

Paccar Automotive, Inc., d/b/a Grand Auto, a wholly owned subsidiary of Paccar, Inc. and Teamsters Automotive Workers Union, Local 576, affiliated with International Brotherhood of Teamsters, AFL-CIO. Case 32-CA-14416

February 22, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

On September 11, 1995, Administrative Law Judge Jay R. Pollack issued the attached decision. The General Counsel filed exceptions and a supporting brief which the Charging Party joined, and the Respondent filed an answering brief and cross-exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the exceptions in light of the record and briefs, and has decided to affirm the judge's rulings, findings,¹ and conclusions, and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the complaint is dismissed in its entirety.

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Patricia M. Milowicki, Esq., for the General Counsel.
John M. Skonberg & Jodi Kruger (Littler, Mendelson, Fastiff, Tichy & Mathiason), of San Francisco, California, for the Respondent.
Stefan Ostrach, of San Jose, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge. I heard this case in trial at Oakland, California, on May 22 and 23, 1995. On December 22, 1994, Teamsters Automotive Workers Union, Local 576, affiliated with International Brotherhood of Teamsters, AFL-CIO (Teamsters 576) filed the charge in Case 32-CA-14416 alleging that Paccar Automotive, Inc., d/b/a Grand Auto, a wholly owned subsidiary of Paccar, Inc. (Respondent) committed certain violations of Section 8(a)(5) and (1) of the National Labor Relations Act (the Act). Thereafter, on February 17, 1995, the Regional Director for Region 32 of the National Labor Relations Board issued a complaint and notice of hearing against Respondent alleging that

Respondent violated Section 8(a)(5) and (1) of the Act. Respondent filed a timely answer to the complaint denying all wrongdoing.

All parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. Upon the entire record, from my observation of the demeanor of the witnesses, and having considered the posthearing briefs of the parties, I make the following

FINDINGS OF FACT AND CONCLUSIONS

I. JURISDICTION

Respondent is a Washington corporation with an office and place of business located in San Jose, California, where it is engaged in the retail sale of automotive parts and services. During the 12 months prior to issuance of the complaint, Respondent derived gross revenues in excess of \$500,000 and purchased and received goods valued in excess of \$5000 which originated outside the State of California. Accordingly, Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent admits and I find that Teamsters 576 is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background and Issues*

Respondent operates a chain of retail auto parts stores and auto repair facilities throughout northern California. Three different Unions represent Respondent's sales and service employees in different geographical areas. During the period relevant to this case, Respondent's unit employees in San Jose, California, were represented by Teamsters 576; those in Antioch, California, by United Food and Commercial Workers Union Local 1169 (UFCW); and unit employees in approximately 50 other Grand Auto stores throughout northern California were represented by the International Association of Machinists, District Lodges No. 87, No. 93, No. 115, and No. 190 (Machinists). Teamsters 576 at this time represented 75-100 employees; UFCW represented 7-8 employees; and the Machinists represented 500-600 employees.

Teamsters 576, UFCW, and the Machinists (the Unions) each have separate collective-bargaining agreements with Respondent which expire on the same date, and have historically conducted joint collective bargaining for separate successor agreements. The agreements have historically been similar. Differences were confined to health and welfare and pension plans, each union providing coverage for their unit employees under their own benefit trust plans. All three unions represented part-time as well as full-time employees, but none of the Unions provided for health and welfare coverage for part-time employees. The Machinists' and UFCW's collective-bargaining agreements with Respondent did not provide for pension coverage for part-time employees. The collective-bargaining agreement between Teamsters 576 and the Respondent, however, had provided for pension coverage for part-time employees since at least 1981. All the Unions' contracts specified a 1-to-1 staffing ratio of full-time to part-time employees, meaning that Respondent could have no

more than one part-time employee for each full-time employee, but could have fewer.

The representative of the Machinists traditionally takes the lead in these negotiations. Nick Antone, then area director and business representative for the Machinists, functioned as the chief spokesperson for all the Unions at the bargaining table for the 1990–1993 contract negotiations. Collective-bargaining agreements with all three Unions expired on August 1, 1993, and were extended until October 1, 1993. Beginning in June 1993 and continuing until September 21, 1994, the parties met in 26 bargaining sessions in an attempt to negotiate new contracts. Agreement was reached with the Machinists and UFCW on September 21, but Respondent and Teamsters 576 never reached agreement and beginning on November 23, 1994, Respondent implemented the terms of its “final proposal” to Teamsters 576.¹

Within this factual framework, the General Counsel alleges that Respondent unlawfully implemented its final proposal in the absence of a lawful bargaining impasse. Respondent contends that the parties were at impasse and it could therefore lawfully implement the terms of its final proposal. Second, Respondent contends that Teamsters 576 avoided and delayed negotiations, thereby privileging Respondent to implement its final offer, even if no impasse were found to exist.

B. Facts

Negotiations between the Unions for the 1993–1996 contracts began June 29, 1993. Antone again served as chief spokesperson for the Union at these bargaining sessions. Local 576’s bargaining representative, Mike Riga, and UFCW’s representative, Phil Carney, were also present at the initial and subsequent bargaining sessions. William Shertz, Respondent’s director of industrial relations, was Respondent’s spokesperson throughout negotiations, as part of a team the composition of which varied throughout the sessions.

At the June 29 session, the Unions submitted separate opening proposals to Respondent. Local 576 proposed increasing wages and pension contributions while maintaining the existing health and welfare benefit plan. The Machinists’ proposal included an increase in wages and adding pension coverage for part-time employees. Neither the Machinists nor the UFCW proposed any change to the full-time/part-time staffing ratio. On July 15, 1993, Respondent submitted separate opening counterproposals to each Union. These included deletion of union security and dues checkoff, employee copayments for health and welfare coverage, an 18-percent wage reduction, and deletion of the 1-to-1 staffing ratio. In response to Antone’s concerns that deletion of the 1-to-1 ratio would make agreement difficult, Respondent restored the ratio to its proposals. Respondent’s counterproposal to Local 576 also included elimination of pension coverage for part-time Teamsters employees. The feasibility of this proposal was apparently not discussed during negotiations at this time nor during most of the subsequent bargaining sessions. When the parties met again on July 28, they agreed to extend the 1990–1993 contracts, which were to expire at the end of July, to October 1, 1993.

¹ Respondent informed its employees in the Teamsters 576 bargaining unit on November 23 that it considered an impasse to exist and would implement its best and final offer.

The parties met over 20 times between July 28, 1993, and August 11, 1994. During these sessions, several issues were resolved. Respondent withdrew its proposal for a wage reduction and proposed a wage freeze instead, although it continued to include in its proposals the deletion of Teamsters part-time employees from pension coverage, the elimination of union security, and employee copayments for health and welfare coverage. Respondent in January 1994 proposed a different health and welfare package from that in place at the time, ostensibly to offset the costs of its compromise on the wage reduction proposal.

In the course of these bargaining sessions, there were apparently some instances of delay, rescheduled meetings, and information requests by the Unions. In September 1993, in the context of bargaining over changes in wages, Antone and Riga sent letters to Shertz requesting financial information. The parties met three times in October 1993, and then failed to meet for a scheduled November 19 session when Attorney David Rosenfeld, who represented the Machinists, canceled the meeting in response to Respondent’s purported failure to provide information that the Machinists had requested.² Bargaining sessions did not resume until 1994, apparently due to scheduling conflicts and the Unions’ desire for further information before resuming. On January 3, 1994, Shertz sent a letter to Commissioner Ruth Carpenter of the Federal Mediation and Conciliation Services, expressing Respondent’s willingness to resume negotiations and proposing several meeting dates in January. The Unions agreed to meet with Respondent on January 17, on which date bargaining recommenced. Further sessions were scheduled for February 28 and March 1. At the February session, the Unions requested further financial information to enable review of the proposed health and welfare package. The session ended early, and the scheduled March 1 session was canceled by the Unions so that the information could be reviewed. Bargaining resumed again on April 29, 1994, and sessions were held on June 20, July 13, August 4, and August 11.

On August 11, 1994, the parties’ 24th bargaining session, Antone proposed in private conversation with Shertz that the Machinists waive the representation rights of part-time employees in exchange for Respondent’s retention of the union-security clause for full-time employees. The General Counsel and Respondent both confirm that this proposal was intended to overcome the parties’ previously insurmountable-appearing discord over union security. Antone consulted with Riga and Carney, who had reservations regarding the proposal. Carney was concerned that eliminating part-timers from the bargaining unit would reduce to three or four the already small number of UFCW-represented employees. Riga’s concerns were twofold. First, since the part-time employees received pension coverage under the rules of the Western Conference of Teamsters Pension Trust Fund (Trust Fund), the Trust Fund might not permit part-time employees to be dropped from pension coverage. Second, Riga had recently signed a contract with Krage Auto Parts, a competitor of Respondent, whose contract covered part-time employees and provided them pension coverage, and Riga was apparently concerned about the political repercussions of abandoning the part-timers. In a subsequent private conversation, Shertz requested

² No allegations have been made in the complaint regarding any failure by Respondent to provide information.

that Antone put the Machinists' offer in writing, to which Antone agreed and further offered to include in writing his proposals for settling the few remaining outstanding issues. Antone also explained the UFCW's and Teamsters' concerns to Shertz, and suggested that the Teamsters might accept the proposal if a 2-to-1 staffing ratio were offered. On August 17, Antone received a letter from Shertz containing a synopsis of proposed resolutions to the remaining issues open between Respondent and the Machinists. Antone responded with a facsimile sent to Schertz on August 23 containing the Machinists' offer.

On August 24, 1994, William Meyers, Respondent's director of human resources, sent Teamsters 576 a synopsis of agreed-on and open contract proposals and a proposed collective-bargaining agreement between Respondent and Teamsters 576. This proposal incorporated Respondent's previous proposals, including deletion of pension coverage for part-time employees and deletion of union security.

The Unions and Respondent met again on September 20 and 21. At the first of these meetings, Respondent and the Machinists reached agreement on a contract eliminating part-time employees from the bargaining unit in exchange for retaining the union-security provision, which agreement was formalized at the next day's session. Also at the September 21 session, Carney told Respondent that the UFCW would accept a contract on the same terms as the Machinists' agreement. Riga did not indicate whether Teamsters 576 would accept such a proposal. On October 18, Respondent sent a letter to Riga via facsimile requesting a response to Respondent's proposed agreement on the same terms as the Machinists' agreement. Riga responded the next day by letter, stating that Teamsters 576 was not willing to accept all the same terms of the agreement. Riga met briefly with Respondent Representatives Meyers and Donna Potter on October 26, at which meeting Meyers again offered a contract on the same terms as the Machinists' agreement. Riga stated that the proposed contract would be acceptable to Teamsters 576 only if a guarantee of a 2-to-1 staffing ratio were also included. Meyers told Riga that Respondent was unlikely to agree to such a change in the staffing ratio, and the bargaining session ended.

On October 31, 1994, Meyers sent Riga a letter rejecting Local 576's proposed 2-to-1 staffing ratio and proposing a contract between Respondent and Teamsters 576, marked as Respondent's "final offer." This proposed contract, like Respondent's August 24 proposal, called for retaining part-time employees in the bargaining unit while deleting them from pension coverage, and eliminating union security. The proposed contract in this letter was not identical to the August 24 proposal, however. The letter further stated:

If you are unwilling to accept at least a 1:1 full-time to part-time staffing ratio, the company believes the parties are at impasse, and will plan to implement the attached proposal effective November 18, 1994. Please inform us of your position prior to that date.

On November 18, Teamsters Local 665, which represented Respondent's employees in a separate bargaining unit in Santa Clara, California, sent a letter to Meyers via facsimile on behalf of its sister local Teamsters 576, informing Respondent that pursuant to order of Teamsters International

Union, Teamsters 576 was being placed under trusteeship effective immediately, and requesting that Respondent "put on hold its negotiations or the implementation of any of its proposals, changes, addendums, etc. for a brief period of time to facilitate this transition." Although Respondent had opened contractual negotiations with Teamsters Local 665 a few weeks previously on October 26, this was the first time that Teamsters Local 665 had acted as a spokesperson for Teamsters 576. Nothing in the letter indicated a response by Teamsters 576 to Respondent's October 31 proposal. On November 22, 1994, Respondent sent a letter to Riga via facsimile regarding implementation of Respondent's August 24 proposal, saying "since we have not heard from you regarding your position on the full-time/part-time staffing ratio, we believe we are at impasse. We will therefore implement the terms of our last offer." The letter announced that the new wage rates would become effective November 26, 1994, and the health and welfare benefit plan on January 1, 1995.

On November 23, Respondent notified its employees that it considered an impasse to exist and informed them of the terms it was implementing. Also that day, Stefan Ostrach, the trustee for Teamsters 576, sent a letter to Meyers via facsimile stating that he (Ostrach) did not believe that the parties were at impasse, and offering to meet for further bargaining sessions. This was followed by another letter to Meyers from Ostrach sent on November 28 via facsimile requesting information "[i]n order to evaluate and respond to the Employer's proposal for a one-to-one ratio of full-time to part time employees" which would "make it possible for us to try to assess the actual affect [sic] of your proposal on the employees we represent and will enable us to respond."³ Meyers met with Ostrach, Teamsters Local 665 Secretary-Treasurer Ernie Yates, and Teamsters Local 665 Business Agent Bruce Kuhn on December 7, 1994. At this meeting between Respondent and Teamsters Local 665, Ostrach proposed joint bargaining between Respondent and the two locals. Respondent rejected that proposal on the ground that it was at impasse with Local 576 but had barely begun bargaining with Teamsters 665. Thereafter Teamsters Local 665 called the meeting to a premature end and refused to bargain regarding Local 665's contract. Ostrach's own testimony confirms that the purpose of the December 7 meeting was bargaining between Respondent and Teamsters Local 665, at which Ostrach had requested he be present, and that the meeting took place in Local 665's offices in Daly City, California. I find therefore that this meeting was in fact a bargaining session between Respondent and Teamsters Local 665, and not further bargaining between Respondent and Teamsters 576. Meyers sent a letter to Ostrach on December 8, 1994, which enclosed information requested by Ostrach regarding the status and identities of part-time employees, and which reiterated Respondent's intent to proceed with implementation of its October 31 offer, offering to meet again

³Meyers testified that he did not receive the facsimile letter of November 23 until it was sent to him via facsimile by Bruce Kuhn of Teamsters Local 665 on November 29, after he had received the letter from Ostrach requesting information regarding full- and part-time bargaining unit employees. I do not find any significance to the precise date the November 23 facsimile was received, nor to the order in which the two facsimiles were received.

“to explain our position” but not agreeing to bargain any further.

Although Local 576 and Respondent met again on December 15, 1994, and March 3, 1995, the relevant bargaining positions of the parties did not change. Respondent continued to offer to agree only to (a) an agreement similar to that made with the Machinists and the UFCW, wherewith retention of union security would be exchanged for deletion of part-time employees from the bargaining unit, without any change in the staffing ratio; or (b) its October 31 offer, deleting union security and ceasing pension contributions on behalf of part-time employees, without deleting them from the unit. Although Teamsters 576 continued to make altered proposals, its position that these above options were completely unacceptable did not change. After this date, there were no further meetings or bargaining sessions between Teamsters 576 and Respondent.

Respondent’s monthly reports from the Trust Fund indicate that contributions on behalf of part-time employees ceased as of December 1994. The reports sent by Respondent to the Trust Fund for December 1994 and January 1995 listed part-time employees as having worked zero hours, with no contributions due on their behalf. As of February 1995, part-time employees were apparently dropped altogether from Respondent’s reports to the Trust Fund.⁴ No contributions have been made by Respondent on behalf of part-time employees to the Trust Fund since November 1994, the last time Respondent made such contributions. On January 1, 1995, Respondent implemented its new health and welfare plan, in accordance with its October 31, 1994 proposal.

Analysis and Conclusions

1. The alleged impasse

The first issue is whether the parties reached impasse in their negotiations so as to permit Respondent to implement its final offer. An impasse occurs when “good faith negotiations have exhausted the prospects of concluding an agree-

⁴Employer reports for a particular month are generated by the trust fund and sent to all employers participating in the trust fund at the end of that month. Employers are to report the hours worked by each participating employee for that month and make payment the following month. The employer in turn generates a report the following month listing the hours worked by each contributing employee and the total due on each employee’s behalf. Thus the report for November 1994 was sent to Respondent at the end of November, and Respondent was to make contributions in December 1994 on behalf of all employees who participated in the pension plan during the month of November 1994; Respondent then generated a report on December 9, 1994, listing employees, hours, and amounts due for November.

Testimony from George Schmid, an administrator for the Trust Fund, indicates that pp. 1–3 of G.C. Exh. 33 contains Respondent’s February 1995 report to the Trust Fund. The report, however, is marked as “Report for 3/1/95” and is dated 4/7/95, which markings would be consistent with its being in fact Respondent’s March 1995 report, sent to the Trust Fund in April 1995. No report from Respondent with markings consistent with a February 1995 report is included in the exhibits. Nevertheless, as it is uncontested that Respondent ceased listing part-time bargaining unit employees in its reports to the Trust Fund as of February 1995, I do not find the discrepancy to be of significance.

ment,”⁵ that is, whenever negotiations reach a point at which the parties have exhausted the prospects of concluding an agreement and further discussions would be fruitless. *Laborers Health & Welfare Trust Fund v. Advanced Lightweight Concrete*, 484 U.S. 539, 543 (1988). After an impasse has been reached on one or more subjects of bargaining, an employer may implement any of its preimpasse proposals. *Western Publishing Co.*, 269 NLRB 355 (1984).

In *Taft Broadcasting Co.*, 163 NLRB 475, 478 (1967), enfd. 395 F.2d 622 (D.C. Cir. 1968), the Board listed the following factors to determine whether an impasse has been reached:

The bargaining history, the good faith of the parties in negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, the contemporaneous understanding of the parties as to the state of the negotiations are all relevant factors to be considered in deciding whether an impasse in bargaining existed.

Since impasse is a defense to a charge of an unlawful unilateral change, the burden of proof rests on the party asserting that impasse exists. *North Star Steel Co.*, 305 NLRB 45 (1991); *Roman Iron Works*, 282 NLRB 725 (1987).

In the instant case, Respondent met with Teamsters 576 in 26 bargaining sessions beginning in June 1993 and continuing until September 21, 1994, prior to Respondent’s implementation of its final offer in November 1994. The parties had also negotiated through numerous facsimiles and letters. During the September 1994 meetings between the Unions and Respondent, both the Machinists and the UFCW reached agreement with Respondent on a contract eliminating part-time employees from the bargaining unit in exchange for retaining the union-security provision. Approximately a month later, Teamsters 576 responded that it was unwilling to accept the same terms as the contained in the Machinists and UFCW agreements. Teamsters 576 proposed acceptance of the Machinists’ agreement, if the Respondent agreed to a ratio of two full-time employees to every part-time employee. Respondent rejected this proposal; the ratio had always been one full-time employee to one part-time employee. Teamsters 576 had never raised this issue during the past 16-month bargaining period. Respondent’s proposals were consonant with its previous proposals for the past 16 months. As of October 26, 1994, the parties differed only on the issues of pension payments for part-time employees and union security. Thus, on November 23, Respondent notified its employees that it considered an impasse to exist and informed them of the terms it was implementing. The union-security issue had been discussed over the 16 months of bargaining and both parties had remained adamant on this issue. The attempt to break impasse on this issue failed when the staffing ratio was raised. However, when the modified Machinists agreement fell through, the parties were back to where they were. While the issue of pension for part-timers had not been discussed because that issue only affected the Teamsters and not the Machinists and UFCW, the parties had persisted in their positions since June 1993.

⁵*Taft Broadcasting Co.*, 163 NLRB 475, 478 (1967), enfd. 395 F.2d 622 (D.C. Cir. 1968).

The existence or nonexistence of an impasse is normally put in issue when, after negotiations have been carried on for a period of time, the positions of the parties become fairly fixed and talks reach the point of stalemate. When this occurs, the employer is free to make unilateral changes in working conditions consistent with its offers that the union has rejected. *NLRB v. Katz*, 369 U.S. 736 (1962); *NLRB v. Almeida Bus Lines*, 333 F.2d 729 (1964).

The final meetings between Respondent and Teamsters 576 indicate that the positions of the parties had clearly reached stalemate. Respondent was unwilling to change its staffing ratio, and Teamsters 576 would not agree to withdraw the union-security provision without a change in the staffing ratio. The inability of the Federal mediator to facilitate agreement is also a factor supporting a finding of impasse. *NLRB v. Cambria Clay Products*, 215 F.2d 48, 55 (6th Cir. 1954).

The General Counsel argues as if the bargaining between Respondent and Teamsters 576 had just begun after the Machinists reached agreement. I cannot accept such a proposition. The Teamsters had been bargaining jointly with the Machinists. When the modified Machinists agreement fell through the parties reverted to the fixed positions prior to the breakthrough created by the Machinists agreement to modify the bargaining unit. The parties' bargaining positions on December 15 and March 3, 1994, did not change. The parties only succeeded in meeting on the two above dates; they failed to make any progress in negotiations. Respondent correctly found that the negotiations had reached an impasse, and implementation of its final offer was not a violation of Section 8(a)(5) of the Act.

Relying on the testimony of Ostrach, the General Counsel argues that the Union's understanding was that the parties were not at impasse. I give little weight to Ostrach's testimony because it was clear that his testimony on this point was colored by the fact that he simply did not want impasse or implementation of the final offer. Second, Ostrach had not been party to the 16 months of negotiations. For example, while trying to bargain over staffing, Ostrach did not realize that Respondent had not raised the issue of the full-time to part-time ratio and was not attempting to change the existing ratio. Ostrach's self-serving testimony on this point is insufficient to overcome the strong evidence that the parties were at impasse.⁶

2. The alleged break in impasse

I next turn to Teamsters 576's argument that assuming an impasse was reached, it was broken by the trust fund's re-

⁶ As I have found that Respondent was privileged to implement its final proposal at impasse, I do not reach the issue of whether Teamsters 576 avoided or delayed bargaining so as to privilege Respondent's unilateral implementation of its final offer.

fusal to accept Respondent's payment for full-time employee pensions without payment for part-time employee pensions.

Any changed circumstance or condition that creates a new possibility of fruitful discussion breaks an impasse. See, e.g., *Gulf States Mfg. Inc. v. NLRB*, 704 F.2d 1390 (5th Cir. 1983); *Albany Steel*, 309 NLRB 442, 450 (1992). The trust fund's notification to the employer that it would not accept contributions on behalf of full-time employees unless contribution was also made on behalf of part-time employees would seem to create the need for future discussion. Respondent, presumably, has not changed its bargaining position as a result of the development, which would have broken the impasse. See, e.g., *Sharon Hats*, 127 NLRB 947 (1961), *enfd.* 289 F.2d 628 (5th Cir. 1961). However, since the trust fund is still accepting contributions for full-time employees without contributions for part-time employees, the employer seems to be implementing its proposal exactly as it said it would.

In *Cuyamaca Meats v. Pension Trust Fund*, 827 F.2d 491 (9th Cir. 1987), *cert. denied* 485 U.S. 1008 (1988), the court held that after an impasse has been reached, the employer had the obligation to contribute to the pension trust fund in accordance with its final proposal. The court found that the employer had fulfilled this obligation, even though the trust fund had not accepted the employer's contributions after the impasse on the grounds that an impasse means that an employer has withdrawn from the fund. The context of this case was the question of when withdrawal occurred, at impasse or after the employer had actually ceased making contributions. However, the point of interest is that the court considered the employer still to be making contributions even when those contributions were not being accepted by the fund.

Because the trust fund is accepting Respondent's payments for full-time employees, I cannot find a break in the impasse. If the trust fund ceases to accept all payments on behalf of Respondent's employees, it would then be necessary to negotiate an alternative route. At this juncture, however, the break in impasse allegation is premature, and I, therefore, cannot find that Respondent refused to bargain.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has not violated the Act as alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended

ORDER

The complaint is dismissed in its entirety.