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Argos USA LLC d/b/a Argos Ready Mix, LLC and Construction and Craft Workers Local Union No. 1652, Laborers' International Union of North America, AFL-CIO. Cases 12-CA-196002 and 12-CA-203177

July 14, 2020

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN
AND EMANUEL

On May 14, 2019, Administrative Law Judge Kimberly R. Sorg-Graves issued a decision in this proceeding, and, on May 23, 2019, she issued an errata. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief. The General Counsel filed cross-exceptions and a supporting brief, and the Respondent filed an answering brief.

On February 5, 2020, the National Labor Relations Board issued a decision and order, reported at 369 NLRB No. 26,¹ that, among other things, severed and retained the complaint allegation that the Respondent violated Section 8(a)(5) and (1) by failing to provide the Union with notice and an opportunity to bargain before suspending employee Emmanuel Excellent. At the time that the complaint issued, this area of the law was controlled by *Total Security Management Illinois 1, LLC*, 364 NLRB No. 106 (2016).

While this remaining complaint allegation was pending, the Board overruled *Total Security Management*. In *800 River Road Operating Company, LLC d/b/a Care One at New Milford*, 369 NLRB No. 109 (2020), the Board returned to the well-established principle that no material change has occurred when an employer imposes

discretionary discipline on a represented employee pursuant to its existing disciplinary policy or practice and, therefore, that an employer has no prediscipline obligation to bargain. The Board further held that its decision would apply retroactively to all pending cases.

The judge here found that the Respondent routinely exercises discretion when imposing discipline on its employees pursuant to its established disciplinary policies and practices. Using that discretion, the Respondent decided to suspend Excellent while it investigated his suspected breach of its Cell Phone Policy, a policy the Board found lawful in its prior decision. Under the rule articulated in *800 River Road*, we find that the suspension of Excellent did not constitute a material change in his terms and conditions of employment and, accordingly, that the Respondent did not have a duty to bargain with the Union prior to implementing the suspension. We shall therefore dismiss the allegation.

ORDER

The remaining complaint allegation is dismissed.
Dated, Washington, D.C. July 14, 2020

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ Judge Sorg-Graves' decision was attached to that decision and order and may be accessed there.