

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9

THE PAINTING CONTRACTOR, LLC

and

Cases 09-CA-248716  
09-CA-250898

INTERNATIONAL UNION OF PAINTERS AND  
ALLIED TRADES, AFL-CIO, CLC, DISTRICT  
COUNCIL 6

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S BRIEF**  
**TO THE**  
**ADMINISTRATIVE LAW JUDGE**

**TABLE OF CONTENTS**

	<b><u>Page Number</u></b>
<b>I. INTRODUCTION.....</b>	<b>1</b>
<b>II. STATEMENT OF THE CASE.....</b>	<b>1</b>
<b>III. ISSUES.....</b>	<b>2</b>
<b>IV. THE FACTS.....</b>	<b>2</b>
<b>A. Background.....</b>	<b>2</b>
<b>B. Contract Negotiations between the Union and Association.....</b>	<b>3</b>
<b>C. Respondent Attempts to Withdraw from the Association         and its Subsequent Conduct .....</b>	<b>7</b>
<b>D. Respondent Declares Impasse and Unilaterally Implements         New Terms and Conditions of Employment.....</b>	<b>10</b>
<b>E. Respondent Threatens its Employees at the October 28 Meeting .....</b>	<b>13</b>
<b>V. LEGAL ANALYSIS.....</b>	<b>14</b>
<b>A. Respondent violated Section 8(a)(5) of the Act         when, since about May 30, 2019, it has refused         to adhere to the collective-bargaining agreement         between the Association and the Union .....</b>	<b>14</b>
<b>B. Respondent violated Section 8(a)(5) of the Act         when, about June 16, 2019, it ceased contributing         to the Drug Free Workplace program and reduced         its contributions to the Target Fund .....</b>	<b>19</b>
<b>C. Respondent violated Section 8(a)(1) of the Act on about         October 28, 2019, at its Sharonville, Ohio office, when         Jack Varney told employees that if they wished to         keep their current benefits under a union contract, they         would need to work for a different employer.....</b>	<b>21</b>
<b>D. Respondent violated Section 8(a)(5) of the Act when on         November 1, 2019, it withdrew from the Southern Ohio         Painters Health and Welfare Fund, ceased participation         in the IUPAT Union and Industry National Pension         Fund, and changed Unit employees' wage rates.....</b>	<b>22</b>
<b>VI. REMEDY.....</b>	<b>25</b>
<b>VII. CONCLUSION.....</b>	<b>25</b>

**TABLE OF AUTHORITIES**

<b><u>Primary Sources</u></b>	<b><u>Page Number</u></b>
<i>American Automatic Sprinkler Sys.</i> , 323 NLRB 920 (1997).....	23, 24
<i>American Federation of Television and Radio Artists v. NLRB</i> , 395 F.2d 622 (D.C. Cir. 1968).....	24
<i>Associated Shower Door Co.</i> , 205 NLRB 677 (1983).....	18
<i>Daily News of Los Angeles</i> , 315 NLRB 1236 (1994).....	20, 22
<i>Dependable Tile Co.</i> , 268 NLRB 1147 (1984).....	17, 19
<i>Electrical Workers IBEW Local 46 (Puget Sound)</i> , 302 NLRB 271 (1991).....	19
<i>Health Care Workers Union, Local 250 (Trinity House)</i> , 341 NLRB 1034 (2004).....	19
<i>NLRB v. E.I. DuPont De Nemours</i> , 750 F.2d 524 (6th Cir. 1984).....	21
<i>NLRB v. Gissel Packing Co.</i> , 395 U.S. 575, 89 S. Ct. 1918, 23 L.Ed.2d 547 (1969).....	21
<i>NLRB v. Hartman</i> , 774 F.2d 1376 (9th Cir. 1985).....	17, 19
<i>NLRB v. Okun Bros. Shoe Store, Inc.</i> , 825 F.2d 102 (6th Cir. 1987).....	21
<i>NLRB v. Southwestern Colorado Contractors, Ass’n</i> , 379 F.2d 360 (10th Cir. 1967).....	14, 17
<i>Retail Associates, Inc.</i> , 120 NLRB 388 (1958).....	15, 16
<i>Sheet Metal Workers Local 19 v. Herre Bros., Inc.</i> , 201 F.3d 231 (3rd Cir. 1999).....	17
<i>Taft Broadcasting Co.</i> , 163 NLRB 475 (1967).....	22
<i>Torbitt &amp; Castleman, Inc. v. NLRB</i> , 123 F.3d 899 (1997).....	21

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9

THE PAINTING CONTRACTOR, LLC

and

Cases 09-CA-248716  
09-CA-250898

INTERNATIONAL UNION OF PAINTERS AND  
ALLIED TRADES, AFL-CIO, CLC, DISTRICT  
COUNCIL 6

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S BRIEF**  
**TO THE**  
**ADMINISTRATIVE LAW JUDGE**

**1. INTRODUCTION**

This case is before Administrative Law Judge Geoffrey Carter upon the Counsel for the Acting General Counsel's Order Consolidating Cases, Consolidated Complaint, and Notice of Hearing, and Amendment to the Consolidated Complaint and Notice of Hearing collectively alleging that Respondent violated Section 8(a)(1) and (5) of the Act. (G.C. Exs. 1(e), 1(k)) The record evidence strongly supports the arguments set forth by Counsel for the Acting General Counsel.

**II. STATEMENT OF THE CASE**

The charge in Case 09-CA-248716 was filed on September 23, 2019 and the charge in Case 09-CA-250898 was filed on October 30, 2019. <sup>1/ 2/</sup> (G.C. Exs. 1(a), 1(c)) Thereafter, an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing issued in Cases 09-CA-248716 and 09-CA-250809 on September 30, 2020 and an Amendment to the Consolidated Complaint and Notice of Hearing issued on December 16, 2020. (G.C. Exs. 1(e) and 1(k)) An unfair labor practice

---

<sup>1/</sup> References to the transcript will be designated as (Tr. \_\_\_\_); references to Counsel for the Acting General Counsel's Exhibits will be designated as (G.C. Ex. \_\_\_\_); references to Joint Exhibits will be designated as (Jt. Ex. \_\_\_\_); and references to Respondent's Exhibits will be designated as (R. Ex. \_\_\_\_).

<sup>2/</sup> All dates takes place within 2019 hereinafter unless otherwise noted.

hearing was held by videoconference on January 5 and 6, 2021. Counsel for the Acting General Counsel maintains that Respondent violated the Act as alleged.

### **III. ISSUES**

1. Whether since about May 30, 2019, Respondent has refused to adhere to the collective-bargaining agreement between Greater Cincinnati Painting Contractors Association (the Association) and International Union of Painters & Allied Trades District Council #6, Local Unions #123 and #238, AFL-CIO in violation of Section 8(a)(5) of the Act.

2. Whether, about June 16, 2019, Respondent ceased its contributions to the Drug Free Workplace program and reduced its contributions to the Target Fund, in violation of Section 8(a)(5).

3. Whether on about October 28, 2019, Respondent, by Jack Varney, at its Sharonville, Ohio office, threatened employees that if they wished to keep their current benefits under a union contract, they would need to work for a different employer, thereby interfering with, restraining, and coercing employees in violation of Section 8(a)(1) of the Act.

4. Whether, about November 1, 2019, Respondent withdrew from the Southern Ohio Painters Health and Welfare Fund, ceased participation in the IUPAT Union and Industry National Pension Fund, and changed Unit employees' wage rates in violation of Section 8(a)(5) of the Act.

### **IV. THE FACTS**

#### **A. Background**

The Painting Contractor, LLC (Respondent) is a commercial and industrial painting contractor and surface solution specialist that offers services in the Greater Cincinnati area. (Jt. Ex. 36, p. 1) Its representatives and agents are Rich Coleman, Chief Executive Officer,

Jack Varney, Jr. Chief Financial Officer, and Kevin Walker, Business Developer. (Jt. Ex. 36, pp. 1-2) Respondent employs about 35 painters and drywall finishers who are represented by the International Union of Painters and Allied Trades District Counsel #6, Local Numbers 123 and 236 (the Union). (Jt. Ex. 36, p. 2) Respondent is a member of the Greater Cincinnati Painting Contractors Association (Association) which is comprised of about eight painting and drywall companies that authorize the Association to bargain on their behalf with respect to collective bargaining. (Jt. Ex. 36, p. 2) Several members of the Association have been the lead negotiator on behalf of the Association during the relevant period of time in which the parties negotiated. (Jt. Ex. 36, p. 2; Tr. 57) The Association and Union have been parties to a series of collective-bargaining agreements, most recently in effect from May 1, 2016 to May 1, 2019 and from May 1, 2019 to May 1, 2022. <sup>3/</sup> (Jt. Exs. 1, 11 and 36, p. 3)

## **B. Contract Negotiations between the Union and the Association**

On January 28, the Union requested to bargain with the Association for a new contract. (Jt. Exs. 20 and 36, p. 3) The Union and Association bargained approximately 10 times between the period of February 11 through May 28, reaching a first tentative agreement (TA 1) about April 23. (Jt. Exs. 21 and 36, p. 3) Before presenting TA 1 to the unit members for ratification, the Union and Association agreed to extend the contract through May 14. (Jt. Exs. 2, 21 and 36, p. 3; Tr. 43, 47, 132, 133) Kevin Walker represented Respondent and caucused with the Association at the April 23 negotiation session. (Jt. Ex. 36, p. 3; Tr. 43, 44, 48, 132, 133) Mr. Walker did not say anything during the meeting. (Tr. 48, 133)

---

<sup>3/</sup> Jt. Ex. 11 contains a typographic error which incorrectly indicates the contract term is from May 1, 2019 to May 1, 2021; the term agreed to by the parties was a 3-year term with an expiration date of May 1, 2022. (Tr. 89, 90, 112). Articles IV and Addendum A of the Union and Association's current collective-bargaining agreement correctly provide for 3 years of wage increases, not 2. (Jt. Exs. 11, pp. 6 and 20)

On May 7, the Union membership voted against TA 1. (Jt. Ex. 36, p. 3; Tr. 48) About May 10, Union Business Manager and Secretary Treasurer Jim Sherwood sent an email to the Association advising that the membership rejected TA 1 and asking to bargain for a new tentative agreement. (Jt. Ex. 36, p. 3) The parties next met on May 13, but did not reach an agreement that day. (Jt. Exs. 2 and 36, pp. 3, 4; Tr. 48, 50, 133) Kevin Walker represented Respondent during this meeting as well. (Jt. Ex. 36, p. 4; Tr. 49, 133) Walker participated in a caucus with the Association and did not say anything at the meeting. (Tr. 50, 133, 135)

On May 13 and May 14, the Union and Association communicated by email about wages, further attempting to reach a second tentative agreement (TA 2). (Jt. Exs. 2 and 36, p. 4; Tr. 51) On May 14, the Union agreed to the proposal offered by the Association and to take TA 2 to its members for a ratification vote pending a signed extension from the Association. (Jt. Exs. 2, 3, 22 and 36, p. 4; Tr. 50, 51, 52) It then proposed to extend the expired collective-bargaining agreement until May 23, to allow time for the Union membership to vote on the proposal. (Jt. Exs. 2, 3, 22 and 36, p. 4; Tr. 52) The vote was scheduled for May 23. (Jt. Ex. 2) On May 17, Respondent, by its attorney Mark Gerano, by email, advised the Union and Association, “[p]ursuant to Article XIX of the Agreement, if there is a further extension of the Agreement, then this is TPC’s notice of withdrawal from the Association, contemporaneous with such extension. TPC would thereafter negotiate separately with the Union on its own behalf for a new agreement to be effective after the extension expires.” (Jt. Exs. 4 and 36, p. 4)

On May 23, the Union membership rejected TA 2 because of the wages proposed by the Association and voted to strike. (Jt. Exs. 23 and 36, p. 4; Tr. 52, 135) The Union advised the Association that membership rejected TA 2 and requested to resume bargaining. (Jt. Ex. 23)

The Union members were on strike from May 24 through the morning of May 28. (Jt. Ex. 36, pp. 4, 5; Tr. 58, 135)

On May 27, Rick Perry of Perry Interiors, on behalf of the Association, called Jim Sherwood with the intention of ending the strike. (Tr. 55-56) Perry also emailed Sherwood asking for a contract extension and to start negotiations as soon as the next day. (Jt. Ex. 5, pp. 2-3 and 36, p. 4; Tr. 59, 60) Perry advised that the wage increases previously proposed by the Union were agreeable to the Association and expressed his desire for the Union to end the strike and for the unit members to return to work. (Jt. Ex. 5, p. 2) Sherwood agreed to meet the following morning to negotiate and stated that the Union “*cannot extend without a T.A. [L]et’s negotiate tomorrow and see if we can get another T.A. and extend after we negotiate. Please let me know if that is acceptable.*” (Jt. Ex. 5, p. 2 (emphasis added))

A few of the Association members then exchanged emails, independently from the Union, about meeting beforehand to discuss the proposal to increase the wage package to \$1.15 an hour for each year of the 3-year contract (as opposed to \$1.05 per hour in the first 2 years and \$1.15 in the 3<sup>rd</sup> year proposed in TA 2). (Jt. Ex. 5, pp. 1-2 and 22; Tr. 94) Among these emails was one from Jack Varney, Jr., Respondent’s chief financial officer, stating, “The Painting Contractor is willing to have the Association enter into a short term extension but votes no on the proposed tentative agreement.” (Jt. Ex. 5, p. 1) Respondent did not notify the Union of its opposition to the tentative agreement expressed in this email. (Tr. 94)

On the morning of May 28, while the unit members were still on strike, the Union and Association met via videoconference. (Jt. Ex. 36, p. 5; Tr. 60, 136) Kevin Walker attended on behalf of Respondent. (Jt. Ex. 36, p. 5; Tr. 61, 136) Rick Lehn, from Association contractor Lehn Painting, spoke on behalf of the Association and expressed that the Association members

were upset that that the unit members had gone on strike after rejecting TA 2 and wanted their employees to return to work. (Jt. Ex. 36, p. 5; Tr. 61, 137) Lehn then asked the Union for a contract extension, and Jim Sherwood responded that its members would continue to strike until the parties reached a tentative agreement. (Tr. 64)

The Union and Association then exchanged wage proposals, after which both the Union and the Association contractors caucused. (Tr. 62, 137) Like he did at the April 23 and May 13 meetings, Walker participated in the caucus with the Association but did not say anything during the meeting. (Jt. Ex. 36, p. 5; Tr. 62, 91, 137) The Union and Association subsequently agreed to a third tentative agreement (TA 3) that was subject to ratification by union membership, which they executed that day. (Jt. Exs. 6, 24 and 36, p. 5; Tr. 62) Prior to the May 28 meeting, wages and restrictive age hiring language were the only two unresolved items on the table, and the substance of these proposals account for the main differences between TA 2 and the final tentative agreement, TA 3. (Jt. Exs. 22 and 24; Tr. 69)

Once the parties agreed on TA 3, the Association members then expressed that they wanted their employees back to work immediately. (Tr. 64) The Union and Association then agreed to extend the prior contract through June 5, to allow the membership to end the strike and return to work until the June 5 ratification vote. (Jt. Exs. 6 and 36, p. 5; Tr. 63, 64, 137) The Union's constitution requires it to provide sufficient notice to its members for ratification, which is why the Union waited until June 5 to hold the vote. (Tr. 64-65)

As of the May 28 meeting, the Union believed that Respondent was a part of the Association because Walker was involved in negotiations and caucused with the Association along with the other contractors. (Tr. 67) Further, neither Walker nor the Association indicated that Respondent was not a party to TA 3 or that Respondent was withdrawing from the

Association. (Tr. 65-66, 138) Sherwood testified that if anyone had mentioned anything to that effect at the meeting, he would have insisted that Walker leave negotiations. (Tr. 66, 92) This meeting ended much sooner compared to prior negotiations, presumably because the contractors were eager for their employees to return to work. (Tr. 67) The May 28 meeting was the last time the Union and Association met to bargain for the new contract; the Union and Respondent did not meet after that time to bargain for an agreement either. (Jt. Ex. 36, p. 6; Tr. 71, 145)

**C. Respondent Attempts to Withdraw from the Association and its Subsequent Conduct**

After the May 28 meeting ended, the Union notified its members that the strike was over because the parties reached TA 3. (Jt. Ex. 36, p. 5; Tr. 67-68, 138) Unit employees, including Respondent's employees, returned to work that day and on May 29. (Jt. Ex. 36, p. 5; Tr. 67-68, 139) At 5 p.m. on that day - after the parties had agreed to TA 3 and unit employees had returned to work from the strike - Respondent sent the Union and Association an email stating that, "pursuant to the notice that we emailed to you and the Association on May 17, 2019..., TPC is no longer represented by the Association, and no agreement reached between the Association and Union that would be effective after expiration of the current extension will apply to TPC. TPC offers to begin separate negotiations with the Union for a new agreement to replace the Agreement when the extension expires." (Jt. Exs. 7 and 36, p. 5; Tr. 70)

On May 29, via email, the Union refuted Respondent's claim that it was not bound by TA 3, citing the facts that Respondent had participated in the May 28 videoconference in which Association members also participated, the discussions concluded with an agreement from all participating parties that the contract would be extended through June 5, and the Union would present TA 3 to its members for ratification prior to that date. (Jt. Ex. 8) It further noted that Respondent's representative Walker did not exclude himself nor Respondent from either the

extension or TA 3 itself. (Jt. Exs. 8 and 36, p. 6) The Union maintained that because Respondent agreed to be bound by both TA 3 and the third extension, negotiations for a separate contract were unnecessary at that time. (Jt. Exs. 8 and 36, p. 6)

On May 30, Respondent advised the Union that it separated from the Association and was not bound to any tentative agreement or any other agreements in effect between the Union and Association after June 5. (Jt. Exs. 9 and 36, p. 6; Tr. 70) Respondent also emailed the Union a proposal for a separate collective-bargaining agreement. (Jt. Ex. 9 and 36, p. 6) The terms proposed by Respondent on May 30 were never discussed during negotiations between the Union and Association. (Tr. 71) The Union did not respond to Respondent's May 30 proposal because it believed that Respondent was bound to TA 3. (Tr. 71) Thereafter, on June 5, Union membership ratified TA 3. (Jt. Ex. 36, p. 6; Tr. 99) Respondent's employees, among others, participated in the meeting. (Tr. 99)

On June 16, Respondent notified the Union that it intended to maintain the status quo regarding wages and fringe benefit contributions while the Union and Respondent negotiated a new agreement or until the parties reached impasse. (Jt. Exs. 16 and 36, p. 7) More specifically, Respondent advised that it would remit contributions to the fringe benefit funds per the 2016-2019 contract between the Union and Association ("old contract" or "2016 Agreement"), but would change how it remitted contributions to the Target Fund and Drug and Alcohol programs to accommodate for changes to these funds agreed-to in the new 2019 to 2022 contract ("new contract" or "2019 Agreement"). (Jt. Ex. 16, p. 1) The Target Fund is an after-tax dues assessment from unit members' wages, and the deduction was reduced to \$0.05 in the new contract. (Jt. Ex. 1, pp. 1 and 11; Tr. 87) The Drug and Alcohol program is a pre-tax assessment and was eliminated entirely from the new contract. (Jt. Exs. 1, p. 1 and 11; Tr. 88) In lieu of

deducting and sending \$0.25 per hour directly to the Target Fund per the old contract, Respondent remitted only \$0.05 per hour to the Target Fund, pursuant to the terms of the new contract, and set aside the remaining \$0.20 per hour. (Jt. Exs. 1, p. 1, 11, pp. 1 and 16, p. 1) Further, in lieu of deducting and remitting \$0.03 per hour for the Drug and Alcohol program pursuant to the old contract, Respondent advised that it would deduct, but set aside, that amount. (Jt. Exs. 1, p. 1 and 16, p. 1)

On June 17, the Union advised that it received Respondent's June 16 email and would respond. (Jt. Exs. 16 and 36, p. 7)

On June 26, the Union and Association signed a wage allocation chart, which set forth how the \$1.15-an-hour wage increase that the Union and Association had agreed to in TA 3, and that the unit employees ratified on June 5, would be allocated. (Jt. Exs. 10, 24 and 36, p. 7; Tr. 76, 96) Wage allocation refers to the process whereby the Union, with input from the members, take the agreed-upon wage increase and allocate it to where they determine it is most needed, whether towards fund fringe benefits or hourly pay.<sup>4/</sup> (Tr. 72, 74, 97, 139, 154) It is a yearly internal union procedure that typically does not involve the Association or its contractors. (Tr. 72, 74, 97, 139, 140) Rather, each unit votes on wage allocation for their particular contract. (Tr. 75, 154) After the unit votes on wage allocation, the Union sends the decision to particular contractors to verify that the allocation is correct. (Tr. 76) The wage allocation process did not affect the wage package that was agreed to in TA 3 and ratified on June 5. (Tr. 77, 127, 128, 139, 142, 149) Rather, the unit members merely voted to put the entire \$0.69 wage increase into

---

<sup>4/</sup> For example, TA 3 initially allocated \$0.69 of the \$1.15 an hour increase to wages but, based on a July 11, vote, unit members voted to put that money towards fund contributions (\$0.61 into health and welfare and \$0.08 into pension) rather than a wage increase. (Jt. Ex. 24, p. 4; Tr. 111, 112) These contributions remained in effect through April 30, 2020. (Tr. 112)

benefits rather than to wages. (Tr. 112) All contractors, including Respondent, received a copy of the wage sheet. (Tr. 112)

On June 28, the Union filed a grievance against Respondent asserting that Respondent refused to recognize the newly ratified contract and also refused to adhere to the terms of the then-expired agreement. (Jt. Exs. 1, 25 and 36, p. 7; Tr. 98) Specifically, it grieved that, on or about June 25, the Union allocated wages under the newly ratified collective-bargaining agreement in effect between the Union and Association, that Respondent is refusing to recognize the newly ratified contract in its entirety, and refusing to comply with certain terms of the old, expired contract by refusing to make certain contributions as required under that contract in violation of Articles IV and V. (Jt. Ex. 1, pp. 6-8 and 25)

**D. Respondent Declares Impasse and Unilaterally Implements New Terms and Conditions of Employment**

On September 13, Respondent emailed the Union a contract proposal and offered to meet and negotiate on September 16. (Jt. Exs. 14 and 36, p. 7; Tr. 78) This proposal was identical to its May 30 proposal except it proposed a later expiration date and contained more details regarding health insurance. (Jt. Ex. 14, p. 2) On September 19, Respondent sent a follow-up email, repeating that its September 13 proposal was identical to its May 30 proposal, and also declaring impasse and advising that it would implement the September 13 proposal on October 23. (Jt. Exs. 15, 26 and 36, p. 7; Tr. 80) Respondent and the Union did not meet to negotiate a new contract between May 30 and September 19. (Tr. 80) The Union did not offer a counter to Respondent's May 30 and September 19 proposals because it believed Respondent was bound to TA 3. (Tr. 80)

On September 20, Respondent notified the Union that it would implement new terms effective November 1. (Jt. Exs. 15 and 36, p. 7) On September 23, Respondent distributed a

letter to its employees which detailed the status of negotiations with the Union and provided information regarding health insurance. (Jt. Exs. 27 and 36, p. 7) The memo provided, “TPC has been attempting to negotiate with the Union for a new collective-bargaining agreement since May 2019. Since then, the Union has refused to meet with TPC to negotiate a new agreement. On September 19, 2019, TPC declared impasse with the Union regarding its negotiations...[and] TPC is going to implement its contract proposals effective [ ] November 1, 2019.” (Jt. Ex. 27) Respondent also provided its employees with details regarding its group health insurance plan. (Jt. Ex. 27)

On September 24, Respondent contacted the Union regarding its Target Fund and Drug & Alcohol Program contributions. (Jt. Exs. 28 and 36, p. 7) Specifically, it stated that the \$0.20 per hour contributions that it had withheld from the Target Fund since June 16 would be remitted to the Union through October 31. (Jt. Ex. 28, p. 1) Regarding the Drug & Alcohol Program, Respondent stated that it never set aside the \$0.03 contribution, because it assumed it was subsumed into another fund contribution. (Jt. Ex. 28, p. 1) Respondent stated that it made those payments and would continue to do so through October 31. (Jt. Ex. 28, p. 1)

On October 7, Respondent sent the Union an email detailing the terms that it would implement effective November 1. (Jt. Exs. 30 and 36, p. 8; Tr. 80, 81) It also attached its proposed working agreement and rules. (Jt. Ex. 30) A portion of these items were initially proposed by Respondent on May 30 – i.e. wage rates changes, eliminating pension and other fringe benefit plans, and union security language. (Jt. Exs. 9, 30 and 36, p. 8) The terms provided on October 7 differed significantly from both TA 2 and TA 3, and the May 30 proposal as well. (Jt. Exs. 9 and 30; Tr. 81) For example, it significantly reduced the wage package by

approximately \$4 an hour and removed all references to Union dues, and Union health and welfare fund deductions. (Tr. 81)

On October 16, the Union told Respondent that it disputed its claim of impasse because the Union was not required to bargain with Respondent for a separate contract; and it asked Respondent to preserve the status quo of the parties pending determination of the underlying dispute of whether it was obligated to do so. (Jt. Exs. 31, pp. 1-2 and 36, p. 8) On October 18, Respondent replied that the parties were at impasse and, even if not at impasse, the Union's refusal to bargain allowed Respondent to implement its proposed terms. (Jt. Exs. 31 and 36, p. 8) The Union responded that it had every intention of negotiating with Respondent if the National Labor Relations Board determined that Respondent is not bound to the new contract. (Jt. Ex. 31, p. 2) It stated that, in the meantime, Respondent needed to maintain the status quo by adhering to the terms of the expired contract instead of resorting to self-help by unilaterally imposing its proposal. (Jt. Ex. 31, p. 2) In response, Respondent stated the parties were at impasse as to its September 13 proposal, including the revised proposed new group health plan, and even if not at impasse, it claimed the Union's refusal to bargain allowed it to implement its proposed terms. (Jt. Exs. 14, 31, p. 1, 32 and 36, p. 8)

On October 22, the Union provided Respondent with the finalized collective-bargaining agreement between the Union and the Association, which reduced TA 3 to writing, and requested that it sign the agreement. (Jt. Exs. 11, 33 and 36, p. 9; Tr. 113) On October 22, Respondent replied to the Union, stating it was not bound to the agreement between the Association and Union. (Jt. Exs. 33 and 36, p. 9) Respondent claimed in its letter that it "timely withdrew from the Association while negotiations were ongoing effective May 28, 2019, and offered to bargain separately with the Union for an agreement....and is not bound by the 2019-21 Association

Agreement or any other agreement entered into by the Association and Union following [Respondent's] withdrawal from the Association.” (Jt. Ex. 33) Respondent further claimed that the Union and the Association continued to engage in negotiations after TA 3 was ratified on June 5 and substantially changed its terms. *Id.* Contrary to such claims, there were no more negotiations between the Association and Union after the June 5 ratification; rather, the Union and its membership had merely made wage allocations to the agreed-upon \$1.15/hour increase as had been the established practice with prior agreements between the parties. (Jt. Ex. 10; Tr. 77, 139)

On October 24, Respondent gave the Union a copy of the benefits and open enrollment information that it had previously provided to unit employees pursuant to the terms of its unilaterally implemented proposal. (Jt. Exs. 34 and 36, p. 9)

#### **E. Respondent Threatens its Employees at the October 28 Meeting**

On October 28, Respondent distributed a memo to its employees announcing that new terms would be taking effect on November 1, including new wages and cessations of fringe benefit contributions. (Jt. Exs. 19 and 36, p. 9; Tr. 170) That day, Respondent also met with its employees at its shop to explain the new employment terms that were to be unilaterally implemented. (Jt. Ex. 36, p. 9; Tr. 169) Jack Varney spoke to the employees, with CEO Rich Coleman and Walker also being present. (Tr. 171-172) During the meeting, and after Varney had explained some of these terms, employee David Henn stood up and asked Varney, “let me get this straight, I have two options, I either have to accept what you’re going to pay me and withdraw from the Union ...or pay my own dues, or find a job for another union contractor.” (Tr. 173) Varney replied, yes, and then turned around and walked out of the room. (Tr. 173)

On October 29, the Union advised Respondent that its members were willing to continue working for Respondent under the terms and conditions of the old CBA, while the National

Labor Relations Board determined the rights and responsibilities of the parties. <sup>5/</sup> Respondent replied that it did not intend to maintain status quo but would implement its proposal effective November 1. (G.C. Ex. 2; Tr. 83) Thereafter, on November 1, Respondent implemented new terms and conditions of employment. (Jt. Ex. 36, p. 9) Specifically, it withdrew from the Southern Ohio Painters Health and Welfare Fund, ceased participation in the IUPAT Union and Industry National Pension Fund, and changed Unit employees' wage rates. (Jt. Ex. 26; G.C. Ex. 1(g) p. 2)) The terms that Respondent implemented on November 1 were virtually similar to those proposed on May 30 and September 13. (Jt. Exs. 9, 14 and 36, p. 9) However, they greatly differed from both TA 2, to which Respondent consented as an undisputed member of the Association, and TA 3. (Jt. Exs. 24 and 26)

## V. LEGAL ANALYSIS

Counsel for the Acting General Counsel submits, as demonstrated below, that Respondent engaged in the following violations:

**A. Respondent violated Section 8(a)(5) of the Act when, since about May 30, 2019, it has refused to adhere to the collective-bargaining agreement between the Association and the Union**

The appropriate time for withdrawing from a multiemployer bargaining unit is after the expiration of an existing contract and/or prior to the start of negotiations on a new contract. See, *NLRB v. Southwestern Colorado Contractors, Ass'n*, 379 F.2d 360, 364 (10th Cir. 1967) Longstanding Board-law weighs heavily against parties withdrawing from multi-employer bargaining where actual bargaining negotiations have begun and have not otherwise broken-down or reached impasse. Thus, any uncertainty in this case should be resolved in favor of

---

<sup>5/</sup> By this time, the NLRB charge that Respondent had filed against the Union in 9-CB-242861 was still pending hearing on a complaint and the Union had filed the charge herein alleging that Respondent had unlawfully refused to adhere to the 2019-2022 collective-bargaining agreement.

finding that Respondent is bound by TA 3. In *Retail Associates, Inc.*, 120 NLRB 388, 395 (1958), the seminal case defining the standard for withdrawal from multiemployer bargaining units, the Board held:

“We believe it reasonable to establish in appropriate future cases, where such issues are squarely presented, specific ground rules, resting upon existing principles and policies under the Act, to govern questions of representation in multiemployer bargaining units. Among other things, the timing of an attempted withdrawal from a multiemployer bargaining unit, as Board cases show, is an important lever of control in the sound discretion of the Board to ensure stability of such bargaining relationships. We would accordingly refuse to permit the withdrawal of an employer or a union from a duly established multiemployer bargaining unit, except upon adequate written notice given prior to the date set by the contract for modification, or to the agreed-upon date to begin the multiemployer negotiations. *Where actual bargaining negotiations based on the existing multiemployer unit have begun, we would not permit, except on mutual consent, an abandonment of the unit upon which each side has committed itself to the other, absent unusual circumstances.*” (Emphasis added)

Here, Respondent does not dispute that it remained a part of the Association until at least the point where the parties agreed to a contract extension at the May 28 meeting. It will argue, however, that such extension preceded the parties’ agreement on TA 3, thus absolving it of the obligations of multi-employer bargaining and allowing it to subsequently reject the parties’ agreement to TA 3. Board law condemns such untenable stance. Moreover, Respondent’s own conduct after its May 17 notice defies its claim of withdrawal. Initially, while there is little in the record regarding how the parties have interpreted Article XIX – indeed, no contractor had previously attempted to withdraw under this provision (Tr. 98. 99) - the parties’ contractual language easily contemplates that a contractor’s notice that it intends to withdraw from the Association and negotiate separately will, at a minimum, occur before negotiations for a new contract get underway. In this regard, the parties’ contractual deadline for notifying each other

that they wish to negotiate a new agreement (“at least 90 days prior to the date of expiration....”) coincides with the contractors’ deadline for providing written notice of withdrawal from the Association (“...not less than 90 days prior to the expiration date of this Agreement...”). (See, Article XIX at Jt. Ex. 1, p. 20) Such reading is consistent with the Board’s aversion to withdrawing once negotiations have begun “absent unusual circumstances.” See, *Retail Associates*, supra at 395. Furthermore, the language upon which Respondent relied, which literally appears to give it the option of withdrawing “...at least 3 days before any extension of this Agreement is executed by the Association,” contradicts both Board policy and the parties’ ostensible intent.

Even if Respondent’s May 17 notice of intent to withdraw from the Association was timely under a literal reading of Article XIX, such notice was ineffective for the purpose of withdrawing from multi-employer bargaining. Respondent’s May 17 notice was neither a clear nor an unequivocal withdrawal from multiemployer bargaining. Indeed, the notice stated that, “if there is a further extension of the Agreement, then this is [Respondent’s] notice of *withdrawal from the Association*, contemporaneous with such extension.” (Jt. Ex. 4)(Emphasis added) Even if withdrawing from the Association was the equivalent of withdrawing from multiemployer bargaining, and its results, Respondent went on to condition its withdrawal on an uncertain future event, i.e., another contract extension. Thus, the notice fell well short of the Board’s requirement that withdrawals be unequivocal. See, *Retail Associates*, supra at 393-395 (employer’s “decision to withdraw must contemplate a sincere abandonment, with relative permanency, of the multiemployer unit and the embracement of a different course of bargaining on an individual-employer basis ....”) The expiration of the parties’ May 23 contract extension left the parties without any agreement, thereby arguably removing any barrier to Respondent withdrawing. See,

*Southwestern Colorado Contractors, Ass'n*, 379 F.2d 360 at 364. Instead, Respondent again equivocated, opting to remain in the Association and in multi-employer bargaining past the May 23 expiration and up to May 28 when negotiations resumed the parties and the parties entered into TA 3 and agreed to the third contract extension. (Jt. Exs. 3, 6 and 36, p. 4) Respondent could have arguably withdrawn from bargaining upon expiration of the May 23 extension and its failure to do so should be construed against it.

Respondent's conduct after giving the May 17 notice, and after the May 23 contract expiration, belie any finding that it withdrew from multi-employer bargaining and was privileged to negotiate a separate agreement with the Union. First, leading up the May 28 meeting, it continued to vote with other Association members on whether to accept TA 3 and on the extension itself. Second, its contrary actions at the May 28 meeting reasonably led the Union to believe that Respondent remained a part of the Association and was consenting to TA 3 and the extension: Walker was present at the May 28 meeting, caucused with the Association and made no attempt to express Respondent's position that it was not consenting to or bound by TA 3 or the extension. <sup>6/</sup> (Jt. Ex. 36, p. 5; Tr. 65, 66, 67, 92 and 138) Finally, and, significantly, Respondent reaped the benefits of the meeting by ending its employees' strike. (Tr. 64, 109, 110) The Board has found, in numerous cases, that acts inconsistent with a purported withdrawal from multi-employer bargaining nullifies such claimed withdrawals. See, *Dependable Tile Co.*, 268 NLRB 1147 (1984) enfd. as modified; *NLRB v. Hartman*, 774 F.2d 1376, 1383-84 (9th Cir. 1985)(if an employer substantially acts inconsistent with its withdrawal from multi-employer bargaining, its conduct nullifies withdrawal); *Sheet Metal Workers Local 19 v. Herre Bros., Inc.*, 201 F.3d 231, 233 (3rd Cir. 1999)("[A]n employer may not

---

<sup>6/</sup> Had Walker made this known during the meeting, the Union would have asked him to leave. (Tr. 66, 92)

attempt to ‘secure the best of two worlds’ by purportedly withdrawing bargaining authority but then remaining a member of a multi-employer unit in the hope of security advantageous terms through group negotiations.”); *Associated Shower Door Co.*, 205 NLRB 677, 682 (1983), enfd. 512 F.2d 230, 233 (9th Cir. 1975). Here, Respondent attempted to “secure the best of two worlds,” by accepting an extension (ending the strike) while simultaneously arguing that the Union must now begin negotiations with it individually, de novo, without regard to TA 3 (much less the bargained-for terms of TA 1 or TA 2). See *Id.*

The Union made it clear, both in its email to the Association to which Respondent was privy and at the May 28 session, that it would only agree to an extension and end the May 23 strike in exchange for the Association agreeing to TA 3. (Jt. Exs. 4 and 5; Tr. 63, 64, 71, 72, 138) The Union would not have agreed to a contract extension without a new tentative in agreement in place; the extension was a quid pro quo for TA 3. (Tr. 64) In sum, Respondent knew that the Association’s agreed-upon contract extension also included its consent to the new tentative agreement. And voting in favor of the extension inured to Respondent’s benefit as it ended the strike. (Tr. 64, 109, 110) Although Respondent preemptively voted “no” to the proposed tentative agreement in its May 27 email to the Association, this is irrelevant and also failed to put the Union on notice of this intent. (Jt. Ex. 5; Tr. 94) The critical fact is that Respondent voted on the new wage proposal in the first place – as part of the Association-wide bargaining process – and, significantly, never informed the Union it was voting against TA 3 until after Respondent voted in favor of the very short term extension, which it disingenuously relied on only hours later to attempt to withdraw from Association-wide bargaining. (Jt. Exs. 5, 7; Tr. 94)

Respondent's purported withdrawal hours after the May 28 meeting, without indicating during the meeting that it was bargaining solely on its own behalf, was inconsistent with its purported May 17 contingent withdrawal and an attempt to achieve the best of both worlds – ending the strike by reaping the benefits of the extension and also circumventing the substantive agreement on which it was outvoted in by other Association members. See, *Dependable Tile*, 268 NLRB 1147, 1148 (1984)(concluding employer's attempt to withdraw from multiemployer bargaining association was thwarted by its subsequent participation in group bargaining; employer "sought the 'best of the two worlds'"), enforced as modified sub nom. *NLRB v. Hartman*, 774 F.2d 1376 (9th Cir. 1985); cf. *Electrical Workers IBEW Local 46 (Puget Sound)*, 302 NLRB 271, 273-74 (1991)(concluding employer's participation in negotiations between multiemployer association and union was not inconsistent with employer's prior withdrawal from association where employer made numerous statements during bargaining that it was negotiating a separate contract for itself.) Such attempt was unlawful and did not constitute a lawful basis for withdrawal.

Once there is a meeting of the minds and an agreement is reached, it is binding on the parties. See, *Health Care Workers Union, Local 250 (Trinity House)*, 341 NLRB 1034, 1037 (2004). Thus, by disavowing TA 3 and notifying the Union of this intention to negotiate a separate agreement, Respondent violated Section 8(a)(5) of the Act beginning on May 28. (Jt. Exs.7, 9, 16, 36, pp. 5, 6, 7)

**B. Respondent violated Section 8(a)(5) of the Act when, about June 16, 2019, it ceased contributing to the Drug Free Workplace program and reduced its contributions to the Target Fund**

Even if Respondent is found to have effectively withdrawn from the Association, it subsequently violated Section 8(a)(5) of the Act by failing to maintain the status quo with respect

to payroll deductions and remittance under the Drug Free Workplace program and the Target Fund as required by the old contract. (Jt. Exs. 1 and 16) At a minimum, Respondent was required to maintain the status quo with respect to these items until impasse in contract negotiations was reached. See, *Daily News of Los Angeles*, 315 NLRB 1236 (1994).

By email dated June 16, Respondent advised the Union of the following: rather than contributing \$0.25/hour to the Target Fund and \$0.03/hour to the Drug and Alcohol Program, as provided by the parties' old contract, Respondent would remit only \$0.05/cents per hour to the Target Fund (setting aside \$0.20/hour) and would not remit any money to the Drug and Alcohol Program (but would set aside \$0.03/hour). (Jt. Ex. 16, p. 1) In its email, Respondent claimed that, in doing so, it was maintaining status quo per the old contract. (Jt. Exs. 1 and 16) To the contrary, the parties' old contract required Respondent to deduct *and remit* \$0.25/hour to the Target Fund and the \$0.03/hour to the Drug and Alcohol Fund. (Jt. Ex. 1) Additionally, Respondent continued in this practice with respect to the Target Fund until September 24 and Respondent never deducted the \$0.03/hour for the Drug and Alcohol Fund as it advised it would do on June 16 because Respondent allegedly could not determine where on the Union wage/benefit worksheet the payment was located, so assumed it was included in another fund contribution. (Jt. Exs. 28, p. 1 and 36, p. 8)

Therefore, pursuant to the parties' old contract, by undisputedly failing to deduct and remit the entire amount for the Target Fund from May 1 through September 24, and any amount for the Drug and Alcohol Program from May 1 through October 31, Respondent violated Section 8(a)(5) of the Act.

**C. Respondent violated Section 8(a)(1) of the Act on about October 28, 2019, at its Sharonville, Ohio office, when Jack Varney told employees that if they wished to keep their current benefits under a union contract, they would need to work for a different employer**

An employer violates Section 8(a)(1) of the Act by threatening employees with reprisals for their activities protected by the Act. See, *Torbitt & Castleman, Inc. v. NLRB*, 123 F.3d 899, 906 (1997)(citing *NLRB v. E.I. DuPont De Nemours*, 750 F.2d 524, 528 (6th Cir. 1984)). “In determining whether a statement is a coercive threat, the Board considers the ‘total context’ of the situation and ‘is justified in determining the question...from the standpoint of employees over whom the employer has a measure of economic power.’” See *Id.* The test is whether the statement tends to coerce. See *Id.* at 906 (citing *NLRB v. Okun Bros. Shoe Store, Inc.*, 825 F.2d 102, 107 (6th Cir. 1987), *cert denied*, 485 U.S. 935, 108 S. Ct. 1099, 99 L.Ed.2d 270 (1988)). The Board may consider the “economic dependency” of employees on their employers and the tendency to pick up on intended implications in such event. See *Id.* (citing *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 617, 89 S. Ct. 1918, 1941, 23 L.Ed.2d 547 (1969)).

On October 28, after distributing a memo to employees which discussed their union rights and company benefits, Respondent’s representatives met with employees at its shop. (Tr. 169-170) In the presence of Coleman and Walker, Jack Varney led the meeting by talking to employees. (Tr. 169-170) Employee David Henn stood up and rhetorically asked Varney directly, “So let me get this straight, these are my two options? I either have to accept what you’re going to pay me and withdraw from the Union or whatever or pay my own dues, or find a job for another union contractor.” (Tr. 173, 174) Varney replied, “yes.” (Tr. 173)

Varney’s affirmative “yes” to David Henn’s question was coercive under Section 8(a)(1) of the Act. It is undisputed that Respondent’s employees had knowledge of the unfair labor practices. (Jt. Exs. 19, 27 and 36, pp. 7, 9) Further, Varney’s statement is directly linked to

Respondent's refusal to honor the contract between the Union and Association and its unilateral implementation of new terms and conditions on November 1. Respondent had put employees on notice of its actions and talked to employees about their new wages and benefits at the October 28 meeting. (Jt. Exs. 19, 27 and 36, pp. 7, 9; Tr. 169, 170, 173, 174) Indeed, Henn's question, and Varney's response, occurred during the meeting in which Respondent was announcing the unilaterally imposed, and thereby unlawful, terms that it would be implementing in a few days. Therefore, by informing employees that if they wanted to keep their current union benefits, they would need to work for another union contractor, Respondent violated Section 8(a)(1) of the Act.

**D. Respondent violated Section 8(a)(5) of the Act when, on November 1, 2019, it unilaterally implemented new terms and withdrew from the Southern Ohio Painters Health and Welfare Fund, ceased participation in the IUPAT Union and Industry National Pension Fund, and changed Unit employees' wage rates**

Assuming that Respondent was privileged to negotiate a separate agreement with the Union, it was, at a minimum, required to maintain the status quo and bargain in good faith until reaching overall impasse on an agreement with the Union. See, *Daily News of Los Angeles*, 315 NLRB 1236. Impasse occurs after good-faith negotiations "have exhausted the prospects of concluding an agreement" and, only at such point, is an employer generally permitted to unilaterally implement its last, best offer. See, *Taft Broadcasting Co.*, 163 NLRB 475 (1967). No such impasse had been reached when Respondent implemented its new terms on November 1. While there may be a superficial appeal to Respondent's argument that the Union's refusal to meet and bargain privileged it to declare impasse, it was Respondent's own bad faith that led to the Union's stance. Respondent's ambiguous withdrawal from the Association and multi-employer bargaining and its subsequent contradictory actions wrought the confusion over whether it was bound to TA 3. Moreover, after declaring its withdrawal at a

point where it had tentatively, and undisputedly, agreed to all but the \$0.10 an hour increase that was added in TA 3 (compare Jt. Ex. 22 (TA 2) to Jt. Ex. 23 (TA3)), Respondent proposed a contract that all but eviscerated the prior contract and tentative agreement between the parties. Impasse will not justify a unilateral change if the employer's failure to bargain in good faith created the impasse. *American Automatic Sprinkler Sys.*, 323 NLRB 920 (1997)(employer violated the Act when it unilaterally implemented terms because it bargained in bad faith and failed to reach valid impasse; bad faith was established through proposals which left the Union with fewer rights, the employer made no significant concessions, and advanced proposals cutting back on existing terms and conditions of employment).

Notwithstanding Respondent's May 17 notice of withdrawal, it is undisputed that it neither sought nor held separate bargaining or different terms from the Union until May 28, after the Union and Association agreed to the terms in the parties' new collective-bargaining agreement. (Jt. Ex. 36, pp. 3, 6) Understandably, upon receipt of Respondent's May 30 contract proposal, the Union consistently expressed its good faith belief that Respondent was bound to TA 3 and the new contract as a member of the Association; thus, it would not negotiate for a separate agreement. (Jt. Exs. 8, 25, 31 and 36, pp. 6, 7, 8; G.C. Ex. 2) Nonetheless, Respondent made little room for the Union's good faith belief that it was bound by TA 3 and began declaring impasse by September 19.

However, the facts do not establish that a valid impasse was reached on September 19. Respondent negotiated as part of the Association with the Union approximately 10 times, which culminated in TA 1 on April 23, TA 2 on May 14, and TA 3 on May 28. (Jt. Exs. 21, 22, 24 and 36, p. 3) TA 3, reached on May 28, is the only agreement that Respondent disputes as having been bound, but it differs only from TA 2 by the amount of per hour rate increase (from

\$1.05 to \$1.15). (Jt. Exs. 22, 24; Tr. 69) Respondent undisputedly agreed to the terms of TA 2, which would have included the Southern Ohio Painters Health and Welfare Fund and participation in the IUPAT Union and Industry National Pension Fund. (Jt. Ex. 22.) Yet, on May 30, 2 days after participating in negotiations on May 28, and before the Union membership could even vote on TA 3, Respondent presented a “Company proposal” that overhauled both TA 3 and TA 2: in addition to a different wage structure and new health insurance plan, the proposal added new language in areas not previously negotiated (i.e. Management Rights) and eliminated the fringe benefit plans (e.g. the Southern Ohio Painters Health and Welfare Fund and National Pension Fund), which had never been a topic of negotiations prior to May 30. (Jt. Exs. 9 and 36, p. 6) Respondent sent this proposal again to the Union on September 13, and then unilaterally concluded, absent any bargaining between the parties, that they had reached impasse on September 19. (Jt. Exs. 14, 26 and 36, p. 7) Respondent subsequently, on November 1, implemented these terms even though they were not contemplated pre-impasse or even discussed during negotiations with the Union and Association. See, *American Federation of Television and Radio Artists v. NLRB*, 395 F.2d 622 at 624.

In addition to being the product of Respondent’s in bad faith, i.e. not actually bargaining and failing to reach valid impasse, the terms implemented on November 1 gave Respondent’s employees fewer rights, made no significant concessions, and established proposals which cut back significantly on existing terms and conditions of employment. See, *American Automatic Sprinkler Sys.*, 323 NLRB 920 (1997).

Therefore, Counsel for the Acting General Counsel asserts that Respondent violated Section 8(a)(5) of the Act when, on November 1, it withdrew from the Southern Ohio Painters

Health and Welfare Fund, ceased participating in the IUPAT Union and Industry National Pension Fund, and changed Unit employees' wage rates.

## **VI. REMEDY**

Counsel for the Acting General Counsel seeks all relief as may be just and proper to remedy the unfair labor practices alleged. As part of the remedy, Counsel for the Acting General Counsel proposes that the Administrative Law Judge recommend the Notice attached hereto as Attachment A.

## **VII. CONCLUSION**

For the reasons discussed above, Counsel for the Acting General Counsel respectfully requests that the Administrative Law Judge find that Respondent violated Section 8(a)(1) and (5) of the Act as alleged in the consolidated complaint and amendment to the complaint in Cases 09-CA-248716 et al.

1. Respondent violated Section 8(a)(5) of the Act when, since about May 30, 2019, it has refused to adhere to the collective-bargaining agreement between Greater Cincinnati Painting Contractors Association (the Association) and International Union of Painters & Allied Trades District Council #6, Local Unions #123 and #238, AFL-CIO.

2. Respondent violated Section 8(a)(5) since June 16, 2019, when it ceased its contributions to the Drug Free Workplace program and reduced its contributions to the Target Fund.

3. Respondent violated Section 8(a)(1) of the Act when, on about October 29, 2019, Jack Varney, at its Sharonville, Ohio office, told employees that if they wished to keep their current benefits under a union contract, they would need to work for a different employer.

4. Respondent violated Section 8(a)(5) when about November 1, 2019, it withdrew from the Southern Ohio Painters Health and Welfare Fund, ceased participation in the IUPAT Union and Industry National Pension Fund, and changed Unit employees' wage rates.

Dated: February 10, 2021

Respectfully submitted,

*/s/ Jamie L. Ireland*

Jamie L. Ireland  
Counsel for the Acting General Counsel  
Region 9, National Labor Relations Board  
3003 John Weld Peck Federal Building  
550 Main Street  
Cincinnati, Ohio 45202-3271

**ATTACHMENT A**

**THE NATIONAL LABOR RELATIONS ACT 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.

The International Union of Painters and Allied Trades, AFL-CIO, CLC, District Council 6 (Union) is the exclusive representative for collective bargaining purposes of our employees in the following appropriate unit (the Unit):

All employees performing the work described, in the geographical locations described, in the Recognition and Coverage provision of the May 1, 2016 through May 1, 2019 collective bargaining agreement between the International Union of Painters & Allied Trades District Council #6, Local Unions #123 and #238, AFL-CIO and Greater Cincinnati Painting Contractors Association (the Association).

**WE WILL NOT** tell you that if you wish to keep your current benefits under a union contract, you will need to work for a different employer.

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

**WE WILL NOT** make any changes in wages, hours and working conditions without reaching an overall good faith impasse with your Union.

**WE WILL**, if requested by the Union, rescind any and all changes to your terms and conditions of employment, including Unit employees' wage rates and changes made to the Drug Free Workplace program and Target Fund, that we made without bargaining with the Union.

**WE WILL**, if requested by the Union, rescind any and all changes to your terms and conditions of employment that we made without bargaining with the Union, specifically by rejoining the Southern Ohio Painters Health and Welfare Fund and IUPAT Union and Industry National Pension Fund.

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

**The Painting Contractor**

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

**Dated:** \_\_\_\_\_

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

---

*The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. 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.*

550 MAIN ST  
RM 3-111  
CINCINNATI, OH 45202-3271

**Telephone:** (513)684-3686  
**Hours of Operation:** 8:30 a.m. to 5 p.m.

---

**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 Centralized Compliance Unit at [complianceunit@nlrb.gov](mailto:complianceunit@nlrb.gov)

CERTIFICATE OF SERVICE

February 10, 2021

I hereby certify that I served the attached Counsel for the Acting General Counsel's Brief to the Administrative Law Judge on all parties by electronic mail at the following addresses:

Gary Greenberg, Esq.  
Jackson Lewis P.C.  
201 E. Fifth Street, 26<sup>th</sup> Floor  
Cincinnati, OH 45202  
Email: [gary.greenberg@jacksonlewis.com](mailto:gary.greenberg@jacksonlewis.com)

Alessandro Botta Blondet  
Jackson Lewis P.C.  
201 E. Fifth Street, 26<sup>th</sup> Floor  
Cincinnati, OH 45202  
Email: [alessandro.bottablondet@jacksonlewis.com](mailto:alessandro.bottablondet@jacksonlewis.com)

Marilyn Widman, Counsel  
Widman & Franklin, LLC  
405 Madison Ave Suite 1550  
Toledo, OH 43604  
Email: [marilyn@wflawfirm.com](mailto:marilyn@wflawfirm.com)

*/s/ Jamie Ireland*

Jamie L. Ireland  
Counsel for the Acting General Counsel  
Region 9, National Labor Relations Board  
3003 John Weld Peck Federal Building  
550 Main Street  
Cincinnati, Ohio 45202-3271