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

BROWN-FORMAN CORPORATION D/B/A WOODFORD RESERVE DISTILLERY

Cases 09-CA-307806
09-CA-311850
09-RC-305269

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS (IBT), LOCAL 651

Erik Brinker and Shay Chandler, Esqs.,
for the General Counsel,
James U. Smith III, Oliver B. Rutherford, and Jacob Crouse, Esqs.,
for Respondent
Pamela Newport, Esq.,
for Union

DECISION

I. INTRODUCTION[1]

ANDREW S. GOLLIN, ADMINISTRATIVE LAW JUDGE. These consolidated cases were tried on January 8-12, 2024, in Lexington, Kentucky, over allegations that Brown-Forman Corporation d/b/a Woodford Reserve Distillery ("Respondent" or "Woodford") violated Sections 8(a)(1), (3), and (5) of the National Labor Relations Act ("Act") and engaged in objectionable conduct affecting the results of the election to determine whether a unit of its production employees wished to be represented by the International Brotherhood of Teamsters (IBT), Local 651 ("Union").

The chronology of events is largely undisputed. On August 25, 2022,[2] the Union notified Respondent that its employees were beginning to organize. Thereafter, managers held meetings and spoke with employees about the organizing campaign. By October 4, the "speculation" was that 50-60 percent of the employees had signed authorization cards, and their primary motivation for organizing was to increase their wages. Over the next week, Respondent decided on and announced an across-the-board wage increase. It also decided on and announced changes to existing policies affecting who was eligible for the annual merit increases and when employees could use their vacation.

On October 11, the Union sent Respondent a letter stating it had obtained majority support and was requesting recognition as the employees' bargaining representative. Respondent received that letter on October 13. On October 12, managers held meetings with employees to announce the across-

[1]Abbreviations used in this decision are as follows: Transcript citations are "Tr. ___"; General Counsel Exhibits are "GC Exh. __"; Respondent's Exhibits are "R Exh.__"; the Union's Exhibits are "U. Exh. ___." Although I have included citations to the record to highlight particular testimony or exhibits, my findings and conclusions are based on my review and consideration of the entire record.
[2] All dates refer to 2022, unless otherwise stated.

the-board wage increase, which would not become effective until November 1. They also held meetings to announce the changes to the merit increase and vacation usage policies.

Two days later, the Union petitioned for an election, which was scheduled for November 17. About a week before the election, employees began seeing the wage increase on their paychecks. Also, a week before the election, Respondent gave each employee a bottle of bourbon valued at about $30 for exceeding an unannounced multi-month production goal. The Union eventually lost the election.

The General Counsel alleges Respondent violated the Act when it announced and later implemented the wage increase, changed its merit increase and vacation usage policies, and gave away the bottles of bourbon. The Union separately alleges Respondent engaged in objectionable conduct when it announced the wage increase, changed the merit increase policy, and gave out the bottles of bourbon. Respondent denies these allegations and contends each action was for a legitimate business reason, unrelated to the organizing campaign or the pending election.

For the reasons discussed below, I conclude Respondent engaged in violative and objectionable conduct. I further conclude that traditional remedies, including a rerun election, are inadequate under the circumstances and recommend that Respondent be ordered to recognize and bargain with the Union as the chosen representative of the employees in the petitioned-for unit.

II. STATEMENT OF THE CASES

On October 14, the Region docketed the Union's petition for a representation election in Case 09-RC-305269 and served it on Respondent. (GC Exh. 1(a)).[3] On October 27, the Regional Director approved the parties' Stipulated Election Agreement and scheduled an election for the following petitioned-for unit of employees ("Unit"):

> All full-time and regular part-time regauge and processing, distillery, warehousing and bottling employees employed by the Employer at its 7855 McCracken Pike, Versailles, Kentucky facility; excluding all professional employees, office clerical employees, guards and supervisors as defined in the Act.

(GC Exh. 1(ll)).

At the time the parties entered into the Stipulated Election Agreement, there was a dispute over whether the Unit should include the 6 multi-craft mechanic-maintenance employees ("mechanics").[4] Woodford claimed they should be included, and the Union asserted they should not. The parties agreed to allow the mechanics to vote subject to challenge, and they would defer resolution as to their inclusion until after the election. (GC Exh. 1(mm)).

The election took place as scheduled. The Tally of Ballots shows that of the approximately 60 eligible voters, 14 votes were cast for the Union and 45 votes were cast against, with 7 challenged ballots, a number not sufficient to affect the results of the election. (GC Exh. 1(nn)).

[3] The postage mark on the Union's mailing to the Region is dated October 11. (GC Exh. 7).
[4] The terms "multi-craft mechanic," "mechanic," "maintenance mechanic," and "maintenance employee" are all used interchangeably throughout the record to describe the same position. (Tr. 835).

On November 23, the Union filed objections to the conduct affecting the outcome of the election ("Objections"). (GC Exh. 1(jj)). That same day, the Union also filed the underlying unfair labor practice charge in Case 09-CA-307806, which it later amended. (GC Exhs. 1(c) and (g)). On February 8, 2023, the Union filed the underlying unfair labor practice charge in Case 09-CA-311850, which it later amended. (GC Exhs. 1(e) and (i)).

On August 25, 2023, the General Counsel, through the Regional Director, issued an order consolidating cases, consolidated complaint, and notice of hearing over the alleged unfair labor practices. (GC Exhs. 1(k)-(l)). On September 9, 2023, Respondent filed its answer. (GC Exh. 1(n)). On October 5, 2023, the Regional Director issued the order approving withdrawal of certain objections, directing hearing, consolidating the case, and notice of hearing. (GC Exh. 1(r)). On November 28, 2023, the General Counsel, through the Regional Director, issued an amended consolidated complaint and notice of hearing over the alleged unfair labor practices ("Complaint"). (GC Exh. 1(x)). On December 12, 2023, Respondent filed its answer. (GC Exh. 1(z)).

At the consolidated hearing over the Complaint and Objections,[5] all parties were afforded the right to examine witnesses, present any relevant documentary evidence, and argue their legal positions. The General Counsel, the Respondent, and the Union filed post-hearing briefs, which I have carefully considered. Based on the entire record and the parties' briefs, I make the following

III. FINDINGS OF FACT[6]

A. Jurisdiction and Labor Organization

Respondent is a corporation with an office and place of business in Versailles, Kentucky, where it has been engaged in the distilling, bottling, commercial distribution and retail sale of bourbon. During the 12-month period ending June 1, 2023, Respondent derived gross revenues in excess of

[5] On January 4, 2024, the General Counsel filed notice of intent to amend the Complaint. (GC Exh. 1(kk)). At the hearing, the Counsel moved to add paragraph 6(d), which alleges that on about October 11, 2022, Respondent, by Human Resources Manager Chris Gray, increased the benefits of certain of the regauge and processing, distillery, warehousing and bottling employees at Respondent's facility by ending its policy of requiring employees to save, and then use, five vacation days during the annual holiday shutdown period, in violation of Sec. 8(a)(1) and (3) of the Act. (GC Exh. 1(kk) (Tr. 28-29). I granted the amendment, over Respondent's objections, for the reasons stated on the record. (Tr. 213-217). Respondent then amended its Answer to deny the added allegation and to raise additional affirmative defenses. (GC Exh. 1(oo). Those arguments and defenses are addressed below.

[6] The Findings of Fact are a compilation of the stipulated facts, credible testimony, and other evidence, as well as logical inferences drawn therefrom. To the extent testimony contradicts with the Findings, such testimony has been discredited, either as in conflict with credited evidence or it was incredible and unworthy of belief. In assessing credibility, I primarily relied upon witness demeanor. I also have considered the context of their testimony, the quality of their recollections, testimonial consistency, the presence or absence of corroboration, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. See *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. sub nom., 56 Fed. Appx. 516 (D.C. Cir. 2003). Of course, credibility findings need not be all-or-nothing propositions. Indeed, nothing is more common in judicial decisions than to believe some, but not all, of a witness's testimony. *Daikichi Sushi*, supra at 622; *Jerry Ryce Builders*, 352 NLRB 1262, 1262 fn. 2 (2008) (citing *NLRB v. Universal Camera Corp*., 179 F.2d 749, 754 (2d Cir. 1950), revd. on other grounds 340 U.S. 474 (1951)). Specific credibility findings are set forth below.

$500,000, and purchased and received at its Versailles facility goods valued in excess of $50,000 directly from points outside the Commonwealth of Kentucky. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

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

B. Alleged Unfair Labor Practices

1. Background

a. *Woodford's Operations, Departments and Hierarchy*

The Brown-Forman Corporation, which is headquartered in Louisville, Kentucky, is one of the largest producers of bourbon whiskey in the United States. Its brands include Woodford Reserve and Old Forester bourbons and Jack Daniel's whiskeys. It also produces wine in California, tequila in Mexico, and Irish whiskey and scotch in the European Union ("EU").

The Brown-Forman Distillery Operations ("BFDO") has a distillery in Louisville. The production employees at that distillery are represented by Teamsters Local 89. Old Forester Distillery is also in Louisville, as is Brown-Forman Cooperage, which makes the barrels used for aging.

Woodford's operations in Versailles are divided into three "tracts." Tract 1 includes bottling, distillery and maintenance. Tract 2 encompasses regauge and processing. Tract 3 covers warehousing and shipping. (Tr. 580-582). Woodford has a total of approximately 120 employees, including approximately 87 hourly employees. (Tr. 585). The hourly employees are divided into the following departments: Bottling, Distillery, Regauge and Processing, Warehouse, and Maintenance. (GC Exh. 1(mm)). Distillery currently operates 24 hours a day, 7 days a week. Bottling operates 5 days a week, with two 8-hour shifts. Regauge and Processing operates 5 days a week, with two 8-hour shifts, as well as a skeleton crew performing limited tasks. Warehouse operates 5 days a week, with two 8-hour shifts. Maintenance operates 24 hours a day, 7 days a week, with two 12-hour shifts. (Tr. 585)

At the time of the election, Woodford had approximately 9 employees in Distillery, 26 in Bottling, 18 in Regauge and Processing (including 1 truck driver), 7 in Warehousing (including 3 truck drivers), and 6 in Maintenance. (GC Exh. 1(mm)).

Michael Nelson is the Plant Director for Woodford and Old Forester Distilleries. He reports to Josh Anderson, Vice President – Director for Bourbon, EU Whiskey, and Wine. Anderson reports to Tim Nall, who is Senior Vice President, Chief Supply Chain and Technology Officer. Christine Stavros is the Controller. Timothy Reid, Jr. is the Operations Manager for Bottling. Yolanda Pritchard is the Human Resource Director. Chris Gray is a Human Resource Manager. Melissa Lowe works in Human Resources for Brown-Forman.

b. *Wages and Benefits*

1. Hourly Pay Rates and Pay Progression Policy

Woodford pays its hourly employees based on their job classification. In May, the starting wage rates were as follows:

Level	Job Classifications	Rate
1	Bottling operators, warehouse/regauge operators, and logistics operators	$19.00
2	Processing operators, labeler operators, uncaser operators, and personal selection coordinators	$20.00
3	Distillery operators and truck drivers	$23.00
4	Multi-craft mechanics	$27.00

(GC Exh. 45, pg. 5).

Under Woodford's "pay progression" policy, newly hired and recently promoted employees receive a $.50 per hour increase after their first six months, and another $.50 per hour increase after their first year, in their new position. (GC Exh. 28).

2. Vacation

Woodford provides its employees with various benefits, including paid vacation, which is accrued and used throughout the year. Every year, between late December and early January, Woodford shuts down its operations. To ensure a portion of the shutdown is paid, Woodford requires all hourly employees to save and use (a minimum of) five of their vacation days during that period.

3. Bottles of Bourbon

Woodford periodically gives out bottles of bourbon to employees in recognition of an event or an accomplishment of a goal. The size and value of the bottles varies, but they are given to all employees, and there usually is a handwritten tag on the bottle describing the reason why it was being given out. When bottles are given out to recognize an accomplishment of a goal, that goal is known in advance.

Every year in April, Woodford hands out bottles of bourbon to its employees to celebrate the Kentucky Derby. Otherwise, the distributions appear random and discretionary. In 2018, Woodford gave out a 375 ml bottle of its Double Oaked bourbon after production employees set a monthly equipment effectiveness ("OEE") record of 49.2 percent. In March 2020, it gave out a 200 ml bottle of its bourbon for Employee Appreciation Day. In August 2020, it gave out a 375 ml bottle of its rye whiskey after employees set another monthly OEE record of 55.3 percent. In December 2020, it distributed a 375 ml bottle of its bourbon for setting a record package audit score of 98.49 percent. In February 2021, it gave out a 375 ml bottle of its Double Oaked bourbon for the regauge/processing team breaking a record by filling 1,040 barrels of a particular product. In October 2021, Woodford gave out a 750 ml of its bourbon in celebration of its 25th anniversary. (R. Exh. 4).

4. Merit increases and Market Adjustments

Since at least 2014, Woodford has given hourly employees a 3-percent annual merit increase, which is awarded and paid beginning in August. (GC Exh. 45). Historically, new and recently promoted employees who had not completed their pay progression were ineligible to receive the annual merit increase. (Tr. 292-93) (R. Exh. 28).

Woodford also periodically gives raises in response to changes in the labor market or the economy, to remain competitive. These are referred to "market adjustments." (R. Exh. 1). In January 2018, Woodford performed a market analysis and determined it needed to increase the starting rates for several classifications to be more competitive in recruiting and retaining applicants to fill those positions. (Tr. 597). It raised the starting rates for bottling operators ($2), warehouse operators ($1), logistics operators ($1), processing operators ($2), labeler operators ($2), distillery operators ($2), and multi-craft mechanics ($2). In May 2019, it implemented a pay progression of $.75 per hour for multi-craft mechanics who completed certain training. In November 2019, it increased truck drivers' pay by $1 per hour when they moved from grade 2 to grade 3. In June 2021, it raised the starting rates for distillery operators and truck drivers by $2 per hour. (R. Exh 1 and GC Exh. 44(a)). In July 2021, it raised the starting hourly rate for all temporary employees by $2.50 per hour, in response to changes in the labor market. (Tr. 599-600).

c. *Challenges Facing Woodford and $1 Across-the Board Increase*

In 2021, Brown-Forman experienced an unanticipated increase in demand for its products. However, in 2022, Woodford faced several challenges ramping up its production to meet demand. One challenge was getting a steady and adequate supply of certain ingredients and materials, particularly glass for bottling. Another challenge was finding adequate staffing. Respondent, which historically had low turnover, began having difficulty recruiting and retaining employees for certain classifications due to a tightening labor market and resulting wage inflation.

Woodford begins preparing its annual budget in around January, and it is finalized by May. In late February 2022, Woodford was looking at possible wage adjustments for certain classifications, specifically logistics and maintenance. (GC Exh. 26). Plant Director Michael Nelson and Controller Christine Stavros discussed a $1-$1.50 per hour increase for those positions. One of the issues was whether the increase would be in addition to, or in lieu of, the annual merit increase given in August. The details are limited but Woodford continued to discuss the increases over the next few months.

Ultimately, in about May, Woodford decided to give a $1 per hour, across-the-board increase. Nelson testified this increase was intended to help Woodford be more competitive and better able to hire and keep qualified employees. (Tr. 593). Nelson later held meetings with employees to announce the increase, and that it would be in addition to the annual merit increase in August. He told employees that he had to work hard to get them both increases. (Tr. 254; 376-377). According to Nelson, Woodford had no further discussions or plans about additional increases at that time, or for the next several months. (Tr. 605-606).

2. *Organizing Campaign*

a. *Initial Steps and Collection of Authorization Cards*

In February, employees began contacting the Union about organizing. They spoke with Union Vice President Joe Bill Lance. The Union held a few meetings for employees, but they were sparsely attended. (GC Exh. 2). After Woodford announced the $1 per hour, across-the-board increase in May, interest in the organizing effort grew, in part because employees viewed the increase as inadequate. (Tr. 39, 252-254, 376, 407-409). Following the announcement, employees spoke directly with management about the possibility of additional increases, and they were told by Nelson and Human Resource Manager Chris Gray that Woodford would not be considering further increases until the next fiscal year, which would begin the following May. (Tr. 495-497).

At an early July Union meeting, Lance began distributing authorization cards to employees.[7] (Tr. 41). The employees discussed and determined there were approximately 60 regular employees, and they would need to get signed cards from a majority before the Union would file a petition for a representation election. In late July, Lance provided employees with information showing the wages from other distilleries in the area, including Woodford's BFDO facility in Louisville. As stated, employees at that facility were represented by Teamsters Local 89, and they worked under a two-tiered wage system. Lance provided the higher-tier wage information, showing that employees there were earning around $27 per hour.

By July 30, 15 of the employees had signed and submitted authorization cards. (GC Exh. 4, pgs. 1-15). By the end of August, that number grew to 26. (GC Exh. 4, pgs 16-26).[8]

b. *Union's August 25 Letter and Nelson's September 16 Meetings with Employees*

On August 25, Lance prepared and sent Woodford an unsigned letter on behalf of the "Woodford Reserve Distillery Organizing Committee" stating that its employees had begun organizing, and they were requesting that Woodford remain neutral during that process. (GC Exh. 5). In early September, Woodford's managers, human resources representatives, and legal counsel began meeting and circulating "talking points" to use when speaking to employees. (GC Exhs. 34-35). At around this time, the Union had individuals standing outside the entrance to Woodford's facility distributing information, including pamphlets comparing Woodford's pay rates with those of other distilleries. They also displayed an inflatable "fat cat" outside the entrance. (Tr. 771-772).

On about September 16, Plant Director Nelson held meetings with all employees where he acknowledged receiving the August 25 letter regarding the organizing campaign. As for the letter's request that Woodford remain neutral, Nelson told employees that was not going to happen, and that the company was going to do what it could to keep operating as it was. He then went on to give his opinions about unions and why having one was not in the employees' best interests. (GC Exh. 18).

c. *Inquiries into Possible Classification-Specific Wage Adjustments.*

On September 12, Chris Gray emailed Christine Stavros stating that management was looking at increasing the starting wage rate for multi-craft mechanics by $2 per hour, and it wanted her to pull together information on the financial impact of such an increase. (GC Exh. 27). Stavros responded that day, questioning the need for such an increase, stating that the $1 per hour increase in May was intended to address concerns over recruitment and bring Woodford's starting wage rates more in-line with the industry average. She asked Gray if Woodford was still having difficulty filling open positions, and whether the reason for that difficulty was the starting wage rate. (GC Exh. 27). Gray replied that it was continuing to have difficulty, but he stated the request was "not urgent," and that Nelson wanted the data to see if they could increase the wage rate "at some point in the future." (GC Exh. 27). There is no evidence that similar inquiries were made for any of the other classifications.

[7] The card reads, "I, undersigned employee of _____ voluntarily and of my own free will, hereby authorize Local 651, affiliated with the International Brotherhood of Teamsters, to represent me for the purpose of collective bargaining as to improved wages, hours, and working conditions." In completing the card, the employee is asked to provide their name, phone number, home address, terminal, rate of pay, date of hire, and classification. Below that are lines for the employees' signature and the date. (GC Exhs. 3 and 4).

[8] Derek Tipton signed and submitted two authorization cards. (GC Exh. 4, pgs 23 and 24). Only one is counted.

d. *Complaints about Ineligibility for Annual Merit Increases While on Pay Progression*

On September 17, Operations Manager Timothy Reid, Jr. emailed Gray stating he had received questions from an employee over whether those on pay progression were eligible for the annual merit increase given in August. He specifically asked whether an employee hired in January, who got their first pay progression increase in July, and their second pay progression increase the following January, would be eligible for the annual merit increase later that August. (GC Exh. 28). Gray responded that as the pay progression policy was currently structured, the employee would not be eligible for the merit increase. However, Gray stated he wanted to discuss the policy with incoming Human Resources Director Yolanda Pritchard, who was taking over responsibility for Woodford on October 1, to see if they could make "some sensible changes" to the policy. (GC Exh. 28).

e. *October 4 Email Update on Organizing Effort and Reactions*

In early October, Nelson and Vice President Josh Anderson held "debrief" meetings with employees about the Union organizing campaign. In the late afternoon of October 4, Nelson emailed Anderson, Pritchard, Gray, and Melissa Lowe, who works in Human Resources for Brown-Forman, as well as in-house and outside counsel, to report what he and Anderson had learned through those meetings and to propose some possible next steps. (GC Exh. 38(b)). As far as what they learned, Nelson wrote there had been an active organizing campaign for the last few months, and the "speculation" was that 50-60 percent of the employees had signed authorization cards. Nelson also reported the employees' primary issues were over their pay, and they did not want much else to change. The Union was promising employees they could earn $27 per hour, like at BFDO in Louisville. As for potential next steps, one of the suggestions Nelson made was to "fix" the pay progression/merit increase policy. He added that they could discuss such a change with employees the following week during the annual benefit enrollment meetings. (R Exh. 38(b)).

The day after receiving Nelson's email, Pritchard forwarded it to Senior Vice President Timothy Nall and Lowe. Pritchard wrote, "It appears we have a very active union campaign at Woodford. Below is a quick summary and possible next steps." (GC Exh. 38(b)). Lowe replied: "This is not good news. Ugh. I'll be interested to hear what [counsel] have to say about next steps. But this is far more advanced than I was expecting. In one sense, I'm glad it's only about money and not safety, culture, etc. But I don't see us going up to $27 an hour at this stage. Maybe we need a transparent pay structure, by role, shift, tenure to show how one can earn more over time…" (GC Exh. 39). Nall replied, simply, "Fudge!!!!" Lowe responded to Nall, "Not good, this progressed way faster than what [Nelson or Anderson] realized." Nall replied to Lowe, "Agreed…I don't think they had the focus we needed." (GC Exh. 39).

Also on October 5, Pritchard replied to Lowe, "I know bad news for sure… We worked on the wage modifications yesterday, we are going to review with [counsel] at 10, to see if we can make the changes. It appears that they have been given the wage scale for BFDO scale A, not B .... We will work on shifting the conversation more towards the culture changes that would be impacted, we touched on this some yesterday during the employee meetings, more direct messaging for sure." (GC Exh. 39).

The following day, Anderson emailed Nall stating he believed the matter was going to a vote and that it would be an intense six weeks. He further stated, "The issue is really about pay and the promises made by union organizers to match Louisville's pay (about +7/hr). They do not want

anything else to change – just pay." He also stated the election likely would occur around Thanksgiving. (GC Exh. 40).

f. *Changes to Pay Progression/Merit increase and the Vacation Policies*

Nelson testified he spoke with Pritchard about the pay progression/merit increase policy at some point after she assumed responsibility for Human Resources at Woodford. According to Nelson, Pritchard stated Woodford's policy of not allowing new and recently promoted employees to be eligible for annual merit increases was "out of step" with Brown-Forman's other companies. (Tr. 606-607). Pritchard made the decision to change Woodford's policy to conform with that of Brown-Forman's other companies.

On October 5, Nelson emailed managers, human resource personnel, and the controller announcing changes to the pay progression/merit increase policy. (GC Exh. 29). He stated that: (1) newly hired employees would now be eligible for the merit increase if their pay progression is completed before August 1; and (2) internally promoted employees would now be eligible for the merit increase even if they had not completed their pay progression before August 1. These changes would be retroactive, and those who would have been eligible for the August merit increase under the change would receive the increase as well as backpay from August 1 forward. Nelson further stated in his email that Chris Gray and a manager would talk one-on-one with each employee immediately affected by the change, and then they would communicate the change to the broader teams during the annual benefit meetings the following week.

Internal emails show that approximately 18 employees from the petitioned-for Unit, and 2 mechanics, were (favorably) affected by this change. (GC Exh. 29). Those employees began seeing the merit increase, and any retroactive pay, on their October 14 paychecks. (GC Exh. 21, pg. 13).

About a week later, on around October 11, Gray held meetings with employees to announce the change to the pay progression/merit increase policy and its effects. (GC Exhs. 14(a)-(b). At the same meetings, Gray announced that Woodford was no longer requiring employees to save and use vacation during the annual end-of-the-year shutdown. Gray told employees that "when that policy was implemented, … there were times where there was literally no work. So, it made sense to have everybody … be off the same time … But the way it is now, sometimes there's work available. So, if you want to work, that's fine. If you want to take [] some time unpaid, some time vacation, … it's completely up to you. So this will give everybody more flexibility to use their vacation the way they want to …." (GC Exhs. 14(a)-(b)).[9]

[9] Respondent contends the decisions to change the pay progression/merit increase and the vacation usage policies were both made by Pritchard at some point after she assumed responsibility for the Human Resources at Woodford on October 1. Respondent, however, failed to provide any further specifics about when, and it failed to call Pritchard as a witness. The failure of Pritchard to appear and testify went unexplained. Under the circumstances, I draw an adverse inference over Respondent's unexplained failure to call such a critical witness in support of its defenses. See *Farm Fresh Co., Target One, LLC*, 361 NLRB 848, 860 (2014) (noting an administrative law judge may draw an adverse inference from a party's failure to call or question a witness who may reasonably be assumed to be favorably disposed to a party, and who could reasonably be expected to corroborate its version of events, particularly when the witness is the party's agent); *International Automated Machines*, 285 NLRB 1122, 1123 (1987), enfd. 861 F.2d 720 (6th Cir. 1988). *See Martin Luther King, Sr., Nursing Center*, 231 NLRB 15, 15 fn. 1 (1977) (adverse inference appropriate where no explanation as to why supervisors did not testify); *Flexsteel Industries*, 316 NLRB 745, 758 (1995) (failure to examine a favorable

g. *Union's Majority Support and October 11 Letter Requesting Recognition*

By October 8, the Union had received signed authorization cards from 35 employees. (GC Exh. 4).[10] The following day, Lance met with employees at a local brewery restaurant and informed them that, based on the cards showing majority support, he planned on filing a petition for an election the following week.

On October 11, the Union mailed the petition and the 35 signed authorization cards to the Board's Regional Office in Cincinnati.[11] That same day, Lance also mailed Nelson a letter, with various attachments. The letter began as follows.

> A majority of employees in a proposed bargaining unit have signed union authorization cards, indicating their desire to be represented by Teamsters Local Union No. 651. The Union would be happy to submit proof of our signed cards to a mutually agreed-upon and neutral third party for verification. Therefore, the union requests that Brown-Forman Corporation--Woodford Reserve Distillery [recognize] the Union as the exclusive bargaining representative, and request[s] bargaining over terms and conditions of employment towards a first contract.
>
> Today, Teamsters Local Union No. 651 also filed a representation petition for a group of Brown-Forman Corporation--Woodford Reserve Distillery employees with the National Labor Relations Board. Attached is a service copy of the representation petition that was filed today, along with two required forms, Form NLRB--6812, Description of Representation Case Proceedings and Form NLRB--505, Statement of Position. These forms also may be accessed online at https://www.nlrb.gov/guidance/fillable-forms. You will receive a copy of the petition directly from NLRB Region 9 when the case is docketed, which will include the assigned case number.
> …

(R. Exh. 3).[12]

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witness regarding factual issue upon which that witness would likely have knowledge gives rise to the "strongest possible adverse inference" regarding such fact).

[10] The General Counsel called Lance and several employees, as well as one former employee, to testify about the gathering and verification of the signatures. I found their testimony to be clear, detailed, and credible. I particularly found the current employees to be credible considering they were testifying against their employer. See *Pacific Cost Sightseeing Tours & Charters, Inc*., 365 NLRB No. 131 (2017); *Flexsteel Industries*, supra at 749; and *Rose Printing Co*., 289 NLRB 252, 270 (1988).

[11] On about October 12, the Union received a signed authorization card from Gary Williams, who works in bottling. (GC Exh. 10). Lance testified he did not submit the card to the Region because he was told by the Board agent that he should hold onto the card.

[12] Respondent received the Union's October 11 mailing on October 13. The parties dispute whether a copy of the representation petition was included. The inclusion is significant because the petition was the only document in the mailing setting forth the "proposed bargaining unit" the Union was seeking recognition to represent based on its majority support. Lance believed the Union included a copy of the petition in the mailing to Respondent, but he was not certain, and the Union did not keep a copy of what it mailed out. The Union argues that regardless of whether the petition was included, it should be inferred that Respondent had knowledge of the unit as of October 11, because that is when Lance and others posted on the Union's social media accounts about mailing

h. *Decision and Announcement of $4-per-hour, Across-the-Board Increase*

The day after Nelson sent his October 4 email. Respondent began the process of what eventually resulted in a $4-per-hour, across-the-board wage increase. Upper management quickly gathered and reviewed internal and external wage data. (GC Exhs. 30, 44 and 45). They prepared a chart comparing Woodford's hourly rates (by job classification) with those at other distilleries and the industry averages. (R Exh. 2). According to the chart, Woodford paid below the industry average for all classifications. The wage disparities varied by position: logistics operators earned $8.22 per hour below the average; warehouse operators earned $5.98 per hour below the average; bottling operators earned $4.65 per hour below the average; processing operators earned $4.47 per hour below the average; distillery operators earned $3.68 per hour below the average; labeler operators earned $3.65 per hour below the average; truck drivers earned $3.15 per hour below the average; and multi-craft mechanics earned $.81 per hour below the average. (R Exh. 2).[13]

Senior Vice President Timothy Nall made the decision to increase Woodford's starting rates on October 10. He denied it had anything to do with the organizing effort, and that it was solely to address the "inefficiencies" that existed. (Tr. 935-937). When prompted, Nall testified the "inefficiencies" were Woodford's inability to increase production because of the difficulties it was having recruiting and retaining employees, which were believed to be because of the wage disparities. (Tr. 947).[14]

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out the petition, which had photos of the actual petition. (U. Exhs. 4-6). The flaw with this argument is there is no evidence anyone in management viewed or learned of these posts. Based on the evidence, I conclude Respondent did not have knowledge of the unit the Union was seeking to represent until October 14, when the Board received, docketed, and mailed a copy of the petition to Respondent. As such, the Union's request for recognition was valid as of that date.

[13] Nelson, Anderson, and Nall testified Respondent began preparing this wage comparison chart in September. I do not credit their testimony. In general, I found them to unreliable witnesses. They testified with a guarded and less than forthright demeanor, their memory was often selective and self-serving, and their testimony was often vague, generalized, and unsupported by credible evidence. Additionally, during cross examination, Nelson repeatedly looked to Respondent's counsel, seemingly for confirmation on what he was saying, when pressed by the General Counsel or the Union about the timing and rationale for gathering and compiling this wage data. The same was true of Anderson, but to a lesser extent.

The documentary evidence regarding the wage increase at issue shows the process, including the gathering of information, did not begin until after Nelson's October 4 email. The internal emails show a sudden and otherwise unexplained urgency to gather information in what appeared to be a rushed attempt to justify the subsequent wage increase. Christine Stavros, who normally is brought in on the outset of these discussions, did not get involved until a day or two later, and she worked while off from work to promptly respond to these "urgent information requests." (GC Exhs. 44 and 45). Additionally, as discussed, the emails between Lowe and Pritchard on October 5 refer to wage modifications that management had begun discussing the day before.

The General Counsel requests that I draw an adverse inference against Respondent for failing to provide certain subpoenaed information, including prior versions and underlying metadata for the chart. (R. Exh. 2) Specifically, in the absence of that information, the General Counsel requests a finding that Respondent did not begin gathering the information and preparing the chart until on about October 6. However, I am unable to determine from the record whether Respondent failed to provide certain subpoenaed information regarding this chart. Nonetheless, I find, for the reasons discussed, that Respondent's gathering and review of wage information, and the contemplation of the wage increase, did not begin until after Nelson's October 4 email.

[14] Nall, Anderson, and Nelson each testified, generally, that Woodford was having difficulty with recruitment and retention in 2022, but they did not provide specifics. The record is devoid of any details about difficulties with staffing, when they began, what the company was doing to address them, and, importantly, how they worsened in the fall, requiring Respondent to take the immediate actions at issue.

In determining the amount of the increase, Nall testified he wanted Woodford's hourly rates to be competitive with the industry averages. (Tr. 933-934). After reviewing the wage comparison chart, Nall "did some quick back of the envelope math" and decided that $4-per-hour "fe[lt] like … the right number." (Tr. 933). He acknowledged this was not based on "any detailed analytics" and that $4-per-hour was "a number" and "seemed appropriate." (Tr. 934).

On the morning of October 12, Nall emailed Anderson and Pritchard about the increase. (GC Exh. 42). Twenty minutes later, Nall emailed them again stating, "It should go without saying that I want to make this effective ASAP – let me know what that means from a feasibility perspective…" Anderson responded to Nall, "We were thinking Jan. 1 to coincide with what we have done historically. If we want to move faster, we can. Nov. 1 would be the fastest we could realistically process these through the system." (GC Exh. 42).

Anderson informed Nelson about the wage increase later that morning. (Tr. 763). They circulated proposed talking points to share with the employees regarding the increase. (GC Exh. 41). Later that day, Nelson held meetings with the employees to inform them about the increase. In one of the meetings, Nelson was recorded as saying the following:

> So we talked above over – well for the year and a half I've been here – about how we try to stay flexible with pay, stay competitive in the market, stay a place where we can retain talent. And I've talked with a number of you even one-on-one and in groups [over the year] … I got approval today to announce something been working on for a while that effective … November 1, $4.00 on the hour across the board … In the last few months, I've known we've been working on trying to make sure that we're equitable. And if that were a place where you want to stay to work, we feel like we've got a lot of the things with relationship with you all. Some other good benefits just Brown-Forman provides. Good atmosphere… And then knowing that a huge piece of that is the compensation, right? That's just a fact. So, if this raise gets us to a spot where we feel that, with all the other things non-monetarily and other monetary benefits that that you get, that just gets us in a place where we can retain you….

(GC Exh. 19).

This was the first time Woodford gave employees two across-the-board wage increases in the same year. (Tr. 294-295; 879).

i. *Effect of the Increase*

After Woodford announced the $4 wage increase, employee sentiment and interest about the Union changed. Lance testified that employees who he had spoken to in the past who supported the Union would no longer speak with him or others from the Union. (Tr. 186-189). They went to employees' homes, and Lance recalls that about 10 of the employees would not come to the door. Employee organizers testified that co-workers no longer wanted to speak with them about the Union. One of the employees told an organizer following the increase that he was taking "the bribe" and he was no longer supporting the Union. (Tr. 298). On October 18, employee Robert Harris emailed Lance asking for his signed authorization card back. Lance agreed but asked Harris how he planned to vote in the upcoming election. Harris responded "[t]he raise put me back on the fence … and now I [do] not know how I will vote." (GC Exh. 8). On about October 21, Josh Moore, another employee who

signed an authorization card, informed Lance that he was taking the $4 raise and was "backing down" (from supporting the Union). (GC Exh. 9).

The increase went into effect, as planned, beginning on November 1. Employees began seeing the increases in their paycheck on about November 10. (Tr. 761) (GC Exh. 21).

j. *Mandatory Meetings*

Following the above announcements, Woodford held various mandatory meetings with employees to discuss the Union. Pritchard held meetings where she compared the benefits Woodford offered with those offered at one of Brown-Forman's (unidentified) unionized facilities. One point Pritchard emphasized was that Woodford had greater flexibility as a non-union facility to make and adapt to changes. In that discussion, she gave the $4-per-hour wage increase that had just been announced as an example of Woodford's ability to be flexible. (GC Exh. 16, pg. 1).

k. *Distribution of Bottles of Bourbon*

A week before the election, on about November 10, Woodford distributed 375 ml bottles of Double Oaked bourbon valued at around $30 to all production employees. The decision to give out these bottles began about a month earlier, on October 7. On that date, Anderson emailed Thomas Reid Jr. asking if September had been a record for monthly OEE, and, if so, "it may not be a bad time to gift all our employees a nice bottle like we have done a few times before." (GC Exh. 24). Reid replied, "Yes sir, that is correct. We had agreed once we hit the 55 percent OEE record for the month we'd go 60 percent at our next target goal, but that was pre-COVID years. Previous record before then was 49.2 percent. Totally supportive…" (GC Exh. 24).

Three weeks later, Reid sent Nelson an email with a list of events or accomplishments where Woodford distributed bottles of its product to employees. Reid wrote "As a note and as of now, May 2022 – September 2022 is the first time we have broken a SKU[15]/Daily OEE Record for 5 consecutive months. It would be my preference to give the team bottles for this feat, as we continue to meet our OEE target projections." (GC Exh. 23). On October 31, Nelson responded, "If you all can come up with what you want to put on the name tags, we could try and get them passed out this week." At the hearing, Reid confirmed that as of October 31, Woodford had not yet determined the reason it was going to distribute the bottles of bourbon to the employees. (Tr. 824).

The reason Woodford gave employees when they provided the bottles on November 10 was that it was in recognition of them achieving a new SKU/OEE record during the months of May through September 2022. As for the delay in timing, Nelson testified they waited to distribute the bottles because management wanted to see if employees could continue to set the SKU/OEE record for a sixth consecutive month (in October). When the employees did not continue the streak, management made the decision to hand out the bottles in recognition for the five-month accomplishment. There is no further explanation for why it was given out on November 10.

[15] SKU stands for Stock Keeping Unit.

IV. LEGAL ANALYSIS

A. Overview of the Allegations and Positions

The Complaint alleges Respondent: (1) violated Section 8(a)(1) of the Act when it announced the $4-per-hour wage increase; (2) violated Section 8(a)(3) and (1) of the Act when it granted the $4-per-hour increase, changed the pay progression policy to allow new and recently promoted employees to be eligible for the annual merit increase and paid them retroactive to August 1, changed its vacation policy to no longer require that employees save, and then use, five vacation days during the annual end-of-the-year shutdown, and by giving all employees a bottle of bourbon with a retail value of approximately $30 a week before the election; and (3) violated Section 8(a)(5) of the Act by failing or refusing to recognize and bargain with the Union after it presented or offered to present evidence establishing its majority support as the representative of the employees in the petitioned-for Unit, without a good-faith doubt as to the Union's majority status.

The Objections allege Respondent engaged in impermissible conduct affecting the results of the election when it: (1) announced the wage increase, (2) issued the merit increase following the change in the pay progression policy; and (3) gave employees the bottle of bourbon.

Respondent denies these allegations. It contends each was a business decision compelled by the operational needs of Woodford which were neither made in response to the Union organizing campaign nor intended to sway the opinion of employees regarding representation. The wage increase was implemented to address the ongoing recruitment and retention issues that Woodford was experiencing, issues that intensified throughout the year as a result of record and unprecedented inflation and changes in the labor market. The modifications to the pay progression/merit increase policy and vacation use policy were responses to employee concerns that predated any awareness of the organizing campaign by Woodford and coincided with a change in Human Resources leadership at Woodford. Finally, the gift of a bottle of bourbon in November was nothing more than a morale booster routinely given to all Woodford employees for a variety of reasons, including meeting or surpassing production performance records and other similar benchmark.

As explained below, I conclude that Respondent engaged in the violative conduct, and that conduct which occurred during the critical period is also objectionable.

B. Legal Framework

Section 8(a)(1) of the Act makes it an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. Section 8(a)(3) of the Act makes it an unfair labor practice for an employer to discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.

In *NLRB v. Exchange Parts Co*., 375 U.S. 405, 409 (1964), the Supreme Court held an employer violates the Act when it confers an increase in wages or other benefits, or makes improvements to terms and conditions of employment, where the purpose is to impinge upon employees' freedom of choice for or against unionization or is reasonably calculated to do so. The Court reasoned:

> The danger inherent in well-timed increases … is the suggestion of a fist inside the velvet glove. Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged.

Id. See also *Vista Del Sol Healthcare*, 363 NLRB 1193, 1193 fn. 2 (2016); *McAllister Towing & Transp. Co*., 341 NLRB 394, 399 (2004), enfd. mem. 156 Fed. Appx. 386 (2d Cir. 2005).

Whether the conferral of an increase or other improvement during an organizing campaign violates Section 8(a)(1) and/or (3) turns on the employer's motivation. *ManorCare Health Services--Easton*, 356 NLRB 202 (2010); *Networks Dynamics Cabling*, 351 NLRB 1423, 1424 (2007). See also *Donaldson Bros. Ready Mix*, 341 NLRB 958, 961-962 (2004). The Board will infer improper motive when the increase or improvement occurs after the employer learns of the organizing campaign. *Yale New Haven Hospital*, 309 NLRB 363, 366 (1992); *Kanawha Stone Co*., 334 NLRB 235 fn. 2 (2001). The employer may rebut the inference by proving the action was part of a previously established policy or plan, such action had been decided upon prior to the onset of union activity, or the action was prompted by a legitimate business justification. See *American Sunroof Corp*., 248 NLRB 748, 748-749 (1980), modified on other grounds 667 F.2d 20 (6th Cir. 1981); *Marine World USA*, 236 NLRB 89, 90 (1978), enf. denied 611 F.2d 1274 (9th Cir. 1980). See also *Donaldson Bros. Ready Mix*, supra.

Similarly, an employer cannot time the announcement of an increase or improvement to discourage union support, and the Board will separately scrutinize the timing of that to determine its lawfulness. *Mercy Hospital Mercy Southwest*, 338 NLRB 545 (2002); *Reno Hilton*, 319 NLRB 1154, 1154-1155 (1995); *Capitol EMI Music*, 311 NLRB 997, 1012 (1993), enfd. 23 F.3d 399 (4th Cir. 1994). "[I]t is clear that an employer's right to recite for employees the benefits bestowed upon them prior to the union's appearance includes the right to announce the culmination of any nonunion related efforts to improve those benefits when such efforts naturally come to term, even in the period of an organizing campaign." *Waste Management of Palm Beach*, 329 NLRB 198, 199 (1999). The announcement becomes perilous, however, when the employer has, and exercises, discretion in choosing the timing, as the timing may not be manipulated to heighten the impact of the increase. Id. at 199 fn 4. As with the implementation, the employer bears the burden of establishing the announcement would have been made at the same time in the absence of the organizing campaign. Id. at 198.

The Board applies these frameworks not only to conduct occurring after the petition has been filed but also conduct occurring prior to the filing, during an organizing campaign. See *Hampton Inn NY- JFK Airport*, 348 NLRB 16, 17 (2006) (citing *Curwood Inc*., 339 NLRB 1137, 1147-1148 (2003), enfd. 397 F.3d 553-54 (7th Cir 2005). In contrast, objectionable conduct normally must occur during the critical period, which begins on the date the petition is filed and runs through the date of the election. *Ideal Electric Mfg. Co*., 134 NLRB 1275 (1961); *Dal-Tex Optical* Co., 137 NLRB 1782 (1962). In this case, the critical period began when the petition was filed on October 14 and ended with the election on November 17. An unfair labor practice during the critical period is, a fortiori, objectionable conduct that requires setting aside the election unless it is so de minimis that it is "virtually impossible to conclude that the violation could have affected the results of the election." *Intertape Polymer Corp*., 363 NLRB No. 187 (2016). See also *Super Thrift Market, Inc*., 233 NLRB 409, 409 (1977). *Dal-Tex Optical Co*., supra. In determining whether violations are de minimis, the Board considers the number and severity, the extent of their dissemination, the number of employees affected, the size of the unit, the closeness of the election, and the violations' proximity to the election. *Super Thrift*, supra, at 409.

C. Announcement and Implementation of Increases in Wages and Changes in Benefits

All the alleged violations and objectionable conduct occurred after management received the Union's August 25 letter announcing the organizing campaign, *and* after receiving Nelson's October 4 email reporting the "speculation" that 50-60 percent of the employees had signed authorization cards. Respondent contends the "speculation" was what the employees reported to Nelson, and that management had no independent knowledge or belief regarding the Union's level of support. Regardless, the internal communications prove upper management viewed the "speculation" to be true. They were shocked and dismayed with how quickly the campaign had advanced, but they were relieved that employees' primary motivation for organizing was their pay, and they did not want much else to change. With that information, Respondent sprang into action. Over the next week, it decided on and announced the $4-per-hour wage increase, decided on and announced changes to the pay progression/merit increase and vacation policies, and decided on distributing bottles of bourbon to employees for a yet-to-be-finalized accomplishment.

Overall, the timing and circumstances surrounding these actions are more than sufficient to infer unlawful motivation. And, as discussed below, Respondent has failed to prove it would have taken these actions in the absence of the organizing campaign and the anticipated election.

1. Wage Increases

Respondent contends Nall made the decision regarding the wage increase solely in response to "inefficiencies" in production at Woodford and the wage data showing a sizable discrepancy between the wage rates at Woodford as compared to its competitors and the industry average.[16] It further contends the purpose of the resulting $4-per-hour wage increase was to address the retention and recruitment issues that Woodford experienced in 2022, issues that became increasingly problematic over the course of the year. Nall concluded the wage increase was necessary to close the gap between Woodford and the companies with which it was competing to attract and retain employees.

These contentions do not withstand scrutiny. To begin with, they rest solely on the testimony of Nall, Nelson, and Anderson, which I do not credit. Their explanations regarding the timing and rationale for the increase are vague, generalized, and lacking any documentary support. Although there is proof of wage disparities, there is no evidence of issues with staffing or, more importantly, that those issues worsened in the fall, requiring the rush to take the actions at issue. The only document showing concerns that wage rates may be affecting hiring was Gray's mid-September emails with Stavros requesting a wage analysis to help determine if increasing the starting pay for mechanics by $2 per hour would help the company attract candidates for that classification. That email, however, made

[16] Respondent does not contend -- and the evidence does not support -- that it was acting as part of a previously established policy or plan when it gave this $4-per-hour, across-the-board increase. Historically, Respondent gave increases after a lengthy and thorough review, and the results were often tied to the annual budget, which Respondent prepares beginning in about January. Here, Nall began reviewing the wage information after receiving Nelson's email and, four days later, determined the $4 increase "seemed appropriate" based on his "quick back of the envelope math."

Additionally, the increase was unprecedented. As stated, it marked the first time Respondent gave two across-the-board increases in the same year. It also was, by far, the largest single increase Respondent had ever given. To illustrate, the combination of the $1 per hour raise in May and the 3-percent annual increase in August, upped employees' total pay 6.7 to 8.4 percent. The $4-per-hour wage increase, which was given 3 months later, raised employees' total pay *another* 13.1 to 18.9 precent. According to the wage data, that total increase was more than Respondent had given in wage adjustments and increases over the last five years combined.

clear that request was "not urgent," and they wanted the information to see if an adjustment could be made "at some point in the future." There is nothing suggesting a change in urgency between mid-September and October 12, aside, of course, from the information in Nelson's October 4 email.

Additionally, in the past, when Respondent believed wage disparities were affecting hiring or staffing, it implemented *targeted*, classification-specific wage adjustments to narrow or eliminate the *individual* disparities. It followed this practice in January 2018, when it increased (by differing amounts) the hourly rates for bottling operators, warehouse operators, logistics operators, processing operators, labeler operators, distillery operators, and mechanics; in June 2021, when it raised the starting rates for distillery operators and truck drivers; and in July 2021, when it increased the starting rate for temporary employees. There was no explanation for why this practice was not followed here.

As a nod toward an explanation, Nall stated he wanted Respondent's starting rates to be competitive with the industry averages, and he wanted it handled quickly. However, if Nall wanted to make wage rates competitive with industry averages, the increase at issue failed to achieve that goal. Respondent went from paying below-average rates for all classifications to paying well-above average rates for mechanics, above-average rates for truck drivers, distillery operators, and labeler operators, (still) below-average rates for processing operators, warehouse operators and bottling operators, and (still) well-below average rates for logistics operators.

Finally, in all the communication regarding this wage increase, there is no mention of issues with employee recruitment or retention. It all refers to, or stems from, Nelson's October 4 email. All of which indicates that Respondent decided to grant the wage increase and then attempted to justify it. The first mention of recruitment/retention as a justification for the increase was by Nelson when he announced the wage increase to employees on October 12. I conclude that announcement was a ruse, similar to Nelson's statements during that meeting that management had been working on the increase for several months; both were without any evidentiary support and simply untrue.

Based on the timing of this unprecedented increase and the pretextual reasons given to justify it, I conclude the General Counsel has established Respondent announced and later granted the wage increase solely in response to, and to undermine support for, the organizing campaign, in violation of Section 8(a)(1) and (3).

For an increase to be objectionable, it must be announced or effective -- not just paid or received -- during the critical period. See *ManorCare Health Services*, 362 NLRB 644 (2015); *Kokomo Tube Co*., 280 NLRB 357, 358 fn. 8 (1986); *Scott Glass Products*, 261 NLRB 906 (1982). As stated, the Union contends the announcement of the wage increase, as opposed to also the increase itself, was objectionable conduct. Here, the announcement was prepetition, but the effective date of the increase was during the critical period. Although the granting of the wage increase is not separately alleged as objectionable conduct, the Board has held matters litigated in an unfair labor practice case which is consolidated with a representation case may form the basis for setting an election aside even though those violations are not specifically raised as objections. See *White Plains Lincoln Mercury*, 288 NLRB 1133, 1138-1139 (1988), and cases cited therein. Furthermore, the Board has held that while prepetition conduct cannot be grounds for setting aside an election, it may be considered when it "lends meaning and dimension to related postpetition conduct." *Stevenson Equipment Co*., 174 NLRB 865, fn. 1 (1969). See also *Dresser Industries*, 242 NLRB 74 (1979). Respondent's announcement of the increase a week after learning that pay rates were what was motivating the organizing campaign, clearly lends meaning and dimension to the subsequent granting of the increase. Finally, based on my finding that the increase itself violated the Act, it is, a fortiori, objectionable conduct.

2. Favorable Changes in Existing Policies

Respondent contends the changes to the pay progression/merit increase policy and the vacation usage policy were the result of the change of leadership in Human Resources and the assumption of responsibility for Woodford by Pritchard on about October 1.[17] According to Respondent, Pritchard was made aware of the concerns employees had regarding their (in)eligibility for merit increases while on pay progression. Pritchard identified that policy, as well as the vacation usage policy, at Woodford to be contrary to, and in conflict with, existing Brown-Forman practices. As a result, with Pritchard's involvement, Respondent determined that moving forward Woodford's policies on these matters would be consistent with those of Brown-Forman's other companies.

Like with the wage increase, Respondent's defense for these changes is unsupported by credible evidence. Respondent again relies on the testimony of Nelson, Nall and Anderson, which, for the reasons already stated, I do not credit. Additionally, it failed to call Pritchard as a witness, for which I have taken an adverse inference because she continues to work for Respondent and was the admitted decisionmaker for both changes.

Moreover, Respondent contends it waited to make the changes until Pritchard assumed responsibilities for Human Resources at Woodford. It is not clear why waiting for Pritchard to assume responsibility was necessary to make the changes. Regardless, from all accounts, Pritchard assumed these responsibilities on October 1, but the changes were not made at that time. The changes were not made until after Nelson sent his October 4 email. In that email he called for a "fix" to the pay progression/merit increase policy as a possible next step in response to the organizing effort. Then, without any explanation, October 5, Nelson announced internally that the policy had been changed and that management would begin meeting with affected employees one-on-one to inform them about the change, and then the change would be announced at group meetings.

[17] In its revised Answer, Respondent argues the amended allegation that the change to the vacation policy violated Section 8(a)(3) and (1) of the Act was untimely under Sec. 10(b) of the Act. Sec. 10(b) requires that unfair labor practice charges be filed and served within six months of the allegedly unlawful conduct. However, the Board permits litigation of an otherwise untimely complaint allegation if the conduct alleged occurred within 6 months of a timely filed charge and is closely related to the allegations of that timely charge. The test for determining whether the otherwise untimely allegation is closely related is set forth in *Redd-I*, *Inc*., 290 NLRB 1115 (1988). Under *Redd-I*, the Board considers whether (1) the otherwise untimely allegations involve the same legal theory as the allegations in the timely charge; (2) the otherwise untimely allegations arise from the same factual situation or sequence of events as the allegations in the timely charge (i.e., the allegations involve similar conduct, usually during the same time period, and with a similar object); and (3) Respondent would raise the same or similar defenses to both the otherwise untimely and timely allegations. The amended allegation meets the "closely related" test. It involves identical conduct allegedly committed by supervisors arising from the same factual situation or sequence as in that same paragraph of the Complaint. Specifically, in the weeks after learning about the organizing effort, Woodford's managers, including Gray, are alleged to have held meetings or conversations with employees to announce changes to their wages and other terms and conditions of employment, in response to, and to undermine support for, the organizing effort. The amended allegation also involves the same legal theory, and Respondent would raise the same or similar defenses, as to the timely allegations regarding the merit increases. Those defenses are that the changes regarding vacation usage were made to align with Brown-Forman's other facilities, and the changes would have been made regardless of the organizing effort.

The record does not reflect when the change to the vacation usage policy was made. The first reference to it was when Gray announced it during the October 11 group meetings. Once again, Pritchard made the decision, but she failed to testify as to her rationale for the change or its timing.

Based on the timing and surrounding circumstances, I conclude the General Counsel has proven these changes were in response to, and to undermine support for, the organizing campaign, in violation of Section 8(a)(1) and (3). The announcement and effective dates of these changes both appear to be prepetition.[18] As such, they are not separately objectionable. But I find they add meaning and dimension to the postpetition granting of benefits at issue. See *Dresser Industries, Inc*., supra.

3. Distribution of Bottles of Bourbon

Respondent contends it gave out the bottles of Woodford's Double Oaked bourbon to all employees on November 10 solely in recognition of them achieving 5 consecutive months of an SKU/OEE record between May and September, which was entirely consistent with its past practice of giving out bottles to recognize special events or accomplishments.

Like the wage increase, the distribution of these bottles was unprecedented, and several factors lead me to conclude Respondent's rationale is pretext. First, the decision originated with Anderson on October 7, when he emailed Reid stating that September appeared to be a record OEE month, and that it "may not be a bad time to gift all our employees a nice bottle." Neither Anderson nor anyone at the corporate level previously initiated this type of action. In the past when bottles were handed out, it was at the behest of mid-level managers, like Reid, and then approved by a manager at the Woodford facility. Second, Anderson's email to Reid was sent a couple days after Anderson emailed Nall stating he believed the organizing campaign was going to a vote and it likely would occur around Thanksgiving. Third, rather than recognize the September monthly OEE record in October, Respondent chose to recognize the multi-month SKU/OEE record instead. This is the first time Respondent recognized a multi-month achievement. However, rather than distribute those bottles in October, Respondent waited until November. Nelson testified they wanted to wait another month to see if the employees would continue the streak. Logic would dictate that if Respondent was looking for the streak to continue it would notify employees of the goal and the reward ahead of time to

[18] These changes in policy were both announced on October 11, and payments under the change to the pay progression/merit increase policy began with the paycheck issued on October 14, covering the hours from the prior work week. Respondent's payment indicates the change became effective before October 14, which means both the announcement and the effective dates of the changes were prepetition.

Respondent cites to *B&D Plastics, Inc*., 302 NLRB 245, 245 (1991), in which the Board held it would look at the following factors in determining if a pre-election benefit is objectionable: the size of the benefit conferred in relation to the stated purpose for granting it; the number of employees receiving it; how employees reasonably would view the purpose of the benefit; and the timing of the benefit. Respondent argues the change is not objectionable because: (1) only a subset of employees was impacted by the change, and only in a year in which they were either newly hired or newly promoted; (2) the amount of the benefit was limited as it would only entitle those employees to receive the same annual wage increase that every other employee at Woodford received; (3) the timing of the change occurred outside the critical period, and, as stated, based solely on Pritchard assuming responsibility for Woodford, which was disconnected from the organizing campaign.

Aside from timing, Respondent's arguments are unsupported. The change was neither limited nor insignificant; it affected more than 30 percent of the employees, and it resulted in a 3-percent increase in their hourly pay. Depending on their hourly rate, the change increased their pay roughly $25-$40 per pay period, or $1,300-$2,080 a year. Additionally, they received a lump-sum retroactive payment, and those payments were around $250-$400 each.

incentivize them. Respondent did neither. It never notified them about the alleged goal, or that it had changed. Finally, after the streak did not continue, Respondent recognized the May-September achievement on November 10, a week before the election. Respondent offered no explanation for why it waited 6 weeks to recognize the alleged accomplishment, but it could not wait until after the election to announce and make the distribution.

Based on the foregoing, I conclude Respondent's motive was not to legitimately reward employees for a known accomplishment, but rather to influence their vote and discourage them from supporting the Union, in violation of Section 8(a)(1) and (3). I further conclude the distribution of the bottles of bourbon a week before the election was timed to heighten the impact of those benefits and thereby influence the outcome of the election. See *Waste Management of Palm Beach*, supra; *Preston Products Co*., 158 NLRB 322 (1966), enf. granted in pertinent part 392 F.2d 801 (D.C. Cir. 1967).

C. Refusal to Bargain and Remedial Bargaining Order

The final allegation is that Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit employees after it was designated as such through authorization cards signed by a majority of those employees and then by engaging in serious and substantial unfair labor practices that undermined the Union's majority support and impeded the election process.

Where an employer engages in misconduct in response to an organizing campaign, the Board has broad discretion when ordering appropriate remedies, including the issuance of a bargaining order. The Supreme Court in *NLRB v. Gissel Packing Co*., 395 U.S. 575, 610 (1969), approved remedial bargaining orders in two types of cases. Category I are "exceptional cases" involving unfair labor practices so "outrageous" and "pervasive" that traditional remedies cannot erase their coercive effects, thus rendering a fair election impossible. Id. 613. Category II are "less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election process." Id. at 614. In Category II cases, the Board must evaluate the "extensiveness of an employer's unfair labor practices in terms of their past effect on election conditions and the likelihood of their recurrence in the future" in determining whether a bargaining order is appropriate. Id. The General Counsel must prove that: (1) the union was at some point supported by a majority of the bargaining unit employees; and (2) the "possibility of erasing the effects of past practices and of ensuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight and that employee sentiment once expressed … would, on balance, be better protected by a bargaining order …" Id. at 614-615. In such a case, the Court emphasized, the bargaining order serves the two equally important goals of "effectuating ascertainable employee free choice" and "deterring employer misbehavior." Id. at 614.

Under *Gissel,* the Board examines the employer's entire course of conduct, both before and after the critical period. See *Aldworth Co*., 338 NLRB 137, 150 (2002); *Alumbaugh Coal Corp*., 247 NLRB 895, 914 fn. 41 (1980) enfd. in relevant part 635 F.2d 1380 (8th Cir. 1980); *Baker Machine & Gear, Inc*., 220 NLRB 194 (1975); *Idaho Candy Company*, 218 NLRB 352 (1975). It considers the seriousness of the unfair labor practices and their pervasive nature, as well as such factors as the number of employees directly affected, the identity and position of the individuals committing the unfair labor practices, and the size of the unit and extent of dissemination of knowledge of the employer's coercive conduct among unit employees. See *Holly Farms Corp*., 311 NLRB 273 (1993), enfd. 245 F.3d 819 (D.C. Cir. 2001).

The Board has identified certain "hallmark" violations that are considered particularly coercive because of their tendency to destroy election conditions, and to persist for longer periods of time than other unfair labor practices. *Gissel,* supra at 611 fn. 31. Among the hallmark violations is the grant of wage increases and benefits. The reason is that such grants have "a particularly long-lasting effect on employees and are difficult to remedy by traditional means not only because of their significance to the employees, but also because the Board's traditional remedies do not require a respondent to withdraw the benefits from the employees." *Hogan Transports, Inc*., 363 NLRB 1980, 2005 (2016). See also *Evergreen America Corp*., 348 NLRB 178, 180 (2006), enfd. 531 F.3d 321 (4th Cir. 2008); and *Pembrook Management*, 296 NLRB 1226, 1228 (1989). Further, wage increases and benefits unlawfully granted will serve as a reminder to the employees that the employer, not the union, is the source of such increases and benefits and that they may continue as long as the employees do not support the union. *Evergreen America*, supra; *Gerig's Dump Trucking, Inc*., 320 NLRB 1017, 1018 (1996), end. 137 F.3d 936 (7th Cir. 1998). Cf. *Jewish Home for the Elderly of Fairfield County*, 343 NLRB 1069 (2004) (no bargaining order despite unit-wide wage increase).

Recently, in *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130 (2023), the Board adopted a new standard for determining whether a bargaining order is appropriate, holding the *Gissel* standard "has resulted in persistent failures to enable employees to win timely representation despite having properly designated a union to represent them." Id., slip op. at 26. The new standard, applied retroactively to all pending cases, states:

> …[A]n employer violates Section 8(a)(5) and (1) by refusing to recognize, upon request, a union that has been designated as Section 9(a) representative by the majority of employees in an appropriate unit unless the employer promptly [within 2 weeks of the demand for recognition] files a petition pursuant to Section 9(c)(1)(B) of the Act (an RM petition) to test the union's majority status or the appropriateness of the unit, assuming that the union has not already filed a petition pursuant to Section 9(c)(1)(A).
> …
>
> However, if the employer commits an unfair labor practice that requires setting aside the election, the petition (whether filed by the employer or the union) will be dismissed, and the employer will be subject to a remedial bargaining order.

Id. slip op. 25-26 (footnotes omitted).[19]

The Board held its new standard will more effectively disincentivize employers from committing unfair labor practices, both before and after the filing of the election petition. Id., slip op.

[19] In doing away with re-run elections as part of the remedy in this context, the Board held:

> Given the strong statutory policy in favor of the prompt resolution of questions concerning representation, which can trigger labor disputes, we do not believe that conducting a new election -- after the employer's unfair labor practices have been litigated and fully adjudicated -- can ever be a truly adequate remedy. Nor is there a strong justification for such a delayed attempt at determining employees' free choice again where the Board has determined that employees had already properly designated the union as their majority representative, consistent with the language of the Act, before the employer's unfair labor practices frustrated the election process. Simply put, an employer cannot have it both ways. It may not insist on an election, by refusing to recognize and bargain with the designated majority representative, and then violate the Act in a way that prevents employees from exercising free choice in a timely way.

Id. at 26 (footnotes omitted).

at 28. As a result, an employer will be found to have violated Section 8(a)(5) and a remedial bargaining order will issue when: (1) the employer refuses the union's request to bargain; (2) at a time when the union had in fact been designated as representative by a majority of employees; (3) in an appropriate unit; and then (4) the employer commits unfair labor practices requiring the election to be set aside. Id. slip op. at 29.

Each of these factors is met. First, Respondent refused the Union's request for recognition, although there is an issue over the effective date of that request. The Union's October 11 letter to Respondent states it has majority support and requests recognition as the representative of employees "in a proposed unit." The letter, however, does not describe the "proposed unit." Rather, it refers to an attached service copy of the petition the Union filed that day with the Board, but the Union inadvertently failed to include a copy of the petition with the letter sent to Respondent. As such, when Respondent received the Union's letter on October 13, it was not yet aware of what unit the Union was claiming to represent. Any uncertainty as to the unit was resolved when the Board served Respondent with the filed copy of the petition on October 14, and there is no dispute Respondent has failed to recognize and bargain with the Union since that date.

Second, the Union's request for recognition was after it had obtained support from a majority of the employees, and Respondent lacked a good-faith doubt as to the Union's majority support. By October 14, the Union had signed authorization cards from 36 of the 60 employees in the petitioned-for Unit. In *Cumberland Shoe*, 144 NLRB 1268, 1269 (1963), enfd. 351 F.2d 917 (6th Cir. 1965), the Board held that an unambiguous card is valid unless and until it is rendered invalid through solicitation misrepresenting the sole purpose of the card. A card may be ambiguous, and thus facially invalid, through either the words on the card or through the way the card is presented to the signee. Here, there is nothing ambiguous in the wording of the authorization card employees signed, and there is no evidence of any misrepresentation regarding the card's purpose.[20]

All 36 of the signed cards have been authenticated. The Board has ruled that signatures can be authenticated by the signers, a witness who observed the signing, the person who solicited the signatures and received them back, even if the solicitor did not actually observe the signing, or by signature comparison. See *Novelis*, 364 NLRB 1452, 1454-1455 (2016), enf. denied in part 885 F.3d 100, 107 fn. 7 (2d Cir. 2018); *Evergreen America Corp*., supra at 179; and *McEwen Mfg. Co*., 172 NLRB 990, 992 (1968), enfd. 419 F.2d 1207 (D.C. Cir. 1969), cert. denied 397 U.S. 988 (1970) (cases cited therein). The parties stipulated to 11 of the cards, and the General Counsel's witnesses who either observed or collected the signed cards authenticated the remaining 25. Separately, I compared and verified the signatures on the cards with their W-4 forms that each employee signs when they begin working for Woodford. Consistent with Section 901(b)(3) of the Federal Rules of Evidence, the Board has held a judge may determine the genuineness of signatures on authorization cards by comparing them to W-4 records. See *Traction Wholesale Center Co*., 328 NLRB 1058, 1059 (1999), enfd. 216

[20] Robert Harris's October 18 revocation of his signed authorization card was invalid. An employer may attack the validity of authorization cards which a union relies upon to establish majority support that were revoked *prior* to the union's demand for recognition. See *J. P. Stevens & Co*., 244 NLRB 407 (1979); *Struthers-Dunn, Inc. v. NLRB*, 574 F.2d 796 (3d Cir. 19780: *TMT Trailer Ferry*, 152 NLRB 1495 (1965). Additionally, the Board has held timely revocations are invalid if they are the product of the employer's unfair labor practices. *Dlubak Corp*., 307 NLRB 1138 fn. 2 (1992), enfd. 5 F.3d 1488 (3rd Cir. 1993); *Quality Markets*, 160 NLRB 44 (1966). Harris told Lance, in writing, he wanted his card returned because the $4-per-hour "raise put [him] back on the fence" about supporting the Union.

F.3d 92 (D.C. Cir. 2000). See also *Parts Depot, Inc*., 332 NLRB 670, 674 (2000), enfd. 24 Fed. Appx. 1 (D.C. Cir. 2001).

Third, the petitioned-for Unit is appropriate. The Board's role in unit-determination cases is to decide whether the petitioned-for unit is *an* appropriate unit, not whether it is the optimum or most appropriate unit. *Black & Decker Mfg. Co*., 147 NLRB 825, 828 (1964). Recently, in *American Steel Construction, Inc*., 372 NLRB No. 23 (2022), the Board overruled *PCC Structurals, Inc*., 365 NLRB No. 160 (2017) and reaffirmed *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), enfd. sub nom., 727 F.3d 552 (6th Cir. 2013), concerning the framework that applies where a union seeks to represent a unit that contains some, but not all, of the job classifications at a particular workplace. In *American Steel*, the Board held it will find a petitioned-for unit to be appropriate where the grouping of employees: (1) shares an internal community of interest; (2) is readily identifiable as a group based on job classifications, departments, functions, work locations, skills, or similar factors; and (3) is sufficiently distinct. Id., slip op. at 13. If a party contends the petitioned-for unit is not sufficiently distinct -- i.e., that the smallest appropriate unit contains additional employees -- then that party has the burden of establishing there is an "overwhelming community of interest" between the petitioned-for and the additional classification(s), such that there is no rational basis for the latter's exclusion. Id. Under the traditional community-of-interest standard, the Board assesses whether the employees: are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. An "overwhelming" community of interest exits "[i]f there are only minimal differences" between the petitioned-for and the additional employees. Id. The Board, in *American Steel*, held this reaffirmed standard applies retroactively to all pending cases. Id, slip op. at 13-14.

Respondent's only argument regarding the appropriateness of the Unit is that it also must include the maintenance mechanics because they share an overwhelming community of interest with those in the petitioned-for Unit. The record shows that maintenance mechanics work alongside and support production employees to maintain and repair equipment used during all three production shifts. The two groups participate in the same pre-shift and safety meetings, are subject to the same employee handbook and work rules, share the same restrooms and break rooms, receive the same benefits, and wear similar attire and protective gear. Respondent further argues that while mechanics report to the Maintenance Engineer, their work may also be directed by the supervisors for production employees, that is, the Quality Manager, and the Operations Manager, and those three managers must coordinate with each other to ensure safe, efficient, and productive operations at Woodford. Further, all three supervisors report to the Plant Director.

These arguments, while true, ignore key differences or distinctions between the maintenance mechanics and the employees in the petitioned-for Unit. Of particular significance is that maintenance mechanics have distinct skills and training; they have distinct job functions and perform distinct work; and, while there is daily interaction, there is little-to-no interchange in job duties with the production employees. Although production employees perform minor preventative maintenance and replacement of parts on their machines, Reid confirmed their work is unskilled, and none of the production employees could do the primary job duties of a maintenance mechanic. He also confirmed that while maintenance mechanics could cover for a production employee, he personally was aware of that occurring only once. Additionally, the mechanics are their own department, which is separately supervised. While the Maintenance Engineer may occasionally oversee the production employees when their supervisor is sick or on vacation, that only happens about 6 times a year. There is no

estimate as to how often the production supervisors oversee the mechanics. Additionally, the maintenance mechanics are highly compensated, earning up to nearly 50 percent more than the production employees. They also work 12-hour shifts, as opposed to the production employees' 8-hour shifts; and they move all over the facility performing their duties, whereas the production employees work in a specific area. For these reasons, I conclude maintenance mechanics do not share a traditional community of interest, let alone an overwhelming one, with the production employees.

Fourth, Respondent committed serious violations requiring the election to be set aside. As stated, granting wage increases and other benefits in response to an organizing campaign has long been held to be a significant, or "hallmark," violation warranting a bargaining order. See *Evergreen America*, supra; *Pembrook Management*, supra; *Overnite Transportation*, 329 NLRB 990, 993 (1999).[21] Here, Respondent committed hallmark violations requiring the election be set aside with the wage increase, the favorable policy changes, and the distribution of bourbon, all within about a month prior to the election. They directly affected most-if-not-all the employees in the petitioned-for Unit. As stated, there was no plan to take any of these actions prior to October 4. Nelson, who a month earlier told employees Respondent would not stand idly by in response to the organizing campaign, held meetings on October 12 to announce the wage increase, telling employees that Respondent had listened to their concerns about pay and responded. The increase and policy changes had the desired effect because interest in the campaign plummeted immediately after they were announced. Employees ceased communicating with the Union and employee organizers about the campaign. Two of the employees who signed cards told the Union that the wage increase caused them to reconsider or end their support for the Union. Another employee referred to the increase as a "bribe," and stated he was taking it and no longer supporting the Union. The Union went from having signed authorization cards from 36 of the 60 employees on October 12, to losing the election about a month later by a vote of 45 to 14, showing an otherwise unexplained drop in support from 60 percent to about 24 percent.

I, therefore, conclude that a remedial bargaining order is appropriate in this case.[22]

[21] Respondent cites to *Hialeah Hospital*, 343 NLRB 391 (2004) to support its argument that a bargaining order is not warranted. That case, which involved several hallmark violations, including a wage increase, is distinguishable. It involved seemingly random threats and inducements in response to an organizing campaign. Here, the violations were not random; they were laser-focused on responding to the employees' stated motivation for supporting the Union, i.e., increasing their pay. There is a myriad of scenarios which could be compared to the instant case in support of arguments both for and against a bargaining order. Overall, I find the immediate, focused, and unprecedented violations at issue, which were made and/or communicated by upper management, along with the other factors discussed herein, warrant a bargaining order.

[22] For the same reasons, I also conclude a remedial bargaining order is appropriate applying the *Gissel* Category II analysis, which involves less extraordinary cases marked by less pervasive practices that nonetheless still have the tendency to (and, in this case, did) undermine majority strength and impede the election processes. Once again, none of the changes at issue were contemplated or decided until after Nelson's October 4 email. As soon as Respondent learned what was motivating the organizing campaign, upper management took immediate and unprecedented actions, clearly tailored at undermining support for the Union by showing employees they could get what they wanted without the Union. In light of the violations, and their lasting effect on employees, I do not believe that traditional remedies will sufficiently deter their recurrence. Rather, I find the employees' representational desires, expressed through the signed authorization cards from a majority of the employees, would be better protected by a bargaining order.

V. CONCLUSIONS OF LAW

1. Brown-Forman Corporation d/b/a Woodford Reserve Distillery ("Respondent") is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The International Brotherhood of Teamsters (IBT), Local 651 ("Union") is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act on about October 12, when it announced to employees that they would be receiving the $4-per-hour wage increase.

4. Respondent violated Section 8(a)(1) and (3) of the Act: on about October 11, when it changed the pay progression/merit increase policy to allow new and recently promoted employees to be eligible for the annual merit increase and paid them retroactive to August 1; on about October 11, when it changed its vacation policy to no longer require that employees save, and then use, five vacation days during the annual end-of-the-year shutdown; effective November 1, when it granted the $4-per-hour, across-the-board wage increase; and on about November 10, when it by gave all employees a bottle of bourbon with a retail value of approximately $30, all in response to, and to undermine support, for the Union organizing campaign.

5. Respondent violated Section 8(a)(1) and (5) of the Act by failing or refusing to recognize and bargain with the Union since October 14 as the exclusive collective-bargaining representative of "all full-time and regular part-time regauge and processing, distillery, warehousing and bottling employees employed at Respondent's 7855 McCracken Pike, Versailles, Kentucky facility; excluding all professional employees, maintenance employees, office clerical employees, guards and supervisors as defined in the Act" after the Union obtained majority support as the representative of these employees, without Respondent having a good-faith doubt as to the Union's majority status.

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

REMEDY

Having found that Respondent engaged in certain unfair labor practices, I shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Respondent also shall also post the attached notice at its Versailles, Kentucky facility in accordance with *J. Picini Flooring*, 356 NLRB 11 (2010), and *Durham School Services*, 360 NLRB 694 (2014). In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means.[23]

[23] If no exceptions are filed, as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be waived for all purposes.

ORDER[24]

The Respondent, its officers, agents, successor, and assigns, shall:

1. Cease and desist from

(a) Announcing raises to employees as a way of promising its employees increased benefits and improved terms and conditions of employment if they rejected the Union as their bargaining representative;

(b) Increasing benefits employees at Respondent's facility by granting them a $4-per-hour wage increase;

(c) Increasing benefits of certain employees at Respondent's facility by granting a merit wage increase to new hires and newly promoted employees who were ineligible for the increase under its pay progression/merit increase policy;

(d) Increasing benefits of certain employees at Respondent's facility by giving the employees a lump-sum merit increase payment retroactive to August 1, 2022;

(e) Increasing benefits of all employees at Respondent's facility by ending its vacation usage policy that required employees to save, and then use, five vacation days during the Respondent's annual end-of-the-year shutdown period;

(f) Granting benefits to all employees at Respondent's facility by giving the employees a bottle of bourbon with a retail value of approximately $30; and

(g) Failing or refusing to recognize and bargain with the Union over wages, hours, and other terms and conditions of employment affecting all full-time and regular part-time regauge and processing, distillery, warehousing and bottling employees employed by the Employer at its 7855 McCracken Pike, Versailles, Kentucky facility; excluding all professional employees, maintenance employees, office clerical employees, guards and supervisors as defined in the Act (the Unit).

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

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

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the Unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement;[25]

(b) Post at its Versailles, Kentucky facility copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by an authorized representative of Respondent, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced,

[24] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[25] The General Counsel, in its post-hearing brief, seeks certain special or enhanced remedies, such as a notice reading and the production of a list of employees and contact information to the Union. Those remedies were not pled or raised prior to submission of the briefs, and the briefs contain not argument or rationale for why they are warranted. I, therefore, decline to order them or address their appropriateness.

or covered by any other material. If Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail a copy of the notice to all current employees and former employees employed by Respondent at any time since October 11, 2022.[26]

(c) Within 21 days after service by the Region, file with the Regional Director for Region 9 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

IT IS FURTHER ORDERED that the election in 09-RC-305269 is set aside.

Dated, Washington, D.C. April 8, 2024

Andrew S. Gollin
Administrative Law Judge

[26] If the facilities involved in these proceedings are open and staffed by a substantial complement of employees, the notice must be posted and read within 14 days after service by the Region. If the facilities involved in these proceedings are closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted and read within 14 days after the facilities reopen and a substantial complement of employees have returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]."

NOTICE TO EMPLOYEES

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

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.

WE WILL NOT do anything to interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL NOT fail or refuse to recognize and bargain collectively with the International Brotherhood of Teamsters (IBT), Local 651 ("Union") as the exclusive collective-bargaining representative of the employees in the following appropriate unit ("Unit"):

> All full-time and regular part-time regauge and processing, distillery, warehousing and bottling employees employed by the Employer at its 7855 McCracken Pike, Versailles, Kentucky facility; excluding all professional employees, maintenance employees, office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT announce raises to employees as a way of promising its employees increased benefits and improved terms and conditions of employment if they rejected the Union as their bargaining representative;

WE WILL NOT increase benefits for employees at our facility by granting them a $4-per-hour wage increase;

WE WILL NOT increase benefits for our employees at our facility by granting a merit wage increase to new hires and newly promoted employees who were ineligible for the increase under its pay progression/merit increase policy;

WE WILL NOT increase benefits for our employees at our facility by giving the employees a lump-sum merit increase payment retroactive to August 1, 2022;

WE WILL NOT increase benefits for our employees at our facility by ending its vacation usage policy that required employees to save, and then use, five vacation days during the annual end-of-the-year shutdown period;

WE WILL NOT grant benefits to our employees at our facility by giving the employees a bottle of bourbon with a retail value of approximately $30; and

WE WILL NOT in any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of the employees in the Unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

BROWN-FORMAN CORPORATION D/B/A
WOODFORD RESERVE DISTILLERY
(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. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies 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. You may also obtain information from the Board's website: www.nlrb.gov

John Weld Peck Federal Building, 550 Main Street, Room 3003, Cincinnati, OH 45202-3271
(513) 684-3686, Hours: 8:00 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/09-CA-307806 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

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 (513) 684-3733.