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IN THE UNITED STATES COURT OF APPEAL
FOR THE THIRD CIRCUIT

COUNTY CONCRETE CORPORATION Petitioner v. NATIONAL LABOR RELATIONS BOARD, Respondent.	PETITIONERS COUNTY CONCRETE CORPORATION'S PETITION FOR REVIEW OF NATIONAL LABOR RELATIONS BOARD ORDER

County Concrete Corporation, Petitioner, pursuant to Rule 15(a) of the Federal Rules of Appellate Procedure and 29 U.S.C. §160(f), hereby petitions the United States Court of Appeals for the Third Circuit to review and set aside the Order of the Respondent National Labor Relations Board in NLRB Case 22-CA-171328, entered on April 20, 2018, and titled "County Concrete Corporation and Local 863, International Brotherhood of Teamsters." A true and correct copy of the Order is attached hereto as Exhibit A.

Date: 5/3/18

Respectfully submitted,

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EXHIBIT A

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

County Concrete Corporation *and* Local 863, International Brotherhood of Teamsters. Case 22–CA–171328

April 20, 2018

DECISION AND ORDER

BY MEMBERS PEARCE, KAPLAN, AND EMANUEL

On April 18, 2017, Administrative Law Judge Mindy E. Landow issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and the Charging Party Union each filed an answering brief, and the Respondent filed reply briefs.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and justified because the Union had not advised employees of their rights under *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963), and *Communications Workers of America v. Beck*, 487 U.S. 735 (1988). The judge found, incorrectly, that the issue was not properly presented because no party filed an unfair labor practice charge asserting a *Beck* violation. Contrary to the judge's finding, a respondent may raise an alleged unfair labor practice as an affirmative defense even if no charge was filed if "proof of such defense could affect the judge's unfair labor practice findings" or "defeat essential elements of the General Counsel's prima facie case." *Chicago Tribune Co.*, 304 NLRB 259, 260 (1991).

Having considered the Respondent's affirmative defense, we reject it on the merits. In support of its defense, the Respondent relies on cases pertaining to union-security clauses. However, this case involves employees' voluntary decision to authorize dues checkoff, not the enforcement of a mandatory union-security provision. As the judge correctly noted, the Board has held that an employee's decision to authorize the deduction of moneys to be remitted to a union is separate and distinct from the issue of union membership. See *Shen-Mar Food Products, Inc.*, supra at 1330 ("[T]he dues checkoff herein does not, in and of itself, impose union membership or support as a condition required for continued employment, and . . . matters concerning dues-checkoff authorization and labor agreements implementing such authorizations are exclusively within the domain of Federal law, having been preempted by the National Labor Relations Act and removed from the provision of Section 14(b) by the operation of Section 302."); see also *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*, 302 NLRB 322, 328 (1991) ("We recognize that paying dues and remaining a union member can be two distinct actions.").

Here, the Respondent and the Union reached an agreement in November 2015 that deductions of dues for employees who authorized checkoffs would begin January 1, 2016. Under this agreement, once the Respondent received an employee's written dues-checkoff authorization, it was obligated to begin deducting the employee's dues. In accordance with their agreement, the Union began collecting dues-checkoff authorizations from unit employees in December 2015 and sending them to the Respondent in January 2016. By the end of January, the Respondent had received 125 signed dues-checkoff authorizations. However, upon receipt of these authorizations, the Respondent refused to deduct dues for any employees for the months of January and February. Although the Union's failure to provide employees with a *General Motors* and *Beck* notice may affect the amounts it was entitled to receive (see, e.g., *Paperworkers Local 987 (Sun Chemical Corp. of Michigan)*, 327 NLRB 1011, 1012 (1999)), we find that it does not justify the Respondent's failure to comply with the agreed-upon contract term to deduct dues. Moreover, even assuming the Respondent was genuinely concerned about deducting dues in these circumstances or was uncertain as to the correct amounts to deduct, it could have addressed such concerns while making a good-faith effort to honor its contractual obligation. For instance, it could have sought the Union's consent to change the start date for dues checkoff, bargained for indemnification from the Union, or placed the dues in escrow pending resolution of its concerns. See generally *Nathan's Famous of Yonkers, Inc.*, 186 NLRB 131, 133 (1970) (no violation, where an employer's good-faith uncertainty as to which of two unions it was required to remit checked-off dues was demonstrated by placing the dues in escrow). The Respondent, however, made no attempt to honor its contractual obligation. Accordingly, we find the Respondent's refusal to comply with its agreement to deduct dues was unlawful. See, e.g., *Shen-Mar Food Products, Inc.*, supra. Finally, as the judge correctly found, to the extent questions exist about whether certain employees selected financial-core as opposed to full membership, or about the particular date that certain employees authorized dues checkoff, these

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In adopting the judge's finding that employee Dean Walgren's testimony was not credible, we correct the judge's statement that it was unclear whether Walgren's conversation with the Respondent's Vice President, John Scully, occurred in 2016 or 2017. As both the Respondent and the General Counsel correctly observe, the record evidence establishes that this conversation occurred in 2016.

We adopt the judge's separate findings that the Respondent violated Sec. 8(a)(5) and (1) of the Act by modifying the dues-checkoff provisions of its collective-bargaining agreements with the Union and by refusing to deduct and remit dues to the Union in January and February 2016 in accordance with those agreements. See *Shen-Mar Food Products, Inc.*, 221 NLRB 1329, 1329 (1976) (finding that, where an employer fails to deduct and remit dues in derogation of an existing contract, it is in effect "unilaterally changing the terms and conditions of employment . . . and thus violates Section 8(a)(5) of the Act."), enfd. in relevant part 557 F.2d 396 (4th Cir. 1977); *Hearst Corp. Capital Newspaper*, 343 NLRB 689, 693 (2004) ("It is well established that an employer violates Section 8(a)(5) by ceasing to deduct and remit dues in derogation of an existing contract."). In adopting the former finding, we do not rely on the judge's statement that neither party was privileged to modify any term of the collective-bargaining agreements "once these agreements were signed and returned to the Employer." The agreements were signed and returned to the Respondent in January 2016. However, the parties reached a meeting of minds on all substantive issues and material terms in November 2015. "Once an agreement is reached by the parties, they are obligated to abide by the terms of the agreement even though those terms have not been reduced to writing." *Sunrise Nursing Home*, 325 NLRB 380, 389 (1998) (citing *H. J. Heinz v. NLRB*, 311 U.S. 514 (1941)).

In adopting the latter finding, we have considered the merits of the Respondent's affirmative defense that its failure to deduct dues was

to adopt the recommended Order as modified and set forth in full below.[2]

ORDER

The National Labor Relations Board orders that the Respondent, County Concrete Corporation, East Orange, Kenvil, Landi, Morristown, Oxford, and Sussex, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Making mid-term modifications to the dues-checkoff provisions of its collective-bargaining agreements with Local 863, International Brotherhood of Teamsters (the Union) without the Union's consent.

(b) Failing and refusing to deduct properly authorized dues from the paychecks of bargaining unit employees and failing to remit these dues to the Union, as required under its collective-bargaining agreements with the Union.

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

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

(a) Reimburse the Union for the losses resulting from the Respondent's failure to deduct and remit union dues in January and February 2016, as set forth in the remedy section of the judge's decision.

(b) Within 14 days after service by the Region, post at its facilities in East Orange, Kenvil, Landi, Morristown, Oxford, and Sussex, New Jersey, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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 internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 1, 2016.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 22 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 20, 2018

Mark Gaston Pearce, Member

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT make mid-term modifications to the dues-checkoff provisions of our collective-bargaining agreements with Local 863, International Brotherhood of Teamsters (the Union) without the Union's consent.

WE WILL NOT fail and refuse to deduct properly authorized dues from your paychecks and fail to remit these

questions can be resolved in the compliance stage of this proceeding. See *Williams Pipeline Co.*, 315 NLRB 630, 632 fn. 8 (1994).

We note that the judge mistakenly stated that the Union sent 122 signed authorization forms to the Respondent on January 20, rather than 102 forms. We correct the judge's inadvertent error.

[2] We shall modify the judge's recommended Order to conform to the Board's standard remedial language and the violations found, and we shall substitute a new notice to conform to the Order as modified.

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

dues to the Union, as required under our collective-bargaining agreements with the Union.

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 reimburse the Union for the losses resulting from our failure to deduct and remit dues in January and February 2016.

COUNTY CONCRETE CORPORATION

The Board's decision can be found at www.nlrb.gov/case/22-CA-171328 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

Michael P. Silverstein, Esq., for the General Counsel.
Brian P. Shire, Esq. Jennifer S. Abrams, Esq. (Sussanin, Widman & Brennan, P.C. Wayne, PA), for the Respondent.
Kenneth I. Nowak, Esq. (Zazzali, Fagella, Nowak Kleinbaum & Friedman, P.C.), of Newark, New Jersey, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MINDY E. LANDOW, Administrative Law Judge. Based upon charges filed by Local 863, International Brotherhood of Teamsters (Union), on July 22, 2016, complaint and notice of hearing (complaint) issued in this matter alleging that County Concrete Corporation (Respondent or the Employer) violated Section 8(a)(1) and (5) of the Act by making a unilateral change in the dates for the payment of union dues under a collective-bargaining agreement entered into by Respondent and the Union, and failing and refusing to remit certain dues payments. In its answer to the complaint, Respondent denied the material allegations of the complaint and has raised certain affirmative defenses, as will be discussed below.

A hearing in this matter was held before me on October 28, 2016 in Newark, New Jersey.

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

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent has been a corporation with an office and place of business in Kenvil, New Jersey, where it is engaged in the provision, sale and transport of ready-mix concrete and other construction materials from facilities located in Kenvil, Morristown, Oxford, Sussex, East Orange and Flemington, New Jersey.

During the 12-month period preceding the issuance of the complaint, Respondent has purchased and received at its facilities listed above goods valued in excess of $50,000 directly from suppliers located outside the State of New Jersey.

Respondent admits, and I find that at all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent further admits and I find that at all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Background

The Employer's corporate officers are majority stockholder and President John Crimi and Vice-President John Scully. Kurt Peters has been, at material times, the Employer's in-house counsel.

On May 12, 2009, based upon a card check, the Employer voluntarily recognized the Union as the exclusive collective-bargaining representative for its drivers, mechanics, laborers and heavy equipment operators employed at facilities located in Oxford, East Orange, Sussex, Kenvil, Morristown, and Landi, New Jersey.

The parties commenced negotiations for an initial collective-bargaining agreement in June 2009. The parties agreed that they would use, as a template, a prior contract with IBT Local 408, which had previously represented the employees of the Employer. This agreement resolved a number of issues, one of which was a dues check-off clause. Bargaining focused on economic issues about which there was disagreement such as wages, pensions and health insurance. Eventually it was agreed that each of the Employer's facilities would have its own contract, with most of the provisions as set forth in the template being the same, and any differences based upon the nature of the work performed at each facility, would be reflected therein. In addition, each facility would have its own wage rates.

The template had a dues deduction provision which provided, in pertinent part, that: "during the life of this agreement the employer agrees to deduct once each month from the employees' wages and remit to the Union monthly dues." This language was identical in all the template agreements for each facility.

At various times throughout the bargaining process, the Employer presented the Union with so-called final offers, which the Union rejected. After each of these occasions bargaining resumed.

The 2015 Collective-Bargaining Agreement(s)

In May 2015, the Employer communicated another "final of-

fer" to the Union. This offer was submitted to employees and on November 8, 2015, the membership voted to ratify this final offer. The offer itself did not contain any reference to dues check-off language.

Shortly after the ratification vote, Union Secretary-Treasurer Alphonse Rispoli (who had represented the Union during bargaining) telephoned Employer counsel Desmond Massey to inform him that the contract proposal had been ratified. There was agreement that the effective dates of each of the collective bargaining agreements that had been agreed upon would be November 8. 2015.

Rispoli testified that he spoke with Massey about distributing dues check off authorization applications to employees to allow for dues deductions to commence. Massey said that if Rispoli would bring the applications to his office, he would see to it that the Employer received and distributed them.

Rispoli further testified he spoke with Crimi at some point during the week of November 9. Rispoli testified that Crimi agreed to use November 8 as the effective date of the agreements and that Massey would draft the contracts. The parties agreed that the date when dues deductions would begin would be January 1, 2016, because of the holidays and the fact that certain employees were then on layoff status.

On December 22, 2015, Peters sent the following communication to Rispoli:

> Enclosed please find two execution copies of each of the collective bargaining agreements for County Concrete's five bargaining units.
>
> These agreements are substantially the same as the CBA's that had previously been provided to you. As you requested we have deleted the section that had been labeled "intentionally delete." We have also added the effective date of November 8, 2015 (which you have told us is the date the members ratified the CBAs) and set January 1, 2016 as the start date for dues. Exhibit B, which sets forth the co-pays, has also been updated to reflect the current co-pay amounts.
>
> Please execute both copies and return them to me so I can have John Crimi sign them when he returns from his vacation. If you have any questions, please feel free to contact me.

Rispoli signed the contracts sent to him by the Employer and returned them by express mail to Peters on January 13, 2016.

The Distribution and Collection of Dues Authorization Forms and Related Communications to Employees

Rispoli then asked for the Employer's assistance in getting dues check off applications signed by employees. Crimi told Rispoli to send the applications to Peters, the Employer's in-house counsel, which he did, noting in an accompanying letter that dues deductions would begin in January 2016.

Crimi testified that following the ratification vote a number of employees spoke with him and stated that they didn't know what they needed a union for and did not want to pay union dues.

After consultation with counsel, the following memorandum (the SWB Memorandum) was distributed to employees by the Employer:

> Teamsters Local 863 and County Concrete recently entered into a Collective Bargaining Agreement governing the terms and conditions of employment for County's bargaining unit employees. One of the provisions contained in the CBA is a "Union Security" clause that requires all employees to be members of the Union as a condition of employment. County's bargaining unit employees can satisfy this requirement by becoming a:
>
> (1) FULL TIME MEMBER of the Union, or
> (2) FINANCIAL CORE MEMBER (otherwise called a "dues paying only, nonmember.")
>
> Teamsters Local 863 must represent the employees whether they are a Full-Member or a Financial Core Member.
>
> **Full Members** pay all periodic dues and fees assessed by Teamsters Local 863.
> **Financial Core Members** only pay the periodic dues and fees that relate to negotiating and administering the collective bargaining agreement. Financial Core Members cannot attend union meetings, hold union office or vote in a union election.
>
> If County's employees would like more information regarding their obligation to pay union dues under the "Union Security" clause of the CBA and/or whether Teamsters Local 863 is charging the employees the correct amount for dues, you should direct your employees to contact the following United States Government Agency:
> [contact information for Region 22 provided]

In early December, Peters called Rispoli and advised him that upon advice of counsel the Employer would not be distributing dues check off applications. This telephone call was followed by a confirmatory letter dated December 4, 2015. In this letter Peters returned the dues check off applications and told Rispoli that he would, if necessary, provide the Union with contact information for the unit employees.

The Union then requested an updated seniority list from Peters, which he furnished on December 16, 2015. The Union then sent two of its business agents, Chuck O'Mara and Lou Sanchez, to the Employer's various facilities to distribute dues check off authorizations to the shop stewards at each facility. Rispoli began receiving reports that the employee census provided by Peters contained names of supervisors and those no longer working at the facility.

Rispoli questioned Peters about the accuracy of the employee list and Peters agreed to send to the Union a more accurate list of unit employees. The Union still had difficulties with the list provided by the Employer but nevertheless collected approximately 100 signed applications from employees during the month of December 2015. The Union continued to collect cards in January 2016 as well.

The form distributed by the Union to Respondent's employees is comprised of two sections. The first is entitled "Application for Membership" and states:

> Desiring to become a member of the above Local of the International Brotherhood of Teamsters, AFL–CIO, I hereby make application for admission to membership so that the duly elected officers of said Union may represent me for the pur-

poses of collective bargaining with my employer in reference to working conditions, hours of labor, rates of pay and other terms and conditions of employment.

I hereby authorize my employer to deduct my dues from my wages and pay them to Local 863 in accordance with any agreement made between my employer and the Union and this authorization shall be my warrant to my employer for said purposes and shall be irrevocable for the period of time permitted by law.

I further agree that upon acceptance of this application for membership I will pay the regularly required dues and assessments and will abide by the rules, regulations, constitution and by laws of Local 863 and The International Brotherhood of Teamsters, AFL–CIO.

There is another, separate, section to the document distributed to employees entitled "Checkoff Authorization and Assignment" which provides as follows:

I _____ [Print Name], hereby authorize my employer to deduct from my wages each and every month an amount equal to the monthly dues, initiation fees, and uniform assessments of Local union 863,and direct such amounts so deducted to be turned over each month to the Secretary-Treasurer of such Local Union for and on my behalf.

This authorization is voluntary and is not conditioned on my present or future membership in the Union.

This authorization and assignment shall be irrevocable for the term of the applicable contract between the Union or for one year, whichever is the lesser, and shall automatically renew itself for successive yearly or applicable contract periods thereafter, whichever is lesser, unless I give written notice to the company and the union at least sixty (60) days, but not more than seventy-five (75) days before any periodic renewal date of this authorization and assignment of my desire to revoke same.[1]

There is evidence that the foregoing dues check off authorization forms were also distributed to employees by shop stewards John Hutchings, Jr. and Vinnie Modafferi. Bargaining unit employee Dean Walgren testified that Modafferi (who is now deceased) provided the form and spoke with him about it.

Walgren testified as follows:

He gave me an application and he said that I needed to fill it out or I couldn't work at County Concrete because it's now unionized. And I needed to actually fill that out. And when I took that I was under the impression that we's – we would be core members. And I had talked to him about that. And he says that really was not an option, because it wasn't. That core members weren't really a member.

When Walgren was asked whether he approached County Concrete management that he wanted to be, or was electing to be a financial core member, Walgren stated that these conversations occurred later –"quite a ways down the road." He stated that such discussions might have occurred in January of February of "this year." Walgren also testified that he had discussions with Scully about core or membership dues. All in all, it's not entirely clear from the record whether his discussions regarding this matter took place in January or February of 2016 or 2017.

Relevant Contract Terms

On December 22, 2015, Peters mailed to Rispoli copies of 5 collective-bargaining agreements for his signature. In a cover letter Peters wrote: "these agreements are substantially the same as the CBA's that had previously been provided to you. We have also added the effective date of November 8, 2015 (which you have told us is the date the members ratified the CBAs) and set January 1, 2016 as the start date for dues. Please execute both copies and return them to me so I can have John Crimi sign them when he returns from his vacation."

Article 2 of the proposed collective-bargaining agreements each contain an identical "union security clause" as follows:

Any present or future employee who is or hereafter becomes a member of the Union shall remain a member of the Union during the terms of this Agreement as a condition of his employment and condition of his employment and continued employment. New employees may be hired by the Employer on the open labor market, but each new employee shall be required to join and remain a member of the Union upon the expiration of the Probationary Period (as defined in Article 20).[2] Such employees shall be acceptable as members in good standing upon payment of the customary initiation fee and current monthly dues to the Union. Customary initiation fees shall be waived for all covered employees that were employed by County Concrete as of the date of this Agreement. The Employer agrees that it will not discriminate in any manner against any employee because of his membership or activity in or on behalf of the Union.

Article 3 of each CBA contains the dues check off language, and provides as follows:

This Article 3 is effective January 1, 2016. Thereafter and during the remainder of the life of this Agreement (commencing after the Probationary Period set forth in Article 20) the Employer agrees to deduct once each month from the employees' wages and remit to the proper officers of the Union monthly dues and initiation fees as membership dues uniformly levied by the International Union or by the Local Union in accordance with the Constitution and By-Laws of the Union, of such members of the Union as individually and voluntarily certifying in writing, in form required by law, that they authorize such deductions. An abstract of such deductions showing the name and amounts deducted from each employee will accompany the monthly remittance to the Secretary-Treasurer of the Union or a duly designated representative.

[1] As Respondent notes, this document does not provide employees with their right to elect financial-core status.

[2] The "probationary period' is defined as: "the first ninety (90) days of employment for all new employees, excluding absences on work days, and as may be otherwise be mutually extended."

The Alleged Failure to Remit Dues

The Employer failed to remit dues money to the Union for the month of January 2016. In a telephone discussion held among Rispoli, Peters and Scully, the Respondent said they wanted to get the seniority list straightened out first. Peters and Scully stated that the Employer would collect dues authorization forms from employees. There was also a discussion of the dues amount. Rispoli informed Employer representatives that the applicable formula was 2.5 percent of the employee's hourly rate plus $1. Rispoli later spoke with Crimi later in January 2016. At this time, Crimi suggested that it would be a good idea to waive the January 2016 dues. In this regard, Crimi testified as follows:

> Q: [by Respondent's counsel]: Okay. Did you have any conversations with Al Rispoli in January 2016 regarding the dues obligations of County's employees?
> A: A number of conversations.
> Q: Can you please tell us what those conversations entailed?
> A: Well, Al was concerned about collecting his dues and I told him we don't know what dues to take out, because we don't know what's going on. There -- did not have a proper census. There were no dues signed. And the financial core membership had thrown everything lopsided, where they didn't know what to do, the men. In the meantime the Union hadn't given us the information of what dues to take out.
> Q: When you say the Union didn't give you the information as to what dues to take out, what do you mean by that?
> A: Well, the Union sends you a schedule to take the dues out. So we had no ability to take anything out. We didn't know what they were to be paid or who we were to take the dues from.
> Q: And that was in January –
> A; It was –
> Q: 2016?
> A: In January, that's correct.
> Q: Okay. Did you have any other conversations with Mr. Rispoli?
> A: That's the same situation that came about in February.
> Q: Let's stick with January 2016.
> A: Stick with January. Al had said to me that he's wave [sic] the January dues.
> Q: When did he say this to you?
> A: Sometime in January. I don't remember the date.
> Q: Did he say why he was waiving the January dues?
> A: Well, everything was in flux. We didn't even know what dues to take out. So how could you take dues out of a member's thing if you don't know what to take or who – or if they're financial core or they [are a] full member.

Crimi then went on to testify that he could not recall whether the conversation where Rispoli said he would be waiving dues took place before or after Respondent received signed authorization cards from the Union. As he stated: "I don't recall. It was in the course of oura number of conversations Al and I had."

Rispoli, who was in the courtroom when Crimi offered the foregoing testimony testified on rebuttal and acknowledged that Crimi had suggested waiving the dues for January 2016. According to Rispoli, his response was, "No fucking way."

On January 20, 2016, Lorraine Graziano, one of the Union's administrative assistants, sent via email copies of the approximately 122 cards the Union had collected by that point. On January 26, Scully responded requesting information about how many workers were full-time members and how many were financial core members. He also asked for the dues calculation for each category.

On February 3, Graziano wrote to Scully that she would be sending the monthly dues check off for February 2016, which would list the amount of member dues and asked for the social security numbers of certain employees.

Additional cards were sent by the Union and on or about February 3, 2016, the Employer acknowledged in writing that it had received 125 cards, but since there were 146 employees at the time, they could not deduct dues for the remaining 21 employees. Peters, writing on behalf of the Employer requested the names of employees who had selected financial member status and the amount of the dues to be collected from these employees. The Union received this communication on February 8.

On February 6, 2016, the Union sent to the Employer a complete remittance form for dues, listing each person for whom they had a card, their wage rate and the dues owed. By mid-February 2016, the Employer had not yet provided the Union with a signed copy of the collective-bargaining agreements, nor had it remitted any dues payments to the Union. Rispoli called Peters and asked where the contracts were and Peters replied he was working on it. Rispoli asked when the Union would be receiving the dues payments and Peters replied that he was attempting to get the rest of the applications and Scully was working on it.

Crimi testified that he had a number of conversations with Rispoli during the month of February regarding the dues payment obligations:

> The most particular one is I talked to Al about the fact that again, God rest his soul, Vinnie was going around to all the employees in the sand plant at Kenvil telling them that if they're a financial core member that they're not going to be represented by the Union. They can't go on Union jobs, they can't do this, they can't do that. And now the whole company in the area is up in flame again. And I talked to Al.
>
> I said you have to have Vinnie stop that. He can't keep doing that, because first of all it's untrue. And so that's the conversation I had with him. And Al said I'll have him stop it.
>
> I then took the paper we received from your law firm and had John Scully sit down with every single employee with that form in front of him with their rights and declare what they wanted. Yes, full member or financial core member. So now there was no question in anyone's mind because they had to sign.
>
> They read it, they signed it and we submit it to Al. And now we knew exactly what it was without [coercion] No one pushing them one way or the other and that's how it happened.

The Alleged Unilateral Change

On February 26, 2016, Peters sent a letter to Rispoli as follows:

> As discussed, John Scully of County Concrete is collecting the signatures of your members on the Check Off Authorization and Assignment cards to enable us to withhold monthly union dues. We are expecting to have all of your members sign by the end of February 2016.
>
> Given this fact, the date in Article III (the date dues will be initially collected) of the Collective Bargaining Agreements must be changed in all of the CBA's to March 1, 2016. Mr. Crimi will initial this change in the CBA's and we ask you to do the same.
>
> Many of your members have questioned us as to the amount of the monthly dues paid by a Full-Member versus a Financial Member. You had previously provided us with the monthly amount for a Full Member of two times the hourly rate plus $1.00,[3] and for a Financial Member the rate is unknown.

After receiving this letter, Rispoli called Peters. As Rispoli testified, Peters told him he had not been able to get ready for February 2016 and would change the dues deduction to start in March 2016. Rispoli testified that he challenged Respondent's authority to change the contract and maintained that the agreement was for dues to be taken out and remitted as of January 1 and that the Union would not agree to any change in the date.

Rispoli then called Crimi, who expressed surprise that the Union had not yet received the contracts because he had signed them. Shortly thereafter Rispoli did receive the contracts. The version submitted to the Union by Respondent had the January date crossed out in article 3 and in its place there was a handwritten notation: "March." In the cover letter accompanying the signed contracts, Scully wrote that, "[a] small change has been made on page Two (2) Article 3. Mr. Crimi has changed the dues check off date from January 1, 2016 to March 1, 2016 to reflect the date of the initial execution of the CBAs by both parties. Mr. Crimi has initialed next to the hand written changes. Please initial the changes in your set of the CBAs and forward us a copy of page two (2) so that we can update our copies of the CBAs."

Rispoli returned the contracts to Respondent but had his assistant write the word "January" back into article 3.

On March 9, 2016, the Union emailed Scully its check off spreadsheet outlining dues payments owed for March 2016. This spreadsheet contained separate ledgers for those employees who selected financial core status and those employees who selected full member status. Financial core status employees paid anywhere between $37 and $42 per month for dues whereas full members paid between $46 and $52 per month in dues.

It is undisputed that by the end of January 2016, Respondent had in its possession 125 dues authorization check off cards and did not remit dues for any employee for either January or February 2016. Dues for the month of March were remitted in April.

Crimi testified that he directed Scully to show every bargaining unit employee the SWB memorandum and have them confirm on their check off authorization card whether he or she elected full membership or financial-core status.

Crimi further testified that he did not execute the collective-bargaining agreement until the end of February 2016 for the following reasons:

> I was very upset that I'm the one who brought my company back home to 863 and we couldn't get to the point to agree on the dues thing. And it got really upsetting to me and I wasn't going to go forward with this Local in a peaceful manner. It wasn't fair to my men and women.

Contentions of the Parties

As an initial matter, counsel for the General Counsel argues that a collective-bargaining agreement is formed where there is a meeting of the minds on all substantive issues and material terms of the contract, and the General Counsel bears this burden of proof. Counsel argued that the Union and Employer reached a meeting of the minds on the dues check-off clause (Article 3) and the remaining elements of the CBA where both parties agreed the effective date of contract was November 8, 2015, the Employer drafted 5 CBAs in accordance with the agreed-upon terms, forwarded the contracts to the Union for execution, and the cover letter specified that the Employer inserted January 1, 2016, into the dues check-off clause as the start date for dues collection (reflecting the agreement of the parties, as set forth above). Thus, General Counsel argues that the drafts reflected agreement on all substantive issues and the Employer was not authorized to change any agreed upon terms without first obtaining approval of the Union.

General Counsel further argues that the Employer should have retroactively remitted requested dues to the Union because by the beginning of February 2016, the Employer already received 125 dues deduction authorization cards. Counsel for the General Counsel relies upon two Board cases[4] where the Board held employers "were obligated to remit dues even when the union did not timely present dues cards," and argued that in the present case the Union did timely present the cards. Thus, this unilateral refusal to remit dues violated Section 8(a)(5) of the Act.

General Counsel additionally contends that, for the remaining unit employees, it was the Employer's tactics that delayed the authorization card collection. These involved: refusing to assist in the collection of cards where they first agreed to distribute them, purposely providing an inaccurate seniority list, and deciding at last that it will, in fact, collect authorization forms from all employees.

Finally, Counsel for the General Counsel has anticipated that the Employer will argue that Section 302(c)(4) of the Act privileged its refusal to remit the January 2016 and February 2016 dues. Although Section 302(c)(4) requires a written authorization before dues are deducted, the Board in *Gadsden Tool*, supra, has stated that this section of the Act "cannot be used as a shield when the Employer's 8(a)(5) violations necessitate a

[3] The applicable wage rate as cited by the Employer in its letter was apparently incorrect.

[4] See, e.g., *Gadsden Tool, Inc.*, 340 NLRB 29 (2003); *Williams Pipeline Co.*, 315 NLRB 630 (1994).

remedy for this unlawful conduct." General Counsel has argued even it were to be found that Section 302(c)(4) is persuasive, "the record is clear that the Employer received in January approximately 100 applications that were signed in December 2015," thus the January 2016 and February 2016 dues should have been deducted as had been previously authorized by these employees. General Counsel contends that, just as the Employer retroactively made payments for March 2016 in April 2016, they could have made the January 2016 and February 2016 dues payments. For the 82 employees who signed applications in December 2015, the Union's March 6, 2016 dues spreadsheet quoted the exact amount of monthly dues owed as initially requested in the February 6, 2016 spreadsheet for these respective employees.

The Union has argued that dues deductions are a mandatory subject of bargaining and an employer may not make a unilateral change in the contract, during the term thereof, without first negotiating with the union representing its employees and obtaining its consent. It is argued that such consent was never given to changing the applicable term of the agreement. In particular, the Union argues, contrary to the testimony of Crimi, that Rispoli never waived the collection and remittance of dues for January. No such written evidence of any such waiver was presented and even in the February 26, 2017 letter when Respondent informed the Union in writing that it was making a change, it did not refer to any purported waiver of dues in January. In support of their argument, Respondent relies upon cases which stand for the proposition that, "a waiver will not readily be inferred and there must be a 'clear and unmistakable showing that the waiver occurred."[5]

Further, the Union points out that an employer violates section 8(a)(1) and (5) by ceasing to deduct and remit dues during an existing contract.[6] As a remedy, the Board in *Bulkmatic Transport Co.*[7] found, prospectively, the company is to deduct dues from the employee: however, for the period of the violation the company must reimburse the union for its failure to do so with interest.

The Union further points to *Shen-Mar Food Products, Inc.*,[8] where the Board found a violation of the Act where a "company improperly injected itself into the relationship between the employees and the [u]nion" and wrongly "threw its weight" against the union, thereby undermining the union. There the Board found. unilaterally refusing to cease to deduct and remit dues to the union during the term of the contract even where there is confusion about employees' union or dues status, violates the Act. Thus, the Union has argued that the Employer here has improperly injected itself and threw its weight behind one choice, where they issued memos about core dues and met with employees to advise them of their choices, which is an issue between a union and its bargaining unit employees.

Respondent argues, as an initial matter, that the collective-bargaining agreement was not executed between the parties until February 26, 2016. Respondent maintains that the Board has long held that the date of the contract's execution and not any previous effective dates govern the union security clause.[9] Therefore, the Union would be entitled to assess and collect dues in March 2016, which would be the first paycheck following February 26, 2016.

Respondent has also argued that the Union never provided the employees with notice of their rights under *General Motors*[10] and *Beck*[11] until March 2016. The Supreme Court in *Beck* and *General Motors* found, prior to collecting union fees and dues, a union must notify the employee that he or she has the right to be or remain a nonmember. and notify them of their rights as a nonmember.[12] The Respondent further argued that nowhere on the application for membership or on the authorization cards did the Union notify the employees of their right to elect financial-core status or challenge their dues under this status, or provide any other rights under *Beck*. Moreover, Respondent has argued that the Board has repeatedly held absent notice of his or her *Beck* rights "an employee's decision to elect full membership status with the union is not knowing or voluntary and the union is prohibited from assessing and collecting dues form such employees."

Respondent has argued that an employer is justified in refusing to deduct dues where check-off authorizations that are not freely and voluntarily obtained are unenforceable, and maintains this was the case for January and February 2016. Authorizations are not free and voluntary where a union threatens employees with discharge if they refuse to sign dues check off authorization cards. The Respondent further argues that the Union violated the Act where agents of the Union told the employees while handing out the Union's membership applications that the "employees could not pay financial-core dues and could only be full members of the union or else they couldn't work." Therefore, the Respondent argued that they were justified in waiting until the cards were freely and voluntarily obtained, which was not until February 26, 2016.

Respondent has also argued it genuinely believed some (if not all) of the check off cards it received from the Union were not freely, knowingly, and voluntarily made by its employees. Therefore, the Respondent's decision to withhold dues deductions until they knew which authorization cards were unenforceable and or valid was justified. In their reasoning, the Respondent argued that the employee list that was submitted by the Union stated all employees elected full-membership status, however, the Respondent personally knew of a few employees who expressed interest in being financial-core members. Therefore, the Employer conducted its own investigation and confirmed with each employee of their desired status, and rectified 18 misclassified check off authorizations. Thus, pursuant to

[5] See e.g., *Beacon Piece Dyeing & Finishing Co.*, 121 NLRB 955, 956 (1958); *Metropolitan Edison Co. NLRB*, 460 U.S. 693, 708 (1983).

[6] See e.g., *Shen-Mar Food Products*, 221 NLRB 1329 (1976).

[7] See e.g., *Bulkmatic Transport Co.*, 340 NLRB 621 (2003).

[8] *Shen-Mar Food Products*, 221 NLRB 1329 (1976).

[9] See e.g., *M.J. Santulli Mail Services, Inc.*, 281 NLRB 1288, 1294 (1986).

[10] *NLRB v. General Motors*, 373 U.S. 734 (1963).

[11] *Communication Workers v. Beck*, 487 U.S. 735 (1988).

[12] Rights include: (1) to object to paying for union activities not germane to the union's duties as bargaining agent and to obtain a reduction in fees for such activities; (2) to be given sufficient information to enable the employee to intelligibly decide whether to object; and (3) to be appraised of any internal union procedures for filing objections.

Section 302(c)(4) of the Taft-Hartley Act, the Respondent could not deduct dues until February 26, 2016, where they received valid and accurate express authorization cards.

Finally, the Respondent argues with respect to whether the Union verbally waived any dues obligation that may have existed for the employees in January 2016, Crimi's testimony should be credited and Rispoli's testimony should be rejected. The Respondent further argues that Crimi's testimony is corroborated by direct evidence: (1) the absence of a remittance spreadsheet submitted by the Union for January 2016 strongly suggests that the union did not intend to collect dues for that month, where it is their practice to send the spreadsheet to the employer; and (2) the February 2016 spreadsheet contains three separate categories of data: "LAST PYMT" "MONTHS OWED" and "PAID THROUGH." The box under "PAID THROUGH," states "2016-01" and when asked what the numbers referred to, Rispoli testified that the notation "2016-01" meant that the employee had satisfied his or her dues obligation for January 2016.[13]

III. ANALYSIS AND CONCLUSIONS

There are certain undisputed facts here:

The parties agreed that the effective date of the collective-bargaining agreements would be November 8, 2015, but that under Article 3 of the contracts, dues deductions would commence on January 1, 2016. In December 2015, the Employer prepared, and sent to the Union for signature, five collective-bargaining agreements. All contained the agreed-upon date of January 1 for the commencement of dues deductions and the Union signed these contracts and returned the contracts with that provision.

By the beginning of February, the Union had provided the Employer with dual purpose membership and dues authorization cards for 125 employees, many of which had been collected and forwarded to the Employer in January. Cards for an additional 21 employees remained outstanding.

The Employer failed to sign its counterpart to the agreements until the end of February, at which time it notified the Union stating that it was changing the commencement date for the deduction of dues to March.

In early March 2016, the Employer sent to the Union a signed contract with a handwritten change in the date for dues from January to March 1, 2016. The Union did not agree and reinstated the January 1 date and returned the collective-bargaining agreements to the Employer.

It is also undisputed that the Employer failed to deduct and remit dues until sometime in April.

It is well-established that a collective bargaining agreement is formed after a meeting of minds on substantive issues and material terms. See *Sunrise Nursing Home, Inc.*, 325 NLRB 380, 389 (1998). This is measured "not by parties' subjective inclinations, but by their intent as objectively manifested in what whey said to each other." *Crittendon Hospital*, 343 NLRB 717, 718 (2004). Under Section 8(d) of the Act, either party to a collective-bargaining agreement is obligated to execute, or assist in executing, a memorialized version of the agreement, if requested to do so by the other party. *H.J. Heinz Co. v. NLRB*, 311 U.S. 514 (1941).

Here, there is no doubt that such a meeting of the minds regarding the terms and conditions of a collective-bargaining agreement had been reached. The Employer cannot reasonably dispute this, as they agreed to draft the agreements with an effective date of November 8, 2015 and a date for dues deductions and remittances to commence on January 1, 2016. These agreements were sent to the Union in December 2015 and thereafter, in January 2016, executed and returned to the Employer by the Union.

I agree with the General Counsel and the Union that once these agreements were signed and returned to the Employer, neither party was privileged to change any of the agreed-upon terms without the consent of the other party.

I do not credit Crimi's testimony to the effect that Rispoli agreed to waive the January dues. In this regard, I find Crimi's testimony on this issue to be vague and otherwise unsubstantiated. If this was such a critical issue, I conclude that he would have a more concrete recollection of how and when this conversation took place, and would have memorialized it in some fashion. Further, I note that in its February letter to the Union, Respondent failed to mention any such agreement, which it surely would have done had such an amendment to the collective-bargaining agreement been reached. Moreover, any purported agreement for January fails to take into account Respondent's failure to remit dues for the month of February (or those of March until April).

Respondent attempts to defend its actions by asserting coercion on the part of the Union in obtaining the membership and dues authorization forms. The evidence regarding this is unavailing. The record, as discussed above, demonstrates that several shop stewards were involved in obtaining signed authorizations from employees. One employee offered testimony that a shop steward told him that he would not be able to become a financial core member. However, he also offered contradictory testimony that the issue did not come up until the following year. Taking this evidence in the light most favorable to the Respondent, I cannot find this to be sufficient evidence of employee coercion to invalidate the well over 100 dues authorization cards obtained by the Union in January 2016. Moreover, I note that there was no unfair labor charge filed against the Union relating to any such conduct and cannot appropriately make such a finding here.

Respondent further attempts to defend its conduct by raising the *Beck* issue. While it is the case generally that the Board has found that notice to employee nonmembers of a union must be given at the time the union first seeks to collect dues and fees,[14] again, no such charge was filed and the issue of any unfair labor practice on the part of the Union here is not properly before

[13] The transcript reflects that although, Mr. Rispoli initially stated "right" with respect to the question of whether 2016-01 meant the member paid through January 2016, he then corrected himself and stated "No, I'm sorry. It's says owed or through."

[14] *Paperworkers Local 1033 (Weyerhauser Paper Co.)*, 320 NLRB 349 (1995), rev'd on other grounds, *Buzenius v. NLRB*, 124 F.3d 788 (6th Cir 1997), vacated, *United Paperworkers Int'l Union v. Buzenius*, 119 S. Ct. 442 (1998).

me. Moreover in this instance the record reflects that employees were advised of their option to become core rather than full members of the Union. Further, it is worth noting that an employee's right with regard to union membership, full or otherwise, is separate and distinct as to whether they authorize the deduction of moneys owed to a union, regardless of status, through their payroll, as is reflected in the dual purpose cards which were distributed to employees.

Respondent further defends its conduct by referring to certain cases which assert that any dues obligation under a union security clause starts to accrue from the date of contract execution and not the date to which the contract was retroactively made. In *Peoria Newspaper Guild, Local 86*, 248 NLRB 88, 91 (1980), the Board noted that the Act does not sanction the retroactive application of a union security clause. There the union was found to have unlawfully threatened with discharge and sought the discharge of an employee who had resigned his membership in the union at a time when a contract binding him to continued membership was not in force.

In that case, where the differences in factual circumstances to those here are apparent, the Board made note of looking to the language of the union security clause in question which did not support the contention made by the respondent therein that the contract's retroactive date, rather than its execution date, was controlling. Here, there is no evidence to support the conclusion that Respondent could properly rely upon the contract's execution date (which was in its exclusive control), rather than its agreed-to effective date to give the clause effect. The language at issue in the union security clause here refers to membership during the "terms of this Agreement." It is apparent from the letter sent by Peters to the Union that there was a meeting of the minds regarding such terms.

Respondent further relies upon *Local 32B-J, SEIU*, 266 NLRB 137 (1983), where it was found that the respondent union violated the Act by causing the employer to deduct and transmit dues of employees for a period prior to 30 days after the execution of their collective-bargaining agreement. In that case, after a certification of representative, there was a negotiated agreement between the employer and the union, which was finalized in a letter of acceptance on March 27, 1981. During the months of March and April, most of the employees in the bargaining unit signed dual purpose cards for the union. The employer maintained that pursuant to an agreement with the union, dues deductions were to commence on March 1, 1981; however, the union alleged that dues were to commence retroactively to July 1, 1980. In finding an unfair labor practice, the Board noted that while an employee may voluntarily pay dues for a period prior to the execution of a collective-bargaining agreement, such freedom of choice had not been afforded to the employees in that instance. Inasmuch as no contract had existed prior to March 27, 1981, when the employer and the union executed the agreement, no obligation to pay or remit dues existed.

Here, however, whatever limited support such authority might offer to Respondent is obviated by the fact that it was the Respondent's dilatory tactics which delayed the execution of the collective-bargaining agreement at issue. After all, it was Respondent who sent the contracts at issue to the Union in December 2015 for executionwith the jointly agreed upon date of January 1, 2016, for the commencement of properly authorized employee dues deduction and transmission. The Employer then delayed its own execution of the agreement and incorporated a unilateral change. And, it is the unilateral change of the agreed-upon contract term which is the sole issue in these proceedings. Respondent's unlawful unilateral change is not condoned by the fact that certain employees may not have submitted properly executed dues check off forms by the date the relevant contract term was to have taken effect or by other conduct as has been alleged. See e.g. *Gadsen Tool, Inc.*, 340 NLRB 29, 30 (2003). Rather, the only question goes to the scope of the financial remedy: i.e. when the dues authorization forms were executed and submitted, thereby triggering Respondent's obligations under the collective-bargaining agreement.[15]

Accordingly, I conclude that the Respondent has violated the Act, as alleged in the complaint.

CONCLUSIONS OF LAW

1. By making a unilateral change to agreed-upon collective bargaining agreements covering bargaining unit employees in its Oxford, East Orange, Sussex, Kenvil, Morristown and Landi, New Jersey facilities, by modifying the effective date of a dues check off authorization provisions contained therein, Respondent has violated Section 8(a)(5) and (1) of the Act.

2. By, for the period from January 1, 2016, through March 1, 2016, failing and refusing to collect properly authorized dues from employees in the bargaining units represented by the Union in the facilities noted above and by failing to remit such dues to the Union, Respondent has violated Section 8(a)(5) and (1) of the Act.

3. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. I recommend that Respondent be ordered to reimburse the Union, with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), for dues that the Respondent was required to but failed to collect and remit under the terms of the collective-bargaining agreements for each facility at issue herein.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[16]

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[15] It is apparent from the record that such forms were submitted to Respondent on a rolling basis. To the extent certain employees had not authorized payroll deductions in January and February (or not at all); such matters regarding Respondent's financial obligations to the Union are appropriately left to the compliance stage of these proceedings. Similarly, I find that any issue regarding Respondent's financial obligations relating to employee choice of financial core status is appropriately deferred to that stage of these proceedings as well.

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

ORDER

The Respondent, County Concrete Corporation, Kenvil, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Making unilateral changes to agreed-upon collective-bargaining agreements covering bargaining unit employees in its Oxford, East Orange, Sussex, Kenvil, Morristown, and Landi, New Jersey facilities,

(b) Failing and refusing to collect properly authorized dues from employees in the bargaining units represented by the Union in the facilities noted above and by failing to remit such dues to the Union.

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

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

(a) Reimburse the Union, with interest as prescribed in the remedy portion of this decision for dues that the Respondent was required to but failed to collect and remit under the terms of the collective-bargaining agreements for each facility at issue herein.

(b) Within 14 days after service by the Region, post at its facilities in Oxford, East Orange, Sussex, Kenvil, Morristown and Landi, New Jersey, copies of the attached notice marked "Appendix."[17] Copies of the notices, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to the posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the respondent customarily communicates with their employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 1, 2016.

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

Dated, Washington, D.C. April 18, 2017

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT make unilateral changes to agreed-upon collective bargaining agreements covering bargaining unit employees in our Oxford, East Orange, Sussex, Kenvil, Morristown, and Landi, New Jersey facilities,

WE WILL NOT fail and refusing to collect properly authorized dues from employees in the bargaining units represented by the Union in the facilities noted above and WE WILL NOT fail to remit such dues to the Union,

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

WE WILL reimburse the Union, with interest, for properly authorized dues that we were required to but failed to collect and remit under the terms of the collective-bargaining agreements for each facility as described above.

COUNTY CONCRETE CORPORATION

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/22-CA-171328 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

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

IN THE UNITED STATES COURT OF APPEAL
FOR THE THIRD CIRCUIT

COUNTY CONCRETE CORPORATION Petitioner v. NATIONAL LABOR RELATIONS BOARD, Respondent.	:	PETITIONERS COUNTY CONCRETE CORPORATION'S PETITION FOR REVIEW OF NATIONAL LABOR RELATIONS BOARD ORDER

CERTIFICATE OF SERVICE

Pursuant to Rule 15(c) of the Federal Rules of Appellate Procedure, I hereby certify that true and correct copies of the foregoing County Concrete Corporation Petition for Review of National Labor Relations Board Order were served on the counsel listed below via Federal Express on this, the 3rd day of May, 2018, and that a sufficient number of copies under Federal Rule of Appellate Procedure 15(c) for service on Respondents were filed.

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Date: 5/3/18

Respectfully submitted,

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