**UNITED STATES OF AMERICA**

**BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**REGION 13**

**ZEIGLER NORTH RIVERSIDE, LLC**
**D/B/A/ZIEGLER FORD OF NORTH RIVERSIDE**

**and**

**ZEIGLER LINCOLNWOOD D/B/A ZEIGLER**
**BUICK GMC OF LINCOLNWOOD & CADILLAC**
**OF LINCOLNWOOD**

**and**

**LOCAL LODGE 701, INTERNATIONAL**
**ASSOCIATION OF MACHINISTS &**
**AEROSPACE WORKERS, AFL-CIO (LOCAL 701)**

**Cases 13-CA-225984**
**13-CA-230635**
**13-CA-233695**
**13-CA-233700**
**13-CA-235867**

# COUNSEL FOR THE GENERAL COUNSEL'S POST-HEARING BRIEF

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## I. INTRODUCTION[1]

This case is about two Respondents who have spent significant time and resources avoiding their collective-bargaining obligations with IAM Local 701. Lincolnwood prematurely declared impasse and implemented a last, best, and final offer (LBFO) that caused the 8(a)(3) constructive discharge of two employees. Additionally, it, and Riverside, avoided their bargaining obligations by engaging in direct dealing, refusing to execute their respective contracts, and by revoking the Union's contractual access to the dealerships. Riverside's above-referenced conduct coupled with its persistent threatening and coercive 8(a)(1) statements, unilateral changes, and its decision to not have at the negotiation table a legal representative with binding authority to negotiate on its behalf shows Riverside engaging in overall bad faith bargaining. The belated signing of the collective-bargaining agreements, four months after the Union demanded signatures and after a consolidated complaint issued, did not fully remedy the 8(a)(1), (3), or (5) violations referenced above because there are employees displaced by Lincolnwood's constructive discharges whom Lincolnwood refuses to reinstate, employees at both dealerships who have not been reassured as to their Section 7 rights given the threatening and hostile environment they have endured, and Respondents, who without any government intervention, will continue to undermine the collective-bargaining process. Thus, the prosecution

[1] Hereinafter, the Administrative Law Judge is referred to as "the ALJ." Respondent Zeigler North Riverside, LLC d/b/a Zeigler Ford of North Riverside is referred to as "Riverside" and Respondent Zeigler Lincolnwood d/b/a Zeigler Buick GMC of Lincolnwood & Cadillac of Lincolnwood is referred to as Lincolnwood" and collectively these parties are referred to as "Respondents". Local Lodge 701, International Association of Machinists & Aerospace Workers, AFL-CIO (Local 701) is referred to as "the Union". The National Labor Relations Act hereinafter is referred to as "the Act," and the National Labor Relations Board is referred to as "the Board." Citations to pages in the transcript are designated as "Tr." followed by the page number. Exhibits submitted by all parties are designated as "Jnt." and those submitted by the General Counsel are designated as "G.C." followed by their exhibit numbers.

of these violations is not purely academic, as Respondents contend. Their actions violated the law and warrant nothing short of a full Board remedy as proposed by the attached Proposed Order and Notice to Employees.

## II. STATEMENT OF FACTS

### A. RESPONDENTS STIPULATE THAT THEY ARE PERFECTLY CLEAR SUCCESSORS; AS SUCH, THEY HAD A DUTY TO MAINTAIN THE STATUS QUO UNTIL THEY BARGAINED TO IMPASSE, AND THEY DID NOT IN VIOLATION OF SECTION 8(A)(5)

Respondents stipulate they are perfectly clear successors with the duty to bargain with Local 701, and as a perfectly successor they had an obligation to consult with Local 701 before unilaterally changing their predecessor's terms and conditions of employment. [Tr. 316-317]; *NLRB v. Burns International Security Services, Inc.*, 406 U.S. 272, 294 (1972); *Spruce Up Corp.*, 209 NLRB 194, 195 (1974). Lincolnwood became a perfectly clear successor following its February 28, 2018[2] purchase of Grossinger Buick. [Jnt. 43, Tr. 316-318] Four months later in June 2018, Riverside purchased McCarthy Ford. [Jnt. 43] Both car dealerships employed mechanics represented by Local 701 and garage attendants represented by Teamsters Local 731.[3] Both dealerships also signed participation agreements at their respective locations obligating them to contribute to Local 701's health and welfare and pension funds. [Jnt. Ex. 2 and 37, Tr. 134-135, 178] Despite recognizing their duty to bargain, both dealerships made significant changes to employees' terms and conditions of employment. Those changes are the subject of this consolidated complaint.

[2] All dates occurred in 2018, unless otherwise noted.
[3] The alleged unfair labor practices involving Local 731 were resolved after the record closed via an informal settlement-agreement.

1. Lincolnwood declared impasse prematurely, unilaterally implemented a LBFO that led to the constructive discharge of two employees, and executed individual employment agreements

In total, Local 701 held 12 negotiation sessions with Lincolnwood over the course of nine months, from March 2018 through December 2018. [Jnt. 43] Riverside initially conducted its negotiation sessions parallel to Lincolnwood's. Riverside's negotiations began September 6, and by October 25, all parties had agreed to combine negotiations and to have two identical contracts, one at each location. [Jnt. 2 and 25]. Parties reached a meeting of the minds on a contract December 6. [Jnt. 31]

Each bargaining session lasted no more than 30 minutes. [Tr. 138] Their negotiations were supplemented by information requests and the extensive exchange of emails between James Hendricks, the attorney and chief negotiator for both Respondents, and Robert "Bob" Lessmann, the Union's chief negotiator. [Tr. 137, 143]

For the first half of negotiations Lessmann was joined at the table by Tony Albergo, Business Representative for Lincolnwood, and Mark Galuski, Lincolnwood unit employee and Steward. [Tr. 143, 244] They did not stay for the duration of negotiations. When the parties began negotiations for the Riverside contract Business Representative Mark Grasseschi replaced Albergo and interim Steward Luis De Leon replaced Galuski. [Tr. 194, 261]

Both dealerships shared the same leadership. Their President was Aaron Zeigler. [GC. 1] But he never joined the parties in negotiations despite the Union's requests. [Tr. 256, 267] Hendricks was always the person responsible for negotiating on behalf of the Respondents.

i. The Union passed its initial proposal at the parties' first bargaining session March 29, and Lincolnwood passed its one and only proposal at their second session April 4

Lincolnwood began contract negotiations March 29. [Tr. 138] At that first session, the Union passed a complete contract proposal, which was a copy of the predecessor Grossinger agreement with only a change in name and contract duration. [Jnt. 3, Tr. 134, 139] The Union's proposed agreement asked to maintain the status quo and offered wage increases in conformity with the planned raises under the Grossinger agreement. [Tr. 140]

Lincolnwood did not pass any proposal at the first session. It passed its proposal at the parties' second session held April 4. This proposal was its one and only proposal before it passed its last, best and final (LBFO) [Jnt. 4] Lincolnwood's initial proposal sought several deletions from the Grossinger contract. Lincolnwood wanted, in part, to withdraw from Local 701's health and welfare and pension funds, discontinue its contributions to the Union's 401(k), and eliminate the 35-hour minimum hours paid guarantee the Grossinger contract provided employees. [Tr. 146-149] When Lincolnwood passed its proposal, Hendricks informed the Union that the client no longer wanted to be in any trust fund and that it wanted to use the company's health insurance plan. [Tr. 146-147] But there was never any discussion at that time regarding the details of the company's health insurance plan or retirement alternative. [Tr. 147-148, 150]

Lincolnwood's failure to disclose any specifics at this April session is why the Union filed a subsequent request for information because it needed, at the very least, the costs and summary plan descriptions of the health insurance plan that the Respondent Lincolnwood was offering to compare it to what the Union was providing its members. [Jnt. Ex. 5, Tr. 152] Respondent replied to the information request but only by providing a summary of its plan description; it failed to provide any information at that time regarding how much the health insurance premiums would cost the individual employee under the new plan. [Tr. 153]

Upon receipt of the Respondent's summary plan description, the Union forwarded that information to its funds' office for review, which caused a minor delay in the parties resuming contract negotiations. [Tr. 153] The fund in turn created a summary plan comparison chart that the Union used at the parties' third negotiation session. [Jnt. Ex. 7, Tr. 154, 157]

ii. At their third session June 6 the Union passed a chart comparing health coverage under its plan to Respondent Lincolnwood's, and it also passed a request for information seeking information regarding the cost of the employees' insurance premiums

The parties' third bargaining session was June 6. At that session the Union gave a presentation discussing the comparison chart prepared by the funds. [Jnt. Ex. 7, Tr. 154-157] According to the Union, the Respondent Lincolnwood's plan had higher employee deductibles and less coverage. When the Union attempted to point out this difference, Lincolnwood foreclosed any conversation insisting that its plan was the only available plan. [Tr. 155]

Also, at this June session, the Union made two requests for information: one verbal and the other in writing. Its verbal request was for information specifically in search of how much the Lincolnwood's out-of-pocket premiums would cost the worker, and its written request wanted to know the number of the insured and past benefit changes so the Union could measure the viability of the plan. [Jnt. Ex. 8, Tr. 157] The Union had asked verbally for the out-of-pocket costs across the table at the April session and needed that information before it could recommend Lincolnwood's plan to the unit. [Tr. 156, 158]

Not having this information up front protracted their meeting schedule because the Union wanted to compare all the costs, benefits, and burdens associated with Lincolnwood's insurance plan so that it could decide whether to recommend this product to the unit. [Jnt. 10, Tr. 160] The

Union certainly was not using the absence of this information as an excuse not to meet because despite not having this information, it nevertheless agreed to meet July 3. [Jnt.11 Tr. 160-161]

iii. The parties' fourth session scheduled for July 3 was cancelled by the Union due to extenuating circumstances, nonetheless, the Union emailed Lincolnwood an updated contract proposal that incorporated certain changes to the contract the Respondent was proposing

The parties' fourth session was scheduled for July 3, but due to certain circumstances out of the control of Lessmann, the Union cancelled their meeting that morning. [Jnt. 12, Tr. 161] The Union planned for this July 3rd session to be very productive as it was willing to make certain concessions on the Employer's proposed deletions and even drafted a complete proposed contract merging together where the parties had any potential agreement. [Jnt. 13, Tr. 163]

To make-up for its cancellation Lessmann emailed Hendricks the Union's July 6 draft proposal. [Jnt. 13, Tr. 164-165] The draft showed the Union's willingness to tentatively agree to the deletion of Article 4, Section B (Section Pay Menu), that protected the unit employee by capping the amount of money a mechanic could potentially lose due to a customer promotional discount.[4] The Union's draft also showed its willingness to delete Article 7, Section C, which was contractual language that allowed unit employees to accrue vacation while on workers compensation, and it agreed to remove the contractual base pay. [Jnt. 13, Tr. 168-171] The Union sent this proposed agreement in hopes of moving along contract negotiations.

iv. In reply to the Union's proposed tentative agreements, Lincolnwood declared impasse prematurely

[4] Customer pay menus or specials allow Lincolnwood to take off a certain percentage from an employee's hours whenever that dealership was running a customer special or sale. So, if a job took a mechanic two hours to perform, the Respondent would pay the worker 1.8 hours rather than the full two. How much time the Respondent could shave off when running a sale was subject to negotiation per the contract. With the Union agreeing to delete this mandatory bargaining language from the contract, it was allowing Lincolnwood to make this decision on its own without consultation. (Tr. 167-168)

Lincolnwood replied July 10, but not with an attitude of continuing negotiations; rather, its reply falsely claimed that the parties were at impasse and gave its LBFO. [Jnt. 14] The parties had just begun negotiations, having met no more than a total of 1.5 hours over the course of only three bargaining sessions, 30 minutes each session. The Union wanted to negotiate as evidenced by its July 6 email to the Respondent never expressing any indication that it had exhausted its negotiation efforts. [Jnt. 13]

Lincolnwood's LBFO proposed certain contractual provisions that the parties had never discussed. Respondent's LBFO included a wage increase to the incentive pay, but it never offered a raise in its original proposal nor did it discuss this at the table. [Jnt. 4, Tr. 173] The Union's and Lincolnwood's wage proposal was maintaining the wage schedule in the Grossinger agreement; yet Lincolnwood's final LBFO offered a wage increase. [Jnt. 3, 4, and 14] The proposed LBFO also introduced the Respondent's 401(k) plan in place of its withdrawal from the Union's pension fund. This was not was part of its original proposal. [Jnt. 4] The parties had never discussed this, and in fact, Lincolnwood failed to provide any specifics about this 401(k) plan until four months after its claim of impasse. [Tr. 207, 211] Thus, the claim that the parties were at impasse is dishonest.

The Union understandably was shocked by the Respondent's LBFO and responded via email triggering a series of emails over the next couple of days. In particular, in Lessmann's July 11 email time stamped 4:37 p.m., he questioned how Lincolnwood could claim impasse after only three (3) short bargaining sessions being that the parties had "hardly touched the surface." [Jnt. 14] In that same email Lessmann reminded Hendricks of his outstanding information request for insurance documentation and ended his email by writing that the parties were still bargaining over the successor agreement. During their email exchange Hendricks claimed to not

have received Lessmann's July 6 email. Lessmann sent that July 6 draft to the same email used in the past, and never was the Union asked to use an email different from what the parties had used. [Tr. 179] Nonetheless Lessmann resent his proposal, and Lincolnwood stood by its position that they were at impasse. [Tr. 175]

But the impasse was premature and further proof of that is the fact that Lincolnwood failed to give the Union before declaring impasse the premium costs employees would have to pay under its plan. [Jnt. 15, Tr. 180] Lincolnwood did not release cost information until after the Union asked, again, to know the costs of the insurance premiums. Three days after passing its LBFO Lincolnwood provided a quote for employer-employee premiums informing the Union that quote would expire October 31, well short of the one-year contract Lincolnwood was proposing. [Tr. 181, 83-184]

v. Lincolnwood wasted no time implementing its LBFO

In further rush to implement its LBFO, on July 12 Lincolnwood held a meeting where it announced its LBFO to the employees, giving the chilling message that the Union could not help them. [Tr. 303] The meeting was led by Lincolnwood President Aaron Zeigler and at that meeting Zeigler told the employees that the dealership was no longer union. [Tr. 59] Zeigler said that he was no longer going to negotiate with the union, that he was discontinuing the 35-hour minimum guarantee, and that whatever they book for their two-week pay period that is what they would take home. [Tr. 59, 304] He said that he would no longer deduct union dues from their paychecks, no longer participate in the Union's insurance, and would discontinue pension contributions to the Union's fund. [Tr. 59, 305] He said that the employees could continue to work there or work somewhere else and that if they decided to go on strike he already had their

replacements lined up. [Tr. 59-60] He told them that he could replace them right then and there. [Tr. 60] Zeigler said that these changes were to take effect in the next two days no later than that coming Monday. [Tr. 304, 306] Unit employee, steward, and contract negotiation attendee Mark Galuski asked for more time before implementation, and Zeigler agreed only to a one-week postponement. [Tr. 306]

Service Director Robbie Long reiterated Zeigler's chilling message to employees Carlos Martinez and Mark Galuski. Sometime in June 2018, after employee Carlos Martinez attempted to exercise his seniority rights regarding vacation leave, per the contract, Long told him that she did not give a fuck about the Union and that this was not a union shop anymore. [Tr. 60-61] Similarly, in a second one-on-one conversation with Galuski, Service Director Long told Galuski that their dealership was no longer a union shop and to get on board with that. [Tr. 308]

vi. Lincolnwood's implementation of its LBFO led to the constructive discharges of two employees in violation of both Section 8(a)(3) and (5) of the Act

The unilateral and unlawful elimination of the 35-hour minimum guarantee and its unilateral and unlawful withdrawal from the Union's health and welfare funds had negative implications on long-term employees Carlos Martinez and Mark Galuski because for them it meant a reduction in their wages. The 35-hour minimum guarantee provided employees Martinez and Galuski with a base weekly wage regardless of their caseload intake. [Tr. 62] The contract also provided them with health insurance with very minimal out-of-pocket premium costs. [Tr. 63, 136] These benefits changed drastically with Lincolnwood's implementation of its LBFO.

These changes were life altering for Martinez and Galuski. Martinez' take home pay following the elimination of the 35-hour guarantee was drastically reduced. At Grossinger, Martinez' biweekly check was about $2,364 on average. [Tr. 65] Following the elimination of

the wage guarantee Martinez' biweekly check ranged from as low as $570 biweekly to $1,935. [Tr. 66]

To make matters worse, Martinez never received formal documentation from his Employer informing him as to when his health insurance would run out. [Tr. 63-64] He learned that he no longer had insurance when was at the dentist office and was told that his insurance was terminated. [Tr. 64] He never received any documentation prior to his August 2018 visit regarding a lapse in his insurance nor did he receive information regarding any health insurance plans alternative to what the Union was providing. [Tr. 63-64] In fact, Lincolnwood did not host any meetings giving details on a health insurance plan alternative to the Union's until September 18, after Martinez lost his insurance. So, for that period when Martinez did not have insurance, he just knew that one day he had insurance and the next day he did not. [Tr. 64]

This loss of his insurance coupled with the discontinuation of the 35-hour guarantee were life altering. Martinez struggled to pay his mortgage and other medical expenses that arose in his household. [Tr. 65] These unilateral changes made it too difficult for him financially, lowering his overall quality of life, and are the reasons why he resigned. [Tr. 65, 71]

Similarly, the loss of insurance and guarantee of work, resulted in a reduction of pay for Mark Galuski. His pay was reduced by $150 to $350 per week and this reduction was a determining factor in his decision to resign. [Tr. 307, 313]

w. The parties resumed negotiations August 6, and at their August 15 session Respondent Lincolnwood admitted to having executed individual employment agreements with its employees

When contract negotiations with Lincolnwood resumed August 6, the Union led that meeting by offering, again, its July 6 proposal. [Tr. 186] Without hesitation, Lincolnwood agreed to use this proposal as their baseline for continued negotiations and were able to reach agreement

on certain language in the contract: The Union agreed with the Respondent's proposal on the elimination of dues remittance, and it agreed to lift Lincolnwood's 10% cap on the use of floating days. [Tr. 186]

As negotiations were resuming, the Union submitted a request for information to investigate rumors regarding the individual employment agreements the Respondent Lincolnwood executed with its unit employees sometime in July 2018. [Jnt. 17, Tr. 190-191, 245] The Union learned of these side deals only from unit employees. [Tr. 191] Lincolnwood executed at least four side deals with unit employees that provided for wage bonuses up to $2,500 and an insurance coverage rebate. [Jnt. 17, Tr. 184-185, 245]

The Respondent produced copies of the side deals at their next session, August 15, and upon production, its attorney Jim Hendricks admitted he could not believe his client put these in writing. [Jnt. 18, Tr. 191, 246] Hendricks also stipulated to the unlawfulness of these agreements on the record at the ULP hearing. [Jnt. 43; Tr. 317] Thus, it is undisputed that these side deals were unlawful direct dealing in violation of Section 8(a)(5).

x. Lincolnwood engaged in further direct dealing when it conducted mandatory, open-enrollment sessions September 18 for its unit employees without bargaining

After employees Carlos Martinez and Mark Galuski lost their health insurance, Lincolnwood held mandatory open-enrollment sessions. The employees learned of the mandatory open-enrollment sessions via a posting on the wall. [Jnt. 41, Tr. 68, 85-86] Local 701 was never informed of these sessions by Lincolnwood; it learned from the unit and sent Business Representative Tony Albergo to attend. [Tr. 32-34, 247-249]

The September 18 open-enrollment meeting began with a human resources representative from Lincolnwood passing out a pamphlet that included information on its health insurance.

[GC. 5, Tr. 249] The HR representative said that these were the benefits recommended by the company. [Tr. 251] There was no discussion about the employees being able to opt out nor was there was any distinction drawn between the benefits they were receiving through 701 and what Lincolnwood was proposing. [Tr. 251]

After hearing the Respondent's overview, Business Representative Tony Albergo stood up and told the employees that he did not recommend any of them electing for this insurance because they had insurance through their Union. [Tr. 251] Albergo said the Union's plan was better and free. [Tr. 251] After Albergo spoke, Service Director Robbie Long told Albergo to leave because he was scaring the employees. [Tr. 252] Long told Albergo he was no longer allowed in the building because it was not a union shop, had nothing to do with the Union, and he needed to leave the building. [Tr. 70-71] At the hearing, Lincolnwood suggested that the purpose for the meeting was to explain its health insurance proposal. [Tr. 259] But contrary to the Respondent's assertion, this was not an attempt to explain anything to the unit regarding the health insurance benefits being bargained for at the table.

2. Like Lincolnwood, Riverside was a perfectly clear successor[7] required to maintain the status quo before the parties commenced their first bargaining session September 6, and it did not, implementing immediate changes to employees' terms and conditions of employment following its June 2018 purchase of McCarthy Ford

[7] Riverside stipulated that it was a perfectly clear successor with a collective bargaining obligation to Local 701. [Jnt. 43; Tr. 316-317]

i. Following its purchase of McCarthy Ford, Riverside stopped the practice of paying employees weekly, it no longer paid employees 1.5 hours for wheel alignments, changed the contractual process of approving vacation by seniority, and unilaterally installed surveillance cameras in employees' work stalls

Riverside wasted no time violating the Act following its June 2018 purchase of McCarthy Ford. It approached the Union with that same "take it or leave it" attitude as Lincolnwood, making unilateral changes before the parties commenced bargaining September 6. The key players at the negotiation table were the same: Jim Hendricks for the company and Bob Lessmann for the Union. Lessmann was joined by Business Agent Mark Grasseschi and Interim Steward Luis De Leon. Before the parties commenced their first session September 6, Riverside made changes to employees' pay schedule, the wheel alignment pay rate, and the process for approving vacation requests. Unilateral changes continued even after the negotiations began with Riverside installing surveillance cameras in employee work stalls without notice or bargaining with the Union. These changes were all made to undermine the Union and send the message that what was occurring at Lincolnwood would also occur at Riverside.

McCarthy Ford employees were paid weekly. [Tr. 94] That changed immediately following the transition to Riverside. [Tr. 96] There was no announcement of the change; it just happened. [Tr. 96] One week the employees got a paycheck, the next week they did not and when they [Interim Steward De Leon] asked why, they were told they would be paid bi-weekly. [Tr. 96, 224, 273, 289]

Similarly, there was no announcement regarding the change in the pay rates for wheel alignments. McCarthy Ford employees were paid 1.7 hours for a wheel alignment. [Tr. 97, 288-289] That was cut down to 1.0 hour by Riverside. [Tr. 97, 289] Again, there was no announcement of this change. It just occurred, and the employees learned of the change after they performed the work and were paid for only 1.0 hour. [Tr. 97, 289]

The process for approving vacations also changed. According to Article 7, Section 1 of the McCarthy Ford contract, vacations were approved by seniority. [Jnt. Ex. 3, Tr. 99] People with the most seniority got first pick. [Tr. 99] McCarthy Ford employee Paul Gellert had approved vacation leave for Christmas 2018. [Tr. 99] After Riverside purchased McCarthy Ford in June 2018, Gellert noticed that his name on the vacation calendar wall had been replaced by a less senior employee. [Tr. 99-100] Gellert brought his concerns to Service Manager Edgar Cortez and was told that the shop could not have two technicians off work. [Tr. 100] Gellert was a 29-year employee at the dealership, and Morris had only 10 years seniority; yet, Morris' request for Christmas vacation was approved over Gellert's. [Tr. 100]

In addition to these changes, the Respondent North Riverside also installed cameras in the mechanics' work stalls without affording the Union notice or an opportunity to bargain. There was no attempt by the Employer to give notice to or bargain with the Union over these cameras. [Tr. 280, 285] In fact, the Union learned of the cameras only via a shop visit. [Tr. 279] There were no cameras at McCarthy Ford. [Tr. 101, 280] And when the Union attempted to discuss the matter with the Respondent, Hendricks told the Union to just grieve it. [Jnt. 40, Tr. 284]

These changes were made to undermine the Union, and with the exception of the surveillance cameras, all took effect before the parties began bargaining for a contract, which did not commence until September 6. Business Agent Mark Grasseschi heard rumors at the shop and to address these rumors he emailed Riverside President Aaron Zeigler sometime in August 2018. [Tr. 265] Grasseschi testified that he sent his email because he was concerned that Zeigler was conflating the negotiations between the two dealerships, and he wanted to make it clear to Zeigler that the Union had never engaged in any negotiations with Riverside. [Tr. 265] Zeigler

replied to Grasseschi by email by telling him to direct all further communications about the Riverside property to Hendricks. [Jnt. 30]

Further evidence that these changes were made to undermine the Union and let the employees know that what happened at Lincolnwood will soon happen at Riverside is evidenced by Service Manager Edgar Cortez' one-on-one statement to employee Paul Gellert in September 2018. When Gellert asked Cortez if Lincolnwood was still union, he said no, and that they had voted the union out, which was not true. [Tr. 104] Riverside came to the Union and its employees with a take-it or leave-it attitude and had no intentions of bargaining in good faith.

ii. Riverside's first negotiation session with the Union was September 6, and at that meeting, the Union's request for Riverside President Aaron Zeigler to join their negotiations were denied

The parties first bargaining session at Riverside began September 6. Shortly before that session Grasseschi attempted to include Zeigler in their contract negotiations by emailing both Zeigler and company attorney Jim Hendricks a copy of the Union's initial proposal. [Jnt. 20 and 21] When the parties met face-to-face later that day, Hendricks told Grasseschi and Lessmann not to communicate with Aaron Zeigler because he was the attorney. [Tr. 195] Grasseschi testified that he was only communicating with Zeigler directly because he did not want any further confusion between the two properties. [Tr. 266-267] He wanted everyone on the same page regarding the Riverside location, and the Union genuinely wanted Zeigler at contract negotiations. [Jnt. Ex. 22, Tr. 267]

The parties held a second session September 19, and following that meeting, the Union emailed Hendricks, again, asking Zeigler to join them at the table. [Jnt. 22] Hendricks refused, writing that Zeigler will not be joining their meeting because he was the dealership's representative. [Jnt. 22] In that same emailed response, Hendricks told the Union that the parties

were at impasse and that his client had implemented its last, best, and final. [Jnt. 22] Hendricks' email was right in the sense that Lincolnwood had implemented its LBFO, but Riverside had just begun negotiations, and Riverside never passed any proposals to the Union let alone an LBFO prior to October 25. [Tr. 268-269]

### B. AFTER TWO STAND-ALONE SESSIONS WITH JUST RIVERSIDE, ALL PARTIES AGREED ON OCTOBER 25 TO COMBINE THE NEGOTIATIONS FOR BOTH DEALERSHIPS AND TO HAVE RIVERSIDE'S FINAL COLLECTIVE-BARGAINING AGREEMENT MIRROR LINCOLNWOOD'S

The October 25 negotiations was a pivotal point for the parties. At negotiations for Respondent Lincolnwood the parties agreed in writing to mirror Riverside's final agreement to Lincolnwood's. [Jnt. 25A] The parties combined negotiations because "it made no sense to have two separate negotiations going on, especially if both contracts were going to be identical." [Tr. 179] The parties also agreed to use the Union's July 6 proposal as their master document reflecting all tentative agreements reached between the parties. [Jnt. 25B] [Tr. 202] By doing this all the progress made up to that point during Lincolnwood's negotiations was then transferred to Riverside.

Another reason the October 25 negotiations was also a pivotal point in bargaining was that the parties were able to narrow the open issues. At this meeting, they reached a tentative agreement on wages where the parties agreed to the Union's proposal on wages, which was nothing more than an extension of the wage scale from Grossinger. [Jnt. 25(b)] By agreeing to this extension, Respondents were changing the wage proposal offered in their LBFO. With this agreement on wages, the only thing left on the table was health insurance. [Tr. 204-205, 209-210, 213] What remained regarding health insurance was the updated insurance premium costs; the Union still wanted to know what the premium costs would be beyond October 31. The Union

needed the Respondents' most recent insurance premium costs as Respondent Lincolnwood's earlier premium quote was scheduled to expire October 31. [Jnt. 15]

Following their October session, Hendricks asked via email when the Union would vote on the contract. [Jnt. 26] Lessmann replied vial a phone call October 31, asking for the new insurance rates, and he followed-up their call with an email asking the same. [Jnt. 26, Tr. 209] Lessmann's email said that the insurance quote expired on October 31 and the Union cannot vote on anything without all the information needed to verify that the information the Respondents were providing was correct. [Jnt. 26, Tr. 209] Lessmann sent three (3) follow-up emails to Hendricks for the updated insurance information. He emailed Hendricks November 1, 3, and 8. [Jnt. 27, Tr. 209-210] Hendricks replied November 8 giving the Union the updated insurance premium costs that showed premium costs ranging from $357 for an individual up to $1,072 for a family. [Jnt., 210, Tr. 211]

### C. AS ALL PARTIES WERE AT THE NEGOTIATION TABLE APPEARING TO WIND DOWN NEGOTIATIONS, RIVERSIDE WAS IN SEPARATE DISCUSSIONS WITH ITS UNIT EMPLOYEES HOSTING EMPLOYEE MEETINGS THROUGHOUT THE MONTH OF NOVEMBER 2018 WHERE IT TOLD EMPLOYEES THAT THE DEALERSHIP WAS NO LONGER UNION, THAT THEIR WAGES WOULD BE INCREASED BY $3 OVER THE UNION CONTRACT, AND THAT IT WAS NO LONGER TALKING OR BARGAINING WITH THE UNION

At the table the Respondents appeared as though they were willing to negotiate with the Union, but Riverside's conduct away from the table showed something very different. Riverside hosted individual and group meetings with the employees throughout the month of November 2018, where it attempted to undermine the Union. Two North Riverside employees testified to attending meetings conducted by President Aaron Zeigler where he used a power point presentation to convey his chilling anti-union message. One meeting was held at the beginning of the month and another meeting held at the end.

Former employee Paul Gellert testified to attending a meeting with Zeigler specifically on November 9, where Zeigler used a power point slide as part of his presentation with the technicians. [Tr. 104] According to Gellert, Zeigler said that he was going to pay the unit $3 over the union contract, that they were no longer going to get insurance through the Union and would get his insurance which was just as good and would cost $151 per paycheck, and that he was no longer offering the Union's pension but would offer his 401(k) plan, which did not offer an automatic match. [Tr. 105] Zeigler told the employees that if they did not vote for his proposal then he was going to enact it and that if they went on strike, he would no longer talk to the union and would replace them with the technicians from his other 24 dealerships. [Tr. 105]

Current employee and interim steward Luis De Leon also testified to attending a presentation conducted by Zeigler where he used power point. [Tr. 292] De Leon recalled that meeting happening about the last week in November in the employee lunchroom. At the meeting Zeigler told them that he would pay every technician $3 over scale, across-the-board, and that he was done bargaining with the Union because it was taking too long. [Tr. 292] Zeigler said that he was going to implement his new plan starting December 1, 2018.

In addition to this group meeting, De Leon testified that he also attended a one-on-one meeting with Edgar Cortez the week of Thanksgiving where Cortez told him that he did good work and that they would like for him to stay. [Tr. 290] Cortez told De Leon that the facility was going to be a non-union shop and because they did not want to see him go, they were offering him a loyalty bonus to cover his insurance premiums. [Tr. 291] The amount of the bonus was not disclosed at that time, but the Respondent did come to De Leon in December 2018 with a firm number of $1,180 for his loyalty bonus.

### D. TO WORK AROUND RESPONDENT RIVERSIDE'S UNILATERALLY PROPOSED $3 WAGE INCREASE TO ITS UNIT EMPLOYEES,

**RESPONDENTS SENT THE UNION A NEW WAGE PROPOSAL NOVEMBER 27**

Following North Riverside's November staff meetings, Respondents emailed the Union November 27, 2018, a new pay plan was that was significantly higher than what was included in Lincolnwood's LBFO or the parties' wage agreement reached October 25. [Jnt. 28, Tr. 213] The Union had no clue why the Respondents were offering this new wage proposal. Respondents never discussed their change in position with the Union. [Tr. 213] The Union believed that due to all the side deals that were floating about, the Respondents were trying to conform the negotiated terms of their final contract to the promises Riverside made to its employees. [Tr. 213-214]

E. **THE UNION INCORPORATED THE RESPONDENTS' WAGE PROPOSAL AND UPDATED INSURANCE QUOTE INTO ONE PACKET FOR EACH LOCATION, WHICH IT PASSED AT THEIR NOVEMBER 29 BARGAINING SESSION, SO THAT THE PARTIES COULD REACH A FINAL AGREEMENT ON THE CONTRACT**

After receiving the Respondent's updated wage proposal and insurance rates, the parties returned to the negotiation table November 29, for their second to last bargaining session. [Tr. 214] At that session, the Union passed two packets across the table that incorporated all the changes up to that point (that it was aware of). [Jnt. 29] The packets were identical, one for each dealership, incorporating the changes the Respondents made regarding wages and insurance premium costs. [Jnt. 29] The only thing the Union added was a proposed $1 wage increase for year 2020 which was in conformity with the wage increase schedule under the Grossinger agreement. [Jnt. 29, Tr. 214-216] In response to the Union's offer, Hendricks said he would need to send the package to Michigan to get a final okay and should have an answer by November 30. [Tr. 218-219] The Union followed-up their November 29 session by emailing Hendricks an electronic copy of what was passed at the table. [Tr. 218]

Unfortunately, any progress at the negotiation table November 29 was being overshadowed by Respondent North Riverside's continued direct dealing away from the table. On December 1, Riverside approached unit employee Phil Haberland and offered him $45.30 per hour, $7 more than even its most recent wage proposal to the Union. [GC. Ex. 4, Tr. 119] The December 1 encounter with Haberland was the culmination of a series of events that began one month prior about November 8, when Haberland informed Riverside of his intentions to resign because he had found a better opportunity. [Tr. 117] In response to his notice of resignation, Service Manager Edgar Cortez, about mid-November 2018, asked Haberland what dollar amount he would need to stay. [Tr. 118] Haberland responded by saying $44.30 per hour. [Tr. 119] Riverside met and exceeded Haberland's request, and on December 1, Service Manager Cortez presented Haberland not only with a wage rate of $45.30 per hour, but he also offered Haberland a monthly loyalty bonus of $1,180 to pay for his health insurance. [GC. Ex. 4, Tr. 119] This was all done without notice or bargaining with the Union. [Tr. 121]

### F. AT THE PARTIES' LAST BARGAINING SESSION DECEMBER 5, THE UNION ASKED IF THERE WAS AN AGREEMENT ON ITS NOVEMBER 29 PACKET; THE VERY NEXT DAY, DECEMBER 6, RESPONDENTS' COUNSEL INFORMS THE UNION THEY HAD A FINAL CONTRACT

The Union was not involved in the negotiations with Haberland. It was unaware of these negotiations and was trying to secure a complete contract with the Respondents. After hearing no response to November 29 proposal Lessmann emailed Hendricks December 3, and in his email he said that the Union was trying to vote at both locations the next day, December 4 or December 6. [Jnt. 30] Lessmann reminded Hendricks of the documents it passed at their November 29 session and reattached them for his review. [*Id.*]

The parties met again December 5. That day, Lessmann and Hendricks had gathered to negotiate a totally different contract and at the close of those negotiations, Lessmann turned the

parties' attention to their outstanding matters at the two Zeigler dealerships. [Tr. 220] In response to Lessmann' s request for an update, Hendricks said he needed to confirm the details with the client and would get back to Lessmann. [Tr. 221-222, 271] Later that day, Lessmann sent Hendricks an email, once again, to confirm if the parties had an agreement. [Jnt. 31, Tr. 219-221] Lessmann attached again the packets he created for the dealerships.

The next day, on December 6, Hendricks replied, via email, writing "TA on both." [Jnt. 31]

### G. THE UNION RATIFIED THE CONTRACTS AT EACH LOCATION DECEMBER 7, AND IMMEDIATELY FOLLOWING THE RATIFICATION VOTES, AARON ZEIGLER TOLD THE UNION THAT HE DID NOT AUTHORIZE THE AGREEMENTS, THAT THE UNION WAS NO LONGER ALLOWED TO ACCESS HIS DEALERSHIPS, AND THAT HE WOULD NOT SIGN THE CONTRACTS

The parties were negotiating two contracts and the Union, at all times, sent Hendricks two proposals for final approval, which the Union received from Hendricks, in writing, when he wrote "TA on both." The Union relied on Hendricks' unambiguous representation that the parties had an agreement and held ratification votes at both dealerships December 7.

Riverside's contract was ratified first followed by Lincolnwood's. [Tr. 224] Immediately after the North Riverside agreement was ratified, General Manager Brian told the employees that the Union was lying to them, it was all false, and that Zeigler never authorized the contract. [Tr. 293-294] To reiterate this message, Aaron Zeigler held a meeting shortly thereafter with the employees where he told them he had never seen nor read the contract, that the Union was lying to them, that he planned to sue the Union for false contracts, and that he did not know why the Union would do such a thing and lie to them. [Tr. 294] Riverside employees immediately

contacted their Union representative Mark Grasseschi, who at the time was at the Lincolnwood location ratifying that agreement. [Tr. 224]

After the Union finished with the ratification vote at Lincolnwood, Lessmann, Grasseschi, and Albergo returned immediately to the Riverside location to talk with Aaron Zeigler. [Tr. 225] This was their first-time meeting Zeigler face-to-face. [Tr. 226, 257, 277] Zeigler said that he would not recognize the Union, and he did not recognize the contracts because he did not authorize them. [Tr. 228, 255, 274, 277] He told them to leave the dealership, to not step on the property of either location and that they were not allowed at his properties. [Tr. 227] He told them that they were not allowed on the property ever again at either of their stores and that they were never to return in the future. [Tr. 228, 255, 274] Prior to receiving these instructions, under Article 8, Section 2 of the contract, the Union had unlimited access to the bargaining unit at both locations in the shop and common areas. [Tr. 228, 260, 278] The Union did not need prior approval to come and talk to its members and address grievances. [Tr. 228, 256, 278] Now, Zeigler was permanently revoking the Union's access and there was no temporal restriction to his instructions. [Tr. 228, 275]

After this encounter with Zeigler, Lessmann emailed Hendricks December 10, informing him of the contracts' ratifications and asking him to sign the contracts. [Jnt. 42] Hendricks replied to that email, forwarding Zeigler's comments to the Union, wherein Zeigler said that the Respondents would not sign the agreements. [Jnt. 42, Tr. 230]

### H. TO REINFORCE ITS MESSAGE THAT IT HAD NOT NEGOTIATED A CONTRACT WITH THE UNION, RIVERSIDE CONTINUED TO PULL EMPLOYEES ASIDE ONE-ON-ONE TO OFFER THEM MORE MONEY THAN NEGOTIATED VIA THE CONTRACT, ASK THEM TO EXECUTE INDIVIDUAL EMPLOYMENT AGREEMENTS, AND TO GET THEM TO SIGN LETTERS SAYING THAT THEY WERE RESIGNING FROM THE UNION

On or about December 10, General Manager Edgar Cortez approached De Leon handing him a pre-typed letter, addressed to Sam Cincinelli of Local 701, informing Cincinelli of his immediate resignation. [GC 8] Cortez told him that to get the payment plan discussed earlier, he would need to sign a paper saying he was resigning from the Union. [Tr. 296] Cortez told De Leon that the benefits included in his individual agreement were contingent on his resignation from the Union. [Tr. 298-299] Again, Riverside never negotiated with the Union about these loyalty bonuses and De Leon did not draft any document saying that he wanted to resign from the Union. [Tr. 298-299] That was all done by the Respondent in further effort to undermine the Union. Also, Respondent stipulated to on the record that such side deals entered into by De Leon, Haberland and the others as alleged in the complaint violated the Act. [Tr. 317]

## III. ANALYSIS

### A. **SECTION 8(A)(1)** (Complaint Paragraphs V (a-d))

Respondents violated Section 8(a)(1) of the Act by their repeated threatening statements intended to curb the employees' enthusiasm for the Union and undermine its role as the employees' exclusive bargaining representative. Their statements were not general statements given with the intention of sharing their views on the Union. Rather, they were statements made with the intention to interfere with, restrain, and coerce employees' Section 7 rights and have no protection under Section 8(c) of the Act.

Under Section 8(c) of the Act an employer may freely communicate and share with its employees its general views about a union so long as its communications do not contain any threat of reprisal, force, or promise of benefit. *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969). In the present case, Respondents' communications with its employees lacked that objective character necessary to invoke the protections of Section 8(c) because they purposefully

were misstatements of fact and law, told by the Respondents to create an atmosphere of fear and confusion among the employees.

At Riverside, President Aaron Zeigler held two meetings during the month of November where he used power point presentations to inform employees that his dealership was no longer a union store, that he would replace them if they went on strike (despite the fact that no one had mentioned the potential of striking), and that he did not have to talk to the Union ever again. This notion that Riverside no longer had to bargain with the Union was wrong because as long as the Union remained the employees' exclusive bargaining representative Riverside had an obligation to bargain and threatening his employees by telling them that he will not bargain with the Union violated Section 8(a)(1). See *Emergency One*, Inc., 306 NLRB 800 (1992) (Board found an employer unlawfully threatened its employees where it misinformed them that it did not have to negotiate with the union because it was a right to work state.)

Equally violative of the Act was his statement saying that his dealership was a non-union store. In making this statement, Zeigler was not attempting to communicate to the workers his wishes to bargain the union shop language out of the contract. Instead, he wanted to communicate to the employees what he could do for them without the Union—publicly he was offering the employees at his meetings $3 above the union scale and privately he authorized loyalty bonuses that ranged in value up to $2,500. Thus, given the timing and context of his statement, telling employees that the dealership was non-union violated the Act. See *Sunol Valley Golf Club*, 310 NLRB 357, 376 (1993) (ALJ found an 8(a)(1) violation where the employer's statement that it was no longer a "union shop" was made in the context of coercing employees and discouraging them from exercising their Section 7 rights.)

Further threatening statements in violation of the Act were Zeigler's comments at his November staff meetings where he said that he would replace the workers if they went on strike. Respondents do not have the unfettered right to replace strikers, particularly not if employees are on strike in protest of an unfair labor practice. Consequently, telling employees they will be replaced is an unlawful threat that violates the Act. See, *Consolidation Coal Co*., 266 NLRB 670, 671-672 (1983) (Because the law prohibits permanent replacement of unfair labor practice strikers, a statement informing such strikers that they will be replaced violates Section 8(a)(1)).

Zeigler's comments are reprehensible and emboldened his upper management at both dealerships to make similarly threatening statements. At Lincolnwood, Service Director Robby Long told employee Mark Galuski that Lincolnwood was no longer a union shop and to get on board with that. This unlawful statement came on the heels of President Aaron Zeigler's July staff meeting where he too told the employees that the Lincolnwood dealership was no longer union, that he was no longer going to negotiate with the union, that employees could continue to work there or work somewhere else, and that if they decided to go on strike he already had their replacements lined up because he could replace them right then and there. Long's statement was only reinforcing Zeigler's anti-union message, showing a pattern by Lincolnwood to restrain and coerce employees, and violated Section 8(a)(1) of the Act. *Sunol Valley Golf Club*, 310 NLRB supra.

Service Manager Edgar Cortez and General Manager Brian gave similarly chilling messages at the Riverside location. Employee Paul Gellert credibly testified that in a one-on-one conversation with Cortez, he asked Cortez if the Lincolnwood location was still Union. He was told no and that the employees had voted out the Union. This was false. At the time, the parties were in the middle of contract negotiations and there was no vote by the employees to remove

the Union. Cortez' comments were offered to Gellert only to quell whatever momentum the employees had for the Union at the Riverside location. General Manager Brian had the same message for De Leon—a message that the employees did not need the Union and that it, and not the Union, could take care of the unit. This is why Brian told De Leon that the Riverside dealership was non-union and offered De Leon a loyalty bonus if he would stay at the dealership.

These 8(a)(1) statements must not be viewed in a vacuum. They help to establish Riverside's overall bad faith bargaining and shed light on Lincolnwood's bargaining position in terms of its claim that the parties had bargained in good faith to impasse.

## B. SECTION 8(a)(5) AND SECTION 8(a)(3)

### 1. Lincolnwood violated Section 8(a)(5) of the Act by dealing directly with its employees and by implementing the terms of its LBFO without having bargained to an overall good-faith impasse for an initial collective-bargaining agreement (Complaint paragraphs VIII(a-d))

#### i. The Union and Lincolnwood were not at impasse July 10 when it passed its LBFO

Impasse can only happen after "good-faith negotiations have exhausted the prospects of concluding an agreement," which did not take place in the present case. *Taft Broadcasting Co.*, 163 NLRB 475, 478 (1967). For there to be a valid impasse, both parties must believe that they are at the "end of the rope." *Carey Salt Co.*, 358 NLRB 1142, 1153 (2012); *Newcor Bay City*, 345 NLRB 1229, 1238 (2005); *PRC Recording Co.*, 280 NLRB 615, 635 (1986).

Factors that the Board considers in assessing impasse are the parties' bargaining history; the good faith of the parties; the length of negotiations; the importance of the issues to which there was disagreement; and, the contemporaneous understanding of the parties as to the state of negotiations. See *Taft Broadcasting Co.*, 163 NLRB at 478.

Applying these impasse factors, the parties had not exhausted negotiations. The parties' bargaining history and negotiations were very limited. These were the first negotiations between these parties. The parties had only met three times for a total of 1.5 hours and Lincolnwood had only passed one contract proposal before claiming the parties had exhausted negotiations. Evidence negating a claim that Lincolnwood bargained to good-faith impasse is its contemporaneous side deals that it disclosed to the Union after the fact and stipulated to on the record at the ULP hearing. Moreover, the issues which Lincolnwood claimed to have reached a stalemate on were significant. Lincolnwood was offering to fully withdraw from the Union's health and welfare and pension funds and it wanted the Union to agree to, without any discussion or further information, what proved to be an over-priced insurance policy with limited coverage. Finally, the Union's July 6 email sent just four (4) days before Lincolnwood declared impasse shows the Union's contemporaneous understanding that they were far from having exhausted negotiations. The Union was bargaining when Lincolnwood declared impasse and it was encouraging Lincolnwood to do the same.

Lincolnwood cannot unilaterally establish or create an impasse, as it is attempting to do in the present case. See *Carey Salt Co.*, 358 NLRB at 1153. Both parties must have the same understanding and find themselves at the same point in negotiations, and both must be unwilling to compromise. *Id*; *Grinnell Fire Protection Systems, Co.*, 328 NLRB 585, 586 (1999). That did not occur here.

The mere fact that Hendricks called Lincolnwood's July 10 proposal a "final offer" did not create an impasse, particularly not when the Union's July 6 proposal showed movement from its prior positions. The Union was agreeing to remove the customer pay menu language in Article 4, Section B that capped the amount of money a mechanic could potentially lose due to a

customer promotional discount; it agreed to delete Article 7, Section C language that allowed unit employees to accrue vacation while on workers compensation; and, it agreed to remove the contractual base pay 35-hour guarantee. These were all significant concessions that directly impacted employees' wages and vacation leave. With this movement by the Union, it is difficult for Lincolnwood to claim they were at a stalemate. See *Duane Reade, Inc.*, 342 NLRB 1016, 1017 (2004) (no impasse even though employer had presented what it called a last, best, and final offer, where union, although not accepting employer's final offer, had continued to make movement and expressed a desire to bargain); *Airflow Research & Mfg. Corp.*, 320 NLRB 861, 862-63 (1996) (anything that creates a new possibility of fruitful discussion breaks impasse); *Saunders House v. NLRB*, 719 F. 2d 683, 688 (3rd Cir. 1983) ( a concession by one party on a significant issue precludes the other from declaring impasse, even if there is a wide gap on other issues because there is reason to believe that further bargaining may produce additional movement).

In sum, under Board law, an employer violates the duty to bargain in good faith when it refuses to bargain based on an asserted claim of impasse that the Board determines to be invalid. The burden of proving that an impasse exists is on the party asserting it, and in the present case the Respondent Lincolnwood fails to meet its burden. *CalMat Co.*, 331 NLRB 1084, 1097-98 (2000); *Naperville Ready Mix, Inc.*, 329 NLRB 174, 183 (1999); *Outboard Marine Corp.*, 307 NLRB 1333, 1363 (1992).

ii. Because the parties were not at impasse, Lincolnwood's subsequent unilateral changes violated Section 8(a)(5) and led to the 8(a)(3) constructive discharge of Carlos Martinez and Mark Galuski (Complaint paragraph VI)

Respondent Lincolnwood was not privileged to implement any portion of its LBFO. It was not privileged to withdraw from the Union's health and welfare fund or discontinue the 35-hour minimum wage guarantee. It was not privileged to host mandatory open-enrollment meetings with its employees requiring that they sign-up for Lincolnwood's insurance or remain uninsured. It is well-established that an employer's unilateral change to a matter that is a subject of mandatory bargaining is a violation of the duty to bargain collectively. *NLRB v. Katz*, 369 U.S. 736 (1962). The "general rule" is that "when parties are engaged in negotiations for a new agreement, an employer's obligation to refrain from unilateral changes encompasses a duty to refrain from implementation unless and until an overall impasse has been reached on bargaining for the agreement as a whole." *Hotel Bel-Air*, 358 NLRB 1527, 1532 (2012).

Accordingly, the unilateral rescission of the journeyman base pay minimum 35-hour guarantee violated not only Section 8(a)(5) but it also led to the constructive discharges of Carlos Martinez and Mike Galuski in violation of Section 8(a)(3) because the employees' decision to resign was the direct result of the Respondent Lincolnwood's unlawful implementation of its LBFO and discontinuation of the contractual 35-hour minimum guarantee. See *Electric Machinery Co.*, 243 NLRB 239, 240 (1979); *Superior Sprinkler, Inc., and William Augusto d/b/a William Augusto Fire Protection Services*, 227 NLRB 204 (1976) (The Board concluded that the employer's unlawful repudiation of its statutory bargaining obligations gave employees the Hobson choice of working under unlawfully imposed conditions of employment or quitting, which amounted to actual discharge.)

iii. Lincolnwood (and Riverside) further violated Section 8(a)(5) by admittedly executing individual employment agreements or "side deals" that purposefully undermined the Union as the exclusive bargaining representative (Complaint paragraph VIII (a and m))

Both Respondents stipulate that they engaged in direct dealing when they executed individual employment agreements with their employees without notice to or bargaining with the Union. The Board will find a direct dealing violation when "(1) the employer communicates 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," all of which admittedly occurred in the present case. *Mercy Health Partners*, 358 NLRB 566, 567 (2012) (citing *Permanente Medical Group*, 332 NLRB 1143, 1144 (2000)).

Both Respondents gave their employees, represented exclusively by Local 701, individual employment agreements that directly affected their wages. This was admittedly done without the Union. They are how they exactly read—loyalty bonuses for the those who remained loyal to the Respondents and disavowed their affection for the Union, in violation of Section 8(a)(5) ad evidence of Riverside's bad faith bargaining.

2. Similarly, Riverside has engaged in overall bad-faith bargaining as demonstrated by its coercive 8(a)(1) conduct, its unilateral changes, direct dealing, and its failure to cloak a representative with the authority to enter into a binding agreement (Complaint paragraphs VIII(e)-(i), (k), and (m – n)

Respondent North Riverside under Section 8(d) of the Act was not compelled to reach agreement, but it was compelled to exhibit an intention to reach an accord. Determining whether Respondent North Riverside had the proper intention to reach an accord requires scrutiny of the totality of its conduct, both at and away from the bargaining table. *Atlanta Hilton & Tower*, 271

NLRB 1600, 1603 (1984); *Modern Manufacturing Co., Inc.*, 292 NLRB 10, 11 (1988). Factors the Board considers in determining bad faith bargaining are an employer's delay tactics; its unilateral changes to mandatory subjects of bargaining; its efforts to bypass the union; its failure to designate an agent with sufficient bargaining authority; its refusal to bargain with a designated agent; its withdrawal of already agreed-upon provisions, and its arbitrary scheduling of meetings. *Atlanta Hilton*, 271 NLRB at 1603 (footnotes omitted). Most of these factors are present in this case.

i. Riverside made unilateral changes to the employees' payroll period and paid time for wheel alignments; it unilaterally changed the approval process for vacation requests, installed surveillance cameras, and unilaterally revoked the unions' contractual access to the dealership; these changes were independent violations of Section 8(a)(5) and they further establish Respondent Riverside's overall bad faith bargaining (Complaint paragraph VII (e-m)

Riverside was refrained from making unilateral changes until it reached an overall impasse with the Union. As a perfectly clear successor it could not set initial terms and conditions of employment. *Burns Security Services*, 406 U.S. supra; *Spruce Up Corp.*, 209 NLRB supra. Each change Riverside made after the McCarthy Ford transition, even the installation of the security cameras that occurred later in the calendar year, was a mandatory subject of bargaining. The revocation of Local 701's contractual access to the dealership, *Granite City Steel Co.*, 167 NLRB 310 (1967); Riverside's installation of surveillance cameras, *Anheuser-Busch, Inc.*, 342 NLRB 560, 560 (2004); *Colgate-Palmolive Co.*, 323 NLRB 515, 515 (1997) (installation of cameras is both germane to the working environment and outside the scope of managerial decisions); the changes to the contractual approval process for vacation, *United Cerebral Palsy of New York City*, 347 NLRB 603, 606-607 (2006) (Board has held that vacation scheduling and the procedures related thereto constitute substantial and material

mandatory subjects of bargaining and any unilaterally imposed changes violate Section 8(a)(5) of the Act); Riverside's changes to the employees' pay period, *S & I Transportation, Inc.*, 311 NLRB 1388 (1993) (presenting employees and union with a change from 1-week pay period to a 2-week pay period is an unlawful fait accompli and is a breach of the bargaining obligation under Section 8(a)(5)); and, its changes to the pay for wheel alignments which directly impacted the employees' total compensation package, *NLRB v. Katz*, 369 U.S. supra (wages are a mandatory subject of bargaining), all should have been bargained to impasse before implementation, and they were not. These changes, with the exception of the surveillance camera, all took effect before Riverside began negotiations September 6. Riverside installed its surveillance after contract negotiations began and when the Union brought the matter to Hendricks' attention, Riverside did not attempt to halt the installation process. Hendricks just told the Union to grieve the matter. Such a cavalier attitude of negotiating after the unfair labor practice has occurred shows Riverside's mindset toward the collective-bargaining process.

ii. Riverside's failure to cloak its attorney Jim Hendricks with the authority to enter a binding agreement and its repeated direct dealing with its employees is evidence of its overall bad faith bargaining (Complaint paragraph VIII(m))

Further evidence of Riverside's bad faith bargaining is Hendricks' purported lack of authority to negotiate on its behalf. Throughout the course of negotiations, the Union attempted to have President Zeigler at the table involved in the discussions. Each time the Union asked that he join them, the Union was told no and to bargain with Hendricks. Hendricks in turn negotiated a contract for each location and only after securing a ratification vote, did Zeigler claim that Hendricks lacked the authority to bargain on behalf of the dealerships. Zeigler's claims are dishonest because he was trying to avoid executing a contract, and if true, are an admission that

for the past four (4) months of bargaining a contract for Riverside, Respondent had someone at the table who lacked the authority to enter into a binding agreement while it was refusing to send someone who could.

When a negotiator's lack of authority impedes the collective-bargaining process, such is a key indicator of bad faith bargaining. See *United Brotherhood of Carpenters and Joiners of America. AFL-CIO, Local Union No.*, 1780, 244 NLRB 277, 281 (1979) (limiting the agent's authority while removing the key decision makers from negotiations does not comport with the duty to bargain in good faith); *J. P Stevens & Co., Inc.*, 239 NLRB 738, 768 (1978). In the present case, Riverside purposefully refused the Union's repeated requests that President Zeigler participate in negotiations. Each time the Union asked that Zeigler participate, the Union was told to take all matters to its legal counsel Hendricks. To claim after Hendricks has negotiated a contract that he lacked the authority to do such is not supported by the record and amounts to an admission that it put Hendricks at the table to impede negotiations.

3. Despite the unlawful conduct of both Respondents, the Union was able to reach complete collective-bargaining agreements for each location which the Respondents refused to execute, revoking the Union's access in perpetuity to its facilities in further violation of Section 8(a)(5) of the Act (Complaint paragraphs VIII (i, o-r))

The Respondents had a statutory obligation to execute the parties' collective-bargaining agreement as the parties agreed December 6. Section 8(d) of the Act obligated the Respondents to execute, or assist in executing, a memorialized version of the agreement as requested by the Union. Their failure to execute the contract incorporating the terms of their agreement violated Section 8(a)(5) of the Act. *H.J. Heinz Co. v. NLRB*, 311 U.S. 514, 525-526 (1941). The obligation to execute a written contract came about because the parties reached a meeting of the minds on all substantive and material terms. *Intermountain Rural Electric Assn.*, 309 NLRB

1189, 1192 (1992); *In re Buschman Co.*, 334 NLRB 441, 442 (2001). Board law looks at the parties' total conduct to find their intention. *New Orleans Stevedoring Comp.*, 308 NLRB 1076, 1081 (1992). The burden of proving that there is in fact a meeting of the minds rests on the General Counsel, and counsel has met this burden. *Hempstead Park Nursing Home*, 341 NLRB 321, 322 (2004).

The writings speak for themselves. On November 29, Lessmann emailed Hendricks two identical packets on wages and insurance. One packet was for Lincolnwood and the other was for Riverside. The Union's information for each packet came directly from the Respondents; this was not any information that the Union created on its own. The only thing the Union added was a slight $1 wage increase for year 2020 using the wage increase formula from the predecessor agreements. The Union made this slight adjustment because the Respondents' contract covered the year 2020, yet its wage proposal ended in the year 2019. At their bargaining session as well as in that November 29 email, Lessmann asked Hendricks to confirm whether there was an agreement to his two packets. Lessmann sent a follow-up email to Hendricks December 3 and December 5, and he followed-up in-person at their last December 5 bargaining session. Hendricks replied to Lessmann via email December 6 confirming that they in fact had an agreement, writing in unambiguous terms "TA on both." Based on Hendricks' representation, the Union held a ratification vote at both locations December 7.

Respondents' refusal to execute the contract is not based on any errors. Respondents do allege that the final content of the agreements are wrong. In fact, the only defense for not signing the contracts is that Hendricks lacked the authority to bind them into an agreement. This is a weak defense as discussed above and does not undo the agreements reached.

When the Union attempted to speak with Zeigler immediately following their ratification vote at Riverside, Zeigler banned the Union in perpetuity from accessing his properties in the future. The Union has a contractual right to access the dealerships and a past practice of visiting both dealerships without restriction. And, Respondents' change to this policy governing Union access was also an independent violation of Section 8(a)(5). *Cadillac of Naperville*, 2018 WL 3047010 (N.L.R.B Div. of Judges) (2018) (employer's denial of union access violated 8(a)(5)).

## IV. CONCLUSION

In conclusion, Respondents conduct must not go unchecked. Their blatant disregard for the collective-bargaining process must be remedied as stated in the attached proposed order and notice to employees. Mark Galuski, Carlos Martinez, and the other unnamed employees affected by Lincolnwood's unlawful unilateral implementation of its LBFO must be made whole. Employees at both dealerships must be reassured of their Section 7 rights, and at both dealerships, the Respondents, should be required to restore the status quo ante, as delineated in the attached. Respondents' actions violated the law and warrant nothing short of a full Board remedy.

Respectfully Submitted,

/s/ *Christina Hill*

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## V. PROPOSED ORDER AND NOTICE TO EMPLOYEES

### PROPOSED ORDER

The Respondents, **ZEIGLER NORTH RIVERSIDE, LLC D/B/A/ZIEGLER FORD OF NORTH RIVERSIDE** and **ZEIGLER LINCOLNWOOD D/B/A ZEIGLER BUICK GMC OF LINCOLNWOOD & CADILLAC OF LINCOLNWOOD**, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Telling you that this dealership was no longer a union store, to get on board with the fact this is a non-union store, that the employees would be replaced if they went on strike, that your employer did not have to talk to the Union ever again, or by making other coercive statements about your choice to be represented by or support a union..

(b) Firing you or causing you to quit because of your union membership or support.

(c) Bypassing your Union and dealing directly with you concerning changes in your wages, hours and working conditions.

(d) Refusing to bargain in good faith with Local 701, International Association of Machinists & Aerospace Workers AFL-CIO as the exclusive collective-bargaining representative of our employees in the unit described below.

> All full-time and regular part-time Journeyman Technicians, Body Shop Technicians, apprentices, lube rack technicians, part time express team technicians and semi-skilled technicians.

(e) Unilaterally implementing changes in wages and terms and conditions of employment of these employees at a time when no impasse in bargaining with the Union has occurred.

(f) Refusing to meet and bargain in good faith with your Union regarding any proposed changes in wages, hours and working conditions, including changes to payroll periods, book rates for assigned work, the approval process for vacation requests, installation of surveillance cameras, and denial of access for Union representatives, before putting such changes into effect.

(g) Refusing to sign the agreements we reached with the Union.

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

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

(a) Execute the collective-bargaining agreements as requested by the Union on or December 7, 2018, covering the bargaining-unit at its Riverside and Lincolnwood locations.

(b) Make employees all whole for any losses they may have suffered as a result of the Lincolnwood's unilateral implementation of its last, best and final offer.

(c) Make employees Mark Galuski and Carlos Martinez whole for any losses they may have suffered as a result of their constructive discharges.

(d) Remove from our files all references to the constructive discharges of Mark Galuski and Carlos Martinez and notify them in writing that this has been done and that the constructive discharges will not be used against them in any way.

(e) On request, bargain collectively in good faith with the Union as the exclusive bargaining representative of the employees in the following appropriate unit on terms and conditions of employment, and, if an understanding is reached, embody the understanding in a signed written agreement:

> All full-time and regular part-time Journeyman Technicians, Body Shop Technicians, apprentices, lube rack technicians, part time express team technicians and semi-skilled technicians.

(f) On request, reinstate the wages and terms and conditions of employment that existed before the unlawful unilateral changes, and make whole unit employees for any loss suffered as a result of these unilateral changes, with interest. However, no provision of this notice shall in any way be construed as requiring us to revoke unilaterally implemented improvements in terms and conditions of employment to unit employees.

(g) If requested by the Union, rescind any or all changes to your terms and conditions of employment, including changes to the payroll periods, book rates for assigned work, the approval process for vacation requests, installation of surveillance cameras, and denial of access for Union representatives, that we made without bargaining with the Union.

(h) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of unpaid pension due under the terms of this Order.

(i) Within 14 days of service by the Region, post at its Riverside and Lincolnwood locations copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous place, including all places where notices to employees are customarily posted.

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 facilities 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 March 29, 2018.

(j) 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.

**PROPOSED NOTICE TO EMPLOYEES**

**(To be printed and posted on official Board notice form)**

**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** tell you that this dealership is no longer a union store, to get on board with the fact this is a non-union store, that the employees would be replaced if they went on strike, that your employer did not have to talk to the Union ever again, or make other coercive statements about your choice to be represented by or support a union.

**WE WILL NOT** fire you or cause you to quit because of your union membership or support.

**WE WILL NOT** bypass your Union and deal directly with you concerning changes in your wages, hours and working conditions.

**WE WILL NOT** refuse to bargain in good faith with Local 701, International Association of Machinists & Aerospace Workers AFL-CIO as the exclusive collective-bargaining representative of our employees in the unit described below.

> All full-time and regular part-time Journeyman Technicians, Body Shop Technicians, apprentices, lube rack technicians, part time express team technicians and semi-skilled technicians.

**WE WILL NOT** unilaterally implement changes in wages and terms and conditions of employment of these employees at a time when no impasse in bargaining with the Union has occurred.

**WE WILL NOT** refuse to meet and bargain in good faith with your Union regarding any proposed changes in wages, hours and working conditions, including changes to payroll periods, book rates for assigned work, the approval process for vacation requests, installation of surveillance cameras, and denial of access for Union representatives, before putting such changes into effect.

**WE WILL NOT** refuse to sign the agreements we reached with the Union.

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

**WE WILL** offer Mark Galuski and Carlos Martinez immediate and full reinstatement to their former jobs, or if that job no longer exists, to substantially equivalent positions, without prejudice to his seniority or any other rights and/or privileges previously enjoyed.

**WE WILL** pay Mark Galuski and Carlos Martinez for the wages and other benefits they lost because we caused them to quit.

**WE WILL** remove from our files all references to the constructive discharges of Mark Galuski and Carlos Martinez and **WE WILL** notify them in writing that this has been done and that the constructive discharges will not be used against them in any way.

**WE WILL,** on request, bargain collectively in good faith with the Union as the exclusive bargaining representative of the employees in the following appropriate unit on terms and conditions of employment, and, if an understanding is reached, embody the understanding in a signed written agreement:

> All full-time and regular part-time Journeyman Technicians, Body Shop Technicians, apprentices, lube rack technicians, part time express team technicians and semi-skilled technicians.

**WE WILL**, on request, reinstate the wages and terms and conditions of employment that existed before the unlawful unilateral changes, and make whole unit employees for any loss suffered as a result of these unilateral changes, with interest. However, no provision of this notice shall in any way be construed as requiring us to revoke unilaterally implemented improvements in terms and conditions of employment to unit employees.

**WE WILL,** if requested by the Union, rescind any or all changes to your terms and conditions of employment, including changes to the payroll periods, book rates for assigned work, the approval process for vacation requests, installation of surveillance cameras, and denial of access for Union representatives, that we made without bargaining with the Union.

**WE WILL** pay you for the wages and other benefits lost because of the changes to terms and conditions of employment that we made without bargaining with the Union.

**WE WILL**, upon request, sign the agreements that we reached with the Union.