th Cir. 1978), and *University of Chicago*, 210 NLRB 190, 190-91 (1974), *enforcement denied*, 514 F.2d 942 (7th Cir. 1975), but those cases found a midterm modification based only on general contractual language like clauses recognizing a union or describing a bargaining unit. Moreover, the purported modification in both cases was the reassignment of particular work rather than, as here, the elimination of an entire type of employee.

¹⁴ Kellogg cites *East Tennessee Baptist Hospital v. NLRB*, 6 F.3d 1139, 1143-45 (6th Cir. 1993), for that standard, but that case did not involve a midterm

whether the Master Agreement constitutes a waiver of the right to bargain (Br. 42-43) ignores the fact that the Master Agreement is itself a bargained-for contract containing terms and conditions of employment. Section 8(d) holds the parties to their bargain over wages, benefits, overtime, and premium pay for regular employees in the Master Agreement. Because Kellogg did not propose a simple reallocation of work or other incremental adjustment to the casual program, its insistence (Br. 39) that it would have a right to bargain over such a proposal as part of the Memphis Supplemental Agreement is beside the point. And to the extent that Kellogg is arguing that “clear and unmistakable” should be the standard for identifying whether terms and conditions of employment are contained in a contract for Section 8(d) purposes—and that the Master Agreement contains no such terms—it ignores the overtime and premium pay in Section 5.04, the benefits in Section 6.01, and the Wage Appendix. Indeed, Kellogg’s waiver argument is simply a variant on its contention that its proposals would not modify the Master Agreement.

Kellogg’s passing reference (Br. 42 n.14) to the “sound arguable basis” standard from *Bath Iron Works Corp.*, 345 NLRB 499, 502 (2005), *enforced*, 475 F.3d 14 (1st Cir. 2007), is similarly inapt. The Board used that test in *Bath Iron*

modification—the issue was whether the contract prevented an employer from restricting the union’s access to confidential information.

Works when faced with competing interpretations as to whether a collective-bargaining agreement affirmatively authorized midterm modifications of certain terms contained therein. *Id.* at 503. The issue was not whether the employer's actions would modify terms in the contract. Here, as the Board explained (JA 6 n.14), the principal question is whether Kellogg's proposals would change the Master Agreement; unlike the employer in *Bath Iron Works*, Kellogg does not contend that any language in that contract would permit a midterm modification without the consent of all parties.

Finally, Kellogg's bullet-point arguments that it claims the Board failed to address (Br. 58-59) are largely variants on points made elsewhere in its brief. The "impossib[ility]" (Br. 59) of a midterm modification does not justify insistence upon it, *supra* p.29, and Kellogg's unfair labor practice was not that it "sought to bargain over casual employees" in any way (Br. 59), but that it insisted upon hiring only casual employees. The remainder of its contentions focus on Local 252-G's refusal to provide a counterproposal, but Local 252-G was not required to do so. In order to trigger Local 252-G's duty to bargain, Kellogg would have had to make a proposal that would not modify the Master Agreement. As the Board explained (JA 5), the recipient of a proposed midterm modification is privileged to refuse or simply ignore the offer. *Standard Fittings*, 845 F.2d at 1315; *Chesapeake Plywood*, 294 NLRB at 212; 29 U.S.C. § 158(d).

In sum, through its proposals to hire only casual employees and the “creative semantics” (JA 6) of redefining that phrase to mean a full-time, permanent workforce, Kellogg would be able to avoid honoring the terms to which it agreed in the Master Agreement, contrary to the policy underlying Section 8(d). *Allied Chem. & Alkali Workers*, 404 U.S. at 186. Given the changes that they would work to Section 5.04, Section 6.01, and the Wage Appendix of the unexpired Master Agreement, Kellogg’s proposals would constitute a midterm modification, and Kellogg violated Section 8(a)(5) by insisting upon them to the point of impasse. Not content to insist on its proposals at the bargaining table, Kellogg next attempted to compel submission to the proposed midterm modification of the Master Agreement by locking out every bargaining-unit employee at the Memphis plant.

II. Kellogg Threatened To Lock Out, and Locked Out, Its Employees To Compel Acceptance of an Unlawful Bargaining Position

An employer may lock out its employees “in support of [a] legitimate bargaining position.” *American Ship Bldg. Co. v. NLRB*, 380 U.S. 300, 318 (1965); accord *Dayton Newspapers, Inc. v. NLRB*, 402 F.3d 651, 662 (6th Cir. 2005). By contrast, a lockout to pressure employees to accept an unlawful position is an unfair labor practice. *Teamsters Local Union No. 639 v. NLRB*, 924 F.2d 1078, 1085 (D.C. Cir. 1991). Accordingly, “economic pressures may not be

invoked in furtherance of demands for contract modification.” *Chesapeake Plywood*, 294 NLRB at 212.

Because pressuring employees to accept a proposed midterm modification of their contractual bargain implicates the duty to bargain in good faith, an employer violates Section 8(a)(5) of the Act by locking out employees in support of such a proposal. *Rangaire Co.*, 309 NLRB 1043, 1050 (1992), *enforced mem.*, 9 F.3d 104 (5th Cir. 1993); *Golden Cream Do-Nut*, 277 NLRB 6, 7 (1985). Locking out employees in response to their union’s refusal to accept an illegitimate bargaining position also violates Section 8(a)(3), 29 U.S.C. § 158(a)(3), which prohibits “discrimination in regard to hire or tenure of employment . . . [to] discourage membership in any labor organization.” *Teamsters Local 639*, 924 F.2d at 1085. In addition, threatening an unlawful lockout “interfere[s] with, restrain[s], or coerce[s] employees in the exercise of the rights” to engage in concerted activity such as collective bargaining, and thus violates Section 8(a)(1). 29 U.S.C. § 158(a)(1); *Hosp. Episcopal San Lucas*, 319 NLRB 54, 59-60 (1995); *Movers & Warehousemen’s Ass’n*, 224 NLRB 356, 357 (1976), *enforced*, 550 F.2d 962 (4th Cir. 1977).

Kellogg locked out all 226 bargaining-unit employees at its Memphis plant in support of its casual-employee and alternative-crewing proposals. (JA 485-87, 490-91.) As demonstrated above, those proposals would have constituted unlawful

midterm modifications of the Master Agreement. The lockout in support of Kellogg's unlawful proposals thus was itself a violation of Section 8(a)(5) and (1). *Rangaire Co.*, 309 NLRB at 1050. And because Kellogg instituted adverse action against its employees as a result of Local 252-G's refusal to submit to a midterm modification, its actions also violated Section 8(a)(3) and (1). *Teamsters Local 639*, 924 F.2d at 1085. Finally, Kellogg's letter threatening to lock out its employees if Local 252-G did not accept the casual-employee and alternative-crewing proposals violated Section 8(a)(1), because, as the Board found (JA 7), it "had a coercive effect on employees' exercise of their Section 7 rights" to bargain collectively because "they would have reasonably perceived it as retaliation for the insistence of their bargaining representative on good-faith collective bargaining." *Movers & Warehousemen's Ass'n*, 224 NLRB at 357. By cutting its employees off from their jobs and benefits in its continuing effort to modify the Master Agreement, Kellogg thus compounded its bargaining violation and engaged in further unlawful activity.

III. The Board's Finding That Kellogg Failed To Provide Requested Information Regarding Job Bidding Is Entitled to Summary Enforcement

Kellogg does not contest the Board's finding that it violated Section 8(a)(5) and (1) of the Act when it failed to respond to Local 252-G's October 10 request for information regarding job bidding—information that the Board found (JA 24)

was relevant to Kellogg's proposed changes to the bidding process, including its proposal that casual employees have the ability to bid. When a party "fails to challenge a portion of the Board's findings on appeal," the Board "is entitled to summary enforcement as to the uncontested portions of its Decision and Order." *Vanguard Fire & Supply Co. v. NLRB*, 468 F.3d 952, 956 (6th Cir. 2006). In such circumstances, "the employer effectively admits the truth of those findings and loses the right to object to them." *Id.* Moreover, it is well-settled that an employer's refusal to provide information requested by its employees' union that is necessary and relevant to the union's performance of its functions as bargaining representative is an unfair labor practice. *NLRB v. Acme Indus. Co.*, 385 U.S. 432, 435-36 (1967); *Gen. Motors Corp. v. NLRB*, 700 F.2d 1083, 1088 (6th Cir. 1983). The Board's finding of an information-request violation thus should be summarily enforced.

CONCLUSION

The Board respectfully requests that the Court deny Kellogg's petition for review and enforce the Board's Order in full.

Respectfully submitted,

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February 2016

