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Cascades Containerboard Packaging-Lancaster, A Division of Cascades New York, Inc. and Graphic Communications Conference/International Brotherhood of Teamsters, Local 503-M. Case 03–CA–210207

April 22, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN
AND EMANUEL

On November 23, 2018, Administrative Law Judge Kimberly R. Sorg-Graves issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and the Charging Party each filed an answering brief, and the Respondent filed a reply brief. In addition, the General Counsel filed cross-exceptions and a supporting brief, and the Respondent filed an answering brief.

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 briefs¹ and has decided to affirm the judge’s rulings, findings,² and conclusions and to adopt the recommended Order as modified and set forth in full below.³

ORDER

The National Labor Relations Board orders that the Respondent, Cascades Containerboard Packaging-Lancaster, A Division of Cascades New York, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Graphic Communications Conference/International Brotherhood of Teamsters, Local 503-M (Local 503) as the exclusive collective-bargaining representative of employees in the bargaining unit.

¹ The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

² 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.

³ The judge’s recommended remedy included both a broad order to cease and desist from violating the Act “in any other manner” and a public reading of the notice by a Board agent or responsible management

(b) Failing and refusing to continue in effect all the terms and conditions of the collective-bargaining agreement covering unit employees in effect from October 2, 2016, to October 1, 2020, by repudiating the grievance-arbitration procedure set forth in article 5 of that agreement.

(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) Recognize and, on request, bargain with Local 503 as the exclusive collective-bargaining representative of employees in the following appropriate unit:

All employees employed by the Respondent at its 4444 Walden Avenue, Lancaster, New York location, for only the hourly production and maintenance employees and truck drivers and excluding all other employees at its Lancaster Facility.

(b) Give full force and effect to the 2016–2020 collective-bargaining agreement, including the grievance-arbitration procedure set forth in article 5 of that agreement.

(c) Waive any procedural time limits to the filing or resumption of processing of any grievance that arose or was in any stage of the grievance-arbitration process at any time between August 25, 2017, and the date when the Respondent posts the attached notice marked “Appendix,” and allow a 14-day period from the notice-posting date for the filing or the resumption of processing of any such grievances.

(d) Within 14 days after service by the Region, post at its Lancaster, New York facility copies of the attached notice marked “Appendix.”⁴ Copies of the notice, on forms provided by the Regional Director for Region 3, 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

official. Neither of these extraordinary remedies is warranted in this case. See, e.g., *Bodega Latina Corp. d/b/a El Super*, 367 NLRB No. 34, slip op. at 1 (2018). We accordingly amend the judge’s remedy to substitute the standard narrow cease-and-desist order and to remove the notice-reading remedy. We shall modify the judge’s recommended Order and substitute a new notice to conform to these changes and the Board’s standard remedial language.

⁴ 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.”

shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, 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 the Lancaster, New York facility any time since August 25, 2017.

(e) Within 21 days after service by the Region, file with the Regional Director for Region 3 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 22, 2019

John F. Ring, Chairman

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 fail and refuse to recognize and bargain with Graphic Communications Conference/International Brotherhood of Teamsters, Local 503-M (Local 503) as the exclusive collective-bargaining representative of employees in the bargaining unit.

WE WILL NOT fail and refuse to continue in effect all the terms and conditions of the collective-bargaining agreement covering unit employees in effect from October 2, 2016, to October 1, 2020, by repudiating the grievance-arbitration procedure set forth in Article 5 of that agreement.

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 recognize and, on request, bargain with Local 503 as the exclusive collective-bargaining representative of employees in the following appropriate unit:

All employees employed by us at our 4444 Walden Avenue, Lancaster, New York location, for only the hourly production and maintenance employees and truck drivers and excluding all other employees at its Lancaster Facility.

WE WILL give full force and effect to the 2016-2020 collective-bargaining agreement, including the grievance-arbitration procedure set forth in Article 5 of that agreement.

WE WILL waive any procedural time limits to the filing or resumption of processing of any grievance that arose or was in any stage of the grievance-arbitration process at any time between August 25, 2017 and the date when the Respondent posts this notice to employees, and WE WILL allow a 14-day period from the date of this notice for the filing or the resumption of processing of any such grievances.

CASCADES CONTAINERBOARD PACKAGING-
LANCASTER, A DIVISION OF CASCADES NEW
YORK, INC.

The Board's decision can be found at <http://www.nlr.gov/case/03-CA-210207> 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.



Jesse Feuerstein, Esq., for the General Counsel.
Ian B. Bogaty and *Henry S. Shapiro, Esqs.*
(Jackson Lewis P.C.), for the Respondent.
Daniel Kornfeld, Esq. (Blitman & King LLP),
 for the Charging Party.

DECISION

STATEMENT OF THE CASE

KIMBERLY R. SORG-GRAVES, Administrative Law Judge. On November 20, 2017, Graphic Communications Conference/International Brotherhood of Teamsters, (International Union) Local 503-M (Local 503) filed Case 03-CA-210207 with Region 3 of the National Labor Relations Board (Board) alleging that Cascades Containerboard Packaging—Lancaster, a Division of Cascades New York, Inc. (Respondent) failed and refused to bargain with Local 503 by failing to keep in effect and adhere to all the terms and conditions of the collective-bargaining agreement with Local 503 and by unlawfully withdrawing recognition of Local 503 as the exclusive collective-bargaining representative of a certain group of its employees in violation of Section 8(a)(5) and (1) of the National Labor Relations Act (Act). On February 6, 2018, the Region issued the complaint in this matter.¹ (GC Exh. 1(a) and 1(c).)²

I heard this matter on April 30 - May 2, 2018, in Buffalo, New York, and I afforded all parties a full opportunity to appear, introduce evidence examine and cross-examine witnesses, and argue orally on the record.³ General Counsel, Respondent, and Charging Party filed posttrial briefs in support of their positions.

After carefully considering the entire record, including my observation of the demeanor of the witnesses, and the parties' briefs I find that

¹ In response to General Counsel's request to amend the complaint to allege that Chris Debinski is a supervisor as defined by Sec. 2(11) of the Act, Respondent stipulated that Debinski is a supervisor as defined by Sec. 2(11). (Tr. 8; 276.)

² Abbreviations used in this decision are as follows: "Tr." for the Transcript, "GC Exh." for the General Counsel's exhibits and "R. Exh." for Respondent's exhibits. Specific citations to the transcript and exhibits are included where appropriate to aid review, and are not necessarily exclusive or exhaustive. My findings and conclusions are not based solely on the record citations contained in this decision, but rather are based upon my consideration of the entire record for this case.

³ Charging Party Local 503 submitted a motion to correct the record contending that a statement made by witness William Wilson, Jr. was incorrectly omitted on p. 377 at L. 17. No other party filed a response to

FINDINGS OF FACT

JURISDICTION AND LABOR ORGANIZATION STATUS

Respondent, Cascades containerboard packaging—Lancaster, A Division of Cascades New York, Inc., is a corporation with an office and a place of business in Lancaster, New York (Lancaster facility)⁴ where it engages in the manufacturing of corrugated boxes. In conducting its operations during the calendar year prior to the issuance of the complaint, Respondent purchased and received goods valued in excess of \$50,000 directly from points outside the State of New York. I find, that Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. (GC Exh. 1(c) and (g).)

Although Respondent denies knowledge of whether Graphic Communications Conference/International Brotherhood of Teamsters, Local 503-M is a statutory labor organization, the record is replete with evidence that Local 503 is an organization that exists to interact and bargain with employers regarding employee wages, rates of pay, and conditions of work. (Tr. 29–31; GC Exhs. 2 and 4.) Thus, I find that Local 503 is a labor organization within the meaning of Section 2(5) of the Act.

UNFAIR LABOR PRACTICES

1. Background

Respondent and its predecessors had a longstanding bargaining relationship with Graphic Communications Conference/International Brotherhood of Teamsters, Local 27C (Local 27), which through mergers/affiliations had changed names and internal leadership over time. Local 27 represented all of Respondent's hourly production and maintenance employees and truck-drivers, and excluding all other employees at its Lancaster, New York facility the unit). (Tr. 36; R. Exh. 9; GC Exhs. 2 and 4.) The unit employees produce corrugated cardboard boxes with printed labels for Respondent's customers. (GC Exh. 1(c) and (g).)

Local 27 also represented other units of employees in Buffalo and Niagara Falls, New York. In the years leading up to 2012, Local 27 experienced a dramatic drop in membership which was precipitated by the winding down and closing of a business whose employees were represented by Local 27. (Tr. 35, 37.) As a result, Local 27 had gone from a steady membership of around 341 in the years preceding 2010 to only 156 members in 2012, with approximately 85 of them employed by Respondent in the unit. (Tr. 38; CP Exh. 2.) With the loss of membership, and therefore dues revenue, Local 27 could no longer support itself

this motion. I decline to grant the motion for several reasons. First, while I recall that Wilson made a comment similar to what is paraphrased by Charging Party, I cannot quote his statement. Second, upon review of the record, I note that the comment by Wilson was not responsive to a question. An objection was pending and Charging Party's attorney, who was questioning the witness, withdrew the question. Therefore, any response by the witness is arguably not appropriately part of the record. Third, a later responsive statement by the same witness conveys a very similar meaning. (Tr. 378, LL. 6–7.) Under these circumstances, I find it inappropriate to supplement the record as requested and deny the motion.

⁴ Lancaster, New York, is located on the eastern side of the Buffalo, New York metropolitan area.

financially.⁵ The lack of revenue problems were compounded by a life insurance death benefit fraud that involved Local 27 and a lack of interest amongst the remaining units' employees in running for the local union official positions. (Tr. 33–34, 37, 326–327; CP Exh. 2.) Tony Roman, Local 27's president and an employee of another bargaining unit represented by Local 27, brought concerns about the financial viability and leadership issues of Local 27 to the International Union in 2012. (Tr. 256, 326.)

As a result, Michael Stafford, Local 503's president, was asked to accept an administrative transfer of Local 27 into Local 503 as is contemplated by the International Constitution. Stafford declined to accept the administrative transfer due to Local 27's financial liabilities. (Tr. 34.) Instead, in 2012, Stafford became the trustee of Local 27, which resulted in the removal of Local 27's officers from their positions, including Secretary/Treasurer David Mecca, who at some point had been an employee of Respondent or its predecessor, and an unknown number of elected members of an Executive Board. (Tr. 71, 191.) Stafford started the process of cleaning up Local 27's finances, putting its records in order and closing the local office in Buffalo, which historically had been used as administrative office and not for meeting with Local 27's membership. (Tr. 250–251.) Some usable office supplies and equipment were assumed by Local 503. Respondent and its predecessor were well aware that Stafford was Local 503's president and was acting as the trustee for Local 27 in representing its bargaining units, including the unit employees. (GC Exhs. 2 at p. 26, 4 at p. 27, 6–16.)

In 2012, the unit employees elected new union stewards Andrew Rogacki, Joseph Nemerowicz, and Tom Gipp, who work and serve as union stewards on each of the three shifts operated by Respondent. (Tr. 238–240.) Presumably these stewards were elected pursuant to Local 27's bylaws, but I find that the record is unclear as to whether Local 27's bylaws were specifically referenced and followed. The International Constitution contains multiple provisions governing the contents of local bylaws, including provisions that require union officer terms to exist for a period of 3 years and office elections to be conducted by a secret ballot. (Tr. 320, 324–325; R. Exh. 5, pgs. 38–47.) No elections have been held for Local 503 offices or the unit's steward positions since 2012, as the officers and stewards have been unopposed in each subsequent election cycle. (Tr. 151–152.)

I find the record unclear as to how closely Local 27's bylaws were applied during the trusteeship, as there is no evidence that

Stafford ever reviewed or specifically applied them. Stafford left Local 27's dues structure in place. Stafford credibly testified that he reviewed dues deduction and remittance documents, not Local 27's bylaws, to understand that structure. The limited evidence in the record concerning the election of the unit's stewards indicates that they were elected in accordance with required International Constitution provisions. Few, if any other, distinctions between Local 27's and Local 503's bylaws are in the record.⁶

Since 2012, Stafford and the three union stewards have represented the unit employees by processing and bargaining resolutions to grievances, meeting with Respondent representatives for monthly labor/management meetings, and negotiating new collective bargaining agreements. (Tr. 238–240; 242–243.) A 5-year collective-bargaining agreement was in effect from October 2, 2008 through October 1, 2013. (R. Exh. 9.) Stafford and the union stewards negotiated a subsequent contract, which was in effect from October 2, 2013 through October 1, 2016. (GC Exhs. 2 and 4.) Stafford spoke with the stewards via telephone conversations a few times per week and met with the union stewards and unit employees at the facility when necessary to resolve issues and on days that monthly labor/management meetings were held. (Tr. 42–43, 249.)

Stafford also occasionally held union meetings with Local 27's membership at the VFW hall about 10 miles from the Lancaster facility, as was the practice before the trusteeship was imposed. After the VFW hall closed, the membership meetings have been conducted at Teamsters Local 264's hall about 8 miles from the Lancaster facility. (Tr. 250.) Occasionally union information and notices of meetings were posted on bulletin boards by the time clock and in the break room in the Lancaster facility where employee notices are frequently posted. (Tr. 52–53; 287.) Although other meetings were held, especially in the early period of the trusteeship, Stafford specifically held meetings in preparation for contract negotiations. (Tr. 54–55; GC Exh. 3.) At these meetings and in conversations with the union stewards, the membership inquired about when the administrative transfer would be completed.⁷ (Tr. 206.)

In 2016, Stafford and the Union stewards negotiated a new collective bargaining agreement, effective from October 2, 2016 until October 1, 2020. Stafford contends that during these negotiations he presented benefit proposals to Respondent based upon benefits available to Local 503 in anticipation that the administrative transfer which would eventually be completed. Stafford

⁵ The assertion that lack of membership made Local 27 financially unviable is supported by the Graphic Communications Conference of the International Brotherhood of Teamsters Union's (International Union) Constitution (International Constitution), Part II, Chapter 3.2, which states:

When the membership of a Local Union falls below two hundred fifty (250) active members and the Local Union cannot effectively represent its members consistently due to lack of resources, or for any other reason, the General Board (after considering the individual circumstances) may suspend or rescind the Charter of that Local in order to administratively transfer the representation responsibilities and membership to another Local(s), thereby transferring the members into such other designated Local(s) or declaring them to be members-at-large.

(R. Exh. 5, p. 38.) The International Union has administratively transferred other locals pursuant to this provision many times. (Tr. 329.) Local 27's transfer differed because it was placed into trusteeship prior to being transferred. (Tr. 327–329.)

⁶ Respondent subpoenaed Local 27's bylaws from Local 503. Ultimately, Local 503 did not locate and provide Respondent with a copy of Local 27's bylaws, which understandably limited Respondent's ability to question witnesses concerning the differences between the bylaws.

⁷ After the transfer, Local 503 continued to conduct its monthly membership meetings in Rochester, New York. Membership meetings are also held in Syracuse and Buffalo as needed. For example, Stafford held a membership meeting at the Teamsters Local 264's hall in Buffalo in December 2017 to invite the former Local 27 members to join Local 503's executive board. (Tr. 154.)

was unable to specifically testify about a conversation where such statements were made and no proposals, notes, or contract provisions explicitly make such a statement. Even if Respondent officials were able to infer that a final transfer into Local 503 would eventually transpire, there is no evidence to support that Respondent had prior knowledge of when this would occur.

2. The administrative transfer and subsequent events

The administrative transfer was finalized on April 1, 2017. (GC Exh. 5.) Stafford posted type-written, signed notices on the bulletin board near the time clock and in the employee lunchroom at the Lancaster facility to inform the unit employees that the administrative transfer of Local 27 to Local 503 was complete. (Tr. 59-60; 245, 287-288.) The record is unclear as to how long these notices were posted. (Tr. 246.) Since the administrative transfer, Local 503 has had approximately 501 active members, including the approximately 85 unit employees who were formerly members of Local 27. (Tr. 38, 356.)

After the administrative transfer, Stafford, as the president of Local 503, has represented the unit in much the same manner that he had as the Trustee of Local 27, but he has more resources at his disposal. For example, Stafford never took a grievance to arbitration as the trustee of Local 27 because of inadequate resources. Within months of the administrative transfer, Local 503 was willing to proceed to arbitration on a grievance on the behalf of the unit. The three union stewards maintained their positions and continued to assist Stafford in processing grievances and attending monthly labor/management meetings with Rosowicz. The union dues paid by the unit employees remained the same through the date of the hearing, but will eventually be adjusted to Local 503's dues structure which is based upon a percentage of the employees wage and would result in an unclear amount of increase in dues.⁸ (Tr. 74, 153.)

Stafford claimed that he informed human resources manager Michelle Rosowicz (Rosowicz) of the completion of the transfer in conversations and during the regularly scheduled monthly labor/management in April 2017. In written communications concerning the unit employees after the administrative transfer, Stafford held Local 503 out as the exclusive-bargaining representative of the unit employees without any mention of Local 27. (GC Exhs. 6, 11, 14.) For example, on April 5, 2017, Stafford filed Case 03-CA-196251 alleging that Respondent had failed to bargain with "Local 503, the exclusive representative for purposes of collective bargaining of certain employees of [Respondent]" in regard to changes in health care premiums. (GC Exh. 6.)

Despite the filings in Case 03-CA-196251 and other communications in which Stafford held Local 503 out as the bargaining representative for the unit employees, Rosowicz gave evasive responses to questions attempting to solicit when Respondent first learned of the completion of the administrative transfer and

Local 503's assertion that it represented the unit employees. I find that Rosowicz was not straight forward in her answers to these questions because of some apparent concern on her part that it would affect Respondent's assertion that it did not learn until October 2017 of the dissolution of Local 27 when the administrative transfer was finalized. Yet, Rosowicz admitted that she was aware of Local 503's claim that it was the collective bargaining representative of the unit employees as early as April of 2017. This understanding caused her to change the way she addressed letters concerning the unit to Stafford in April 2017 and again on June 29, 2017, when Rosowicz's communications with Stafford first evidence Respondent's assertion that Local 503 is not the exclusive bargaining representative of the unit. (Tr. 63, 67, 214, 408-411, 443-444, 453-454; GC Exhs. 7, 8, 9, 13, 15.) Based upon a review of the entire record, I find that in April 2017 Respondent was aware of Local 503's assertion that the administrative transfer was complete and that Local 503 was the exclusive bargaining representative of the unit.

By at least Rosowicz's June 29 letter to Stafford, Respondent expressed its belief that Local 503 did not represent the unit. (GC Exh. 9.) Regardless of Respondent's assertion that Local 503 did not represent the unit employees, Rosowicz continued to meet and bargain with Stafford and the union stewards at monthly labor/management meetings, discussed grievances, and communicated with Stafford about unit concerns. (Tr. 78-91; GC Exhs. 7, 8, 9, 12, 11, 13, 14, 15; R. Exh. 10.)

During this time period, Stafford filed a grievance concerning Respondent's reduction of 4 unit employees' wages. On August 18, 2017, Rosowicz responded by letter denying the grievance and stating that Respondent was electing to by-pass mediation and to go straight to arbitration. Rosowicz proposed using a specific arbitrator. (Tr. 88-89, 456; GC Exh. 15.) On August 18, 2017, Local 503's attorney responded by letter requesting that the parties select an arbitrator by striking names from a Federal Mediation and Conciliation Service panel per the requirements of the 2016 CBA. (GC Exhs. 16, 17.) On August 25, 2017 Respondent's attorney emailed Local 503's attorney stating:

No CBA, NLRB certification, or arbitration agreement exists between your client and mine. I had been under the impression that you were representing Local 27. . . . [Respondent's] collective bargaining agreement is solely with Local 27. . . . [Respondent's] position is that Local 503 has no arbitration agreement or standing to arbitrate anything with [Respondent]. (GC Exh. 18.)

While refusing to arbitrate the grievance over the 4 employees' wages, Rosowicz continued to meet and negotiate with Stafford as the bargaining representative of the unit employees through November 2017.⁹ (Tr. 93-107; GC Exhs. 19-28.) On

meetings in Syracuse and Buffalo as needed to service the units in those areas. For example, on December 12, 2017, a membership meeting was held at the Teamsters Local 264 hall in Buffalo about 7 miles from the Lancaster facility to determine if any member was interested in becoming shop stewards or executive board members. (Tr. 155-156.) Regardless of where the meetings are held, turnout is low. (Tr. 157.)

⁹ 2016 CBA, art. 5, Grievance Procedure states in pertinent parts: Sec. 5.02

⁸ The jurisdictions of the locals are controlled by the International Constitution and are not based upon geographic boundaries. (R. Exhs. 1 at p. 3, and 5 at p. 2.) For example before the merger, Local 503 and Local 27's geographic jurisdictions overlapped. Local 503 represented units in Buffalo, Rochester, and Syracuse, while Local 27 represented units in Buffalo and Niagara Falls. Local 503's regular monthly membership meetings are held in Rochester approximately a 45 to 60-minute drive from the Lancaster facility. Stafford holds additional membership

December 4, 2017, Rosowicz sent Stafford an email cancelling their December 9 labor/management meeting and stating that they would resume meeting in January 2018. (Tr. 109–110, 414; GC Exh. 29.) After receiving that email Stafford continued to communicate with Rosowicz via email concerning unit issues but did not receive a response. (Tr. 111–113, 418; GC Exh. 30.)

On December 19, 2017, Respondent informed the International Union that it had learned that Local 27 was defunct and dissolved as of April 1, 2017, and of its belief that recognition of Local 27 as the unit’s exclusive bargaining representative could not be transferred to Local 503. Respondent announced, among other things, that it was taking the following steps:

- 1) [Respondent] can no longer take union dues under the union security/checkoff clause for Local 27, since it is dissolved, it will so notify the employees; 2) as [Respondent] does not recognize Local 503 (that issue is being contested at the NLRB), the Company cannot collect and legally transmit anything of value to Local 503. Because of Local 503’s *claim* to representation rights, [Respondent] will deduct the dues claimed by 503, place the funds in an escrow account and pay the monies over to 503 should it finally be successful in its claim to bargaining rights, otherwise the money shall be returned to the employees; 3) it is [Respondent’s] intent, to the extent possible, to maintain the terms and conditions of employment it last reached with Local 27C, except for the dues deductions as previously stated, and the arbitration agreement portion of the [2016] CBA which cannot be valid without an extant recognized union party.

(GC Exh. 31, pp. 2–3.) On the same day, plant manager Clint Dockeree, Rosowicz, and production manager Byron Quilachimin met with the union stewards and then the unit employees for each shift. Rosowicz read the December 19 letter to them without allowing any questions. Rosowicz also told employees that Stafford was no longer allowed on Respondent’s property and that it would maintain the terms and conditions of employment under the 2016 CBA except for the grievance/arbitration and union dues provisions. (Tr. 116, 260–265, 291, 368, 418–419, 444–445, 446–447.) Stafford was informed of these meetings by unit members after the meetings. (Tr. 115–116,

264–265.) The meetings raised concerns among the unit employees about whether they still had union representation. (Tr. 294–295, 376, 378.)

Stafford arrived at the Lancaster facility on January 9 for the monthly labor/management meeting to learn that Rosowicz was out of town. On January 10, 2018 Stafford received an email stating that the meeting had been cancelled. Stafford replied to the email and asked if the other participants had been told. On January 16, Rosowicz responded telling Stafford that Respondent has no bargaining relationship with Local 503 and Stafford should “not contact [Respondent] or set foot on [Respondent’s] premises.” (Tr. 117–119; GC Exh. 32.)

General Counsel also presented evidence about possible disputes involving unit employees’ wage rates, the application of the overtime policy, the posting of new positions, and providing new hires with information about membership with the union. (Tr. 122, 2560–2569, 273, 458; GC Exh. 34.) To the extent that General Counsel submitted this evidence into the record to prove that Respondent did not arbitrate grievances after August 25, 2017, or process grievances or remit union dues that it deducted from employees’ payroll to the Union after December 19, 2017, I find that Respondent does not refute that it took these actions. The record contains some evidence that this failure to process grievances through arbitration has discouraged employees from raising grievances, which I credit because it is a reasonable response by employees as a result of the December 19 meeting. (Tr. 267, 269, 273, 485.)

ANALYSIS

1. Background law

The Board “may not condone an employer’s refusal to bargain in the absence of a question of representation, and has no authority to prescribe internal procedures for the union to follow in order to invoke the Act’s protections.” *NLRB v. Financial Institution Employees of America Local 1182*, (*Seattle-First National Bank*), 475 U.S. 192, 207–208 (1986). The union is allowed to determine “whether any administrative or organizational changes are necessary in the affiliating organization.”¹⁰ *Id.* at 206 (quoting *Amoco Production Co.*, 239 NLRB 1195 (1979)). One local union may seek to affiliate with another for a variety of reasons, including bargaining expertise, financial support, or

For the purpose of this Agreement, a grievance is defined as any claimed violation, misapplication, or misinterpretation of an express provision of this Agreement. In the event of any dispute, the matter shall be settled in accordance with the following procedure.

Step 1:

Discussion with Direct Supervisor. . . .

Step 2:

Formal Presentation to Production Manager. . . .

Step 3:

If the grievance remains unresolved. . . . The matter shall then be discussed by the General Manager or his representative and the Union Business Representative at a mutually agreeable time and place. . . .

Step 4:

If the grievance is not settled in steps one, two and three above, the grievance may be referred to Federal Mediation upon the mutual agreement of both the President of the Union and a Company Management Representative.

Step 5 Arbitration:

If the grievance remains unresolved after the Step 2, 3 or the Step 4 Mediation provision, if utilized, then the grievance may be submitted to arbitration by written notice within five (5) calendar days following receipt of the Step 2 decision, or the Step 4 Mediation meeting, if utilized. The parties shall select an arbitrator through the Federal Mediation & Conciliation Service.

¹⁰ At hearing I precluded Respondent from submitting evidence to support a defense that the Union failed to provide the Unit members due process by not having a membership vote on the administrative transfer. The Board found it inappropriate for the Board to interfere with internal union processes by requiring a due process vote to validate reorganization of union’s internal structure. *Raymond F. Kravis Center for the Performing Arts*, 351 NLRB 143, 147-148 (2007), citing *Seattle First*, supra at 209 fn. 13. The Board has held that no due process vote is necessary regardless of the form of the internal union restructuring, such as merger, affiliation, or administrative transfer. *Sullivan Bros. Printers*, 317 NLRB 561, 562 (1995); *News/Sun-Sentinel Co.*, 290 NLRB 1171 (1988).

to compensate for a lack of leadership within the affiliating union. *Amoco Production*, supra at 1195. The Board has recognized that a union “must remain largely unfettered in its organizational quest for financial stability and aid in the negotiating process.” *Williamson Co.*, 244 NLRB 953, 955 (1979).

Affiliation with a national or international organization or a different local union does not, standing alone, affect the union's representative status or terminate the employer's duty to bargain with the union. *Minn-Dak Farmers Cooperative*, 311 NLRB 942, 949 (1993); *Toyota of Berkeley*, 306 NLRB 893, 899 (1992). Yet, if such reorganization results in changes that “are sufficiently dramatic to alter the union's identity, affiliation may raise a question of representation, and the Board may then conduct a representation election.” *Amoco Production*, supra at 1195.

To determine whether there were changes in continuity of representation after a merger, affiliation, or other internal union reorganization that are “sufficiently dramatic” to alter the union's identity, the Board considers the totality of the circumstances. *Raymond F. Kravis Center for the Performing Arts*, 351 NLRB 143, 147–148 (2007). In assessing the totality of the circumstances, the Board analyzes various factors before and after the reorganization, such as changes in: union dues; initiation or transfer fees; date of hire; date of membership; pension and health benefits; collective-bargaining agreements; officers; administration; bylaws; autonomy; membership size; and jurisdiction. *Id.*; *Minn-Dak Farmers Cooperative*, 311 NLRB 942, 947-948 (1993); *F. W. Woolworth Co.*, 285 NLRB 854, 854–855 (1987).

The burden is on the party seeking to avoid its bargaining duty to establish loss of continuity of representation as an affirmative defense. *CPS Chemical Co.*, 324 NLRB 1018, 1018 (1997); *In-sulfab Plastics*, 274 NLRB 817, 821 (1985), enf. 789 F.2d 961 (1st Cir. 1986);

2. The appropriate time frames from which to compare the representational factors

In the instant case, a pivotal issue is from which two time periods should these factors be evaluated and compared. The differences in the factors arguably vary significantly based upon which time frames are being considered. Respondent contends that the correct timeframe in which to compare the current representation provided by Local 503 is the time frame which existed prior to the trusteeship of Local 27. General Counsel and Charging Party contend that the relevant time frames are the period just before the April 1, 2017 transfer while Local 27 was in trusteeship and the period after the transfer.

In contending that the trusteeship prior to the administrative transfer is the relevant period for assessing whether there was continuity of representation, General Counsel and Charging Party are in essence arguing that the trusted Local 27 became the unit employees' collective-bargaining representative. The Board has found that a union in trusteeship can be certified and

operate as a collective-bargaining representative within the meaning of Section 2(5) of the Act. *West Virginia American Water Co.*, 09-RC-219179, 2018 WL 4003421 (NLRB) (Aug. 20, 2018); *Alto Plastics Mfg. Corp.*, 136 NLRB 850, 851 (1962); *Terminal System, Inc.*, 127 NLRB 979, 980 (1960); *Jat Transportation Corp.*, 128 NLRB 780, 782 (1960); *Sylvania Electric Products, Inc.*, 89 NLRB 398, 398 fn. 1 (1950). The evidence supports that the trusted Local 27 operated as the unit employees' collective-bargaining representative within the meaning of Section 2(5) of the Act for approximately 5 years. Respondent and its predecessor bargained with the trusted Local 27 throughout this time without raising the issue of its bargaining status or the continuity of representation with Local 27 prior to the trusteeship.

Respondent argued at hearing that the relevant time frames for comparing the factors were pre-trusteeship and post administrative transfer because the trusteeship of Local 27 was presumptively invalid 18 months after it was formed pursuant to Section 304(c) of Title III of the Labor-Management Reporting and Disclosure Act (LMRDA). General Counsel and Local 503 concede that the trusteeship of Local 27 lasted well beyond 18 months but contend that the validity of the trusted status of Local 27 is not properly before the Board. I agree and find that Respondent's reliance on the LMRDA is misplaced in the litigation of representational issues before the Board, as the Board has long held.¹¹ See *Terminal System, Inc.*, 127 NLRB 979 (1960).

Apparently in response to the Board's holding in *Terminal System*, Respondent argues in its posthearing brief that if the Board maintains its position precluding employers from raising the validity of trusteeships of unions, then unions can manufacture continuity of representation by maintaining trusteeships that closely resemble the representation the union wishes to impose by its ultimate, yet delayed, merger plans. (R. Br. at p. 12.) I find no merit to this contention. The Board has held that an employer can question the continuity of representation caused by changes in representational factors instituted during a trusteeship regardless of the validity of the trusteeship under the LMRDA. See *Mare-Bear, Inc. d/b/a Stardust Hotel & Casino*, 317 NLRB 926, 926 fn. 1 (1995).

Respondent also relies on *Quality Inn Waikiki*, 297 NLRB 497, 497 fn. 1 (1989), to support its position that the appropriate time to evaluate and compare the post transfer/merger factors is prior to the trusteeship. General Counsel and Charging Party contend that the holding in *Waikiki* was limited to the facts in that case and should not be applied to the circumstances in this case. In *Waikiki* the local union was placed into trusteeship shortly after it was certified as the collective-bargaining representative of a unit of employees. The employer refused to recognize the local and engaged in litigation to test the certification of the local. After the employer's test of certification failed, the local was merged into a sister local and the employer refused to recognize and bargain with that local claiming lack of continuity

¹¹ Section 603(b) of the LMRDA states: “. . . nor shall anything contained in [titles I through VI] . . . of this Act be construed to confer any rights, privileges, immunities or defenses upon employers, or to impair or otherwise affect the rights of any person under the National Labor Relations Act, as amended.” 29 U.S.C. 523(b). The Board has held that

in this provision, “Congress gave very explicit expression in the law to its intent that the Board should not withhold its procedures or remedies where unions or employers, or their officers or agents, breached the obligations laid down in titles I through VI of the LMRDA.” *Alto Plastics Mfg. Corp.*, 136 NLRB 850, 854 (1962).

of representation.

Respondent asserts that when Local 27 was placed into trusteeship there were striking similarities with many of the factors considered by the Board in *Waikiki*, and therefore, the appropriate time to compare the post transfer representation factors in the instant case is pre-trusteeship. While many of these factors are similar, there are significant differences between these two cases when considering the totality of the circumstances. In *Waikiki*, the Board noted that there was no evidence that the local had leadership difficulties or was in financial trouble. The trusted local in *Waikiki* had recently been certified as the representative of the unit of employees at issue which expanded its membership and revenue base. The local was merged with a sister local that the employees had just left to join the local in hopes of receiving better representation concerning their distinct bargaining issues as compared to other members in the sister local. The *Waikiki* decision does not make clear whether any of the unit employees had the opportunity to hold union steward or any other representational positions on the behalf of the unit. The employer never negotiated or entered into a collective-bargaining agreement with the local, either before or after it was placed in trusteeship, because its test of certification litigation and successful challenge to the continuity of representation as a result of the merger.

Although the documentary evidence of record does not clearly illustrate Local 27's financial status at the time the trusteeship was implemented, its membership had declined significantly. This evidence of decreasing membership corroborates the uncontradicted testimony of Stafford and Lacy that Local 27's president Roman sought assistance with the local because of economic hardships and lack of interest in union positions as is contemplated by the International Constitution. Thus, the reason for the imposition of the trusteeship of Local 27 is distinguishable from that in *Waikiki*.

More importantly in the instant case, Respondent and its predecessor bargained with the trusted Local 27 for about 5 years, including negotiating two collective-bargaining agreements.¹² Furthermore, the union stewards elected by the unit members after the trusteeship was imposed have resolved grievances at the early stages of the grievance process, assisted Stafford in meeting with management on unresolved grievances and other labor issues, and served as the bargaining committee with Stafford in negotiating the last two contracts. Although some of the factors

¹² While an employer asserting that there has been a lack of continuity of representative due to internal union changes does not have to present evidence of loss of majority support, an employer's concern for the continuity of representation is not supposed to supplant the employees' choice of a representative. The Unit employees in this case had two opportunities to express a lack of support since the trusteeship was imposed. Because the collective-bargaining agreement in existence from October 2008 until October of 2013 had been in existence for more than 3 years before the trusteeship was imposed in 2012, the membership was free to attempt to decertify the Union at any time during the first year that the trusteeship was imposed before the new contract became effective in October of 2013. The second period occurred in 2016, between 60 and 90 days prior to the 2013-2016 contract's termination date. See *Basf-Wyandotte Corp.*, 276 NLRB 498 (1985); *Deluxe Metal Furniture Co.*, 121 NLRB 995 (1958); *Leonard Wholesale Meats Co.*, 136 NLRB 1000 (1962); *General Cable Corp.*, 139 NLRB 1123 (1962). Allowing Respondent to question the continuity of representation in this context

cited by the Board in *Waikiki* to support its decision to compare the pre-trusteeship period to the post-merger period were present at the time Local 27 was placed into trusteeship, the significant differences in the bargaining statuses of the trusted locals involved in these cases, distinguishes this case from *Waikiki*. Considering the significant bargaining history during the trusteeship in this case and other distinguishing factors, I find that the Board's holding in *Waikiki* is not controlling in this matter.¹³

Taking into consideration the Board's finding that an employer can question the continuity of representation when a union is placed into trusteeship, it follows that an employer can question the continuity of representation when a trusted local is administratively transferred or otherwise merged into another local. Thus, I find that the appropriate consideration in this matter is whether continuity of representation existed between the time period immediately before and immediately after the administrative transfer was completed on April 1, 2017.

3. Assessing the continuity of representation factors

Many of the factors considered by the Board in assessing the continuity of representation did not change significantly after the administrative transfer was completed as in comparison to the status of those factors during the trusteeship. Stafford, as the president of Local 503, has substantially the same responsibilities with regard to the unit as Stafford possessed as the trustee for Local 27. The unit's union stewards remained the same as they had been for the preceding 5 years. The newly negotiated 2016 CBA continued to be enforced. The unit employees' dates of hire and union membership remained the same. The employees were not charged initiation or transfer fees. While the unit employees may have additional pension and health benefits options available under Local 503, the benefits provided pursuant to the 2016 CBA remained available to them. They remained under the same International Union and International Constitution. They continued to have occasional union meetings in the same local Teamster's union hall. Local 503's offices remained in the same location where Stafford conducted the business of the trusted Local 27 for years.

I find that that some representational changes occurred as a result of the transfer. The unit employees gained more access to union leadership positions than they have had during the 5 previous years under the trusteeship. Now they can join Local 503's

places the employer in the position of making representation choices for employees' that they were free to make for themselves.

¹³ As I will discuss more fully below, General Counsel argues that Respondent is estopped from refusing to recognize and bargain with Local 503 as the unit's bargaining representative because it bargained with Local 503 for more 6 months after it was on notice that Local 27 had been administratively transferred to Local 503. Although not raised by General Counsel, I note that a similar argument can be made that Respondent is estopped from contending that there was a lack of continuity of representation from the period prior to Local 27 being placed into a trusteeship because it bargained with the trusted Local 27 for well beyond 6 months. See *Sewell-Allen Big Star, Inc.*, 294 NLRB 312 (1989) (upholding the validity of a merger the Board found that the employer's "course of conduct constituted an acceptance of the representation status" for 7 months which estopped the employer from withdrawing recognition as a result of any effects of the merger).

executive board and can campaign and vote for Local 503 offices including the position that Stafford holds. Local 503's bylaws are now applicable to the unit instead of Local 27's bylaws.¹⁴ Local 27's units were located in Buffalo and Niagara Falls, New York. After the administrative transfer into Local 503 the geographical area expanded to include Rochester and Syracuse, New York. As has occurred over the last 5 years, Stafford continues to hold membership meetings in Buffalo on an infrequent, as needed, basis to address issues with and encourage participation by the members employed in the Buffalo area. In addition to these meetings, the unit employees may now attend the monthly Local 503 membership meetings in Rochester, New York, a 45-to-60-minute drive each way. The unit employees made up approximately 54 percent of Local 27's membership size and now make up approximately 17 percent of Local 503's membership.

The Board has declined to find more drastic changes in geographic size, membership makeup, bylaws, and bargaining power in an affiliated local constitute sufficient evidence of dramatic changes in the continuity of representation. See *CPS Chemical Co.*, supra at 1020–1021; *Action Automotive*, 284 NLRB 251, 254 (1987). In *CPS Chemical*, the Board rejected the contention that the affiliation of a 30-member independent association with a 550-member local of an 85,000-member international union is alone proof of discontinuity. The Board noted that changes in “size, bylaws, and internal procedures resulting from the affiliation, nor the transfer and commingling of] assets...compel a different result.” Id. The Board found that in accordance with the Supreme Court's holding in *Seattle-First* these are ordinary, expected changes as a result of affiliations, mergers, and transfers amongst union organizations seeking increased financial stability and bargaining power in the negotiation process and do not constitute a lack of continuity of representation. Id. *Seattle-First*, 475 U.S. at 199 fn. 5.

In the instant case, the percentage of the membership that the unit members comprised after the administrative transfer was greater than what the affiliated employees experienced in *CPS Chemical*. In *CPS Chemical*, the affiliated local had no history of operating under an international union's direction or constitution prior to the affiliation, but Local 27 members remained under the direction of the International Union as they have been for years before the transfer. Similarly, the increase in geographical area is not beyond what would be ordinarily expected in any merger or affiliation. The main effects of the transfer of Local 27 into Local 503 were more financial stability, leadership, and bargaining power. These are the types of effects sought by unions

¹⁴ I find no evidence in the record that Stafford specifically referenced and applied Local 27's bylaws during the 5-year trusteeship. Despite Stafford's apparent lack of reliance on Local 27's specific bylaws, they were the bylaws applicable to the unit until the administrative transfer was complete. Respondent requests that I make an adverse inference and find that there were substantial differences between Local 503's and Local 27's bylaws due to Local 503's failure to produce the bylaws. I note that the International Constitution sets forth specific requirements for certain provisions and suggested contents for other provisions of its locals' bylaws. While, there were likely numerous differences between the two locals' bylaws, such as the different dues structures, the extensive framework for local bylaws required by the International Constitution

through internal reorganization which the Board and the Supreme Court have held should remain unfettered. *Seattle-First*, 475 U.S. at 199 fn. 5; *CPS Chemical Co.*, supra at 1020-1021; *The Williamson Co.*, 244 NLRB 953, 955 (1979).

Accordingly, I find insufficient evidence to support a lack of continuity of representative defense, and therefore, Respondent's withdrawal of recognition of Local 503 as the unit employees' collective-bargaining representative on December 19, 2017, violated Section 8(a)(5) and (1) of the Act.

4. Estoppel and statute of limitations arguments

General Counsel argues that regardless of whether a lack of continuity occurred, Respondent is estopped and barred by the statute of limitations from withdrawing recognition from Local 503 because it recognized and bargained with Stafford and the three union stewards for more than 6 months after being aware of the administrative transfer and Local 503's assertion that it was the representative of the unit employees. General Counsel relies upon the Board's decision in *Sewell-Allen Big Star, Inc.*, 294 NLRB 312 (1989), in support of these contentions. In *Sewell*, the local that represented employees merged with another local and the employer recognized and bargained over various issues, remitted dues, and tendered health and welfare benefit payments to the new local in the same manner it had with the previous local. After 7 months of recognizing and bargaining with the local without raising any concerns about the validity of the local's position as the bargaining representative, the employer withdrew recognition. Id. at 313. The Board found that the employer was estopped from withdrawing recognition because the local in reliance on that recognition had not taken action to reestablish its representative status and was time barred by Section 10(b) of the Act from correcting it outside of the 6-month statute of limitation. Id.

The question here is whether Respondent's assertions that it did not have a bargaining duty with Local 503 during the 6 months after it had notice of the administrative transfer requires a different result on the estoppel argument than the Board found in *Sewell*. Respondent put Local 503 on notice that it had concerns about its assertion that it represented the unit employees at least by June 29, 2017, when Rosowicz changed the way she addressed letters to Stafford. Respondent continued to assert that it had no bargaining obligation with Local 503 in various communications with Stafford and International Union representatives. Starting on August 25, 2017, Respondent refused to arbitrate grievances with Local 503 contending it only had a bargaining obligation with Local 27.¹⁵ Even though Respondent

limited the scope of these differences. Considering the Board's holding in *CPS Chemical*, I cannot find that the differences in the locals' bylaws under the International Constitution are sufficiently dramatic to alter the union's identity. Supra at 1020-1021 (holding that ordinary changes in size, bylaws, internal procedures, and the transfer and commingling of assets are ordinary results of merger or affiliation and alone do not evidence lack of continuity of representation).

¹⁵ Paragraph X of the consolidated complaint in its reference to par. VIII alleges that Respondent's refusal to adhere to the 2016 CBA as of August 25, 2017, constitutes a failure and refusal to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Sec. 8(a)(1) and (5) of the Act. Thus,

continued to meet and negotiate with Stafford and the union stewards as representatives of the unit employees until early December 2017, I find that Local 503 was on notice that Respondent questioned its status as the exclusive bargaining representative of the unit employees. Based upon the evidence in this case, I reject the assertion that Local 503 relied to its detriment on Respondent's bargaining conduct after April 2017 in not taking further actions to establish its rights as the exclusive bargaining representative of the unit employees. Therefore, I do not find that Respondent is estopped from asserting its defense of lack of continuity of representation based upon its bargaining conduct.

Under a separate analysis in *Sewell*, the Board found that pursuant to the 6-month statute of limitations in Section 10(b) of the Act the employer's "challenge [questioning the continuity of representation 7 months after it had notice of the merger] came too late, and therefore, cannot be considered a defense to the 8(a)(5) charge in the present proceeding." *Id.* (citing, *Machinists Local 1424 (Bryan Mfg.) v. NLRB*, 362 U.S. 411 (1960)). The Board reasoned that if a union is limited to 6 months to demand recognition as the successor of a merger process, then an employer is similarly limited to 6 months by Section 10(b) to withdrawal recognition based upon a lack of continuity of representation defense. *Id.*

In the instant case, Respondent contends that it was not aware of the dissolution of Local 27 until October 2017, and that it withdrew recognition approximately 2 months later, well within the 6-month statute of limitations. I reject this argument because the Board specifically found that the transfer and comingling of assets, where one local is assumed into another local, are "natural and foreseeable consequences" of a merger. *CPS Chemical*, supra 1020-1021. The comingling of Local 27's assets and its dissolution as a separate entity were foreseeable consequences of the administrative transfer of which Respondent had knowledge since April 2017. Thus, I find that Respondent had or should have had knowledge of the transfer and its foreseeable consequences for at least 7 ½ months before it withdrew recognition on December 19, 2017, and is barred by the statute of limitations from raising the lack of continuity as a defense against allegations that it withdrew recognition in violation of Section 8(a)(5) and (1).

Accordingly, I find that if a viable lack of continuity of representative defense existed in this case, Respondent would be barred by Section 10(b) of the Act from raising that defense to justify its withdrawal of recognition of Local 503 as the exclusive bargaining representative of the unit employees on December 19, 2017, in violation of Section 8(a)(5) and (1) of the Act.

5. Respondent's refusal to arbitrate grievances

General Counsel and Charging Party contend that by refusing to arbitrate grievances pursuant to the 2016 CBA grievance/arbitration procedure since August 25, 2017, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation Section 8(a)(5) and (1) and Section 8(d) of the

Act. The undisputed evidence shows on about August 25, 2017, that Respondent informed Local 503 that it refused to arbitrate any grievance pursuant to article 5 of the 2016 CBA's grievance/arbitration procedure and on December 19, 2017, reiterated this position when it informed the unit employees that it had withdrawn recognition from their collective-bargaining representative and would continue to refuse to abide by article 5 of the 2016 CBA. Respondent contends that it was privileged to take these actions based upon its erroneous conclusion that it has no bargaining obligation with Local 503.

"An employer's refusal to designate an arbitrator and arbitrate grievances, pursuant to a collective-bargaining agreement, violates Section 8(a)(1) and (5) of the Act, if the employer's conduct amounts to a unilateral modification or wholesale repudiation of the collective-bargaining agreement." *Exxon Chemical*, 340 NLRB 357, 357 (2003), *enfd.* 386 F.3d 1160 (D.C. Cir. 2004), and cases cited therein. In *Exxon*, the Board found that the employer had repudiated the collective-bargaining agreement by refusing to arbitrate three grievances that "implicated a range of contractual issues, not a narrow class of issues, and constituted the totality of collective-bargaining issues pending between the parties." *Id.*

Section 5.02 of the parties' 2016 CBA states that a grievance is "defined as any claimed violation, misapplication, or misinterpretation of an express provision of this Agreement" and that "[i]n the event of any dispute, the matter shall be settled in accordance with the following procedure." Based thereon, I find that Respondent's refusal to abide by the CBA's grievance/arbitration procedure is a refusal to arbitrate about any collective-bargaining issues pending between the parties, which amounted to a wholesale repudiation of the collective-bargaining agreement in violation of Section 8(a)(5) and (1) of the Act.

Section 8(d) of the Act provides that "where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification" complies with specific requirements set forth in Section 8(d). Respondent makes no claim that it fulfilled the requirements set forth in Section 8(d) before refusing to abide by the article 5 grievance/arbitration procedure or article 3 dues-checkoff provision. Instead, Respondent contends that it was privileged to refuse to abide by these provisions because it had no obligation to bargain with Local 503. As discussed above, since April 1, 2017, Local 503 has been the exclusive bargaining representative of the unit employees as a result of internal union reorganization. Therefore, I find Respondent's refusal to comply with article 5 of the 2016 CBA without meeting the requirements of Section 8(d) of the Act is a violation of Section 8(d).

Accordingly, I find that since August 25, 2017, Respondent has been failing and refusing to bargain collectively and in good faith with Local 503, the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) and Section 8(d) of the Act.

even the allegations of the consolidated complaint are contrary to a finding that Local 503 could have relied upon Respondent's conduct of recognizing and bargaining with it as the representative of the Unit

employees for more than 6 months to Local 503's detriment, and therefore, estopping Respondent from asserting its lack of continuity of representation defense.

CONCLUSIONS OF LAW

1. Cascades Containerboard Packaging—Lancaster, a Division of Cascades New York, Inc. (Respondent) is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Graphic Communications Conference/International Brotherhood of Teamsters, Local 503-M is a labor organization within the meaning of Section 2(5) of the Act.

3. Graphic Communications Conference/International Brotherhood of Teamsters, Local 503-M (Union) is and has been since April 1, 2017, the exclusive collective-bargaining representative of the following appropriate unit of Respondent's employees:

All employees employed by Respondent at its 4444 Walden Avenue, Lancaster, New York location, for only the hourly production and maintenance employees and truck drivers and excluding all other employees at its Lancaster Facility.

4. Since about August 25, 2017, Respondent failed and refused to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) and Section 8(d) of the Act by failing and refusing to arbitrate grievances pursuant to the grievance/arbitration procedure in article 5 of the collective-bargaining agreement covering the unit employees, which Respondent entered into with the Union in 2016, thereby repudiating the collective-bargaining agreement.

5. Respondent violated Section 8(a)(5) and (1) of the Act on about December 17, 2017, by withdrawing recognition from the Union as the representative of hourly production and maintenance employees and truckdrivers, and excluding all other employees at its Lancaster, New York facility.

6. The above unfair labor practices 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 therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent, having violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from the Union as the collective-bargaining representative of an appropriate unit of its employees and thereby failing and refusing to collectively bargain with the Union as the collective-bargaining representative of the unit employees, I recommend that Respondent be ordered to recognize and bargain with the Union as the collective-bargaining representative of the unit employees described in Article I of the 2016–2020 collective-bargaining agreement between Respondent and the Union with respect to wages, hours, and other terms and conditions of employment of the unit employees.

Respondent, having violated Section 8(a)(5) and (1) and Section 8(d) of the Act by refusing to arbitrate grievances pursuant to the grievance/arbitration procedure set forth in article 5 of the 2016–2020 collective-bargaining agreement between Respondent and the Union resulting in a repudiation of the collective-bargaining agreement, I recommend that Respondent be ordered to restore the terms and conditions of employment that were in effect prior to August 25, 2017, including all the terms of its

2016–2020 collective-bargaining agreement with the Union, specifically but not limited to complying with the grievance/arbitration procedure in article 5 and the dues-checkoff provision in article 3. General Counsel's proposed order requests a make-whole remedy. (GC Br. at p. 38–39.) While a make-whole remedy is the typical remedy for a repudiation of contract provision or an entire contract, I find insufficient evidence of record to establish that an order to make employees whole for loss of back-pay or other benefits is necessary to remedy the actions of Respondent. While the record contains some evidence that Respondent may have inconsistently applied policies regarding overtime and other terms and conditions of employment, the evidence is insufficient to prove, and the complaint does not allege, that such actions by Respondent were unlawful unilateral changes in terms and conditions of employment that would warrant a make-whole remedy. Instead, these alleged inconsistencies in the application of the 2016–2020 CBA or past practices are issues that are appropriately addressed through the grievance/arbitration procedure. Respondent told employees that it would not honor the arbitration portion of the 2016–2020 CBA and that Stafford, the Union's lead negotiator was not allowed on the premises to represent them. The remedial power of the Act is to return employees to the position that they would have been if Respondent had not engaged in unfair labor practices. To remedy the specific conduct of Respondent in this case, I recommend that Respondent be ordered to waive any procedural time limits to the filing and/or the resumption of processing of any grievance that arose or was in any stage of the grievance/arbitration process at any time between August 25, 2017, and the date when Respondent reads the attached notice marked "Appendix" to employees, as required by this order, informing employees and the Union that it will comply with the grievance/arbitration procedure in the 2016–2020 CBA and that it will allow a 14-day period from that date for the filing or the resumption of processing of any such grievances. See *Exxon Chemical*, 340 NLRB 357 (2003).

Respondent having engaged in violations of the Act, I recommend that Respondent be ordered to post at its facility in Lancaster, New York, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 3, 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 in each language deemed appropriate shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, 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 in each appropriate language to all current employees and former employees employed by the Respondent at any time since August 25, 2017.

Furthermore, I recommend Respondent be ordered to hold a meeting or meetings during working hours, which shall be

scheduled to ensure the widest possible attendance, at which the attached notice marked “Appendix” is to be read to unit employees at its Lancaster facility by a responsible management official in the presence of a Board agent and an agent of the Union if the Region or the Union so desires, or, at the Respondent’s option, by a Board agent in the presence of a responsible management official and, if the Union so desires, of an agent of the Union. General Counsel requested that the remedy require a reading of the notice aloud to unit employees by a high-ranking management official in the presence of a Board agent or by a Board agent in the presence of a high-ranking management official. I find that the circumstances of this case warrant such a remedy. Respondent unlawfully refused to abide by the terms of the 2016–2020 collective-bargaining agreement ultimately repudiating the entire contract, refused to remit dues to the Union pursuant to the dues-checkoff provision, withdrew recognition from the Union, and barred the Union’s bargaining representative from its premises. Respondent gathered unit employees together in mandatory, work time meetings at which high management officials read a letter to inform them of these acts. Under these circumstances, I find it appropriate for the “Appendix” to be read to the employees in a manner recommended herein.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁶

ORDER

Respondent, Cascades Containerboard Packaging-Lancaster, A Division of Cascades New York, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from, and failing and refusing to recognize and bargain collectively with Graphic Communications Conference/International Brotherhood of Teamsters, Local 503-M (Union) as the exclusive collective-bargaining representative of the bargaining unit employees of the following appropriate unit:

All employees employed by Respondent at its 4444 Walden Avenue, Lancaster, New York location, for only the hourly production and maintenance employees and truck drivers and excluding all other employees at its Lancaster Facility.

(b) Failing to continue in effect all the terms and conditions of employment that the unit employees enjoyed before August including those contained in its 2016–2020 collective-bargaining agreement with the Union, specifically but not limited to, by refusing to arbitrate grievances and to remit dues to the Union.

(c) In any other 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 actions necessary to effectuate the policies of the Act.

(a) Recognize and bargain in good faith with the Union as the exclusive collective-bargaining representative of its employees

in the unit described above with respect to wages, hours, and other terms and conditions of employment of the unit employees.

(b) Restore the terms and conditions of employment that were in effect prior to August 25, 2017, including all the terms of its 2016-2020 collective-bargaining agreement with the Union, specifically including but not limited to, the grievance/arbitration procedure in Article 5 and the dues-checkoff provision in article 3.

(c) Waive any procedural time limits to the filing and/or the resumption of processing of any grievance that arose or was in any stage of the grievance/arbitration process at any time between August 25, 2017, and the date when Respondent reads the attached notice marked “Appendix” to employees, as required by this order, informing employees and the Union that it will comply with the grievance/arbitration procedure in the 2016–2020 CBA and that it will allow a 14-day period from that date for the filing or the resumption of processing of any such grievances.

(d) Within 14 days after service by the Region, post at its Lancaster, New York facility, copies of the attached notice marked “Appendix.”¹⁷ Copies of the notice, on forms provided by the Regional Director for Region 3, 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, posted on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, 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 the Lancaster, New York facility at any time since August 25, 2017.

(e) Within 14 days after service by the Region, hold a meeting or meetings during working hours, which shall be scheduled to ensure the widest possible attendance, at which the attached notice marked “Appendix” is to be read to employees by a responsible management official in the presence of a Board agent and an agent of the Union if the Region or the Union so desires, or, at the Respondent’s option, by a Board agent in the presence of a responsible management official and, if the Union so desires, of an agent of the Union.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 3 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.

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

¹⁶ If no exceptions are filed as provided by Sec. 102.48 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.

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.”

Dated, Washington, D.C. November 23, 2018

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 a representative 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 withdraw recognition from, or fail and refuse to recognize and bargain in good faith with, Graphic Communications Conference/International Brotherhood of Teamsters, Local 503-M (Union) as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

All employees employed by Respondent at its 4444 Walden Avenue, Lancaster, New York location, for only the hourly production and maintenance employees and truck drivers and excluding all other employees at its Lancaster Facility.

WE WILL NOT fail to continue in effect all the terms and conditions of employment that the unit employees enjoyed before August including those contained in its 2016–2020 collective-bargaining agreement with the Union, specifically but not limited to, by refusing to arbitrate grievances and to remit dues to the Union.

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

WE WILL recognize and bargain in good faith with the Union as the exclusive collective-bargaining representative of its employees in the unit described above with respect to wages, hours, and other terms and conditions of employment of the unit employees.

WE WILL restore the terms and conditions of employment that were in effect prior to August 25, 2017, including all the terms of its 2016–2020 collective-bargaining agreement with the Union, specifically including but not limited to, the grievance/arbitration procedure in article 5 and the dues-checkoff provision in article 3.

WE WILL waive any procedural time limits to the filing and/or the resumption of processing of any unresolved grievance that arose or was in any stage of the grievance/arbitration process at any time between August 25, 2017, and the date of the reading of this notice, as required by this order, informing employees and the Union that we will comply with the grievance/arbitration procedure in the 2016–2020 CBA and that we will allow a 14-day period from the date of the reading of this notice for the filing or the resumption of processing of any such grievances.

CASCADES CONTAINERBOARD PACKAGING-

LANCASTER, A DIVISION OF CASCADES NEW YORK, INC.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/03-CA-210207 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.

