

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

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

**Cases 13-CA-230375  
13-CA-235144  
13-CA-235147**

**and**

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

**and**

**TEAMSTERS LOCAL 731, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, AFL-CIO**

**COUNSEL FOR THE GENERAL COUNSEL'S MOTION TO REVOKE ORDER  
APPROVING SETTLEMENT AGREEMENT AND TO REMAND CASES TO  
REGIONAL DIRECTOR FOR ISSUANCE OF CONSOLIDATED COMPLAINT**

Counsel for the General Counsel files this Motion To Revoke the Order Approving the Settlement Agreement in the three above-referenced cases and to remand the cases to the Regional Director of Region 13 for the issuance of a Consolidated Complaint, and in support thereof, states:

1. On April 22-23, 2019, the above-referenced cases (as filed by Charging Party Teamsters Local 731), along with five other consolidated cases (wherein a different union was the Charging Party but Respondents were the same), were tried before Your Honor at the offices of Region 13 of the National Labor Relations Board.
2. On June 17, 2019, based on a post-trial resolution of Cases 13-CA-230375, 13-CA-235144, and 13-CA-235147 among Counsel for the General Counsel, Respondents, and Charging Party Teamsters Local 731, Your Honor issued an Order Approving Settlement Agreement And Granting Motion To Sever (Your Honor issued a Decision and Order regarding the remaining five cases in favor of Charging Party International Association of Machinists Local 701). Said Order/Settlement Agreement is attached hereto as GC Exhibit 1.
3. Per Your Honor's Order, Respondents were to, inter alia, do the following:

- a. Make Pension Fund contributions;
  - b. Bargain over unilateral changes going forward;
  - c. Cease and desist from engaging in direct dealing with employees and bypassing the Union;
  - d. Furnish information as requested by the Union on January 18, 2019.
4. Your Honor's Order also explicitly states that "**Once the Respondents fully comply with the settlement agreement**, the General Counsel should file a motion with me to withdraw the complaint allegations involving Teamsters Local 731." (emphasis added)
  5. Counsel for the General Counsel never filed a motion seeking withdrawal of these charges.
  6. Rather, Region 13 erroneously issued a closing letter on these matters on October 16, 2019.
  7. The Region's issuance of the closing letter was improper given that jurisdiction over these cases remains with Your Honor per the terms of the Order Approving Settlement.
  8. Moreover, and though jurisdiction of these cases remains with Your Honor, the Region did caution Respondents in the closing letter that "the closing is conditioned upon continued observance of the informal Settlement Agreement."
  9. Thus, the Region did not have the authority to close the cases in compliance and therefore the cases remain open under Your Honor's dominion. Moreover, even if Respondents reasonably believed that the Region did actually have the power to close the cases due to the issuance of the closing letter, Respondents were put on notice two months ago in that letter that the closing of those cases was conditioned upon actual compliance.
  10. Respondents have **not** complied with the settlement agreement approved by Your Honor on June 17, 2019.
  11. To the contrary, Charging Party Teamsters Local 731 has been forced to file new charges against Respondents in Cases 13-CA-243879, 13-CA-248342, 13-CA-248344, 13-CA-248524, and 13-CA-249093, alleging that Respondents have, inter alia:
    - a. Ceased making Pension Fund contributions;
    - b. Failed to bargain over unilateral changes going forward;
    - c. Engaged in direct dealing with employees and bypassed the Union;
    - d. Failed to furnish information as requested by the Union on January 18, 2019 (and re-requested in July 2019).

These are the same issues that remain open in the above-captioned cases.

12. Region 13 found merit to all of these allegations (plus several additional unfair labor practices, including making unilateral changes before and after illegally declaring

impasse when none existed, constructively discharging two employees, threatening employees in various ways, and engaging in overall bad faith bargaining). These “new” cases are scheduled to go to trial at Region 13’s offices starting on December 16, 2019. The Consolidated Complaint in these matters is attached hereto as GC Exhibit 2.

13. The Board has long held that “a settlement agreement may be set aside and unfair labor practices found based on presettlement conduct if there has been a failure to comply with the provisions of the settlement agreement or if postsettlement unfair labor practices are committed.” *Twin City Concrete*, 317 NLRB 1313 (1995), quoting *YMCA of Pikes Peak Region*, 291 NLRB 998, 1010 (1998), enfd. 914 F.2d 1442 (10th Cir. 1990), cert. denied 500 U.S. 904 (1991). Moreover, the Board has noted that the issue of whether to give effect to or rescind a settlement agreement “cannot be determined by a mechanical application of rigid a priori rules but must be determined by the exercise of sound judgment based upon all the circumstances of each case.” *Deister Concentrator Co.*, 253 NLRB 358, 359 (1980) (quoting *Ohio Calcium Co.*, 34 NLRB 917, 935 (1941), enfd. in part 133 F.2d 721 (6th Cir. 1943)).
14. Subsequent or continuing unfair labor practices will ordinarily justify setting aside a settlement agreement. *ConAgra Foods, Inc.*, 365 NLRB No. 102, slip op. at 2–3 (2017); *Scripps Memorial Hospital Encinitas*, 347 NLRB 52, 53 (2006); and *YMCA of the Pikes Peak Region, Inc.*, 291 NLRB 998, 1010, 1012 (1988), enfd. 914 F.2d 1442, 1449–1450 (10th Cir. 1990), cert. denied 500 U.S. 904 (1991).
15. In *Strategic Resources, Inc.*, 364 NLRB No. 42 (2016), the Board held that the employer’s post-settlement unfair labor practices required revocation of the prior settlement agreement. After signing the settlement agreement, the Board found that the employer (like Respondents in these cases) continued its refusal to provide the Union with relevant and necessary information in violation of Section 8(a)(5) of the Act, and, though it promised to bargain in good faith, the employer then took the position that the parties reached impasse on a critical issue in bargaining, violating Section 8(a)(5) of the Act. *Id.*
16. Here, there are multiple complaint allegations that Respondents have continued to commit unfair labor practices and have new committed subsequent unfair labor practices after the approval of the settlement agreement (see GC Exhibit 2) as well as evidence that Respondents have failed to comply with the provisions of the settlement agreement. Among many other violations of the Act, and as alleged in the new Consolidated Complaint, Respondents have continued to fail to furnish the Union with the information it has been requesting (and has re-requested) in order to evaluate bargaining proposals, have been bypassing the Union and dealing directly with the employees, have again stopped paying into the Union’s Pension Fund (all allegations which were mandated to be rectified by the settlement agreement).
17. The Board holds “a lawful impasse cannot be reached in the presence of unremedied unfair labor practices.” *White Oak Coal*, 295 NLRB 567, 568 (1989). Further, an employer that has actually committed unfair labor practices cannot “parlay an impasse

resulting from its own misconduct into a license to make unilateral changes.” *Wayne’s Dairy*, 223 NLRB 260, 265 (1976).

18. The evidence the unremedied unfair labor practices from the settled cases before Your Honor should be made available to Counsel for the General Counsel to introduce in the upcoming December 16, 2019 trial to show Respondent’s propensity to continue its illegal behavior, its failure to fully comply with the prior settlement agreement, and as factors in showing: (1) that there could not have been an impasse at the time Respondents declared impasse given the unremedied and continuing unfair labor practices (see *White Oak Coal* and *Wayne’s Dairy*, supra); and (2) Respondents were engaged in overall bad faith bargaining (for which unremedied and continuing unfair labor practices is a factor the Board weighs in its analysis of bad faith bargaining). See *Mid-Continent Concrete*, 336 NLRB 258 (2001) (the Board noted that in determining whether a respondent has bargained in bad faith, it looks at the totality of the circumstances, including efforts to bypass the bargaining representative, failing to provide relevant information, and unlawful conduct away from the table). Among the “settled” allegations are a failure to provide information and efforts to bypass the Union.
  
19. Given that Respondents did not comply with Your Honor’s Order Approving Settlement, Counsel for the General Counsel respectfully requests that the June 17, 2019 Order Approving Settlement Agreement be revoked and that Your Honor remand the above-captioned cases to the Regional Director in an expedited manner (given that the upcoming trial on the related, overlapping, and integrated issues is scheduled to begin in less than two weeks) so that the evidence from that trial be permitted to be introduced and incorporated into the upcoming December 16, 2019 litigation against Respondent through a Consolidated Complaint, and so that there will be an adjudication on those issues as well as the new/related issues.

Dated: December 4, 2019

/s/ Lisa Weis, Esq.

Lisa Friedheim-Weis, Esq.  
Counsel for the General Counsel for Cases 13-CA-  
243879 et al.  
National Labor Relations Board  
Region 13  
Dirksen Federal Building  
219 South Dearborn Street, Suite 808  
Chicago, IL 60604-2027

## CERTIFICATE OF SERVICE

The undersigns avers that the attached COUNSEL FOR THE GENERAL COUNSEL'S MOTION TO REVOKE ORDER APPROVING SETTLEMENT AGREEMENT AND TO REMAND CASES TO REGIONAL DIRECTOR FOR ISSUANCE OF CONSOLIDATED COMPLAINT has been served on this day, December 4, 2017, on the following parties and in the following manner:

Via E-Filing:  
NLRB Division of Judges

Via Email:

ALJ Charles Muhl  
[Charles.muhl@nlrb.gov](mailto:Charles.muhl@nlrb.gov)

Courtesy Copy to ALJ Andrew Gollin  
[Andrew.Gollin@nlrb.gov](mailto:Andrew.Gollin@nlrb.gov)

Attorneys for Respondents Phil Toomey and Jim Hendricks  
[ptoomey@leehtishman.com](mailto:ptoomey@leehtishman.com)

[jhendricks@leehtishman.com](mailto:jhendricks@leehtishman.com)

Attorney for Union Steve Yokich  
[syokich@laboradvocates.com](mailto:syokich@laboradvocates.com)

/s/ Lisa Weis, Esq. 12/4/19

Lisa Friedheim-Weis, Esq.  
Counsel for the General Counsel for Cases 13-CA-  
243879 et al.  
National Labor Relations Board  
Region 13  
Dirksen Federal Building  
219 South Dearborn Street, Suite 808  
Chicago, IL 60604-2027

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

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

and

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

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

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

and

Cases 13-CA-230375  
13-CA-235144  
13-CA-235147

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

and

TEAMSTERS LOCAL 731, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, AFL-CIO

ORDER APPROVING SETTLEMENT  
AGREEMENT AND GRANTING MOTION TO SEVER

On January 9, 2019, the General Counsel, through the Regional Director of Region 13 of the National Labor Relations Board, issued a complaint and notice of hearing in Case 13-CA-225984 against Respondent Zeigler Buick GMC of Lincolnwood & Cadillac of Lincolnwood ("Zeigler Lincolnwood"). The complaint was based upon an unfair labor practice charge filed by Local Lodge 701 of the International Association of Machinists & Aerospace Workers, AFL-CIO ("Machinists Local 701"). That union represents mechanics who work in the service department of the Zeigler Lincolnwood auto dealership. On March 1, 2019, the General

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Counsel issued an order consolidating Case 13-CA-225984 with Cases 13-CA-230635, 13-CA-233695, and 13-CA-233700, as well as a consolidated complaint against Zeigler Lincolnwood and an additional respondent, Zeigler Ford of North Riverside ("Zeigler North Riverside"). The latter entity operates a different auto dealership, with mechanics who also are represented by Machinists Local 701. On March 26, 2019, the General Counsel issued an order consolidating the previous four cases with Cases 13-CA-235867, 13-CA-230375, 13-CA-235144, and 13-CA-235147, as well as a second consolidated complaint. The latter three cases are premised upon charges filed by Teamsters Local 731, International Brotherhood of Teamsters, AFL-CIO ("Teamsters Local 731") against the same respondents. Teamsters Local 731 represents other service department employees at the two dealerships. On April 22 and 23, I conducted a trial in these cases in Chicago, Illinois. My decision is pending.

On June 10, 2019, the General Counsel, Teamsters Local 731, Zeigler Lincolnwood, and Zeigler North Riverside reached an informal Board settlement for the charges filed by that union. On June 11, the General Counsel filed a motion requesting that I approve the settlement and sever the cases where Teamsters Local 731 is the charging party. The settlement requires Zeigler Lincolnwood to make pension fund contributions from the date it ceased making payments through June 20, 2019. It further requires Zeigler Lincolnwood to, upon request, rescind unilateral changes it made to employees' terms and conditions of employment, as well as to bargain, upon request, over such changes going forward. Zeigler Lincolnwood also must cease and desist from bypassing the Union and engaging in direct dealing with employees. Finally, the settlement requires the Respondents to furnish Teamsters Local 731 with the information that union requested on August 31, 2018 and January 18, 2019. Accordingly, the settlement agreement fully resolves all of the complaint allegations involving Teamsters Local 731. All parties agreed to the settlement and no party objects to the General Counsel's motion.

Therefore, I HEREBY ORDER that the General Counsel's motion is granted. The settlement agreement is approved and Cases 13-CA-230375, 13-CA-235144, and 13-CA-235147 are severed from this proceeding. The settlement agreement is remanded to Region 13 for compliance.<sup>1</sup>

Dated, Washington, D.C., June 17, 2019.



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Charles J. Muhl  
Administrative Law Judge

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<sup>1</sup> Once the Respondents fully comply with the settlement agreement, the General Counsel should file a motion with me to withdraw the complaint allegations involving Teamsters Local 731.

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
SETTLEMENT AGREEMENT  
APPROVED BY AN ADMINISTRATIVE LAW JUDGE

IN THE MATTER OF

Zeigler Lincolnwood d/b/a Zeigler Buick GMC of Lincolnwood &  
of Lincolnwood & Zeigler North Riverside, LLC  
d/b/a Zeigler Ford of North Riverside

Cases 13-CA-230375, 13-CA-235144,  
13-CA-235147

The undersigned Charged Party and the undersigned Charging Party, and Counsel for the General Counsel, in settlement of the above matter, and subject to the approval of an Administrative Law Judge for the National Labor Relations Board, **HEREBY AGREE AS FOLLOWS:**

**POSTING OF NOTICE** - Upon approval of this Agreement and receipt of the Notices from the Region, which may include Notices in more than one language as deemed appropriate by the Regional Director, the Charged Party will post immediately in conspicuous places in and about its plant/office, including all places where notices to employees/members are customarily posted, and maintain for 60 consecutive days from the date of posting, copies of the attached Notice (and versions in other languages as deemed appropriate by the Regional Director) made a part hereof, said Notices to be signed by a responsible official of the Charged Party and the date of actual posting to be shown thereon. In the event this Agreement is in settlement of a charge against a union, the union will submit forthwith signed copies of said Notices to the Regional Director who will forward them to the employer whose employees are involved herein, for posting, the employer willing, in conspicuous places in and about the employer's plant where they shall be maintained for 60 consecutive days from the date of posting. Further, in the event that the charged union maintains such bulletin boards at the facility of the employer where the alleged unfair labor practices occurred, the union shall also post Notices on each such bulletin board during the posting period.

**COMPLIANCE WITH NOTICE** - The Charged Party will comply with all the terms and provisions of said Notice.

**BACKPAY** - Within 14 days from approval of this agreement the Charged Party will make whole the employee(s) named below by payment to each of them of the amount opposite each name. The Charged Party will make appropriate withholdings for each named employee.

	Pension Fund	Liquidated Damages	Interest	May 2019 payment due June 20, 2019	Grand Total
Teamsters Local 731 Pension Fund	\$22,086.00	\$4,417.20	\$1,596	\$1,296	<u>\$29,395.21</u>

<b>Charged Party</b> <b>Zeigler Lincolnwood d/b/a Zeigler Buick GMC of Lincolnwood &amp; Cadillac of Lincolnwood</b>			<b>Charging Party</b> <b>Teamsters Local 731</b>		
By:	Name and Title	Date	By:	Name and Title	Date
	<i>/s/ Aaron Zeigler</i> President	06/10/2019		<i>/s/ Stephen A. Yokich</i> Counsel	06/11/2019
Print Name and Title below			Print Name and Title below		
<b>Charged Party Zeigler North Riverside, LLC d/b/a Zeigler Ford of North Riverside</b>					
By:	Name and Title	Date			
	<i>/s/ Aaron Zeigler</i> President	06/10/2019			
Print Name and Title below					
Recommended By:		Date	Approved By:		Date
<i>/s/ Christina Hill</i> Counsel for General Counsel		06/11/2019	<i>/s/ Charles Muhl</i> Administrative Law Judge National Labor Relations Board		06/17/2019

**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** interfere with, restrain or coerce you in the exercise of the above rights.

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

**WE WILL NOT** fail and refuse, or unreasonably delay in providing Teamsters Local 731 with requested information that is relevant and necessary to its role as the exclusive collective bargaining representative of employees in the unit specified below.

**WE WILL NOT** refuse to bargain in good faith with Teamsters Local 731 as the exclusive collective-bargaining representative of our employees in the unit described below.

**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 pension fund contributions before putting such changes into effect.

**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 Service Department employees including full-time parts counter employees, stock room employees, stock room attendant, drivers, utility, and garage attendant employees.

**WE WILL** immediately provide the Union with the information requested on August 31, 2018 and on January 18, 2019.

**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 pension contributions that we made without bargaining with the Union.

**WE WILL** pay the Teamsters Local 731 Pension and Welfare Funds the contributions for the Pension funds owed because of the changes to terms and conditions of employment that we made without bargaining with the Union.

**Zeigler Lincolnwood d/b/a Zeigler Buick GMC of  
Lincolnwood & Cadillac of Lincolnwood & Zeigler  
North Riverside, LLC d/b/a Zeigler Ford of North  
Riverside**

\_\_\_\_\_  
(Employer)

**Dated:** \_\_\_\_\_ **By:** \_\_\_\_\_  
(Representative) (Title)

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*The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-844-762-NLRB (1-844-762-6572). Hearing impaired callers who wish to speak to an Agency representative should contact the Federal Relay Service (link is external) by visiting its website at <https://www.federalrelay.us/tty> (link is external), calling one of its toll free numbers and asking its Communications Assistant to call our toll free number at 1-844-762-NLRB.*

Dirksen Federal Building  
219 South Dearborn Street, Suite 808  
Chicago, IL 60604-2027

**Telephone:** (312)353-7570  
**Hours of Operation:** 8:30 a.m. to 5 p.m.

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

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

**ORIGINAL**

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13

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

and

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

and

TEAMSTERS LOCAL 731, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, AFL-CIO

Cases 13-CA-243879  
13-CA-248342  
13-CA-248344  
13-CA-248524  
13-CA-249093

**ORDER CONSOLIDATING CASES, CONSOLIDATED  
COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board), and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 13-CA-243879, Case 13-CA-248342, Case 13-CA-248344, Case 13-CA-248524 and Case 13-CA-249093, filed by Teamsters Local 731, International Brotherhood of Teamsters, AFL-CIO (Charging Party) against Zeigler Lincolnwood D/B/A Zeigler Buick GMC of Lincolnwood & Cadillac of Lincolnwood (Respondent Lincolnwood) and against Zeigler North Riverside, LLC, D/B/A/ Zeigler Ford of North Riverside (Respondent North Riverside), are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Board's Rules and Regulations, and alleges Respondents Lincolnwood and North Riverside have violated the Act as described below.

I

(a) The original charge in Case 13-CA-243879 was filed by the Charging Party on June 25, 2019, and a copy was served on Respondent Lincolnwood by U.S. mail on June 26, 2019.

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(b) The first amended charge in Case 13-CA-243879 was filed by the Charging Party on November 6, 2019, and a copy was served on Respondent Lincolnwood by U.S. mail on the same date.

(c) The original charge in Case 13-CA-248342 was filed by the Charging Party on September 17, 2019, and a copy was served on Respondent Lincolnwood by U.S. mail on the same date.

(d) The first amended charge in Case 13-CA-248342 was filed by the Charging Party on November 6, 2019, and a copy was served on Respondent Lincolnwood by U.S. mail on the same date.

(e) The original charge in Case 13-CA-248344 was filed by the Charging Party on September 17, 2019, and a copy was served on Respondent North Riverside by U.S. mail on the same date.

(f) The first amended charge in Case 13-CA-248344 was filed by the Charging Party on November 6, 2019, and a copy was served on Respondent North Riverside by U.S. mail on the same date.

(g) The original charge in Case 13-CA-248524 was filed by the Charging Party on September 19, 2019, and a copy was served on Respondent North Riverside by U.S. mail on the same date.

(h) The first amended charge in Case 13-CA-248524 was filed by the Charging Party on November 6, 2019, and a copy was served on Respondent North Riverside by U.S. mail on the same date.

(i) The original charge in Case 13-CA-249093 was filed by the Charging Party on September 30, 2019, and a copy was served on Respondent North Riverside by U.S. mail on the same date.

(j) The first amended charge in Case 13-CA-249093 was filed by the Charging Party on November 6, 2019, and a copy was served on Respondent North Riverside by U.S. mail on the same date.

## II

(a) At all material times, Respondent Lincolnwood has been a corporation with an office and place of business in Lincolnwood, Illinois, Respondent Lincolnwood's facility, and has been engaged in the retail sale and service of new and pre-owned automobiles.

(b) In conducting its operations during the 12-month period ending December 31, 2018, Respondent Lincolnwood derived gross revenues in excess of \$500,000 and during the same period of time, purchased and received goods and materials valued in excess of \$5,000 directly from points outside of the State of Illinois.

(c) In about February 2018, Respondent Lincolnwood purchased the business of Grossinger Auto Group (Grossinger), and since then has continued to operate the business of Grossinger in basically unchanged form, and has employed as a majority of its employees individuals who were previously employees of Grossinger.

(d) Based on its operations described above in paragraph II(c), Respondent Lincolnwood has continued as the employing entity and is a successor to Grossinger.

(e) At all material times, Respondent Lincolnwood has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

(f) At all material times, Respondent North Riverside has been a corporation with an office and place of business in North Riverside, Illinois, Respondent North Riverside's facility, and has been engaged in the retail sale and service of new and pre-owned automobiles.

(g) In conducting its operations during the 12-month period ending December 31, 2018, Respondent North Riverside derived gross revenues in excess of \$500,000 and during the same period of time, purchased and received goods and materials valued in excess of \$5,000 directly from points outside of the State of Illinois.

(h) In about June 2018, Respondent North Riverside purchased the business of McCarthy Ford (McCarthy), and since then has continued to operate the business of McCarthy in basically unchanged form, and has employed as a majority of its employees, individuals who were previously employees of McCarthy.

(i) Based on its operations described above in paragraph II(h), Respondent North Riverside has continued as the employing entity and is a successor to McCarthy.

(j) At all material times, Respondent North Riverside has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

### III

At all material times, the Charging Party has been a labor organization within the meaning of Section 2(5) of the Act.

### IV

(a) At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Lincolnwood within the meaning of Section 2(11) of the Act and agents of Respondent Lincolnwood within the meaning of Section 2(13) of the Act:

Aaron Zeigler - President

Steve Foresta - General Manager

(b) At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent North Riverside within the meaning of Section 2(11) of the Act and agents of Respondent North Riverside within the meaning of Section 2(13) of the Act:

Aaron Zeigler – President

Brian Malpeli – Vice President

Edgar Cortez – Service Manager

V

(a) About September 9, 2019, Respondent, by Steve Foresta, at Respondent Lincolnwood's facility, threatened employees:

- (1) By telling them that Respondent Lincolnwood's employees no longer had a union.
- (2) By telling them they would not be hired back if they went on strike.

(b) About September 9, 2019, Respondent, by Brian Malpeli, at Respondent North Riverside's facility, threatened employees:

- (1) By telling them that Respondent Lincolnwood's employees no longer had a union.
- (2) By telling them they would not be hired back if they went on strike.

(c) About September 9 and 18, 2019, Respondent, by Brian Malpeli, at Respondent North Riverside's facility promised employees benefits if they decertified the Union.

## VI

(a) About June 2019, Respondent rescinded contributions to the pension fund without first bargaining with the Union to an overall good-faith impasse.

(b) About September 9, 2019, Respondent rescinded contributions to the health and welfare fund, changed wage rates, and implemented other new terms and conditions of employment without first bargaining with the Union to an overall good-faith impasse.

(c) By the conduct described above in paragraphs VI(a) and (b), Respondent caused the termination of its employees Anthony Kees and Roger Clabough.

(d) Respondent engaged in the conduct described above in paragraphs VI(a) and (b) because the named employees of Respondent Lincolnwood supported the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

## VII

(a) The following employees of Respondent Lincolnwood (Lincolnwood Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Service Department employees including full time parts counter employees, stock room employees, stock room attendant, drivers, utility and garage attendant employees.

(b) From about 1987 until about February 28, 2018, the Union had been the exclusive collective-bargaining representative of the Lincolnwood Unit employed by Grossinger, and during that time the Union had been recognized as such representative by Grossinger. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from August 1, 2014, to July 31, 2018.

(c) Since about February 28, 2018, based on the facts described above in paragraphs II(c), II(d) and V(b), the Union has been the designated exclusive collective-bargaining representative of the Lincolnwood Unit.

(k) Since about March 2018 and at all material times, Respondent Lincolnwood has recognized the Union as the exclusive collective-bargaining representative of the Unit.

(l) From about 1987 to February 28, 2018, based on Section 9(a) of the Act, the Union had been the exclusive collective-bargaining representative of the Lincolnwood Unit employed by Grossinger.

(m) At all times since February 28, 2018, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Lincolnwood Unit.

(n) The following employees of Respondent North Riverside (North Riverside Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Service Department employees including full time parts counter employees, stock room employees, stock room attendant, drivers, utility and garage attendant employees.

(o) From about 1987 until about June 2018, the Union had been the exclusive collective-bargaining representative of the North Riverside Unit employed by McCarthy, and during that time the Union had been recognized as such representative by McCarthy. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from August 1, 2014, to July 31, 2018.

(p) Since about June 2018, based on the facts described above in paragraphs II(h), II(i) and V(h), the Union has been the designated exclusive collective-bargaining representative of the North Riverside Unit.

(q) Since about June 2018 and at all material times, Respondent North Riverside has recognized the Union as the exclusive collective-bargaining representative of the North Riverside Unit.

(r) From about 1987 to June 2018, based on Section 9(a) of the Act, the Union had been the exclusive collective-bargaining representative of the North Riverside Unit employed by McCarthy.

(s) At all times since June 2018, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the North Riverside Unit.

## VIII

(a) About January 1 and April 8, 2019, Respondent Lincolnwood removed work from the bargaining unit without first giving notice to and bargaining with the Union to an overall good-faith impasse.

(b) About March 29, 2019, Respondent Lincolnwood implemented new terms and conditions of employment in the employee handbook, including a new social media policy, safety standards and a new vacation payment procedure, without first giving notice to and bargaining with the Union to an overall good-faith impasse.

(c) About April 2019, Respondent Lincolnwood changed the procedure for overtime payments without first giving notice to and bargaining with the Union to an overall good-faith impasse.

(d) About April 2019, Respondent North Riverside changed the wage increase progression without first giving notice to and bargaining with the Union to an overall good-faith impasse.

(e) About May 2019, Respondent North Riverside eliminated personal days without first giving notice to and bargaining with the Union to an overall good-faith impasse.

(f) About June 2019 and continuing to date, Respondent Lincolnwood rescinded pension fund contributions without first giving notice to and bargaining with the Union to an overall good-faith impasse.

(g) About August 1, 2019, Respondent Lincolnwood ceased the deduction and remittance of union dues without first giving notice to and bargaining with the Union to an overall good-faith impasse.

(h) About September 9, 2019, Respondent Lincolnwood made the following changes without first giving notice to and bargaining with the Union to an overall good-faith impasse:

- (1) Rescinded health and welfare fund contributions.
- (2) Changed the wages of bargaining unit employees.

(i) About September 9, 2019, Respondent North Riverside made the following changes without first giving notice to and bargaining with the Union to an overall good-faith impasse:

- (1) Ceased deducting and remitting dues.
- (2) Rescinded pension fund contributions.
- (3) Rescinded health and welfare fund contributions.
- (4) Changed the wages of bargaining unit employees.

(j) About September 10, 2019, Respondent, by Edgar Cortez and Brian Malpeli, at Respondent's North Riverside facility, denied and revoked the Union's access to the facility and to bargaining unit employees.

(k) About September 18 and 19, 2019, Respondent, by Brian Malpeli, at Respondent North Riverside's facility, bypassed the Union and dealt directly with its employees in the North Riverside Unit by offering North Riverside Unit employees higher wages and additional monthly compensation.

(l) The subjects set forth above in paragraphs VIII(a) – (k) relate to wages, hours, and other terms and conditions of employment of the Lincolnwood Unit and are mandatory subjects for the purposes of collective bargaining.

(m) Respondents Lincolnwood and North Riverside engaged in the conduct described above in paragraphs VIII(a) – (k) without prior notice to Charging Party and without affording Charging Party an opportunity to bargain with Respondents Lincolnwood and North Riverside with respect to this conduct and the effects of this conduct.

## IX

Since about August 31, 2018 and reinstated on July 17, 2019, the Charging Party has requested in writing that Respondent Lincolnwood furnish the information set forth below related to grievance 18-6-15:

<b>Information Requested</b>
(a) Personnel file of affected employee/employees;
(b) Records of employees who have committed the same offenses and discipline imposed, if any;
(c) Copy of the employer work rules alleged to be violated and the effective date when said rule was adopted, initiated or made known to affected employee/employees/Union;
(3) Copy Investigative records, including witness statements, interview notes, surveillance photographs and/or footage, etc.; and
(4) All documents and information relied upon by the Employer to impose discipline upon the affected employee/employees.

Since about January 18, 2019 and reinstated on July 17, 2019, the Charging Party has requested in writing that Respondent Lincolnwood furnish the information set forth below related to grievance 18-6-06:

<b>Information Requested</b>
(d) Personnel file of affected employee/employees;
(e) Records of employees who have committed the same offenses and discipline imposed, if any;
(f) Copy of the employer work rules alleged to be violated and the effective date when said rule was adopted, initiated or made known to affected employee/employees/Union;
(5) Copy Investigative records, including witness statements, interview notes, surveillance photographs and/or footage, etc.; and
(6) All documents and information relied upon by the Employer to impose discipline upon the affected employee/employees.

XI

Since about January 18, 2019 and reinstated on July 17, 2019, the Charging Party has requested in writing that Respondent Lincolnwood and Respondent North Riverside furnish the information set forth below as it relates to Respondents' bargaining proposal:

<b>Information Requested</b>
(a) Article III bargaining proposal: The names and employment dates of all Utility employees during the prior contract term (8/1/2014 — 7/31/2018) and up to today. If there were none, the Union requests copies of invoices and other records showing all instances during the prior contract term and up to today where either dealership performed any paint shield, fabric shield and/or undercoating, and to identify which employees (and their classifications) who performed it.
(b) Article IV: explanation of Employer's wage proposal cutting hourly rates of pay by as much as \$4.65 per hour for drivers (25% pay cut) and \$.75 per hour for garage attendants (10% pay cut); confirm parts counter employees are non-exempt under the FLSA, and what their regular hourly rate of pay will be under the Employer's proposal; an earnings and hours history for each parts counter employee during the prior contract term and up to today, including all elements of compensation (hourly pay, commission) for each pay period, and for each calendar year, for each employee; the monthly parts gross for both dealerships (and supporting records) for the same period;
(c) Article V: copies or other records identifying all the workweek schedules in effect during the prior contract term and up to today;

(d) Article VI: a record of all personal days taken by each employee during the prior contract term and up to today;
(e) Article VIII: the number of hours worked per week by every employee paid on a straight time hourly basis in each week during the prior contract term and up to today;
(f) Article X: identify the number of weeks of annual vacation currently earned by every bargaining unit employee
(g) Article XIII: identify all subcontracting that occurred during the term of the prior agreement and up to today and in each instance of subcontracting, identify the work subcontracted, the location where the subcontracted work is/was performed, and the duration of the subcontract; and
(h) Articles XVI-XVII, XXI: identify the number of current participants in each of the two proposed Company insurance plans, and the number in each tier of coverage for each plan; regarding the 401(k), please advise of any amounts the Company matches or has matched to employee contributions over the last four years for participating employees.

## XII

The information requested by the Charging Party as described above in paragraphs IX through XI, is necessary for, and relevant to, the Charging Party's performance of its duties as the exclusive collective-bargaining representatives of the Lincolnwood and North Riverside Units.

## XIII

From about the dates of the requests set forth in each relevant paragraph, Respondent Lincolnwood and Respondent North Riverside have failed and refused to furnish the Charging Party, with the information requested by it as described above in Paragraphs IX through XI.

#### XIV

(a) At various times from about October 2018 through September 2019, Respondents Lincolnwood and North Riverside and the Union met for the purposes of negotiating an initial collective-bargaining agreement with respect to wages, hours, and other terms and conditions of employment.

(b) On August 23, 2019, Respondents Lincolnwood and North Riverside unlawfully declared impasse.

(c) During the period described above in paragraph XIV(a), Respondents Lincolnwood and North Riverside engaged in unilateral changes, direct dealing, threatened employees that Respondents Lincolnwood and North Riverside were no longer a union shop, and that if Unit employees went on strike, they would not be hired back and failed and refused to provide information.

(d) By its overall conduct, including the conduct described above in paragraphs V, VI, VIII, IX, X, and XI, Respondents Lincolnwood and North Riverside have failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of the Unit.

#### XV

(a) By the conduct described above in paragraph V, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

(b) By the conduct described above in paragraphs VI and VIII, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its

employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

(c) By the conduct described above in paragraphs VIII, IX, X and XI, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

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

**WHEREFORE**, as part of the remedy for Respondent's unfair labor practices alleged above, the General Counsel seeks an Order requiring Respondent (1) to meet and bargain with the Charging Party at least once every 4 weeks until agreement or good faith impasse is reached; (2) to prepare written bargaining progress reports every 15 days and submit them to the Regional Director and also serve the reports on the Union to provide the Union with an opportunity to reply; (3) to provide time for the Union to address bargaining unit employees at both facilities in order to rectify the unfair labor practices; and (4) to read the Notice in English and Spanish to all employees in the presence of a representative of the General Counsel. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

#### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before November 29, 2019 or postmarked on or before November 28, 2019.**

Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

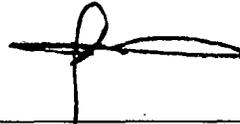
An answer may also be filed electronically through the Agency's website. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the

required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

**NOTICE OF HEARING**

PLEASE TAKE NOTICE THAT on **December 12, 2019 at 11:00 am at 219 South Dearborn Street, Suite 808, Chicago, Illinois**, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: November 15, 2019



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Peter Ohr Regional Director  
National Labor Relations Board  
Region 13  
Dirksen Federal Building  
219 South Dearborn Street, Suite 808  
Chicago, IL 60604-2027

Attachments

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
NOTICE

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in *detail*;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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