

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

C2G LTD. CO.

and

Cases 19-CA-163444
19-CA-169910

GENERAL TEAMSTERS Local 959,
STATE OF ALASKA,
AFFILIATED WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS.

Elizabeth DeVleming
for the General Counsel.

Charles M. Poplstein, Esq.,
Timothy J. Sarsfield, Esq.,
Thompson Coburn LLP
for the Respondent.

DECISION

STATEMENT OF THE CASE

ELEANOR LAWS, Administrative Law Judge. This case was tried in Fairbanks, Alaska, on April 24, 2018. The International Brotherhood of Teamsters, General Teamsters Local 959 (the Charging Party or Union) filed the charge in case 29-CA-163444 on November 4, 2015, and filed the charge in case 19-CA-169910 on February 8, 2016. The General Counsel issued the amended consolidated complaint before me on March 8, 2018.

The complaint alleges that C2G Ltd. Co. (the Respondent or C2G) violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) when it bypassed the Union and issued offer letters to bargaining-unit employees stating: (1) their employment was at will, (2) they had no contract or guarantee of employment or employment terms, (3) the terms and conditions of their employment would be set by C2G, and (4) C2G could alter or amend in its sole discretion the terms and conditions of employment and its employment policies and

procedures. The complaint alleges further violations of Section 8(a)(5) and (1) when the Respondent’s owner took away employees’ first year of accrued vacation leave and later asserted that all employees hired since October 1, 2012, were part-time employees and recalculated their accrued vacation at the part-time seasonal rate. Finally, the complaint alleges the actions in asserting the employees hired since October 1, 2012, were part time was taken in retaliation for the Union filing a collective grievance, in violation of Section 8(a)(3) of the Act.

Two arbitration hearings regarding matters related to the instant complaint were held before Arbitrator Richard Ahearn on September 1 and 2, 2016, and before Arbitrator Marshall Snider on November 9 and 10, 2016. The factual record before me was largely developed at the arbitrations. Neither arbitrator, however, addressed the unfair labor practice issues in this complaint. Any findings by the arbitrators pertinent to this decision are discussed in context below.

I have considered the entire record and the briefs filed by the General Counsel and the Respondent.

I. JURISDICTION

The Respondent, a South Carolina corporation, provides air terminal and ground handling services at Eielson Air Force Base in Fairbanks, Alaska. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background and the Respondent’s Operations

C2G contracts with the United States Air Force to provide air terminal and ground handling services at Eielson Air Force Base (Eielson or the base) in Fairbanks, Alaska. As the Respondent describes it, “In essence, C2G operates the equivalent of an airport at the base.” (R Br. 9.)¹ During the relevant time period, C2G had roughly 55 employees, with about 10 working at the base in Fairbanks.² C2G won the bid for the Air Force contract at Eielson in 2012, and took over operations on October 1, 2012. CAV International had the Eielson contract prior to C2G.

The employees at Eielson primarily work either as air cargo specialists, air terminal operations controllers (ATOCs), or customer service agents. Air cargo specialists load, unload, and inspect air cargo. ATOCs manage air traffic coming in and out of the base. Customer service employees work as gate agents servicing passengers.

¹ Abbreviations used in this decision are as follows: “Tr.” for transcript; “Jt. Exh.” for joint exhibit; “GC Br.” for the General Counsel’s brief; and “R Br.” for the Respondents’ brief. Although I have included several citations to the record to highlight particular testimony or exhibits, I emphasize that my findings and conclusions are based not solely on the evidence specifically cited, but rather are based on my review and consideration of the entire record.

² C2G has other contracts with the Federal Government but they are not relevant here.

To work at Eielson, employees must obtain “secret” security clearance from the Federal Government. Employees must also be available on a 24/7 basis during all times of the year due to the sporadic nature of operations at the base. To accommodate this, C2G maintains a regular staff for all positions.

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At all relevant times, the Respondent’s owner has been Tom Copeland, and the accounting manager has been Carol Huggins.³ David Emig was the station manager.⁴

B. The Union

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Since October 1, 2012, the Respondent has recognized the Union as the exclusive bargaining representative of the following bargaining unit:

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All full-time and part-time employees, including Leads, employed by Respondent under Contract HTC711-12-C-R001, and any other successor work performed at Eielson Air Force Base, Alaska, under the aforementioned contract.

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The parties entered into a collective-bargaining agreement (CBA) on October 4, effective October 1, 2012 through September 30, 2016.⁵ During the relevant time period, Ken Johnson was the union steward. Jeremy Holan, the Union’s Business Agent, handled the C2G CBA for the Union.

The following provision of the CBA governs work hours:

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Section 9.01 Workweek and Workday. Each full time regular employee's work week will consist of no less than thirty-two (32) paid hours. A work period is defined as the time an employee reports to work and terminates twenty-four (24) hours later, where upon a new work period would begin. The Company will rotate personnel equally through shifts and workweeks if there is a need for seven (7) days per week coverage.

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a. During the exercise season the Company may hire part time seasonal employees who will not be subject to the thirty-two (32) hour work week requirement. The Company will not use this language In Article 9, Section 9.01(a) to layoff any full time regular employees.

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C. Vacation Accrual and Employment Status

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Complaint paragraphs 7 and 10 allege that the Respondent violated Section 8(a)(5) and (1) of the Act first by unilaterally rescinding vacation time employees had accrued during their first year of employment on August 18, 2015, and then by asserting on September 21, 2015, that employees hired since October 1, 2012, were part time and recalculating their accrued vacation

³ As Copeland testified at arbitration, “Carol Huggins who is our accounting manager. She's the only accounting person we got so she took the title as manager.” (Jt. Exh. 2 at 349.)

⁴ Emig stopped working for C2G in the fall of 2015.

⁵ The CBA can be found at Jt. Exh. 3, within that exhibit at Jt. Exh. 1, among other places.

leave. Complaint subparagraphs 7(c)-(e) and paragraph 9 further allege a violation of Section 8(a)(3) by virtue of the September conduct.

1. Facts

Vacation accrues at different rates for “bargaining unit employees on the active payroll of the Company” and “part time seasonal employees”⁶ as set forth in the following CBA provisions:

Section 18.01 Vacation. Employees will earn vacation based on a bimonthly payroll period with twenty-four (24) pay periods per year. Vacation selection will be based on contract seniority. Employees will be allowed to make up to three (3) choices per year. The vacation selection process will begin In November for the next calendar year. The senior person will make his or her first choice and then the next senior person will make his or her choice and It will continue until everyone has made their first choice for vacation. This process will be used for all three (3) selections. The Company will identify how many employees may be off at any one time, prior to the vacation selection process. Any open time available, after the vacation selection process has been completed, may be taken on a first come, first served basis.

Part time seasonal employees vacation will be paid out annually on their anniversary date and will accrue pro-rata based on the following:

- a. On date of hire, .038461 per hour.
- b. Beginning with an employee's fifth (5th) year of employment, 0.057692.
- c. Beginning with an employee's tenth (10th) year of employment 0.076923.
- d. Beginning with an employee's fifteenth (15th) year of employment, 0.0961538.

Section 18.02 Vacation Amounts for Employees. Vacation benefits for bargaining unit employees on the active payroll of the Company are as follows:

- a. Eighty hours (80) after one (1) year of employment, accrued at 3.33 hours per pay period.
- b. One hundred twenty hours (120) beginning with an employee's fifth (5th) year of employment, accrued at 5.00 hours per pay period.
- c. One hundred sixty (160) hours beginning with an employee's tenth (10th) year of employment, accrued at 6.67 hours per pay period.
- d. Two hundred (200) hours beginning with an employee's fifteenth (15th) year of employment, accrued at 8.33 hours per pay period.

On about September 28, 2012, prior to entering into the collective-bargaining agreement with the Union, the Respondent had offered employment to the air cargo, ATOC, and customer service employees who had been working for CAV International. The offer letters stated in pertinent part:

All positions will be part time but do not preclude any or all employees from working 32-40 hours per week, or in excess of 40 hours per week depending on contract workload.

⁶ The provision regarding holiday pay, Article 12, references these same two categories of employees.

The Company will in its discretion attempt to normalize work schedules within the constraints of a flexible and changing workload.

5 (Jt. Exh. 6.) The letter further stated, “Your signature on the enclosed Employee Handbook will signify your acceptance of this job offer.” The former CAV International employees signed the handbook and accepted the offers.⁷ Although the language stated the position was part time, the employees were “grandfathered” into their former positions and their vacation continued to accrue uninterrupted at the Section 18.02 rate.

10 As the Respondent hired new employees who had not worked for CAV International or any previous employer at the base, these employees were given offer letters with substantially the same language as the grandfathered employees, and they signed the employee handbook in acceptance of these offers. From October 2012 through mid-July 2015, all of the bargaining-unit employees were paid for at least 32 hours per week on a regular basis and accrued vacation at the
15 Section 18.02 rate starting the first year of their employment. The bargaining-unit employees hired in 2014, Glenda Evans and Allen Matthews, were assured they would work at least 32 hours and 40 hours per week, respectively. When grandfathered employee Richard Tuiletufuga received a new offer letter with this language upon transferring to a different position at C2G, the site manager assured him nothing regarding his employment would change.

20 In mid-July 2015, Copeland discovered Huggins had been granting all bargaining-unit employees leave accrual during their first years under Section 18.02. This came to light because employee Michael Smith left his employment before serving a full year and he sought payout of his accrued vacation. Copeland determined that allowing vacation to accrue under Section 18.02
25 in the first year was a mistake.⁸ The Respondent therefore took away vacation leave employees had earned during their first year of employment without notice to or an opportunity to bargain with the Union. On August 15, 2015, the Union filed a grievance seeking vacation pay for Smith’s first year of pay, but this grievance was subsequently withdrawn.⁹ The Union filed a collective grievance on behalf of the bargaining unit employees affected by this change on
30 August 24, 2105.¹⁰

35 Copeland looked into Smith’s file in response to the grievance filed on his behalf, saw Smith’s offer letter was for part-time employment, and determined that his vacation should have been calculated under Section 18.01, the rate for part-time seasonal employees. Realizing that other employees’ offer letters had the same part-time language, Copeland determined they also should have accrued vacation at the Section 18.01 rate.

On September 21, 2015, the same day the parties were scheduled for a Step-3 meeting about the collective grievance, Copeland stated that most of the bargaining-unit employees who

⁷ Military regulations require the Respondent to issue a written offer letter that the employee must sign.

⁸ I do not find the precise details of the mistake to be material, as detailed in my analysis. To be clear, I am omitting the reasons not because I did not consider them, but because the applicable legal framework renders them immaterial.

⁹ This grievance was settled after Smith was paid out for accrued vacation.

¹⁰ These employees are Chris Jones, Allen Matthews, Richard Tuiletufuga, Phillip Finney, and Glenda Evans. This grievance resulted in the Ahearn arbitration.

had not been grandfathered in were “part-time” employees, subject to the vacation accrual rate negotiated for “part-time seasonal” employees in Section 18.01.¹¹ Without notice to the Union or an opportunity to bargain, the Respondent credited these employees with the vacation they would have accrued their first year under Section 18.01, and recalculated the vacation they
 5 accrued in later years at the Section 18.01 rate.

2. Analysis

a. Deferral to Arbitrator

10 The Respondent argues that I should defer to Arbitrator Ahearn’s interpretation of Section 18.02, and find that the CBA clearly and unequivocally does not permit vacation accrual for bargaining-unit employees until after one year of employment.

15 Under *Spielberg Mfg. Co.*, 112 NLRB 1080, 1082 (1955), the Board will defer, as a matter of discretion, in cases where the arbitral proceedings appear to have been fair and regular, all parties agreed to be bound, and the arbitrator's decision is not clearly repugnant to the Act. In *Raytheon Co.*, 140 NLRB 883, 884-885 (1963), enf. denied 326 F.2d 471 (1st Cir. 1964), the Board added the requirement that the arbitrator must have considered the unfair labor practice
 20 issue. Under *Olin Corp.*, 268 NLRB 573 (1984), this is satisfied if the contractual and statutory issues are factually parallel and the arbitrator was presented generally with the facts relevant to resolving the unfair labor practice. The burden of proof is on the party opposing deferral to the arbitration award. *Airborne Freight Corp.*, 343 NLRB 580, 581 (2004).

25 Arbitrator Ahearn framed the pertinent issue before him as follows:

Whether the Employer violated the CBA by interpreting Section 18.02 to deny employees vacation accrual during their first year of employment? If so, what is the proper remedy?

30 (Jt. Exh. 4.) He decided that Section 18.02 of the CBA clearly and unambiguously states employees will not accrue vacation in their first year of employment. Accordingly, he held that C2G did not violate the CBA when it recalculated employees’ vacation accrual to exclude their first year of employment.

35 Importantly, Arbitrator Ahearn did not consider unilateral change, and the *NLRB v. Katz*, 369 U.S. 736 (1962), paradigm that forms the foundation of this decision, as analyzed below. Notably, Arbitrator Ahearn stated:

40 I further recognize that the CBA contains no provision imposing obligations under the National Labor Relations Act (NLRA). Under such circumstances, I am persuaded that well-established principles of contract interpretation preclude my consideration of the

¹¹ Copeland considered a couple of the previously-grandfathered employees, Finney and Tuiletufuga, to no longer be grandfathered because they had since bid into different positions and signed offer letters stating their employment was part time. Finney, for example, transferred into a different position in August 2015, and his first paycheck for pay date September 4 reflected vacation accrual at the 18.01 rate.

Employer's obligations to bargain in good faith or to avoid making unilateral changes under Sections 8(a) (1) and (5) of the NLRA.

...

5 In light of the foregoing I am persuaded that I lack the authority to consider the unilateral changes issues as posed by the Union as their resolution requires application of the "positive law" of the NLRA that is being addressed through the NLRB's administrative hearing process.

10 (Jt. Exh. 4.) Arbitrator Ahearn therefore did not consider any factual issues with regard unilateral change and the duty to bargain with the Union.

15 In addition, Arbitrator Ahearn's analysis did not positively factor in evidence of past practice, instead applying the law applicable to arbitrators interpreting a contract *i.e.*, when a contractual phrase's plain meaning is clear on its face, arbitrators will refuse to consider evidence of a consistent past practice. However, this strict contract interpretation, rejecting all other evidence, directly betrays an important body of well-settled law under the Act. "When parties by their uniform conduct over a period of time have given a contract a particular construction, such construction will be adopted by the courts." *Pekar v. Brewery Workers Local*
 20 *181*, 311 F.2d 628, 636 (6th Cir. 1962), cert. denied 373 U.S. 912 (1963); see also *Merrill & Ring, Inc.*, 262 NLRB 392 (1982), enforced, 731 F.2d 605 (9th Cir.1984).

25 The fact that a particular working condition or benefit is not expressly embodied in the governing collective agreement is immaterial where satisfactorily established by practice or custom. See *Citizens Hotel Company d/b/a Hotel Texas*, 138 NLRB 706, 712-713 (1962), enfd. 326 F.2d 501 (5th Cir. 1964); *Frontier Homes Corporation*, 153 NLRB 1070, 1072-1073 (1965); *Central Illinois Public Service Company*, 139 NLRB 1407, 1415 (1962), enfd. 324 F.2d 916 (7th Cir. 1963). An employer may establish a past practice by bestowing an extra benefit not embodied in the contract. *Central Illinois Public Service Company*, supra. See also
 30 *Dearborn Country Club*, 298 NLRB 915 (1990) (longstanding practice had become an extracontractual condition of employment).

35 The law on past practice is fleshed out in more detail in the discussion of the merits of the unilateral change allegations directly below. Based on this law, it is clear that by the eschewing all evidence of past-practice, important protections and expectations of bargaining-unit employees under the Act were not protected through the arbitration process alone.¹²

40 For the foregoing reasons, I find that contractual and statutory issues are not factually parallel to the alleged unilateral change before me. In addition, because the arbitrator declined to factor in evidence of clear and longstanding past practice, his interpretation of Section 8.02 is "not susceptible to an interpretation consistent with the Act." *Olin*, supra. at 574.

¹² I am not saying the arbitrator erred by applying the law applicable to arbitrations and declining to consider the Board's law, as he clearly stated he was not passing on any unfair labor practice issues, explicitly reserving them for the Board's administrative process.

It is important to note that the Respondent did not agree to defer the unfair labor practice charges to the parties' grievance-arbitration procedure. This precluded the arbitrator from considering the issues in this complaint.

b. 8(a)(5) and (1) allegations

Under Section 8(a)(1) of the Act, it is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act. The rights guaranteed in Section 7 include the right “to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . .” Under Section 8(a)(5), it is an unfair labor practice for an employer “to refuse to bargain collectively with the representative of his employees.” It is the General Counsel’s burden to prove a violation of Section 8(a)(5) and (1) by preponderant evidence.

Well-settled law provides that an employer may not change the terms and conditions of employment of represented employees without providing their representative with prior notice and an opportunity to bargain over such changes. *See NLRB v. Katz*, supra 747. Vacation accrual is clearly encompassed as a mandatory bargaining subject.

Regular and longstanding practices that are neither random nor intermittent become terms and conditions of employment. As such, these past practices cannot be changed without offering the unit employees’ collective-bargaining representative notice and an opportunity to bargain, absent clear and unequivocal waiver of this right. *Sunoco, Inc.*, 349 NLRB 240, 244 (2007), citing *Granite City Steele Co.*, 167 NLRB 310, 315 (1967); *Queen Mary Rest. Corp. v. NLRB*, 560 F.2d 403, 408 (9th Cir. 1977); *Exxon Shipping Co.*, 291 NLRB 489, 493 (1988); *DMI Distribution of Delaware*, 334 NLRB 409, 411 (2001). A past practice must occur with such regularity and frequency that employees could reasonably expect the “practice” to continue or reoccur on a regular and consistent basis. *Philadelphia Coca-Cola Bottling Co.*, 340 NLRB 349, 353-354 (2003); *Eugene Iovine, Inc.*, 328 NLRB 294, 297 (1999).

Given that the accrual of vacation benefits occurred each pay period for nearly three years, I find this practice occurred with such regularity and frequency that Respondent’s employees would have reasonably expected the “practice to continue or reoccur on a regular and consistent basis” See *Garden Grove Hosp. & Med. Ctr.*, 357 NLRB 653 (2011) (Nine months’ accrual of a reserve sick leave benefit due to a clerical error established past practice).¹³

The Respondent argues that the General Counsel did not meet her burden because she did not prove that C2G was aware of the past practice, relying on *Regency Heritage Nursing & Rehab Ctr.*, 353 NLRB 1027, 1028 (2009), citing *BSAF Wyandotte Corp.*, 278 NLRB 173, 180 (1986).¹⁴ The Respondent is correct that the Board in *Regency Heritage*, quoting *BSAF*

¹³ The General Counsel also cites to *Prime Healthcare Services-Encino, LLC*, 364 NLRB No. 128 (2016), but in that case, the individual who made the alleged error, Mary K. Schottmiller, was the Respondent’s attorney admitted agent.

¹⁴ I find *BSAF Wyandotte* distinguishable. In that case, the General Counsel alleged that the employer modified the practice of allowing two employee union representatives to have unrestricted access to other employees and supervisors for the purpose of handling grievances. In finding the General Counsel had not established a past practice, the administrative law judge, whose opinion the Board adopted, found that the testimony of the two employees was vague and unresponsive regarding the specifics of meeting with any supervisors while on “union time.” In addition it was undisputed that the employer was *never* aware

Wyandotte Corp stated, “[i]t is implicit in establishing a past practice that the party which is being asked to honor it”— here, the Respondent—“be aware of its existence.” Id. In *Garden Grove Hosp.*, however, the fact that the error was clerical, and not knowingly committed by a manager, supervisor, or agent, did not take it outside the realm of past practice. The clerical error in that case was discovered when two nonsupervisory employees in the accounting department reviewed the employer’s balance sheets with the CFO who, upon discovery, corrected the error. Even though the CFO promptly corrected the error once he knew about it, a past practice was still established based on the length of time the error persisted.¹⁵

While *Regency Heritage* and *Garden Grove Hosp.*, cases are somewhat at odds, they are not irreconcilable. This is because Huggins’ actions in independently and permissibly exercising control over payroll had the appearance of being C2G’s actions. When determining employer liability for the acts of employees, “the crucial question is whether, under all the circumstances, the employees could reasonably believe that [the nonsupervisor] was reflecting company policy, and speaking and acting for management . . .” *Regal Shoe Shops*, 249 NLRB 1210, 1215 (1980), quoting *Aircraft Plating Company, Inc.*, 213 NLRB 664 (1974). Though she is not alleged as an agent or supervisor, Huggins clearly had the authority to manage payroll with little to no oversight. As nobody other than Huggins effectively oversaw payroll, and she was the person C2G left in charge of calculating and inputting employees’ vacation accrual, I find it reasonable for employees to believe her actions were taken in line with management’s wishes.¹⁶ Indeed, an August 27, 2015, letter from Station Manager Emig to Holan regarding the collective grievance states:

As discussed in our meeting, submitting the employees’ timecards is my only direct involvement regarding pay matters. The actual processing of pay and vacation matters are processed by the company Accounting Manager, Carol Huggins.

(Jt. Exh. 3.) In short, the practice of calculating vacation accrual in the employees’ first year was originally initiated by the employer’s action, without the Union’s involvement. The discontinuance of this practice was likewise initiated by the employer’s decision, not the Union’s.

Here, the fact that employees accrued vacation during the first year of employment under 18.02 unabated for nearly three years is telling. I find that in light of this longstanding practice,

of the employees’ activities while they were on “union time,” including any discussions with supervisors. Id. at 180. The situation in *BASF Wyandotte* concerned union members and their employee union representatives, and did not involve any seeming action by the employer of implementing, taking action in accordance with, and/or perpetuating the union representatives’ actions of meeting with supervisors in unrestricted fashion. Here, Huggins, with zero involvement from union members or union representatives, did all of these things with regard to vacation accrual. The same rationale holds true for *Regency Heritage*.

¹⁵ In its brief in support of its exceptions in *Garden Grove Hosp.*, counsel for the Respondent argued, to no avail, that no past practice was established because the Respondent was not aware the reserve sick leave was accruing until discovered by the CFO. The brief is available on the Board’s website at <https://www.nlr.gov/case/21-CA-039031>.

¹⁶ As the record makes clear, Huggins was the point of contact for employees with questions about payroll. (Jt. Exhs. 2, 3, 6.)

the Union’s interpretation is eminently reasonable. “Where past practice has established a meaning for language that is used by the parties [in their agreement], the language will be presumed to have the meaning given it by past practice.” *Pan-Adobe*, 222 NLRB 313, 325 (1976), quoting *Pekar v. Local 181, Brewery Workers*, *supra*.

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The relevant provision of Section 18.02 states:

Vacation benefits for bargaining unit employees on the active payroll of the Company are as follows:

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- a. Eighty hours (80) after one (1) year of employment, accrued at 3.33 hours per pay period.

Do employees get to take two weeks of vacation, which has accrued at 3.33 hours per pay period, after a year of employment? This seems easily plausible. After all, per the language of the provision, “[v]acation benefits for bargaining unit employees are . . . Eighty hours (80) after one (1) year of employment . . .” followed by the method by which this benefit is accrued. In other words, the employees receive 80 hours of accrued vacation benefits after one year at the prescribed accrual rate.¹⁷ I find this construction is reasonable and it is the only construction consistent with past practice.

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Even if a reviewing authority finds I erred by not deferring to Arbitrator Ahearn’s determination that the CBA clearly states that no vacation even accrues under Section 18.02 until after a year, this does not change the outcome. Under the legal principles I am bound to apply, the Respondent plainly provided an extra-contractual benefit in the form of an additional year of accrued vacation for nearly three years, and thus established a past practice of so doing.¹⁸

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It is undisputed that most of the employees’ vacation accrual was recalculated again under the Section 18.01 rate for part-time seasonal employees in or around September 2015, with no notice to the Union or opportunity to bargain.¹⁹ This recalculation was based on the language in the employees’ offer letters stating their employment was part time.

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¹⁷ Section 8.01, by contrast, states precisely when vacation starts accruing.

¹⁸ The General Counsel asserts that the Respondent violated the Act by changing its “new hires” employment status from full-time to part-time in September 2015. (GC Br. 31.) Arbitrator Snider, however, determined that nothing precluded the Respondent from hiring part-time employees (as opposed to part-time seasonal employees) even if they essentially worked full-time hours. I defer to this ruling under the *Spielberg/Olin* standards articulated above, finding the General Counsel has not proved his decision, as applied here, runs afoul of those standards. The General Counsel has not established past-practice of formally labeling new employees, including the grandfathered employees who bid for and transferred into new positions, as full-time, only a past practice of promising and giving the employees at least 32 (or in some cases more) hours per week and granting them vacation accrual at the 18.02 rate applicable to all bargaining-unit members from the start of their employment.

¹⁹ The Union filed a grievance on September 28, 2015, regarding whether employees could be classified as part-time under the CBA. This resulted in the Snider arbitration.

With regard to whether the employees should accrue vacation under Section 18.01 or Section 18.02, this requires little analysis. As Arbitrator Snider determined, Section 18.02 by its terms applies to bargaining-unit employees regardless of full-time or part-time status. This is consistent with C2G’s practice until September 21, 2015. Neither arbitrator made findings inconsistent with this, so the issue of deferral does not arise with regard to the September 21, 2015 unilateral change.

The Respondent asserts that the changes to the employees’ vacation accrual were not material. The duty to bargain only arises if the changes are “material, substantial and significant.” *Alamo Cement Co.*, 281 NLRB 737, 738 (1986); *Flambeau Airmold Corp.*, 334 NLRB 165, 171 (2001). The General Counsel bears the burden of establishing this. *North Star Steel Co.*, 347 NLRB 1364, 1367 (2006).²⁰ The Board has held that the manner in which leave accrues is a term and condition of employment that may not be unilaterally changed. See *Rosdev Hospitality, Secaucus*, 349 NLRB 202 (2007). I therefore find any argument by the Respondent that such a change was not material, substantial, or significant lacks merit.

Based on the foregoing, I find the General Counsel has met her burden to prove the Respondent violated Section 8(a)(5) and (1) by unilaterally rescinding the first year of employees’ vacation accrual, and then by recalculating employees’ vacation accrual at a different rate.²¹

c. The 8(a)(3) allegation

The complaint further alleges, at sub-paragraphs 7(d) and (e), that the Respondent violated Section 8(a)(3) and (1) of the Act, asserting the September 2015 changes to the vacation accrual rates for employees hired after October 2012, were taken in retaliation for the Union’s class-action grievance.

Section 8(a)(3) of the Act states it is an unfair labor practice for an employer “by discrimination in regard to hire or tenure of employment . . . to encourage or discourage membership in any labor organization.” *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), governs mixed-motive cases where discriminatory intent is alleged. To prove a violation under *Wright Line*, the General Counsel must make an initial showing “sufficient to support the inference that protected conduct was a ‘motivating factor’ in the employer’s decision.” 251 NLRB at 1089. The elements commonly required to support this showing are union activity, employer knowledge of that activity, and antiunion animus by the employer. *Briar Crest Nursing Home*, 333 NLRB 935, 936 (2001). If this is accomplished, the burden shifts to the employer “to demonstrate that the same action would have taken place even in the absence of the protected conduct.” *Id.* The employer cannot carry this burden merely by showing that it also had a legitimate reason for the action, but must persuade, by a preponderance of the evidence, that the action would have taken place absent the protected activity. *Dentech Corp.*, 294 NLRB 924, 956 (1989).

It is undisputed that the Union filed a collective grievance and Copeland knew about it by September 2015. Thus the only remaining element for the General Counsel’s initial showing is proof of unlawful motivation based on antiunion animus.

²⁰ I agree with the Respondent’s assertion that, particularly in light of Arbitrator Ahearn’s ruling, labeling employees as part time (as opposed to part time seasonal) rather than full time, with no change at all to the number of hours they worked, was not a material change.

²¹ The parties referenced various employees’ individual circumstances. I am deciding whether there was a unilateral change. How any remedy will apply to different individual employees is a matter for compliance if necessary.

Unlawful employer motivation may be established by circumstantial evidence, including among other things: (1) the timing of the employer’s adverse action in relationship to the employee’s protected activity; (2) the presence of other unfair labor practices, (3) statements and actions showing the employer’s general and specific animus; (4) the disparate treatment of the discriminatees; (5) departure from past practice; and (6) evidence that an employer’s proffered explanation for the adverse action is a pretext. See *Golden Day Schools v. NLRB*, 644 F.2d 834, 838 (9th Cir. 1981); *NLRB v. Rain-Ware, Inc.*, 732 F.2d 1349, 1354 (7th Cir. 1984) (timing); *Mid-Mountain Foods, Inc.*, 332 NLRB 251, 260 (2000), enfd. mem. 169 LRRM 2448 (4th Cir. 2001); *Richardson Bros. South*, 312 NLRB 534 (1993) (other unfair labor practices); *NLRB v. Vemco, Inc.*, 989 F.2d 1468, 1473–1474 (6th Cir. 1993); *Affiliated Foods, Inc.*, 328 NLRB 1107 (1999)(statements); *Naomi Knitting Plant*, 328 NLRB 1279, 1283 (1999)(disparate treatment); *JAMCO*, 294 NLRB 896, 905 (1989), affd. mem. 927 F.2d 614 (11th Cir. 1991), cert. denied 502 U.S. 814 (1991) (departure from past practice); *Wright Line*, 251 NLRB at 1089; *Roadway Express*, 327 NLRB 25, 26 (1998) (disparate treatment).

I find the General Counsel has not met her burden to prove Copeland acted out of anti-union motivation in retaliation for the class-action grievance. The General Counsel primarily relies on timing, pointing out that Copeland’s announcement of this change came the same day the parties were to have a Step 3 meeting on the class-action grievance. Specifically, the General Counsel stated, “After all, after more than a month of clinging to its position that its new hires were full-time employees subject to vacation accrual under § 18.02 of the CBA (just not within their first years of employment), Respondent did an outright about-face after the collective grievance was filed.” (R Br. 33.) It is abundantly clear, however, that both parties were confused about how vacation accrual should be calculated under the CBA.

Moreover, the timing argument cuts both ways. Yes, Copeland changed his position while the collective grievance was very active. But, he also changed his position on the heels of a whirlwind of activity causing him to take a closer look at how employees were classified and paid than he had done in the past. Specifically, as the Respondent notes, Copeland looked into Smith’s file in response to his grievance, saw his offer letter was for part-time employment, and determined (albeit erroneously in the end) that his vacation should have been calculated under Section 18.01. This set in motion his discovery that other employees were in the same position.

The General Counsel also points to the fact that Copeland changed his position “despite the extensive evidence in the record that its new hires had been treated as full-time employees under the CBA for all intents and purposes throughout their entire tenure of employment to that point.” Arbitrator Snider, however, determined:

[T]he collective bargaining agreement does not prohibit the Company from hiring part-time employees who are not part-time seasonal employees. The fact that the Company may schedule a part-time employee for 32 or more hours per week to meet its staffing needs does not convert an employee hired as part-time to a full-time employee.

(Jt. Exh. 7.) I do not hold Copeland to the standard of knowing the Board’s law on past practice, and I therefore do not find he acted with unlawful intent in this regard.²² While he erroneously

²² In response to a question about his familiarity with the Board processes and the Act, Copeland

conflated “part-time” and “part-time seasonal” employees, I do not find this to be evidence of discriminatory intent.²³

5 The General Counsel also observes that Copeland’s revised determination negatively
 impacted two grandfathered employees who had since re-bid to new positions and had therefore
 signed new offer letters with the “part-time” language. The General Counsel argues,
 “Respondent’s expansion of its first unilateral change to also impact two longtime bargaining
 10 Unit members demonstrated its animus against Unit employees’ protected activities in protesting
 the first change through their collective bargaining representative.” (R Br. 34.) I find this
 argument unpersuasive. There is no evidence whatsoever, nor is there an allegation in the
 complaint, that Copeland “targeted” any particular employees. The previously-grandfathered
 employees were impacted in the same manner as the other bargaining-unit employees who had
 not been grandfathered. Moreover, it is not clear that employees were disadvantaged by
 Copeland’s actions. It is undisputed that employees classified as part time sometimes worked
 15 more than 32 hours per week, which could result in accrual under Section 18.01 being greater
 than accrual under Section 18.02. Also, at the time, Copeland was operating under his belief that
 employees did not accrue vacation until after a year of employment under Section 18.02. As
 such, classification of employees under Section 18.01 did not result in a windfall for the
 Respondent.²⁴

20 I agree with the Respondent that the General Counsel’s evidence of animus is
 speculative. My impression is that Copeland was doing his best to sort out how his employees
 should accrue vacation in light of their employment status per their offer letters and a collective-
 bargaining agreement that proved less than clear.

25 I further credit Copeland’s testimony about his motivation. As he testified, “We’re just
 trying to give them what they -- what the collective bargaining agreement says they should have
 gotten. We had a dispute as to what that language meant.” (Tr. 76.) Copeland also credibly
 testified that Smith was one of the best employees he’d ever had, and he had tried to promote
 30 him to management, and he did promote bargaining-unit employee Jones to manager. Finally, as
 the Respondent notes, Copeland hired the former CAV employees, who had been represented by
 the Union, and promptly worked to enter into a new 4-year CBA with the Union. There is no
 evidence of any general animus toward unions, and other than timing which is addressed above,
 there is no persuasive evidence of animus stemming from the collective grievance specifically.

35 As the General Counsel has not satisfied her initial *Wright Line* burden, I recommend
 dismissal of the Section 8(a)(3) allegations.²⁵

testified, “It’s fair to say I am very unfamiliar.” (Tr. 86.)

²³ As Copeland testified, “I honestly believe they were part-time seasonal. And I still believe that,
 even though I was overruled by the arbitrator.” (Tr. 76.)

²⁴ As settlement of the Smith grievance makes clear, the amounts under Section 18.01 and Section
 18.02 in the end may be substantially similar. The Union claimed the Smith grievance settlement figure
 was calculated at the § 18.02 rate, while Respondent claimed it was calculated at the § 18.01 rate. In
 Smith’s case, “either approach resulted in the roughly same number of vacation hours.” (R Br. 10 at fn.
 8.)

²⁵ Because I have determined the General Counsel’s *Wright Line* burden has not been met, I find it
 unnecessary to determine whether the Section 8(a)(3) allegations should be dismissed pursuant to *Dubo*

D. Offer Letters

Complaint paragraphs 6, 8, and 9 allege the Respondent violated Section 8(a)(5) and (1) of the Act when Copeland issued offer letters to bargaining-unit employees stating:

- The employee’s employment is “at-will;”
- The employee has no “contract or other guarantee of employment or employment terms;”
- “[T]he terms and conditions of your employment will be set by C2G Ltd. Co.” and
- The Respondent can “alter or amend at its sole discretion their terms and conditions of employment and its employment policies and procedures.”

1. Facts

Since April 2014, bargaining-unit employees have signed offer letters with the following language:

While your employment will be at will, and neither this letter nor, the previous signed Employee Guidelines are intended to create a contract or other guarantee of employment or employment terms, this letter and the Employee Guidelines are intended to provide you with a general overview of the initial terms and conditions of employment offered to you.

...

Except where otherwise stated or required by law, the terms and conditions of your employment will be set by C2G Ltd. Co. Thus, while C2G Ltd. Co will continue to provide economic terms included in the CBA [sic]. Any initial terms and conditions of employment not already mandated by law or addressed in this letter or the enclosed Employee Guidelines will be in accordance with C2G Ltd. Co. standard policies, procedures and/or practices. Of course, the Company reserves the right to the maximum extent permitted by law to alter or amend in its sole discretion the terms and conditions of employment and its employment policies and procedures.

(See, e.g. Jt. Exh. 3 at Union exhibits 5, 26, 31.)

As noted above, the letters also stated, “Your signature on the enclosed Employee Handbook will signify your acceptance of this job offer.” The handbook, in turn, stated “In the event employees are covered by a Collective Bargaining Agreement (CBA), those provisions contained in the CBA take precedence over this employee handbook.”

The letter was the essentially the same as the one CAV had used when hiring its employees. As Copeland testified, “We just took the letter and copied it almost verbatim.” (Tr. 65.)

The collective-bargaining agreement, at Section 10.01, provides in pertinent part, “The Company shall not discharge nor suspend any employee without just cause.” Section 5.02 of the CBA, entitled “Extra Contract Agreements” states, “The Company agrees not to enter into any agreement or contract with employees covered by this Agreement, individually or collectively,
 5 which in any way conflicts with the terms and provisions of this Agreement. Any such agreement shall be null and void.”

2. Timeliness

10 The Respondent argues that this allegation is untimely. Under Section 10(b) of the Act, an unfair labor practice charge must be filed within 6 months of the alleged unfair labor practice. The Board charge was filed on November 4, 2015. The Respondent correctly asserts that the Union knew about the language in the offer letters since 2012 for the grandfathered employees and since at least May 2014 for other employees.

15 The Board, however, has consistently held that the 10(b) period does not begin to run until the charging party has “clear and unequivocal notice” of the violation. See, e.g., *A&L Underground*, 302 NLRB 467, 469 (1991). I agree with the General Counsel that the Union did not become aware that the letters were potentially being used to impact the employees’ terms and conditions of employment until September 2015. Until that point, the employees had been
 20 assured, both through practice and by conversations with management, that the language in the offer letters was not important, and they were merely form letters carried over from CAV. Specifically, until September 4, 2015, when Smith discovered he had accrued vacation at the Section 18.01 part-time seasonal rate, the Union understood that the bargaining-unit employees were accruing vacation under Section 18.02, and were not considered to be or treated as “part
 25 time seasonal” employees. As discussed at length above, this understanding was borne out of a longstanding past practice. As of September 4, the Respondent had begun treating most of the bargaining-unit employees as “part time seasonal” employees, basing its rationale for doing so on the offer letters.²⁶ Only at this point in time did the Union reasonably suspect the Respondent
 30 was using the language of the offer letters to impact bargaining-unit employees’ terms of employment in a manner it deemed inconsistent with the CBA and the law.

35 The Board in *A&L Underground*, supra., also held that if the employer does not fully repudiate a contract, but only breaches its provisions, each successive breach is a separate unfair labor practice unrelated to previous breaches. That one or more of the breaches occurred outside the 10(b) period does not bar a complaint alleging contract violations within the 10(b) period. There is no dispute that some of the offer letters were within the statutory time limit.²⁷ Based on the foregoing, the Respondent’s timeliness arguments fail.

40

²⁶ Arbitrator Ahearn ordered reclassification of the employees named in the collective grievance to full time status. Arbitrator Snider, though finding that the Respondent could hire part-time employees under the CBA, determined that none of the bargaining-unit employees were offered “part time seasonal” work.

²⁷ For example, Phillip Finney’s offer letter was on August 14, 2015. (Jt. Exh. 3 at U Exh. 5.)

3. 8(a)(1) Allegation

The basic test for a violation of Section 8(a)(1) is whether under all the circumstances the employer's conduct would reasonably tend to restrain, coerce, or interfere with employees' rights guaranteed by the Section 7 of the Act. *Mediplex of Danbury*, 314 NLRB 470, 472, (1994); *Sunnyside Home Care Project, Inc.*, 308 NLRB 346 fn. 1 (1992), citing *American Freightways Co.*, 124 NLRB 146, 147(1959). Further, "It is well settled that the test of interference, restraint, and coercion under Section 8(a)(1) of the Act does not turn on the employer's motive or on whether the coercion succeeded or failed." *American Tissue Corp.*, 336 NLRB 435, 441 (2001) (citing *NLRB v. Illinois Tool Works*, 153 F.2d 811, 814 (7th Cir. 1946)).

It is the General Counsel's burden to prove Section 8(a)(1) allegations by a preponderance of the evidence. 29 U.S.C. § 160.

Looking at the totality of the circumstances, I find that until September 2015, the offer letters did not violate Section 8(a)(1), in light of the context surrounding their initial presentation. The grandfathered employees had been assured that nothing about their employment would change, and the employees hired later had been assured they would receive at least 32 or 40 hours of employment despite the language in the offer letters. The employees and the Union both acquiesced to this practice beginning in 2012. It is also clear that up to that point the Union viewed the offer letters as non-binding, as illustrated by Holand's testimony about Tuiletufuga's May 2014 offer letter:

In my line of work, I see letters like this. A lot of the companies that have numerous areas that are union and nonunion, it's a standard form letter. And with the manager telling him that nothing was going to change, it didn't raise any red flags for me, because the contract would prevail at that point.

...

I mean, you see them in the back of employee handbooks, also, that say you're at will, but it -it is also signed saying that a - - the CBA prevails. So there would have been no issue, because he was being paid at that time as full-time.

(Jt. Exh. 3 at Tr. 254-255.)

Once Smith's offer letter was relied upon to assert that he, and then later most of the bargaining-unit employees, should accrue vacation at the part-time seasonal rate, however, I find the employees would reasonably be coerced by the terms of the offer letters identified above. Smith discovered this on his paycheck ending September 4, 2015. At this point, from the employees' perspective, what they believed was their bargained-for right to vacation accrual under the terms of the CBA was now being trumped by the part-time language in their offer letters. That language was utilized to change a term and condition of their employment. It would be reasonable, and quite logical, for the employees to believe the offer letters had taken on new and heightened significance and that the letters' terms could, notwithstanding the handbook

and contract language that the CBA prevails, be used by the Respondent to circumvent the CBA.²⁸

5 Based on the foregoing, I find that the General Counsel has met her burden to reliance on the maintained offer letters violated Section 8(a)(1) as of September 4, 2015.

4. 8(a)(5) and (1) Allegations

10 The General counsel asserts that by relying on the offer letters to justify its unilateral change to bargaining-unit employees' vacation accrual rates, the Respondent violated Section 8(a)(5). This is essentially the same allegation set forth in complaint paragraph 7, discussed above, so I will not re-analyze it here.²⁹

15 The General Counsel also asserts that by offering bargaining-unit employees employment terms that were contrary to the CBA and its past practice, Respondent engaged in direct dealing.

20 To establish that an employer violated Section 8(a)(5) and (1) of the Act by engaging in direct dealing, the General Counsel must show: (1) that the employer was communicating directly with union-represented employees; (2) the discussion was for the purpose of establishing or changing wages, hours, and terms and conditions of employment or undercutting the Union's role in bargaining; and (3) such communication was made to the exclusion of the Union. *Permanente Medical Group*, 332 NLRB 1143, 1144 (2000) (citing *Southern California Gas Co.*, 316 NLRB 979 (1995)).

25 The employer communicated directly with at least two bargaining-unit employees—Tuietufuga and Finney—by sending them offer letters for positions they sought transfers into through the Respondent's bidding process. Once the other non-employee applicants signed the handbook signifying acceptance of their offers, the letter constituted a communication with them. The letters were clearly at least in part intended to establish wages and other working conditions, 30 as the wages, part-time employment status, and some other employment terms appear on their faces. Moreover, as discussed above, the letters were the basis for the Respondent determining employees should accrue vacation at the part-time seasonal rate. This announcement and change to the employees' vacation accrual was done without notice to the Union. Finally, the offer letters were addressed directly to the employees, and the decision to utilize the letters to change 35 the vacation accrual status of the employees was done to the Union's exclusion.

40 Based on the foregoing, I find the General Counsel has met her burden to prove the Respondent engaged in direct dealing.

²⁸As the General Counsel notes, by specifically referencing the CBA's economic terms while reserving the right to unilaterally change any other employment terms, a reasonable employee reading the offer letter would be left with the impression that the Respondent could and might violate the CBA's non-economic provisions.

²⁹This argument, at R Br. 40–41, strays from the allegations in complaint paragraph 6, which does not reference full-time/part-time status or vacation accrual.

CONCLUSIONS OF LAW

1. The Respondent has violated Section 8(a)(5) and (1) of the Act by making unilateral changes to bargaining-unit employees' terms and conditions of employment and by engaging in direct dealing with bargaining-unit employees.

2. The Respondent has violated Section 8(a)(1) of the Act by sending offer letters that coerced bargaining-unit employees in their Section 7 rights.

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

4. The Respondent did not otherwise engage in any other unfair labor practices alleged in the complaint.

REMEDY

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

Having found that the Respondent implemented unilateral changes to the manner in which employees' vacation accrued, I shall order the Respondent to rescind any such change that has not already been rescinded.³⁰ Restoration to the status quo ante is presumptively appropriate to remedy unlawful unilateral changes. *Southwest Forest Industries*, 278 NLRB 228–228 (1986), enfd. 841 F.2d 270 (9th Cir. 1988). Accordingly, I shall order recalculation of bargaining-unit employees' vacation at the rate set forth in Section 18.02 of the collective-bargaining agreement, accruing during the employees' first year of employment, to the extent this has not already occurred.

Having found that the Respondent engaged in direct dealing with employees and coerced employees in the exercise of their Section 7 rights by issuing letters that, in connection with the Respondent's actions of changing employees' vacation accrual rates to those applicable to part-time seasonal employees would reasonably cause employees to believe interfered with their Section 7 rights, I shall order the Respondent to cease and desist from this action and to rescind the coercive language from the offer letters.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³¹

³⁰ Certain actions have already been taken pursuant to the arbitrators' awards.

³¹ 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

5 The Respondent, C2G Ltd. Co., South Carolina, its officers, agents, successors, and
assigns, shall

1. Cease and desist from

- 10 a. interfering with represented employees’ exercise of Section 7 rights by issuing
offer letters requiring them to acknowledge that their employment is "at-will,"
that they have “no contract or other guarantee of employment,” and that their
terms and conditions of employment will be “set solely by” Respondent,
15 despite the fact that they are represented by the Union and their employment
is subject to a collective-bargaining agreement Respondent has negotiated
with the Union;
- 20 b. treating bargaining-unit employees as “part time seasonal” employees and
changing represented employees’ vacation accrual rate from the amount
accrued under Section 18.02 of the parties’ collective-bargaining agreement
with the Union for represented employees to the amount accrued under
Section 18.01 of that collective-bargaining agreement for part-time seasonal
employees without first notifying and bargaining with the Union;
- 25 c. breaching its past practice of awarding represented employees vacation leave
accrual at the Section 18.02 rate during their first year of employment, without
first notifying and bargaining with the Union;
- 30 d. dealing directly with represented employees over changes to their
employment status and/or vacation accrual rates, to the exclusion of the
Union;
- 35 e. refusing to meet and discuss in good faith with the Union any proposed
changes to represented employees’ wages, hours, and working conditions
before putting such changes into effect; and
- f. in any like or related manner interfering with employee rights under Section 7
of the Act.

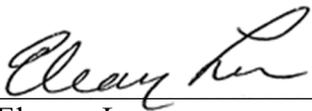
40 2. Take the following affirmative action necessary to effectuate the policies of the
Act:

- 45 a. rescind and revise the employment offer letters Respondent has issued to its
represented employees since 2014 regarding the provisions referred to in
paragraph 1(a), above;

- 5 b. restore all of its represented employees' accrued vacation leave, including any
vacation leave employees accrued at the § 18.02 rate during their first years of
employment, to what it was before Respondent changed it first in August
2015 and then again in September 2015, without first notifying and bargaining
with the Union.
- 10 c. remove from its files and destroy all employment offer letters Respondent has
issued to its represented employees since 2014 containing the language
referred to in paragraph 1(a) above, and inform all affected Unit employees
that this has been done and that their signatures accepting such offer letters
will not be used against them in any way.
- 15 d. Within 14 days after service by the Region, post at the facility where it
operates in Fairbanks, Alaska, copies of the attached notice marked
"Appendix."³² Copies of the notice, on forms provided by the Regional
Director for Region 19, after being signed by the Respondent's authorized
representative, shall be posted by the Respondent and maintained for 60
20 consecutive days in conspicuous places including all places where notices to
employees are customarily posted. In addition to physical posting of paper
notices, the notices shall be distributed electronically, such as by email,
posting on an intranet or an internet site, and/or other electronic means, if the
Respondent customarily communicates with its employees by such means.
Reasonable steps shall be taken by the Respondent to ensure that the notices
25 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 August 18, 2015.
- 30 e. Within 21 days after service by the Region, file with the Regional Director a
sworn certification of a responsible official on a form provided by the Region
attesting to the steps that the Respondent has taken to comply.

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

40 Dated, Washington, D.C. July 26, 2018


Eleanor Laws
Administrative Law Judge

³² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL recognize and bargain with General Teamsters Local 959, State of Alaska, affiliated with the International Brotherhood of Teamsters (“Union”), as the exclusive collective bargaining representative of our employees in the following unit regarding their terms and conditions of employment:

All full-time and part-time employees, including Leads, employed by us under Contract HTC711-12-C-R001, and any other successor work performed at Eielson Air Force Base, Alaska, under the aforementioned contract.

WE WILL NOT interfere with your exercise of the above rights by requiring you to acknowledge that you work for us as an “at-will” employee who has “no contract or other guarantee of employment” or that your terms and conditions of employment will be “set solely by the Employer” despite that you are represented by a Union and your employment is subject to a collective bargaining agreement we have negotiated with your Union, and WE WILL remove and destroy any offer letter you signed containing those terms and inform you that this has been done and that your signatures on such offer letters will not be used against you in any way.

WE WILL NOT, without first bargaining with your Union, change your vacation accrual rate from the amount accrued under Section 18.02 of the collective bargaining agreement we have with your Union to the amount accrued under Section 18.01 of that collective bargaining agreement.

WE WILL NOT breach our past practice of awarding you vacation leave accrual at the Section 18.02 rate during your first year of employment without first notifying and bargaining with your Union.

WE WILL NOT deal directly with you over changes to your employment status and/or vacation accrual rate without the involvement of your Union.

WE WILL NOT refuse to meet and discuss in good faith with your Union any proposed changes to your wages, hours, and working conditions before putting such changes into effect.

WE WILL restore all of your accrued vacation leave, including any vacation leave you accrued at the Section 18.02 rate during your first year of employment, to what it was before we changed it during the pay period ending on August 6, 2015, and then changed it again on September 4, 2015, without first notifying and bargaining with your Union.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the National Labor Relations Act.

C2G LTD. CO.

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

915 2nd Avenue, Room 2948, Seattle, WA 98174-1078
(206) 220-6300, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/19-CA-163444 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (206) 220-6284.