

From: (b) (6), (b) (7)(C)
To: [McKinney, M. Kathleen](#); [Roy, Christopher](#)
Cc: [Dodds, Amy L.](#); [Bock, Richard](#); [Shorter, LaDonna](#)
Subject: Forterra Pipe & Precast, LLC, 15-CA-260140
Date: Friday, November 13, 2020 3:53:45 PM

Dear RD McKinney and OIC Roy,

The Region submitted this case for advice as to whether the Employer, a manufacturer of water and drainage pipe and other products, violated Section 8(a)(5) by refusing the Union's request to bargain over hazard pay due to the COVID-19 pandemic. The Union and the Employer were parties to a collective-bargaining agreement effective April 1, 2017 to April 1, 2020. In anticipation of the expiration of the contract and "[d]ue to the extenuating circumstances of the COVID-19 pandemic", the parties agreed to extend the contract through August 31, 2020. Here, after agreeing, on March 24, to extend the then-effective contract, the Union requested to bargain over hazard pay on April 2. On April 7, the Employer replied in writing that it was "currently not looking to provide hazard pay" and repeated this position orally on April 17. Because we conclude that the Employer did not have an obligation to engage in midterm bargaining regarding hazard pay, the Region should dismiss the charge, absent withdrawal.

Absent a reopen provision, a party to a collective-bargaining agreement is under no obligation to bargain over issues covered by the contract during the life of the agreement. *Connecticut Power Co.*, 271 NLRB 766, 766-767 (1984). Even as to matters not specifically covered by the contract, a zipper clause may relieve a party of any obligation to engage in further midterm negotiations. See *GTE Automatic Electric Inc.*, 261 NLRB 1491, 1491-1492 (1982) (a zipper clause may act as a shield regarding bargaining demands as to matters not specifically covered in the contract).

The parties' collective-bargaining agreement contains a provision addressing wages in Article 20, a zipper clause in Article 17, and does not contain any provision allowing reopening absent written notice by a party, 60 days prior to the expiration date, that it desires to change, add to, or terminate the agreement. Even assuming that Article 20 does not cover the specific subject of hazard pay, we conclude that the zipper clause is dispositive. That clause provides:

It is agreed that all matters deemed by the parties to be proper subjects for collective bargaining between them are included in this contract, and during the term of this contract, including any extension term, no further or other matters shall be subject to further collective bargaining.

That unambiguous language constitutes a clear and unmistakable waiver of the Union's right to demand midterm bargaining concerning matters not otherwise covered by the contract even during the extension term. See *Mead Corp.*, 318 NLRB 201, 202-203 (1995) (where zipper clause excludes "all matters" from further negotiations, no other matters, irrespective of whether they were previously mentioned, can be bargained or changed, absent consent). We note that the Employer furnished timely notification to the Union to forestall automatic renewal of the now-expired contract. To the extent the Union wishes to seek hazard pay, it is free to do so in the context of

bargaining for a successor contract. Accordingly, the Region should dismiss the charge, absent withdrawal.

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

As of January 20, 2020, the NLRB requires electronic filing by parties. Please see www.nlrb.gov for more information.

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