The Region submitted this case for advice as to whether the Union’s conduct during bargaining, which occurred after it had agreed to settle a prior, similar charge, breached the settlement and violated Section 8(b)(3) of the Act. We conclude that there is insufficient evidence to establish that the Union’s conduct amounted to bad faith bargaining that either breached the settlement agreement or violated Section 8(b)(3). Thus, the Region should dismiss the charge, absent withdrawal.

As background, the Charging Party-Employer operates a ready-mix concrete production company that delivers concrete to construction sites in St. Louis, Missouri, and surrounding counties. A handful of area ready-mix employers bargained for a successor agreement with the Union as a group and in April 2021, those employers reached a group contract with the Union. The Employer, previously having informed the Union that it wished to bargain separately from the employer group, identified withdrawal liability from the Central States Pension Fund as its key concern with the group contract. On April 26, the Employer’s employees went on strike after the parties failed to reach agreement on a successor contract. The employees are still on strike.

Pursuant to a previous charge the Employer had filed against the Union, the Regional Advice Branch concluded, among other things, that the Union violated Section 8(b)(3) by adhering to a “take-it-or-leave-it” bargaining stance that evinced an unwillingness to bargain with the Employer. See Teamsters Local 682 (Breckenridge Material Co.), Cases 14-CB-276126, 14-CC-276803, Advice Memorandum dated Aug. 13, 2021. In early September, the Region approved an informal settlement agreement between the parties that resolved the meritorious Section 8(b)(3) charge. The settlement agreement included default language that required the Union to adhere to the affirmative terms and provisions of the agreement.

Around the same time, on August 31, the parties met in person for a two-hour long bargaining session. During this meeting, the Union proposed the same terms as the group contract but with a six-year duration, citing recent tension in the parties’ bargaining relationship as the basis for the added year. The Employer stated it would accept a contract with a duration of three years, a bonus to be paid out over three years, and language stating it would not seek terms lower than the area standard in the two years following the contract’s expiration. The Union responded that it would consider the Employer’s proposal. A few days later, on September 2, the Union asked whether the Employer wanted to meet again in person or continue via email. The Employer said that the ball was in the Union’s court, and it agreed to continue meeting by phone or in person. The following day, September 3, the Union proposed the 5-year group agreement,
retroactive to March 15, the date the predecessor agreement had expired, through March 14, 2026, with a $1.00 per hour wage increase for each of the five years of the contract’s duration.[3] The Employer responded that its desire for a contract with a shorter duration was critical and asked if there was any way to “bridge the divide” between the Union’s proposal of the five-year group contract and its own proposal of a three-year contract. The Union requested the Employer’s counteroffer, and the Employer responded with its last, best, and final offer of a three-year agreement with a $1.10 per hour wage increase for each of the three years and a side agreement to adhere to the area standard for two years following the contract’s expiration. The Union submitted a counteroffer, which proposed a four-and-a-half-year contract beginning September 1 and ending March 14, 2026, with a $1.00 per hour wage increase each year and no retroactive pay between March 15 and September 1. The Employer responded with its last, best, and final offer. The Union stated it would not negotiate against itself and requested a counteroffer. Five days later, on September 7, the Employer reiterated that the Union had its last, best, and final offer.

We conclude that the Union neither breached the settlement agreement nor violated Section 8(b)(3) because it did not show a take-it-or-leave-it attitude but demonstrated a willingness to make some movement in an attempt to reach agreement. Section 8(d) requires parties engaged in collective bargaining “to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment . . . but such obligation does not compel either party to agree to a proposal or require the making of a concession.” Thus, good-faith bargaining does not require a party to agree to or make concessions to proposals, and a party may lawfully adhere to its core positions without violating Section 8(d). NLRB v. American National Ins. Co., 343 U.S. 395, 404 (1952); Atlanta Hilton & Tower, 271 NLRB 1600, 1603 (1984) (“adamant insistence on a bargaining position is not of itself a refusal to bargain in good faith”). Moreover, it is lawful for a union to reach an agreement with one employer, or with a multiemployer bargaining unit, and then seek to compel another employer to adopt those set terms. See United Mine Workers of Am. v. Pennington, 381 U.S. 657, 665 (1965).

Applying the foregoing principles, unlike its conduct leading up to the prior charge, the totality of the Union’s conduct after agreeing to settle the prior charge did not evince a take-it-or-leave-it attitude but demonstrated an effort to resolve the parties’ differences. As an initial note, the Union’s objective of compelling the Employer to agree to the area standard terms established by the group contract remains lawful. See id. at 666 & n.2 (“a legitimate aim of any national labor organization is to obtain uniformity of labor standards,” and in support, “a union may adopt a uniform wage policy and seek vigorously to implement it”). In seeking to achieve that objective, the Union participated in a substantive two-hour, in-person bargaining session on August 31, and it continued thereafter, by mutual agreement, to negotiate remotely with the Employer.[4] After the Employer rejected the Union’s proposal of a six-year contract at the August 31 meeting, the Union stated it would consider the Employer’s proposal, which
included a three-year term, a bonus to be paid out over the contract’s term, and language that the Employer would adhere to area standards for two years following the contract’s expiration. Three days later, the Union responded by proposing the group contract, which included a five-year term retroactive to the expiration of the prior agreement and a $1.00 per hour wage increase for each year of the contract. The Employer responded by reiterating its demand for a contract with a shorter duration. After the Union requested the Employer’s counteroffer, the Employer sent the Union its last, best, and final offer, which included the same three-year term it had proposed earlier, a $1.10 per hour wage increase each year, and a side agreement stating the Employer would adhere to area standard terms for two years following the contract’s expiration. The Union then made a significant concession on contract duration—the core area of disagreement—by proposing a contract with a four-and-a-half-year term that would forgo retroactive pay, and a $1.00 per hour yearly wage increase. Contrary to the Employer’s contention, these facts do not establish a continuation of the Union’s prior intransigence, but rather show an attempt to reach agreement by making small, continuous movement on the critical issue of contract duration. See, e.g., Reichhold Chemicals, 288 NLRB at 70 (noting employer had right to adhere to its demands for certain contractual provisions but its small movement on those subjects showed its attempt to reach agreement). Accordingly, the Union’s conduct did not amount to bad faith bargaining, but hard bargaining in support of its lawful objective of having the Employer agree to terms similar to those in the group contract. Indeed, it would be difficult to conclude that the Union bargained in bad faith when the Employer engaged in the same hard bargaining tactics by responding to the Union’s last counteroffer with its last, best, and final offer despite the Union’s express willingness to continue negotiating. Under these circumstances, there is insufficient evidence based on its bargaining table conduct to find that the Union violated Section 8(b)(3). Accordingly, the Region should dismiss the charge, absent withdrawal.

This email closes this case in Advice. Please contact us with any questions or concerns.

(b) (6), (b) (7)(C)

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1 All dates hereinafter are in 2021 unless otherwise noted.

2 The Teamsters Central States Pension Fund was underfunded and expected to become insolvent. The Employer was concerned that its withdrawal liability would significantly increase as time passed.

3 These are the terms of the contract the Union reached with the employer group in April.

4 As to the Union’s concern that our conclusion regarding the prior charge “left
each side in a peculiar position as it did not lay a framework, or pathway” for how negotiations were to occur moving forward, we note that the right to determine the substance and process of bargaining rests with the parties. Section 8(d) sets forth minimum requirements for meeting the statutory test of good-faith bargaining, and the Board’s sole task is “the often difficult one of determining a party’s intent from the aggregate of its conduct,” and it may fulfill this obligation by “judg[ing] the reasonableness of the bargainers,” but not by “supervis[ing] the substance of [or dictating the methods of] their bargaining.” See, e.g., Reichhold Chemicals, 288 NLRB 69, 69, 70 n.8 (1988) (citing Eastern Maine Med. Ctr. v. NLRB, 658 F.2d 1, 10 (1st Cir. 1981)), affirmed in relevant part sub nom., Teamsters Local 515 v. NLRB, 906 F.2d 719 (D.C. Cir. 1990), cert. denied, 498 U.S. 1053 (1991).

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