

**Before Region 32  
of the  
National Labor Relations Board**

Recreational Equipment, Inc.,

Respondent,

– and –

Case No. 32-CA-329152

UFCW International Union,

Charging Party.

**Position Statement of  
the UFCW International Union in  
Support of the Charge and  
Request for Injunction**

The Region should issue a complaint alleging that REI bargained in bad faith and unlawfully refused to bargain over unilateral changes it made to working conditions of REI's employees, including laying off numerous employees. The evidence shows that REI announced that it was making these changes and then denied the demands of the unions to bargain over the changes.

Specifically, the changes REI made without prior notice to or bargaining with the unions included establishing new roles, job titles and job descriptions, preventing employees from working in certain departments, reducing hours, demoting employees and laying off employees. The units are located in Berkeley, CA, Lincoln Park, IL, Boston, MA, Maple Grove, MN, SoHo, NY, Durham, NC, Beachwood, OH, and Bellingham, WA.

The Region should also request the General Counsel to seek an injunction because of (1) the breadth of REI's changes, (2) REI's blatant refusal to bargain over them, (3) the substantial impact REI's actions have had on employees and is having on the unions' attempts to get REI to

bargain over these changes and make progress on first contracts, and (4) the practical difficulty of reversing these changes years from now when the Board decides this case.

The injunction should order REI to cease bargaining in bad faith, reverse all of the changes, including reinstating all laid off employees with backpay, and to refrain from unilaterally changing these or any other mandatory subjects of bargaining, including disciplining, discharging or laying off any employee, without first fulfilling its obligation to bargain.

The Board should seek the injunction because the “underlying purpose of § 10(j) . . . is to protect the integrity of the collective bargaining process and to preserve the Board's remedial power while it processes the charge.” *Hooks v. Nexstar Broadcasting*, 54 F.4th 1101, 1107 (9th Cir. 2022). *See also Baudler v. American Baptist Homes of the West*, 798 F.Supp.2d 1099, 1104-05 (N.D. Cal. 2011), *citing McDermott v. Ampersand Publ'g*, 593 F.3d 950, 957 (9th Cir. 2010).

### **Statement of Facts**

On October 12, 2023, REI telephoned UFCW Local 5 to inform the union that it was laying off 5 employees at the Berkeley, CA, store. Araby Aff. ¶ 3. Local 5 represents the employees at the Berkeley store. REI also said that it was implementing a “restructuring” program that included demoting “leads” to “senior” employees and taking away some of the leads’ responsibilities. Araby Aff. ¶¶ 3, 12. REI also called the other unions that represent REI workers and informed them of the changes REI was making.<sup>1</sup> Araby Aff. ¶4.

Local 5 demanded to bargain over the layoffs and the restructuring. Araby Aff. ¶ 3.

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<sup>1</sup>The Retail, Wholesale, and Department Store Union (affiliated with the UFCW) represents employees at REI’s Lincoln Park, SoHo and Beachwood stores; UFCW Local 700 represents the employees at the Castleton, IN, store; UFCW Local 1445 represents employees at the Boston store; UFCW Local 663 represents employees at the Maple Grove, MN, store; UFCW Local 1208, the employees at the Durham, NC, store; and UFCW Local 3000, the employees at the Bellingham, WA, store.

REI also laid off employees and implemented the restructuring at its Beachwood, OH, Lincoln Park, IL, SoHo, NY, and Boston, MA, stores. Araby Aff. ¶¶ 4, 6.

On the same day REI informed the unions about these changes – October 12 – REI also told employees about the layoffs and restructuring. Araby Aff. ¶ 7. Specifically, REI told employees how it was going to begin to schedule employees and the number of hours REI would schedule them to work. Araby Aff. ¶ 7. For example, REI told at least two employees at the Chicago store that because of its restructuring “they were fired.” ██████████ Aff. ¶3. When REI “fired” at least five employees at the Boston store because of the restructuring on October 12, a manager, Cam, who escorted several of the fired employees out of the Boston store met with other employees and said, “We lost some really good people today. I know people are probably really upset. [REI] will . . . announce [more] about this and what’s happening moving forward in the coming days.” ██████████ Aff. ¶3.

Following its calls to the unions, REI sent an email detailing the restructuring. Oct. 12, 2023, email from Kelcey Phillips. The email claimed that to improve the “employee experience,” REI changed working conditions that would supposedly “increase scheduling transparency and hours predictability, update store roles and job descriptions, and lead to a more aligned and streamlined staffing model.” Phillips Oct. 12 email. The changes included:

1. Creating committed weekly hour ranges:

1. Full-time: employees who can expect to work at least 32 hours per week.
2. Part-time+ (new): employees who can expect to work 16-24 hours per week.
3. Part-time: employees who can expect a high degree of flexibility and variability throughout the year to meet both the employee desire for flexibility and support our dynamic business demands.

2. Updating staffing models . . . .

3. Updating store roles, job titles, and job descriptions. We’re eliminating the “lead” role, with leads to be moved into new roles in the organization (see below) . . . .

Phillips Oct. 12 email.

The email stated that one “impact” of the restructuring “is that ‘leads’ . . . will be laid off.” Phillips Oct. 12 email. The email continued that REI “would like to offer the[ laid off] employees the following severance benefit.” Phillips Oct. 12 email.

The restructuring also changed the number of days that full time employees are required to be available to work to 7 days a week, created a new part-time position and changed the hours part-timers work. Araby Aff. ¶ 12. After the restructure, part-timers work 0-16 hours a week, and employees who work in the new, part-time position (part-time +) will work 16-24 hours a week. Araby Aff. ¶ 12. Before the restructuring, part-timers worked a minimum of 24 hours a week and could work more than 24 hours a week. Araby Aff. ¶ 12.

REI responded to Local 5’s demand to bargain on October 19 stating that REI “disagree[d] regarding REI’s legal obligations to bargain over the noticed changes before implementing them.” Araby Aff. ¶ 3; Phillips Oct. 19 email.

All of the unions emailed REI a collective response on October 20. Araby Aff. ¶ 6. The email stated that to “make it unambiguously clear, the Union demands to bargain over all the proposed changes outlined in [the Oct. 12 email], as well as any other proposed changes to pay, hours, working conditions, job titles and duties, and/or staffing structure concerning the affected bargaining unit(s) employees.” Montalbano Oct. 12 email to Phillips. The email concluded by stating that the “union objects to any unilateral implementation of the proposed changes before such negotiations have had the time to be sufficiently conducted and conclude either with agreement or impasse.” Montalbano Oct. 12 email.

Later in October, Local 5 met with REI. Araby Aff. ¶ 8. Local 5 challenged REI’s position that the union had to agree to the restructuring before REI would pay severance to any laid off,

union-represented employee. Araby Aff. ¶ 8. REI said that this was its offer and there was not going to be further discussion on the matter. Araby Aff. ¶ 8. Local 5 also protested that managers were already telling employees about the restructuring changes before REI negotiated over the changes. Araby Aff. ¶ 8.

On October 27, REI responded and rejected to the unions' October 20 collective response, saying that REI was restructuring all of the union stores, but would be laying off employees only at the Lincoln Park and Boston stores in addition to the Berkeley store. Araby Aff. ¶ 10.

The unions countered on November 6 and made a "supposal" in a sidebar. Araby Aff. ¶ 10. Several days following the sidebar, REI rejected the proposals. Araby Aff. ¶ 10. REI responded on December 6 saying the same exact thing it said when REI first notified the unions about the layoffs and restructuring without making any movement whatsoever. Araby Aff. ¶ 10.

The changes REI unilaterally made adversely affected REI employees, As a result of the restructuring, for example, REI demoted ██████████ from Sales Lead to Sales Specialist at the Chicago store. ██████████ Aff. ¶ 4. ██████████ was concerned that REI would no longer allow ██████ to work full-time hours because REI doesn't always schedule Sales Associates to work full-time hours. ██████████ Aff. ¶ 4. As of late 2023, REI had failed to schedule ██████████ five days a week at least three times, costing ██████████ a total of at least 24 hours of pay. ██████████ Aff. ¶ 7. REI also demoted Visual Sales Lead ██████████ ██████████ to Senior Sales Specialist. ██████████ Aff. ¶5.

### Argument

#### **1. The Region should issue a complaint alleging that REI unlawfully changed mandatory subjects of bargaining without first notifying or bargaining with the unions.**

REI unlawfully changed working conditions without first notifying the unions and giving them an opportunity to bargain over the changes. Additionally, REI bargained in bad faith because the facts shows that REI had no intent to reach agreement with the unions. REI presented the

changes to the unions as a fait accompli, implemented the changes on the same day it notified the unions, refused to counter the unions or move at all on REI's position on the changes.

“It is well-settled that where employees are represented by a union, an employer violates Section 8(a)(1) and (5) of the Act by making unilateral changes with respect to mandatory subjects of bargaining, absent bargaining to impasse.” *Atl. Veal & Lamb*, 373 NLRB No. 19 at 21 (2024). *See also Frankl v. HTH*, 825 F.Supp.2d 1010, 1032 (D. Haw. 2011) (An “employer violates section . . . 8(a)(5) of the Act if it makes a unilateral change in a term or condition of employment . . . without first bargaining to impasse over the relevant term”), *aff'd*, 693 F.3d 1051 (9th Cir. 2012), *citing Local Joint Exec. Bd. of Las Vegas v. NLRB*, 540 F.3d 1072, 1075 (9th Cir. 2008), *NLRB v. Katz*, 369 U.S. 736 (1962); *Richmond Elec. Servs.*, 348 NLRB 1001, 1002 (2006). “An employer’s unilateral change in conditions is . . . a violation of § 8(a)(5), for it is a circumvention of the duty to negotiate which frustrates the objectives of § 8(a)(5) much as does a flat refusal.” *Visiting Nurse Services of Western Massachusetts v. NLRB*, 177 F.3d 52, 58 (1st Cir. 1999).

“Particularly where . . . a newly certified union is bargaining for a first contract, the prohibition against unilateral changes, and the unilateral layoff of employees in particular, ‘is intended to prevent the employer from undermining the union by taking steps which suggest to the workers that it is powerless to protect them.’” *Atl. Veal & Lamb*, 373 NLRB No. 19 at 21, *quoting NLRB v. Advertisers Manufacturing*, 823 F.3d 1086, 1090 (7th Cir. 1987). “Laying off workers works a dramatic change in their working conditions (to say the least), and if the company lays them off without consulting with the union and without having agreed to procedures for layoffs in a collective bargaining agreement it sends a dramatic signal of the union's impotence.” *Atl. Veal & Lamb*, 373 NLRB No. 19 at 21.

“Consequently, an employer may not lay off bargaining unit employees without providing the union with adequate notice and the opportunity to bargain.” *Atl. Veal & Lamb*, 373 NLRB No. 19 at 21, *citing Sunbelt Rentals*, 370 NLRB No. 102 at 5, 23-24 (2021); *Pan American Grain*, 351 NLRB 1412, 1414 (2007), *enfd.*, 558 F.3d 22 (1st Cir. 2009).

Here, the evidence shows that REI violated § 8(a)(5) when it unilaterally restructured working conditions without first notifying or bargaining with the unions. On the same day – October 12 – that REI began laying off employees and restructuring the working conditions of other employees, REI informed the unions of its restructuring changes. Araby Aff. ¶¶ 3, 12. Also on October 12, REI was already telling employees about the restructuring changes before bargaining over them. Araby Aff. ¶¶ 8, 7; ██████████ Aff. ¶¶ 2-3; ██████████ Aff. ¶3.

All of the unions demanded to bargain over the layoffs and the restructuring program. Araby Aff. ¶ 3. Several days later, the unions followed up their oral demands to bargain with an email response stating, to “make it unambiguously clear, the Union demands to bargain over all the proposed changes.” Montalbano Oct. 12 email. The email concluded by stating that the “union objects to any unilateral implementation of the proposed changes before such negotiations have had the time to be sufficiently conducted.” Montalbano Oct. 12 email.

On October 19, REI emailed Local 5 stating that it “disagree[d] regarding REI’s legal obligations to bargain over the noticed changes before implementing them.” On October 27, REI again rejected the unions’ response. Araby Aff. ¶ 10. The unions countered on November 6 and made a supposal in a sidebar conversation. Araby Aff. ¶ 10. Several days later, REI rejected those proposals too. Araby Aff. ¶ 10. REI responded again on December 6 saying the same exact thing REI said when REI initially notified the unions about the changes, without making any movement whatsoever. Araby Aff. ¶ 10.

Not only did REI refuse to bargain over the decision to make the restructuring changes, REI refused to bargain over the effects of those changes. Later in October, when the unions challenged REI's position that the union had to agree to the restructuring before REI would pay severance to any laid off union-represented employee, REI replied that this was its offer and it was not going to further discuss severance. *Araby Aff.* ¶ 8.

Additionally, REI's little engagement with the unions over the restructuring constituted classic bad faith bargaining. From the beginning, REI presented its restructuring changes as a fait accompli or changes that were irreversible. Companies engage in unlawful bad faith bargaining when they

- make proposals as a fait accompli,<sup>2</sup>
- inform bargaining unit workers of changes at the same time it notifies the union,<sup>3</sup>
- rejects all of the union's proposals,<sup>4</sup>
- fails to discuss the union's proposals or the reasons the company rejected all of them,<sup>5</sup>

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<sup>2</sup>*Thryv*, 372 NLRB 22, 5-6 (2022) (company "began to implement the decision well before notifying the Union . . . and informed employees . . . that the [company] 'will administer a force adjustment . . . ' and that 'these positions will be eliminated'"); *Harley-Davidson Motor*, 366 NLRB 121, 3-4 (2018) (company "made clear that the terms of the [changes to working conditions] were not negotiable"); *Bemis*, 370 NLRB 7, 34 (2020) (company's "conduct fairly can be described as merely informing the union of a course of action the Respondent would take, meaning the layoffs were presented as a fait accompli").

<sup>3</sup>*Bemis*, 370 NLRB at 32 ("notice to the Union of the layoffs was inadequate, because it occurred on the same day as the layoffs and provided no meaningful opportunity to bargain."); *Harley-Davidson Motor*, 366 NLRB at 3 ("notice to the Union 2 days before presenting the [changes to working condition] to employees was merely informational concerning the fait accompli and fails to satisfy the requirements of the Act").

<sup>4</sup>*Leader Communications*, 359 NLRB 730, 737 (2013) ("the Board found bad-faith bargaining because the [company] summarily rejected the union's proposal without offering a counterproposal and failed to negotiate further, despite the union's offer to modify its proposal").

(Footnote continued on next page.)



- fails to make any counter-proposal,<sup>6</sup> and
- makes no movement at all.<sup>7</sup>

**A. All of the changes REI made to working conditions are mandatory subjects of bargaining.**

The terms that REI changed are mandatory subjects of bargaining, including:

- scheduling
- hours
- duties, roles and job descriptions
- eliminating positions or changing assignments
- layoffs

First, REI inasmuch conceded that all of matters it changed were employment terms that are mandatory subjects of bargaining. In its email to the unions describing the restructuring, REI said that it was “looking for ways to improve [the] employee experience” and that the changes would “increase scheduling transparency and hours predictability, update store roles and job descriptions, and lead to a more aligned and streamlined staffing model.” Phillips Oct. 12 email.

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<sup>5</sup>*National Management Consulting*, 313 NLRB 405, 408 (1993) (because the company “offered no reasons” for why it ignored the union’s many requests to respond to the union’s proposals and ultimately rejected all of the proposals, the Board ruled that the company’s “conduct demonstrates bad faith and an attempt to frustrate, rather than engage in meaningful bargaining”).

<sup>6</sup>*National Management Consulting*, 313 NLRB at 408 (the “Board has also held that the failure by an employer to submit any counterproposals tends to frustrate further bargaining and may thus constitute a clear rejection of the collective-bargaining duty spelled out in the Act”); *UPS Supply Chain Solutions*, 366 NLRB No. 111, 1 (2018) (the company “violated . . . the Act when it failed . . . to submit a counterproposal to the Union’s February 18 contract proposal”).

<sup>7</sup>*Presbyterian University Hospital*, 320 NLRB 122, 123 (1995) (“a major function of the bargaining process is reaching common ground that represents modifications of language contained in parties’ initial proposals”).

Second, legal authority demonstrates that all of these terms are mandatory subjects of bargaining.

**Scheduling.** “The Board has found scheduling of employees is a mandatory subject of bargaining.” *Remington Lodging & Hosp.*, 363 NLRB 53, 91 (2015), *citing Beverly Health & Rehabilitation Services*, 335 NLRB 635, 636 (2001).

**Hours.** “The Act prohibits employers from taking unilateral action regarding mandatory subjects of bargaining such as . . . hours of employment.” *Hood River Distillers*, 372 NLRB No. 126 at 28 (2023). *See also* § 8(d), 29 U.S.C. § 158(d).

**Duties, roles and job descriptions.** The “Board has found an increase in job duties to constitute an unlawful unilateral change.” *Remington Lodging*, 363 NLRB at 91. *See also Ahearn v. Remington Lodging & Hosp.*, 842 F.Supp.2d 1186, 1197 (D. Alaska 2012).

Companies are “not at liberty to change the functions of jobs without consulting the Union,” and must “refrain from implementation at all, unless and until an overall impasse has been reached.” *Bottom Line Enterprises*, 302 NLRB 373, 374 (1991). *See also W. Oakland Home*, 307 NLRB 288, 315 (1992).

“Job descriptions have been found to be a mandatory subject of bargaining and a material change in job description without notice to the union or bargaining to impasse has been found to be a unilateral change.” *Remington Lodging*, 363 NLRB at 91, *citing ABB*, 355 NLRB 13, 18 (2010).

**Job assignments.** Employee “job assignments is a mandatory subject of bargaining and a material change in job assignments without notice to or bargaining with the union is a unilateral change.” *Remington Lodging*, 363 NLRB at 91, *citing Flambeau Airmold*, 334 NLRB 165, 171-72 (2001).

**Layoffs.** The “layoff of bargaining unit employees constitutes a mandatory subject of bargaining.” *Atl. Veal & Lamb*, 373 NLRB No. 19 at 21, *citing Thesis Painting*, 365 NLRB No. 142 at 1 (2017); *Pan American Grain* 351 NLRB at 1414.

**2. The Board should file for court an order enjoining REI to rescind its changes and to bargain with the unions before changing these or any other working conditions without fulfilling its obligation to bargain with the unions.**

“In granting an injunction under § 10(j),” “courts should consider traditional equitable criteria.” *Hooks v. Nexstar Broadcasting*, 54 F.4th 1101, 1107 (9th Cir. 2022). The criteria consist of whether (A) the Regional Director is likely to succeed on the merits, (B) the union or workers will likely suffer irreparable harm in the absence of an injunction, (C) the balance of equities favors an injunction, and (D) an injunction is in the public interest. *Nexstar Broadcasting*, 54 F.4th at 1107, *citing Frankl v. HTH*, 650 F.3d 1334, 1355 (9th Cir. 2011).

Courts should consider these criteria through the “underlying purpose of § 10(j),” that is, “to protect the integrity of the collective bargaining process and to preserve the Board's remedial power while it processes the charge.” *Nexstar Broadcasting*, 54 F.4th at 1107. *See also Baudler v. American Baptist Homes of the West*, 798 F.Supp.2d 1099, 1104-05 (N.D. Cal. 2011), *citing McDermott v. Ampersand Publ'g*, 593 F.3d 950, 957 (9th Cir. 2010). For example, where the company raises serious questions about the merits of the Regional Director’s case, a court could alternatively issue an injunction if there is “irreparable harm and . . . preliminary relief is in the public interest.” *American Baptist Homes*, 798 F.Supp.2d at 1105, *quoting Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

**A. The Regional Director is likely to succeed on the merits here.**

The Regional Director will likely succeed on the merits of the allegations for the same reasons the Region should issue a complaint.

**B. REI employees and the unions are likely to suffer irreparable harm if a court does not enjoin REI to reestablish the status quo and bargain over the changes REI made.**

Courts frequently find that bad faith bargaining and unilateral changes companies make to working conditions irreparably harm unions and employees because of the impact the conduct has on bargaining, the standing of unions among workers, and the relationship between unions and companies. This is especially true in newly-organized units when unions are attempting to bargain first contracts.

Here, the employees in the 9 units voted for representation beginning in early 2022 at the SoHo store through most recently in Indianapolis.<sup>8</sup> Since then, all of the unions have been attempting to bargain contracts. The parties have not progressed far on any contract, let alone agreed to any.

The unfair labor practice charges the unions have filed over other unilateral changes REI made have had no deterrent effect on REI.<sup>9</sup> Neither has a complaint Region 32 issued in August 2023 – 2 months before REI made the restructuring changes – alleging that REI unlawfully unilaterally changed 10 working conditions.<sup>10</sup> REI continues to unilaterally change working conditions with impunity.

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<sup>8</sup>SoHo, NY - March 2022; Berkeley, CA – August 2022; Beachwood/Cleveland, OH – March 2023; Lincoln Park/Chicago, IL – May 2023; Boston, MA – May 2023; Durham, NC – May 2023; Bellingham, WA – June 2023; Maple Grove/Minneapolis, MN – June 2023; Castleton/Indianapolis, IN – February 2024; Santa Cruz, CA – April 2024.

<sup>9</sup>Case 1-CA-330504 (5 unilateral changes); 2-CA-330519 (8 unilateral changes); 10-CA-33093 (12 unilateral changes); 08-CA-330249 (9 unilateral changes); 13-CA-330071 (24 unilateral changes); 18-CA-330177 (6 unilateral changes); and 32-CA-330181 (8 unilateral changes).

<sup>10</sup>Case 32-CA-311227, 32-CA-311234, 32-CA-311581, 32-CA-313152, and 32-CA-313171.

Given that the Board's ordinary unfair labor practice process has not caused REI to bargain in good faith or to refrain from unilaterally changing working conditions, the Board is left with no alternative but to seek the extraordinary remedy of an injunction.

**(i) The evidence demonstrates that REI's conduct irreparably harms the employees and the unions.** Irreparable harm "is established if" the evidence shows that the company likely committed an unfair labor practice and there likely is "a present or impending deleterious effect of the likely unfair labor practice that would likely not be cured by later relief." *Nexstar Broad*, 54 F.4th at 1115, quoting *Frankl*, 650 F.3d at 1362. The requirement of irreparable harm is also et if "permit[ting an] alleged unfair labor practice to reach fruition" renders "meaningless the Board's remedial authority." *Small v. Avanti Health Sys.*, 661 F.3d 1180, 1191 (9th Cir. 2011).

Here, it is extremely unlikely that a Board order several years from now requiring REI to rescind its changes and bargain with the unions could possibly result in effective bargaining that remedies the harm REI's unlawful conduct caused. This is particularly true for those employees whose jobs, schedules and hours have been upended, and even more so, for those employees who no longer work for the company 3 or 4 years from now. And, years from now, REI will assert that it cannot comply with a Board order because, as a practical matter, it cannot reverse changes it made years earlier.

While a showing that workers or the union will likely suffer irreparable harm in the absence of an injunction imposes "a higher threshold than 'possible,' the [Regional] Director need not prove that irreparable harm is certain or even nearly certain." *Avanti Health Sys.*, 661 F.3d at 1191, quoting *Frankl*, 650 F.3d at 1362. "This is because inferences from the nature of the particular unfair labor practice at issue remain available." *Nextstar Broadcasting*, 54 F.4th at 1115.

A “permissive inference” is one that “suggests to the [fact finder] a possible conclusion to be drawn if [a party] proves predicate facts.” *Nextstar Broadcasting*, 54 F.4th at 1116-17, quoting *Francis v. Franklin*, 471 U.S. 307, 314 (1985), *mod. in irrel. part*, *Boyde v. California*, 494 U.S. 370 (1990). “Such a permissible inference ‘does not relieve [a party] of its burden of persuasion because it still requires the [party] to convince the [fact finder] that the suggested conclusion should be inferred based on the predicate facts proved.’” *Nextstar Broadcasting*, 54 F.4th at 1116-17, quoting *Francis*, 471 U.S. at 314.

“A court making ‘permissible inferences’ when a Regional Director attempts to demonstrate a likelihood of irreparable harm may rely on the same evidence the Regional Director used to demonstrate a likelihood of success on the merits because some evidence may have probative value for both inquiries.” *Nextstar Broadcasting*, 54 F.4th at 1116-17, citing *Frankl*, 650 F.3d at 1363 (explaining that in assessing the likelihood of irreparable harm, the court may consider the “same evidence and legal conclusions” that were relevant to likelihood of success on the merits, “along with permissible inferences”); *Avanti Health Systems*, 661 F.3d at 1195.

“Thus, a finding of likelihood of success as to a § 8(a)(5) bad-faith bargaining violation . . . , along with permissible inferences regarding the likely effects of that violation, can demonstrate the likelihood of irreparable injury.” *Frankl*, 650 F.3d at 1363.

Here, the facts that show that REI unlawfully unilaterally changed working conditions without bargaining with the unions also show that those changes irreparably harm the employees and the unions. A court will reasonably infer that there is no way that the Board can, several years from now, put the genie back into the bottle through any remedy that results in effective bargaining over – or agreements on – those changes. Rather, all reasonable inferences show that, unless enjoined, REI will continue its unlawful conduct, refuse to agree to contracts, and cause

disaffection from unions and the subsequent loss of the employees' rights to representation. *See for example* Araby Aff. ¶ 3; Phillips Oct. 19 email (REI “disagree[d] regarding REI’s legal obligations to bargain over the noticed changes before implementing them”).

**(ii) Bad faith bargaining causes irreparable harm.** Failure “to bargain in good faith[ ] has long been understood as likely causing an irreparable injury to union representation.” *Avanti Health Sys.*, 661 F.3d at 1191, *citing Frankl*, 650 F.3d at 1362. “Given the central importance of collective bargaining to the cause of industrial peace, when the [Regional] Director establishes a likelihood of success on a failure to bargain in good faith claim, that failure to bargain will likely cause a myriad of irreparable harms.” *Avanti Health Sys.*, 661 F.3d at 1191.

A “failure to bargain in good faith threatens industrial peace.” *Avanti Health Sys.*, 661 F.3d at 1192. The “NLRA secures th[e] goal [of industrial peace] in part by ‘permit[ting] unions to develop stable bargaining relationships with employers, which will enable the unions to pursue the goals of their members, and this pursuit, in turn, will further industrial peace.’” *Avanti Health Sys.*, 661 F.3d at 1192, *quoting Fall River Dyeing & Finishing v. NLRB*, 482 U.S. 27, 38-39 (1987). In fact, the “obligation of collective bargaining is the core of the Act, and the primary means fashioned by Congress for securing industrial peace.” *Avanti Health Sys.*, 661 F.3d at 1192.

“The Board cannot fashion a retroactive remedy for the harm to industrial peace that occurs during the period that the employer refuses to bargain.” *Avanti Health Sys.* 661 F.3d at 1192, *citing Fall River*, 482 U.S. at 38–39.

Here, REI’s refusal to rescind and bargain over its restructuring changes frustrates the establishment of a stable relationship between REI and the unions, and in turn threatens industrial peace. If the unions cannot protect employee rights and achieve contracts through a productive bargaining relationship with REI, REI leaves the unions no choice but to resort to other actions,

such as strikes and boycotts, to pressure REI to honor those rights.<sup>11</sup> This inevitably leads to interruptions in industrial peace.

**(iii) Unlawful unilateral changes cause irreparable harm.** The company’s “institution of unilateral changes to the terms and conditions of employment [can] cause additional harm. Specifically, [the company’s] acts ‘send the message to the employees that their union is ineffectual, impotent, and unable to effectively represent them.’” *Norelli v. HTH*, 699 F.Supp.2d 1176, 1201 (D. Haw. 2010) (internal quotation marks omitted), *aff’d sub nom. Frankl v. HTH*, 650 F.3d 1334 (9th Cir. 2011). The unilateral changes in *Norelli* included “wage increases for certain groups,” “fewer management positions and reduced staffing,” and “former full-time employees being rehired on a part-time or an on-call basis.” 699 F.Supp.2d at 1200.

The *Norelli* court found that the “Union's inability to act on behalf of Hotel employees in turn may cause employees to ‘drift away’ from the Union.” 699 F.Supp.2d at 1201–02, *citing Brown v. Pac. Tel. & Tel.*, 218 F.2d 542, 544 (9th Cir.1954) (in “view of the irreparable harm which the designated unions may suffer by the drifting away of their members . . . we think the law entitles the Board to the injunctive relief sought”); *Norelli v. SFO Good–Nite Inn*, 2007 WL 662477 at 14 (N.D. Cal. 2007) (finding irreparable harm because the company’s “conduct would impair the employees' rights under the Act by causing an erosion of support from the Union, by impairing

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<sup>11</sup>The unproductive approach REI has taken to bargaining has already caused the unions to take actions to force REI to bargain more constructively. See for example Seattle K5 article [“Unionized REI workers to picket in front of company headquarters after lack of progress on contract negotiations”](#) (March 7, 2024) (attached); Boston Globe [“REI workers to march to headquarters”](#) (March 6, 2024) (attached); HuffPost [“A Growing Union Campaign Has Put REI's Progressive Image On Trial, With nine stores and counting now organized, workers say the popular cooperative risks damaging its reputation in a prolonged contract fight”](#) (March 16, 2024) (attached).



the effectiveness of the Union, . . . and by making it difficult to preserve the collective bargaining process”).

A “finding of likelihood of success as to a § 8(a)(5) bad-faith bargaining violation [consisting of “unilateral changes”] in particular, along with permissible inferences regarding the likely effects of that violation, can demonstrate the likelihood of irreparable injury, absent some unusual circumstance indicating that union support is not being affected or that bargaining could resume without detriment as easily later as now.” *Frankl v. HTH*, 825 F.Supp.2d 1010, 1032-33, 1046 (D. Haw. 2011), *aff’d*, 693 F.3d 1051 (9th Cir. 2012). The change in *Frankl* consisted of the hotel increasing the number of rooms housekeepers had to clean. 825 F.Supp.2d at 1032-33, 1046.

Here, REI’s unilateral changes in working conditions undermine bargaining and the collective power of the employees who voted for the unions. REI’s approach to its relationship with the unions sends a loud message to employees that it can unilaterally do whatever it wants without dealing with their unions. *See for example* Araby Aff. ¶ 3; Phillips Oct. 19 email (REI “disagree[d] regarding REI’s legal obligations to bargain over the noticed changes before implementing them”). This is especially true when REI unilaterally changes the most fundamental working conditions of wages, staffing and the part-time/full-time status of employees. Several years from now, the Board will not be able to effectively remedy the harm of employee disaffection and the resulting loss of their collective bargaining rights.

**(iv) The harm REI’s changes caused laid off employees meets the requirement of irreparable harm.** Courts implicitly find that lay offs and terminations irreparably harm workers when they consistently enjoin companies to reinstate laid off or terminated workers or to refrain from laying off or terminating workers without first bargaining with unions. For example, the court in *Norelli* found that “employees w[ould] suffer irreparable harm if the court d[id] not order [the

company] to rescind those unilateral changes it has already instituted, [and] to reinstate the wrongfully discharged employees.” 699 F.Supp.2d at 1204. *See also Kreisberg v. HealthBridge Mgmt.*, 732 F.3d 131, 134 (2d Cir. 2013) (changes the court enjoined included “conducting layoffs without notice”); *Dunbar v. Onyx Precision Servs.*, 129 F.Supp.2d 230, 240 (W.D. N.Y. 2000) (enjoining “unilaterally laying off Unit employees without notice to and bargaining with” the union); *Rivera-Vega v. ConAgra*, 70 F.3d 153, 162 (1st Cir. 1995) (enjoining “a lay-off of forty employees”); *Hirsch v. Tube Methods*, No. CIV. A. 86-3558, 1986 WL 8951 at 17 (E.D. Pa. 1986) (enjoining company from “unilaterally changing the terms and conditions of employment of employees in the unit, including . . . layoffs”).

### **C. The balance of equities tips in favor of an injunction.**

In “considering the balance of hardships, the district court must take into account the probability that declining to issue the injunction will permit the alleged[ ] unfair labor practices to reach fruition and thereby render meaningless the Board's remedial authority.” *Frankl*, 650 F.3d at 1365, *citing Miller v. Cal. Pac. Med. Ctr.*, 19 F.3d 449, 460 (9th Cir.1994) (*en banc*). The *Frankl* court affirmed the district court’s “determination that the Regional Director had shown likely irreparable harm to the collective bargaining process meant that there was also considerable weight on his side of the balance of the hardships.” 650 F.3d at 1365.

When weighing “the equities,” “the preservation of the status quo as it existed before [an employer’s] unfair labor practices outweigh[s] any hardship [the employer] might suffer if required to bargain.” *Coffman v. Queen of the Valley Med. Ctr.*, 895 F.3d 717, 728 (9th Cir. 2018). In *Coffman*, the appeals court rejected the employer’s contention “that the District Court erred in balancing the equities, because [the employer would] face significant hardship if forced to recognize and bargain with the Union,” and rescind “all unilateral changes.” 895 F.3d at 728.

Here, balance of equities or hardships weighs in favor of an injunction, first, because declining to issue the injunction will permit REI's unfair labor practices to continue in effect and thereby render meaningless the Board's remedial authority. Second, because the preservation of the status quo as it existed before REI's unfair labor practices outweighs any hardship to REI if the injunction requires REI to rescind all of its restructuring changes and bargain.

**D. An injunction is in the public interest.**

The 9th circuit has held that when the Regional “Director makes a strong showing of likelihood of success and of likelihood of irreparable harm, the Director will have established that preliminary relief is in the public interest.” *Queen of Valley Med. Ctr.*, 895 F.3d at 729, *citing Frankl*, 650 F.3d at 1355. Furthermore, in “§ 10(j) cases, the public interest is to ensure that an unfair labor practice will not succeed because the Board takes too long to investigate and adjudicate the charge.” *Avanti Health Sys.*, 661 F.3d at 1197, *quoting Frankl*, 650 F.3d at 1365 (*quoting Cal. Pac. Med. Ctr.*, 19 F.3d at 459–60. “Moreover, the public interest favors applying federal law correctly.” *Avanti Health Sys.*, 661 F.3d at 1197, *citing N.D. v. Haw. Dep't of Educ.*, 600 F.3d 1104, 1113 (9th Cir. 2010) (it “is obvious that compliance with the law is in the public interest”).

Here, an injunction is in the public interest first, because the evidence demonstrates that the Board will make a strong showing of likelihood of success on the merits and irreparable harm. Second, it's in the public interest for REI to comply with federal law and to avoid waiting for REI to comply with the law while this charge is adjudicated through the Board's administrative process.

**5. The injunction should order REI to bargain in good faith, restore all working conditions, and refrain from changing these or any other working conditions without first notifying and bargaining with the unions.**

To remedy REI’s bad faith bargaining, the Board should seek an injunction that first requires REI to bargain in a good faith, meaning genuinely attempting to reach agreement with the unions<sup>12</sup>; including:

- designating a bargaining representative with authority to negotiate,<sup>13</sup>
- explaining the positions REI takes during bargaining,<sup>14</sup>
- fully answering the unions’ questions and responding to the unions’ requests for information and documents so that the unions can assess REI’s proposals, positions and responses,<sup>15</sup>

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<sup>12</sup>*Universal Fuel*, 358 NLRB 1504, 1521 (2012) (Board determines “whether a party has bargained in good faith” by considering if the party made “a genuine effort to reach agreement”); *Sage Dev.*, 301 NLRB 1173, 1190 (1991) (“good faith” “has been defined” as: ‘A desire to reach ultimate agreement’; ‘a willingness to negotiate toward the possibility of effecting compromise’; . . . ‘the serious intent to adjust differences and to reach an acceptable common ground’; ‘a genuine desire to compose differences and to reach agreement’; and a readiness ‘to enter into discussion with an open and fair mind, and a sincere purpose to find a basis of agreement’”), *citing NLRB v. Insurance Agents’ Union*, 361 US 477, 485 (1960); *Evansville Chapter AGC v. NLRB*, 465 F.2d 327, 335 (7th Cir. 1972); *U.S. Gypsum*, 200 NLRB 1098, 1101 (1972), *enf. den.*, 484 F.2d 108 (8th Cir. 1973); *Akron Novelty Mfg.*, 224 NLRB 998, 1001 (1976).

<sup>13</sup>*Noah’s Ark Processors*, 370 NLRB No. 74 at 5 and fn 3 (2021) (Employer engaged in bad faith bargaining when its representative at negotiations “had no authority to make or respond to proposals or to bind the [employer] in any way” and “was merely a conduit between the Union and the [employer’s] owners, communicating the Union’s proposals to the owners and relaying to the Union their response to those proposals,” relying on *Carpenters Local 1780*, 244 NLRB 277, 281 (1979) (by limiting the representative’s authority, employer “created possibilities for delay and obstruction which do not comport with the duty to bargain in good faith,”).

<sup>14</sup>*Sage Dev.*, 301 NLRB at 1190 (“good faith of the parties” “has been defined” as “a willingness . . . to discuss freely and fully the[ parties’] respective claims and demands and, when these are opposed, to justify them on reason”).

<sup>15</sup>*Sage Dev.*, 301 NLRB at 1190; *Tegna*, 367 NLRB No. 71 at 2 (2019) (“Under the Board’s well-established precedent, employers have a duty to provide, upon request of the union, information that is relevant and necessary to the union’s performance of its duties as the exclusive collective-bargaining representative”); *USPS*, 341 NLRB 684, 688 (2004) (documents).

- genuinely listening, considering and responding to the unions’ arguments, positions, responses and counter proposals,<sup>16</sup>
  - making, responding and explaining counter proposals to the unions’ proposals,<sup>17</sup>
- and
- listening to, considering, responding to and countering the unions’ counter proposals and responses<sup>18</sup>

until the parties bargain to impasse.

Second, the court should order REI to reverse all of the changes in working conditions that it made in connection with the restructuring, including reinstating with full backpay all employees REI laid off, returning to the schedules and hours employees worked pre-restructuring, and reinstating the job classifications and duties that existed prior to the restructuring.

Courts frequently enjoin companies from unilaterally changing working conditions without first notifying and bargaining to impasse with the union. For example, the court in *Gottschalk v. Piggly Wiggly* enjoined the company from: “Unilaterally reducing the status of bargaining unit employees from full-time to part-time status without first providing the Union with prior notice and an opportunity to bargain over changes to employees' wages, hours, and other terms and conditions of employment.” 861 F.Supp.2d 962, 973 (E.D. Wis. 2012). In *Overstreet v. El Paso Disposal*, the court enjoined the company from unilaterally “giving employees a wage increase, changing its sick leave rules or longevity bonus practice, or changing employees' job assignments,

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<sup>16</sup>*Hanson, Roy E., Jr., Mfg.*, 137 NLRB 251, 265 (1962) (“a predetermined intention not to yield, without giving reasons or listening to opposing reasons, shows a disposition not to bargain”), citing *Herman Sausage*, 122 NLRB 168; *California Girl*, 129 NLRB 209 (1960); *Duro Fittings*, 121 NLRB 377 (1958).

<sup>17</sup>*UPS Supply Chain Solutions*, 366 NLRB No. 111 at 3 (2018) (finding violation where company failed to submit a counterproposal in response to the union’s contract proposal); *Raytheon Network Centric Systems*, 365 NLRB No. 161 at 4 & n. 10 (2017) (same).

<sup>18</sup>*Hanson, Roy E., Jr., Mfg.*, 137 NLRB at 265.

methods of pay, or wage rates without first notifying the Union and affording it a reasonable opportunity to bargain about such changes.” 668 F.Supp.2d 988, 1017 (W.D. Tex. 2009), *aff’d as modified*, 625 F.3d 844 (5th Cir. 2010).

In *Rivera-Vega v. ConAgra*, the court enjoined the company from “making unilateral changes in the terms and conditions of employment when no valid impasse existed.” 70 F.3d 153, 157 (1st Cir. 1995). The working conditions the company changed included “the form of employee payment from cash to check,” and terminating the “medical plan coverage for locked out employees.” *Con Agra*, 70 F.3d at 162. The court also ordered the company to provide “employees with contractual Thanksgiving turkey[s].” 70 F.3d at 162.

Third, the court should enjoin REI to refrain from changing any working condition in the future, including laying off, discharging or disciplining any employee, before notifying the unions of its proposed change early enough so that the parties can complete the entire bargaining process. In many – if not most – unilateral change cases, courts not only enjoin changes the company already made, but also enjoin the company from “unilaterally changing [other] terms and conditions of employment of bargaining unit employees [during the pendency of the Board case].” *See, for example, Norelli*, 699 F.Supp.2d 1208. Similarly, the court in *Overstreet v. Thomas Davis Medical Centers* enjoined the company from making “any unilateral changes in the terms and conditions of employment.” 9 F.Supp.2d 1162, 1167 (D. Ariz. 1997).

The *Norelli* court explained “that the Union and employees w[ould] suffer irreparable harm if the court d[id] not order [the company] . . . to cease changing the terms and conditions of employment without bargaining with the Union, . . . to reinstate the wrongfully discharged employees, and to stop any further discharges of employees.” 699 F.Supp.2d at 1204. *See also Lineback v. Spurlino Materials*, 546 F.3d 491, 504–05 (7th Cir. 2008).

In *Spurlino Materials*, the court rejected the company’s objection to one paragraph “of the injunction because it enjoin[ed] all unilateral actions to change the terms and conditions of employment, although the only allegations of unilateral action in the complaint involved [one matter].” 546 F.3d at 504–05. The court specifically rejected the company’s argument that this “prohibition against all unilateral action [was] overbroad” because “there [was] no evidence that the company ha[d] taken or w[ould] take other unilateral actions.” 546 F.3d at 504–05.

The appeals court explained that “the district court reasonably” “found that [the company] was likely to refuse to negotiate with the Union on the terms and conditions of employment in the future. Given these specific findings,” the appeals court held, this prohibition did “not exceed the scope of the court's authority to enjoin similar actions by the company.” 546 F.3d at 504–05, *citing* *NLRB v. Express Pub.*, 312 U.S. 426, 435 (1941). *See also* *Piggly Wiggly*, 861 F.Supp.2d at 973 (court ordered company to bargain “with the Union . . . before implementing any changes in wages, hours, or other terms and conditions of employment of the employees in the subject two bargaining units”); *NLRB v. Irving Ready-Mix*, 780 F.Supp.2d 747, 776 (N.D. Ind.), *aff'd*, 653 F.3d 566 (7th Cir. 2011) (company enjoined from “unilaterally changing the employee's terms and conditions of employment”); *Mattina v. Ardsley Bus*, 711 F.Supp.2d 314, 328 (S.D. N.Y. 2010) (company enjoined from unilaterally, “and without bargaining with the Union, making changes in the terms and conditions of employment”).

The Supreme Court in *Express Publishing* explained that courts should enjoin possible future unlawful conduct because a “federal court has broad power to restrain acts which are of the same type or class as unlawful acts which the court has found to have been committed or whose commission in the future unless enjoined, may fairly be anticipated from the defendant's conduct in the past.” 312 U.S. at 435.

Lastly, the order should enjoin REI to refrain from unilaterally changing any working condition in any bargaining unit whose employees vote for the union in the future represented by a union without first fulfilling all of its obligations to bargain.

### **Conclusion**

For the foregoing reasons, the Region should issue a complaint alleging that REI unlawfully changed working conditions without first notifying and bargaining with the unions.

The Board should file a case in federal district court moving for an injunction enjoining REI to:

- reverse all of the changes it made and reinstate the status quo ante, including reinstating all laid off employee with backpay; and
- refraining from changing those, or any other working conditions, including any lay offs, discharges or discipline, without first notifying the unions that currently or in the future represent REI employees, and bargaining with those unions.

Respectfully submitted,

Dated: May 3, 2024

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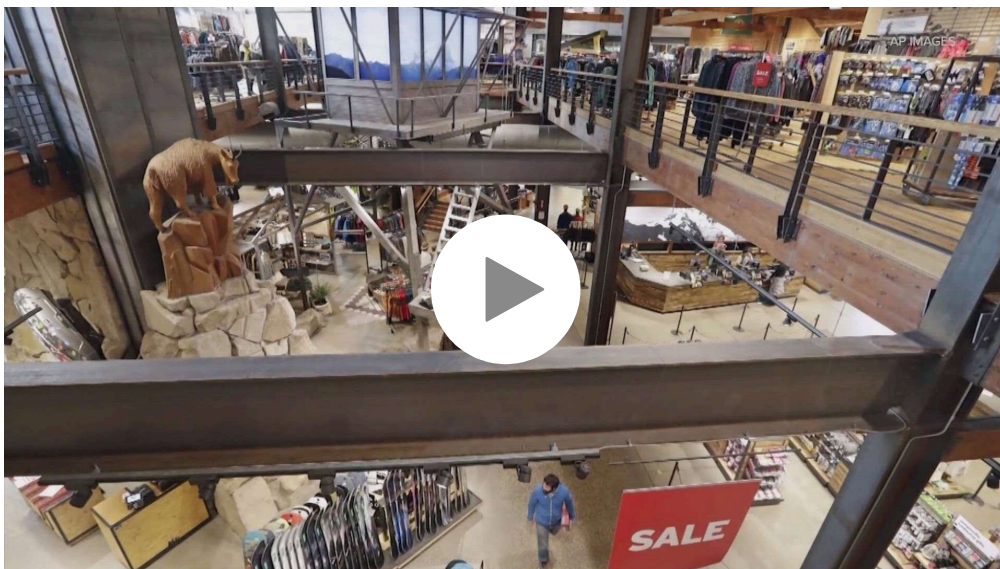
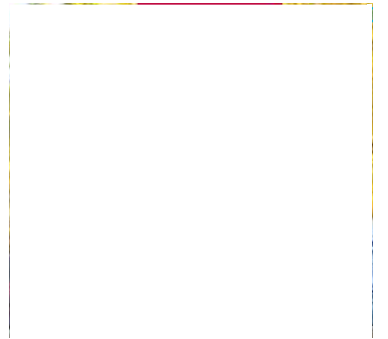
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LOCAL NEWS

# Unionized REI workers to picket in front of company headquarters after lack of progress on contract negotiations

Multiple stores have voted to unionize but they have been waiting for months to negotiate contracts with the company, according to unions representing REI workers.



Author: KING 5 Staff  
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ISSAQUAH, Wash. — [Unionized REI workers](#) say they are "bringing the bargaining tables to the company" on Thursday by hiking out to the chain's headquarters to demand progress on contract negotiations.

The first of nine stores to unionize across the company has been bargaining with REI for two years, leaving eight other stores, including one in Bellingham, waiting for their turn to negotiate contracts with the company.

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Union members allege that progress has stalled and workers at unionized stores are now actually earning less than non-unionized employees due to the delay. In that time, REI changed its legal representation, leading the company to restart bargaining with the first unionized store from the beginning.

Among their demands, staff are looking for better staffing at their stores.

"(We want) the right amount of staff that is also knowledgeable, skilled, experienced and comfortable to operate effectively and safely within the stores," said Tini Alexander, an employee at the company's Bellingham location.

In a statement to KING 5, the company said "REI is committed to and will always negotiate in good faith with our stores that have chosen union representation."

Members of each unionized store's steering committee plan to arrive at the company's headquarters at 1 p.m. on Thursday to demand that company leaders come outside and bargain with them in good faith. Union members allege that decision-makers with REI have been absent from negotiations.

In addition to unionized REI members, King County councilmembers Girmay Zahilay and Sarah Perry are planning to join the hike.

### **Related Articles**

[REI workers vote to unionize at SoHo location](#)

[275 people to be laid off nationwide at REI](#)

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REI workers from stores around the country showed up uninvited at their corporate office in Issaquah, Washington, last Thursday. The signs they were carrying made it clear to the white-collar employees looking down from the windows above that they weren't there to tour the campus.

"Where the hell's our merit pay?" one sign asked.

"Ask me about my raise (REI took it away!)" read another.

Plenty of REI's devoted customers — "members," in company parlance, since REI is structured as a [cooperative](#) — would have been surprised to see disaffected employees protesting such a beloved retailer. But a growing union campaign that has so far organized nine stores and counting is testing the progressive reputation that REI built through its environmental and conservation advocacy over the years.

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Workers who are trying to improve their jobs through a union contract say the cooperative is failing to live up to its [values](#) and damaging its reputation in the process.

“I think they are trying to figure out how to be dug in on this and maintain their public image,” said Steve Buckley, a senior sales specialist and union leader at the company’s flagship store in the SoHo neighborhood of New York City. “That is getting increasingly harder to do as the days go on.”

Buckley’s was the first of REI’s 181 stores to unionize, in March 2022, joining the Retail, Wholesale and Department Store Union. The RWDSU and its parent group, the United Food and Commercial Workers Union, have organized eight more stores, with election wins in Berkeley, California; Cleveland; Chicago; Durham, North Carolina; Boston; Bellingham, Washington; Maple Grove, Minnesota; and Indianapolis.

**“I think they are trying to figure out how to be dug in on this and maintain their public image.”**

- Steve Buckley, REI worker in New York City

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Employees at REI’s store in Santa Cruz, California, on Thursday became the latest to petition for an election, with a vote likely to

happen in the coming weeks.

But none of those stores has secured a contract more than two years after the SoHo victory. In the meantime, the unions have accused REI of threatening pro-union workers, firing union supporters and bargaining in bad faith in an effort to slow the organizing campaign.

The company has denied those allegations and said it's serious about reaching agreements with all the union shops.

“REI is — and will always be — committed and engaged in good-faith bargaining with stores that have chosen union representation,” the company said in a statement. It added that the firings in question “were completely unrelated to whether or not that employee was involved with the union — individual employee union interest or activity is not a factor.”



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The company made its stance against the union evident early on, when it released a [podcast](#) with its CEO, Eric Artz, and chief diversity and social impact officer, Wilma Wallace. People were quick to point out on social media that Artz and Wallace introduced themselves with a land acknowledgment — noting they were on land stolen from Indigenous people — as they tried to discourage collective bargaining by their employees.

REI views climate change as “an [existential threat](#) to life outside” and has set a goal to [reduce its greenhouse gas emissions](#) by 47% by 2030. It has also publicly [committed](#) to becoming a “fully inclusive, anti-racist, multicultural organization” and maintains a [factory code of conduct](#) for sourcing products based on standards set by the International Labour Organization. The code includes a stipulation on collective bargaining that requires suppliers to “recognize and respect the legal rights of employees to free association.”

The retailer maintains that it respects those rights here in the U.S., but workers at the union stores disagree — and they’re increasingly sharing their views with the cooperative’s progressive customer

base. The unions say they recently got more than 4,000 members to email REI telling the company to negotiate contracts.

“There’s a large gap between what REI tells the members and what REI is actually doing that we see as employees,” said Si-Hua Chang, 31, a sales specialist in the Durham store. “Way more REI members are starting to hear about our working conditions.”

Workers recently put out a list of bargaining demands labeled “[10 essentials](#)” for a sustainable REI, a riff on the [10 essentials](#) needed to survive in the backcountry. The list includes “navigation” (predictable scheduling), “shelter” (minimum hours with a livable wage) and a “repair kit” (commitment to diversity).

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**“I thought they strive toward this progressive image, this idea that our workers are our lifeblood.... To see this campaign against workers has been a stark reality change.”**

- Alaina Preddie, REI worker in Indiana



Lack of consistent hours is a common grievance among the union stores and across retail more generally. Anni Saludo, who also works at the Durham store, said she typically gets her schedule eight days in advance, making it hard to plan her life and impossible to know what her paycheck will look like.

“How can I stay on course if one week I’m scheduled 24 hours and six the next?” Saludo said. “How can I stay on course if I can’t schedule a medical appointment because I don’t know what days I’ll have off?”

The company and the union reached some tentative agreements in bargaining when REI was represented by the law firm Perkins Coie. But employees say progress slowed significantly after the company switched to Morgan Lewis, the same firm whose attorneys have argued on behalf of Trader Joe’s and Elon Musk’s SpaceX that the National Labor Relations Board itself is [unconstitutional](#).

One of the most contentious issues is pay raises. After stores began unionizing, REI increased employee pay but withheld the hikes from organized stores, saying the raises needed to be negotiated at the bargaining table. The unions allege this was a retaliatory move meant to cool other locations on organizing.

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REI eventually extended the raises but later took them back. The unions say it did so after workers refused to waive their right to strike as a precondition; REI says it was a temporary agreement that the union refused to extend.



REI workers in Chicago marched to their store to announce their intention to unionize last year. CHICAGO TRIBUNE VIA GETTY IMAGES

Alaina Preddie, who works at the Indianapolis store that unionized last month, said she's been surprised by what she views as the company's hardball tactics, as well as its hiring of a famously hard-nosed law firm.

"It's been pretty shocking, actually," Preddie said. "I thought they strive toward this progressive image, this idea that our workers are our lifeblood.... To see this campaign against workers has been a stark reality change."

Along with Starbucks, Amazon, Apple and Trader Joe's, REI is one of several previously non-union companies where unions have made organizing breakthroughs in the last two years. But parlaying those election wins into written agreements has proved [much more difficult](#).

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When they met at Issaquah last week, REI union members discussed different ways they could continue to pressure the company into settling contracts. They have already waged a number of temporary strikes and could expand them to more stores. And although the unions have not asked co-op members to boycott REI, Buckley said that thinking "may or may not change as workers see fit."

They found some cause for [optimism](#) last month when Starbucks reached a detente with its union, pledging to hammer out a contract framework and extend raises and benefits that had been withheld from union stores. The coffee chain may have grown tired of bruising its own progressive image through a growing list of unfair labor practice charges, including claims of retaliatory firings, threats and store closures.

Buckley believes REI will start to squirm as more stores file election petitions and the union's allegations of illegal union-busting are

litigated. But he said the point of the campaign is not simply to “harangue” the company about hypocrisy. REI holds itself out as a different kind of company, he argued, so it should set a higher standard for retail work.

“It doesn’t need to be a short-term churn-and-burn retail establishment,” Buckley said. “What this movement is all about is holding REI to their own level of commitments.”

***CORRECTION: This story originally misspelled Si-Hua Chang’s name.***

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## TALKING POINTS

# REI workers to march to headquarters

Updated March 6, 2024, 7:13 p.m.



Unionized REI employees rallied in November in support of laid-off coworkers at REI on 401 Park Street in Boston. KEN MCGAGH FOR THE BOSTON GLOBE

## LABOR

### REI workers to march to headquarters

REI employees from the company's nine unionized stores around the country, including in Boston, plan to hike from a park in Issaquah, Wash., to REI headquarters Thursday afternoon to demand that executives come to the table and bargain in good faith. Over the past two weeks, union members have held events in the nine communities where

they're organized to unveil a national platform demanding job security, guaranteed minimum hours, a consistent sick policy, and minimum staffing levels. Bargaining for a first contract has been dragging on for as long as two years at the Soho location in New York, the first store to organize. When REI changed its legal representation a year into negotiations, the unions said, the company rolled back an agreement to give workers there the same pay increases offered to non-union stores the day after the union election. In November, in the first coordinated effort among all the REI union employees, who are represented by the United Food and Commercial Workers International Union and the Retail, Wholesale and Department Store Union, the workers filed 80 unfair labor practice charges against the company for bargaining in bad faith and engaging in anti-union behavior. — KATIE JOHNSTON

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