

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

ADT SECURITY SERVICES, INC.

and

Case GR-7-CA-51288

LOCAL UNION 131, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS
(IBEW), AFL-CIO

A. Bradley Howell, Esq., for the General Counsel.
Bernard P. Jeweler, Esq., for the Respondent.

DECISION

Statement of the Case

GEORGE CARSON II, Administrative Law Judge. This case was tried in Grand Rapids, Michigan, on October 28 and 29, 2008. The complaint issued on August 12, 2008, and alleges that the Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act by withdrawing recognition from the Union and thereafter making certain unilateral changes.¹ The Respondent filed an answer admitting that it withdrew recognition from the Union but denying that its actions violated the Act. I find that the Respondent violated the Act substantially as alleged in the complaint.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

Findings of Fact

I. Jurisdiction

The Respondent, ADT Security Services, Inc., the Company, is a corporation with facilities throughout the United States including its facility in Wyoming, Michigan, where it is engaged in the sale, installation, and service of security systems. The Company annually purchases and receives goods and services valued in excess of \$50,000 directly from points located outside the State of Michigan. The Company admits, and I find and conclude, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent admits, and I find and conclude, that Local Union 131, International Brotherhood of Electrical Workers (IBEW), AFL-CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

¹ All dates are in 2008 unless otherwise indicated. The charge was filed on May 29 and was amended on July 14.

II. Alleged Unfair Labor Practices

A. Facts

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1. Introduction

10 The Company operates nationally selling, installing, and maintaining various types of security systems. The Company's sales operations are separate from its installation and service operations. The employees who install and service the security systems are referred to as servicemen with subclassifications as installers and service technicians.

15 The facts herein are virtually undisputed. The issues presented arose when the Company, on May 19, announced that the installation and service component of its facility in Kalamazoo, Michigan, would close on June 2 and that the Company would no longer recognize the Union as the representative of those 14 servicemen, who it contended were being consolidated with the 27 unrepresented servicemen who worked out of its Wyoming, Michigan, facility. As admitted in the answer to the complaint, the Union had represented the Kalamazoo employees for almost 29 years, since June 29, 1979. At the time recognition was withdrawn, 20 there was a collective-bargaining agreement in effect that extended from January 24, 2007, until January 22, 2010, and which recognized the Union as the exclusive collective bargaining representative of employees in the following appropriate unit:

25 All full-time and regular part-time servicemen employed by the Respondent at its Kalamazoo, Michigan, facility; but excluding branch managers, service supervisors, chief clerks, office clerical associates, professional associates, guards, sales associates and supervisors as defined in the Act.

2. The Company's Operations

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35 In the State of Michigan, the Company employs servicemen at Detroit, which also serves the Ann Arbor metropolitan area; at Flint, which also serves the Saginaw area; at Lansing, which also serves the Jackson area; and, prior to June 2, at Grand Rapids and Kalamazoo. The addresses of the facilities do not, in all cases, coincide with the metropolitan area. The Lansing facility is actually located in the suburb of Okemos, Michigan. The Grand Rapids facility is located in the suburb of Wyoming, Michigan. Thus, references in testimony to Grand Rapids and Wyoming refer to the same facility. That facility served western and northwestern Michigan including Traverse City, some three hours from Grand Rapids, up to the Mackinac Bridge, the northernmost point on the Michigan Lower Peninsula. The Kalamazoo 40 facility served southwestern Michigan including Kalamazoo, Battle Creek, and Benton Harbor. The collective-bargaining agreement uses the term "service territory," and that territory is shown on a Company color coded map. Work performed in that territory is identified on computer printouts by code numbers 45 and 230.

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The term serviceman, as already noted, refers to installers and service technicians. Installers typically handle the same type of installations. Thus, residential installers, most of whom are classified as high volume residential installers, perform installations at individual residences and are paid pursuant to a piece rate schedule for the components that they install. Small business installers handle small commercial installations and are paid an hourly wage. Commercial installers, referred to as core commercial installers, install multiple systems in large buildings and factories and are also paid hourly. Service technicians, who handle problems that develop or repairs that need to be made after the systems are installed, are also paid hourly.

Immediately prior to June 2, Mike Swift was Installation and Service Manager at Kalamazoo. He reported to Roy Rogers, who was Branch Manager over both the Wyoming and Kalamazoo facilities. From June 2 until late September, he remained as Branch Manager over the Wyoming facility. The closure of the service and installation function in Kalamazoo eliminated Swift's position. He worked as a serviceman for a short period after the elimination of his supervisory position and then left the Company.

The residential installers and service technicians who had been employed at Kalamazoo were initially placed under the supervision of Dave Fitzsimmons, who supervised the Wyoming service technicians and residential installers. The Kalamazoo small business and core commercial installers were placed under the supervision of Dan Beschel, who supervised the Wyoming employees who performed that work.

In late September, the Company reconfigured its supervisory hierarchy. Rogers, who had formerly been Branch Manager, was assigned as Manager of Core Commercial installations. Dan Beschel, who formerly supervised core commercial installations and small business installations, was assigned as Manager of Residential and Small Business installations. Fitzsimmons, who had formerly overseen both service technicians and residential installations, became Service Manager over the service technicians. According to Rogers, the foregoing three positions are of equal rank, but he is the "senior manager in the office."

The Company installs multiple types of systems including security systems, fire alarm systems, and card access systems. Notwithstanding the different types of systems, Manager Rogers explained that ninety percent of the work is generic and able to be performed by any serviceman. Before and after June 2, when numerous outages or malfunctions caused by a storm or other disaster occurred, installers would assist service technicians and the Company would, if necessary, assign servicemen from other locations. Thus, Kalamazoo servicemen might assist in the Grand Rapids area and vice versa. Similarly, when a job required a specific skill or certification or when assistance was needed for a large installation, servicemen would be assigned from their normal service area. Employee Donald Berry, currently a service technician but formerly a Kalamazoo commercial installer, was once assigned work in the Lansing area.

3. The Withdrawal of Recognition

On May 19, the Company's Director of Labor Relations, James Nixdorf, wrote the Union the following letter:

I'm writing to notify Local 131 the Company will be absorbing the Kalamazoo office into our Wyoming, Michigan[,] office effective June 2, 2008. All managerial, operations and administrative functions formerly housed in Kalamazoo will now be conducted in the Wyoming office. Given the Kalamazoo unit employees will now be Wyoming employees and Local 131 does not represent a majority of the employees located in Wyoming, the Company is withdrawing recognition of Local 131 as agent for the former Kalamazoo bargaining unit effective June 2, 2008.

Please let me know if you have any questions or wish to discuss this issue further.

Also on May 19, the Company, without notifying the Union, held a meeting with the Kalamazoo unit employees in which the closure of the installation and service function at Kalamazoo was announced directly to them. Rekha Agrawal, who at that time was General

5 Manager for the Midwest, was present as was then Branch Manager Rogers, who was the principal speaker. Manager Dave Fitzsimons was also present. Employee Bruce Abrams recalled that Rogers informed the employees of the closure and consolidation, but he stated that the employees' jobs "would basically remain the same," that they would be serving the same areas and would be going to jobs from their homes, and that their wages would remain the same. Rogers told the servicemen that the service technicians and residential installers would be supervised by Fitzsimons and the small business and core commercial installers would be supervised by Dan Beuschel. Employee Abrams recalled that Rogers, in response to questions, stated that overtime would be for work over 40 hours in a week whereas, under the collective-bargaining agreement, hourly employees had received overtime if they had to work over 8 hours on a single day. Employee Leonard Dean Osborn recalled that Rogers also spoke about travel time, explaining to the employees that they would not receive compensation for commuting until the trip exceeded 45 minutes rather than the 30 minutes specified in the collective-bargaining agreement. Rogers did not dispute any of the foregoing testimony.

15 On May 29, the Union filed the charge herein and Business Manager Leroy Crabtree wrote Nixdorf stating:

20 I am writing to notify you that on May 29, 2008, IBEW Local 131 filed an 8(a)(5) ULP against ADT Security Service Inc. for unilaterally repudiating our collective bargaining agreement.

Please feel free to contact me at any time.

25 Director of Labor Relations Nixdorf denied receiving the foregoing letter but admitted receiving the charge. Whether he did or did not receive the letter is irrelevant. In response to questioning by Counsel for Respondent, Business Agent Crabtree admitted that the Union never requested "effects bargaining." Insofar as the Union had been informed that the Company would no longer recognize the Union, any such request would have been futile. *Port Printing AD and Specialties*, 351 NLRB No. 91, slip op. at 2 (2007).

30 General Manager for the Midwest Agrawal made the decision to consolidate the installation and service function at Kalamazoo into the Wyoming office "because the cost structure in that branch ... was too high." Agrawal testified that she made the decision in consultation with Manager Rogers and "input from other managers" and that the cost savings realized was the elimination of Swift's supervisory position and one clerical position. There was no reduction in the number of servicemen.

40 When asked about the decision regarding the compensation of the Kalamazoo employees whose collective-bargaining representative the Company no longer recognized, General Manager Agrawal testified that "we essentially deferred to Jim Nixdorf's expertise on that." Director of Labor Relations Nixdorf, who "negotiate[s] [and] administer[s] all the collective agreements" between the Company and various unions, confirmed that he was involved in the decision to continue paying the former Kalamazoo employees the contractual wage rate, although he acknowledged that it was a "fair statement" that the Wyoming employees generally made more than the Kalamazoo employees. In explaining the decision, Nixdorf noted that, pursuant to the contract, the Kalamazoo employees had received a raise in January, that the Company made wage adjustments in January and, therefore, it was decided that "we'd approach it at that point." On cross examination, Nixdorf admitted that, when negotiating a particular contract, "whatever the wages are in that particular market, that's what we address." When asked whether it was a market based consideration that the Company could "pay people in Kalamazoo less and retain

them” while having “to pay people in Grand Rapids more,” Nixdorf answered, “Absolutely. We don't pay all of our bargained for employees and we don't pay all our non-bargaining unit cities the same.”

5 The building out of which the employees had worked is leased by the Company, and the lease runs until 2012. Because of competitors in the Kalamazoo area, the Company decided to maintain a presence in Kalamazoo by keeping the sales office open. Efforts to sublease the space have been unsuccessful. Thus, two salesmen currently work out of the otherwise unoccupied leased building. Manager Agrawal acknowledged that there was “no sophisticated analysis” regarding the consolidation decision. No financial documents or documents reflecting financial projections and savings were offered into evidence. Agrawal acknowledged that the Company was aware that it would still have to get parts and materials to the employees, either by delivering them or paying to have them delivered, but “we never did a formal cost analysis of what that would look like.”

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4. Effect of the Closure upon Employees

a. Unchanged Conditions

20 On May 19, the employees were told that they would continue to receive the same wages, and the Company continued to pay the contractual rate after the closure of the Kalamazoo facility. Director Nixdorf confirmed that it was a “fair statement” that the Wyoming employees made more than the Kalamazoo employees. The piece rate schedules pursuant to which high volume residential installers are compensated are different for the Kalamazoo and Wyoming installers. The Company continued to pay the Kalamazoo residential installers according to the Kalamazoo piece rates.

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30 The collective-bargaining agreement provides for “Tyco benefits,” the corporate benefit package of Tyco, the parent company of ADT; thus there was no change in the employee benefits of health insurance, pension, or the 401(k) plan, although it appears that employees in the 401(k) plan were assigned a different account number.

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35 As already mentioned, when additional help is needed in a specific area, both before and after June 2, employees assigned to other locations would be called in. Manager Rogers acknowledged that “when the need arises,” as in a storm situation, installers would assist the service technicians. He acknowledged that, before June 2, Kalamazoo employees would go into the Grand Rapids service area to perform work “[o]nce in a while,” and that Wyoming employees would go into the Kalamazoo area “off and on.” In a pretrial affidavit Rogers admitted that there “hadn't been much change.” That, of course, is consistent with what he told the employees on May 19, and it continued to be true until a few weeks before the hearing herein when, as hereinafter discussed, the Company began requiring Kalamazoo employees to report to the Wyoming office one day a week for materials.

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45 The collective-bargaining agreement refers to the Kalamazoo “service territory.” The employees take their company owned vehicles to their homes at night. Both before and after the consolidation, service technicians have been dispatched by a national dispatching center in Rochester, New York, where “optimizers,” according to zip code, identify the closest available technician who can respond to a reported problem. Manager Rogers acknowledged that, in order to “save on expenses,” service technicians would typically be routed “to the closest spot to their house,” explaining that the Company sought to have people that lived in the area do the work because that was the least expensive. Manager Rogers confirmed that Fitzsimmons had assigned the former Kalamazoo service technicians various areas that corresponded to

subdivisions of the Kalamazoo service territory as shown on a Company map that is color coded, General Counsel's Exhibit 13.

5 Rogers testified that assignments to installers are made on the same basis: whoever is the closest available installer "and the travel time." Residential installers are scheduled out of a national dispatching center in Jacksonville, Florida.

10 Thus, with the exception of the new requirement that servicemen report to Wyoming one day each week for replenishment of parts, at which time the servicemen are assigned work in the Grand Rapids area in order to eliminate unproductive travel time, there has been virtually no change in the work the service technicians and installers perform or where they perform it.

15 In order to handle emergencies on nights and weekends, employees are assigned "on call" duty pursuant to a weekly rotating schedule. The Kalamazoo contract, Article 6, Section 3, provided that "[s]eparate call out lists will be created for Commercial and Residential Service," whereas only one Wyoming employee was on call each week. Employee Grant Korteway, a Kalamazoo commercial service technician on the commercial call out list, testified that, after the consolidation, when he has received calls that should have been routed to the residential employee who was on call, he would explain the dual Kalamazoo list to the dispatcher. Manager
20 Rogers confirmed that the dual call out list is being used for the former Kalamazoo employees.

b. Changed Conditions

25 When the termination of the service and installation function at Kalamazoo was announced, the employees were informed that they would no longer receive overtime for working over 8 hours in a single day as provided in the collective-bargaining agreement.

30 The employees were also told that uncompensated travel time would be 45 minutes rather than 30 minutes. Article 6, Section 1, of the contract provided that employees would be compensated at their regular rate of pay for "traveling time in excess of thirty (30) minutes."

35 Manager Rogers confirmed that those changes did occur, and Business Agent Crabtree's uncontradicted testimony established that there was no notice to or bargaining with the Union with regard to any changes that have been made.

40 The collective-bargaining agreement, in Article 3, required that the Company notify the Union, "if practicable," when subcontractors or non-Kalamazoo ADT employees were "performing work in the Kalamazoo service territory." Manager Rogers admitted that he understood that provision existed because the Union was "concerned about people doing their work," i.e. unit work, in the Kalamazoo service territory. He acknowledged that the Company no longer "had that restriction."

45 The Company extended its vacation eligibility policy to the Kalamazoo employees, which resulted in some employees receiving one additional week of vacation.

The building in Kalamazoo out of which the Company operated contained the working area of two clerical employees, the offices of two salespersons, the office of Manager Mike Swift, and the area to which the security devices and equipment, such as wiring, used by the servicemen were delivered. Unit employees had turned in their weekly time sheets at that office on Wednesdays. After June 2, the Company provided facsimile machines to those employees who did not have one so that their time sheets could be faxed to the Wyoming office.

Prior to June 2, Dave Ross or Jeff Griffioen, the warehousemen at Wyoming, would place the parts needed by particular employees in separate plastic bins and then travel to Kalamazoo to distribute the parts to the employees. They generally did this twice a week.

5 After June 2, for about six weeks, Ross and/or Griffioen drove to a Meijer's supermarket parking lot where the materials used by the Kalamazoo employees were distributed. General Manager Agrawal explained that, although the Company's leased building remained available, the distribution of materials was made in the Meijer's parking lot because "we didn't have a management presence" and the Company did not want the employees to "have access to that office." The employees' access cards to the building had been deactivated. Agrawal did not explain how, given the deactivation of the employee access cards, the pickup of parts could not have been carried out at the Company's unused leased facility in the presence of the same individuals who had been entrusted with the parts for delivery at a supermarket parking lot. The supermarket distribution appears to have been designed to underscore the termination of the service and installation function at the Kalamazoo facility.

10 After about six weeks, the Company began shipping parts to employees or distributing them at meeting points individually prearranged between the serviceman receiving the materials and another serviceman or supervisor. Manager Rogers explained that it had been the intention of the Company to utilize Federal Express to get parts to the servicemen, but that "a whole host of issues" caused the Company to abandon that procedure.

15 Beginning in September, the Company began phasing in a requirement that Kalamazoo employees report to the Wyoming warehouse one day each week in order to obtain their parts and supplies. According to Manager Beuschel, the Company phased in this requirement to avoid inundating that system and "creat[ing] havoc." Thus, at the time of the hearing, some of the Kalamazoo employees, including Jason Raymond, had been coming to Wyoming once each week for as many as six weeks whereas others, including Chris Green who lives in Decatur, Michigan, some 75 miles from Grand Rapids, had come only once or twice. On the day that an employee comes to the warehouse, the Company gives the warehouse address to the dispatching centers as that employee's starting location on that day, which results in the employee working in the Grand Rapids area, thus avoiding unproductive time and travel.

B. Analysis and Concluding Findings

20 The complaint alleges that the Respondent, on June 2, unlawfully withdrew recognition from the Union and thereafter unilaterally implemented changes relative to travel time, overtime, "and possibly other terms and conditions of employment" of the unit employees.

1. The Withdrawal of Recognition

25 The General Counsel argues that, notwithstanding the consolidation, the Kalamazoo unit is an historical unit that has maintained its identity and that the Respondent was not privileged to terminate this "long standing bargaining relationship" by withdrawing recognition from the Union as the exclusive collective bargaining representative of the employees in that historic unit.

30 The Respondent contends that it has consolidated the Kalamazoo employees with the Wyoming employees and that, insofar as the 14 former Kalamazoo employees constitute only slightly more than a third, 34 percent, of the larger employee complement at Wyoming, it was privileged to withdraw recognition from the Union. Although the brief of the Respondent acknowledges that the former Kalamazoo unit employees continue to perform "most of their

work” in the Kalamazoo area because of the proximity of the employees to the work, the Respondent argues that those employees “share working conditions, supervisors, and every other conceivable indicia or aspect of employment” with the Wyoming employees. I disagree. The Respondent’s brief does not acknowledge or discuss the undisputed fact that the former
 5 Kalamazoo employees continue to be paid at the Kalamazoo contractual rate or that Director of Labor Relations Nixdorf admitted that Kalamazoo was a separate labor market. More significantly, the Respondent’s brief, neither in its argument nor in the precedent cited, does not address the status of the Kalamazoo unit as an historical unit with a bargaining history of almost 29 years, since June 29, 1979.

10 In addressing the Respondent’s withdrawal of recognition, my analysis begins with precedent establishing that a historic bargaining relationship will not be disturbed absent compelling circumstances. In that regard, the decision of the Board in *Canal Carting, Inc.*, 339 NLRB 969 (2003), is instructive. In that case, the Board reversed a Regional Director’s decision
 15 that disregarded the presence of a bargaining history that began in “the 1970s.” Although the date the history began is not specified, the historic relationship existed for at least 24 years. The bargaining history in this case is almost 29 years. In *Canal Carting, Inc.*, the Board stated:

20 In our view, the Regional Director failed properly to consider the importance of bargaining history in making his determination on the appropriateness of Sanitation’s unit and on the contract bar issue. As one court has noted, “the Board usually applies the community-of-interest and plant-wide unit tests only when delineating units of previously unrepresented employees, not, as here, when it is assessing historical units that have had long periods of successful collective bargaining.” *Trident Seafoods, Inc. v. NLRB*, 101 F.3d 111, 118 (D.C. Cir. 1996). Rather than pursue solely a community-of-
 25 interest analysis, the Regional Director should have considered whether compelling circumstances warranted disturbing the historical bargaining units that developed at Carting and Sanitation.

30It is well settled that the existence of significant bargaining history weighs heavily in favor of a finding that a historic unit is appropriate, and that the party challenging the historical [unit] bears the burden of showing that the unit is no longer appropriate. See *Children’s Hospital of San Francisco*, 312 NLRB 920, 929 (1993) (“Both the Board and the courts have long recognized not only that the traditional
 35 factors, which tend to support the finding of a larger or single unit as being appropriate, are of lesser cogency where a history of meaningful bargaining has developed, but also that this fact alone suggests the appropriateness of a separate bargaining unit and that compelling circumstances are required to overcome the significance of bargaining history.”) (internal quotation marks omitted), *enfd. sub nom. California Pacific Medical Center v. NLRB*, 87 F.3d 304 (9th Cir. 1996). See also *Fisher Broadcasting, Inc.*, 324 NLRB 256, 262-263 (1997); *Buffalo Broadcasting Co.*, 242 NLRB 1105, 1105 fn. 2 (1979) (“The Board is reluctant to disturb units established by collective bargaining as long as those units are not repugnant to Board policy or so constituted as to hamper employees in fully exercising rights guaranteed by the Act.”); *Columbia Broadcasting System, Inc.*, 214 NLRB 637, 643 (1974); *Great Atlantic & Pacific Tea Co.*, 153 NLRB
 40 1549, 1550 (1965) (“[T] he Board has long held that it will not disturb an established bargaining relationship unless required to do so by the dictates of the Act or other compelling circumstances.”). *Id.* at 969, 970.

There are no compelling circumstances that support the withdrawal of recognition from the historic Kalamazoo unit. The letter of May 19 states that the Company was “absorbing the Kalamazoo office into our Wyoming, Michigan, office” and “withdrawing recognition” from the

Union. The withdrawal of recognition was predicated upon the number of unrepresented employees at Wyoming, but the Respondent did not “absorb” the Kalamazoo employees. They continue, as the Respondent admits and the record establishes, to perform “most of their work” in the Kalamazoo area. The term “service territory” is used in the collective-bargaining agreement and is shown on the Respondent’s color coded map. The work performed in that territory is identified on computer printouts by the code numbers 45 and 230.

Director of Labor Relations Nixdorf’s testimony confirms that the Kalamazoo employees were not absorbed into Wyoming. Despite the consolidation, Nixdorf decided that the Respondent would not pay the Kalamazoo employees the same wages being paid to the Wyoming employees because they had received their contractual wage increase the previous January. Although acknowledging that it was a “fair statement” that the Wyoming employees made more than the Kalamazoo employees who had purportedly been absorbed into Wyoming, he defended the discrepancy by explaining that the wages paid by the Respondent were dependent upon the market, and that the Respondent could pay less than the Wyoming/Grand Rapids rate to employees in the Kalamazoo metropolitan area and retain them. The foregoing testimony establishes that the Respondent recognizes that Kalamazoo is a separate labor market and pays the employees accordingly. Thus, on the basis of the wage rate alone, the Kalamazoo employees were not absorbed, and they remain a separate identifiable unit.

The collective-bargaining agreement refers to the Kalamazoo “service territory,” jurisdiction over which the Union sought to maintain pursuant to the provision in the contract that provided for notification if employees not assigned to Kalamazoo were sent to work in that service territory. Manager Fitzsimmons informed the purportedly absorbed service technicians of their respective areas, and the Respondent’s color coded map shows the subdivisions within the Kalamazoo service territory to which Manager Rogers acknowledged they had been assigned. Manager Rogers confirmed that installation jobs are assigned similarly, to the closest available installer based upon “the travel time.” Both before and after June 2, Kalamazoo employees were sent to work outside the Kalamazoo area and employees from other locations were sent to the Kalamazoo area when needed. Such work assignments were dictated by the need for a specific skill certification, the size of an installation job, or a natural disaster that affected installed security systems. The Respondent’s assignment of installation and service jobs in the Grand Rapids area on the weekday that the former Kalamazoo employees are required to report to Wyoming simply assures that they will not be unproductive for a significant proportion of the day and that the Respondent will not be compensating them for traveling time. The overwhelming majority of their work is performed in the Kalamazoo service territory. The Kalamazoo employees are compensated at the contractual wage rate even when working in the Grand Rapids area. The Kalamazoo unit is not only identified by the wage scale being paid but also by the geographic area in which the employees have continued to work.

The Respondent has continued to use the Kalamazoo contractual dual call out roster that separates employees on the basis of their assignment to commercial or residential work.

Although the supervisory position of Swift was abolished, the Kalamazoo employees remained under the ultimate supervision of Branch Manager Rogers, who, as Branch Manager of the Kalamazoo office, had been Swift’s direct supervisor. The record does not reflect whether, following the corporate reconfiguration that occurred about a month before the hearing herein, Rogers, as Senior Manager, remains as the individual ultimately in charge at Wyoming. His current authority is immaterial insofar as an employer may not escape its obligation to bargain by employing different supervisors. See *University Medical Center*, 335 NLRB 1318, 1332 (2001), enfd. in pertinent part, 335 F.3d 1079, 1085 (D.C. Cir 2003).

The fact that the former Kalamazoo employees, like all ADT employees, are subject to the same handbook rules, wear the same uniforms, and perform the same work does not render the historic unit inappropriate and does not privilege the Respondent to withdraw recognition from it. As pointed out in *P. J. Dick Contracting*, 290 NLRB 150, 151 (1988), “units with extensive bargaining history remain intact unless repugnant to Board policy.” The unit herein is not repugnant to Board policy. Neither is it repugnant to any policy of the Respondent which regards Kalamazoo as a separate labor market and has continued to pay the Kalamazoo hourly employees the contractual wage rate rather than the higher wages paid to Wyoming employees and to pay residential installers the contractual piece rates rather than Wyoming piece rates. Changes made by the Respondent that conformed the working conditions of the Kalamazoo employees to the policies in effect at the Wyoming office, such as overtime and travel time, insofar they were made unilaterally, do not detract from the separate identity of the historical unit. See *Comar, Inc.*, 339 NLRB 903, 911 (2003); *Holly Farms Corp.*, 311 NLRB 273,279 (1993); see also *Serramonte Oldsmobile*, 318 NLRB 80, 104 fn. 67 (1995).

The Respondent, by withdrawing recognition from the Union as the representative of the employees in the historic Kalamazoo unit, violated Section 8(a)(1) and (5) of the Act.

I shall, consistent with precedent, alter the description of the appropriate unit to reflect the current reality and specify that the unit consists of employees regularly assigned to work in the Kalamazoo service territory, which thereby includes the former Kalamazoo unit employees as well as any employees hired to fill future unit vacancies. See *Comar, Inc.*, supra at 911.

2. The Unilateral Changes

It is undisputed that the Respondent, pursuant to what I have found was its unlawful withdrawal of recognition on June 2, changed the terms and conditions of the employment of unit employees by ceasing to pay overtime for working more than 8 hours in a single day, increasing unpaid travel time from 30 minutes to 45 minutes, and altering vacation eligibility without notice to or bargaining with the Union. By unilaterally changing the terms and conditions of employment of the unit employees in the foregoing manner, the Respondent violated Section 8(a)(5) of the Act.

There is no evidence that the failure of the Respondent to honor the contractual requirement of notification to the Union regarding the presence of nonunit employees in the Kalamazoo service territory has affected any employee. Insofar as my recommended order shall direct reinstatement of the contract, the Respondent must honor that provision.

Conclusions of Law

1. By withdrawing recognition from the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

2. By unilaterally, without notice to and bargaining with the Union, changing the manner in which overtime is paid to unit employees, increasing unpaid travel time, and altering vacation eligibility, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find

that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

5 The Respondent, having unlawfully withdrawn recognition from the Union, it must extend recognition to the Union as the bargaining representative of its former Kalamazoo employees, reinstate the collective-bargaining agreement without retracting any benefit conferred, and bargain collectively in good faith with the Union. *Cook County School Bus, Inc.*, 333 NLRB 647 (2001); *Custom Manufacturing Company*, 220 NLRB 1256, 1258 (1975).

10 The Respondent, having unilaterally changed the terms and conditions of employment of the unit employees by altering the manner in which overtime and travel time are paid, must make whole any employees whose benefits were decreased as a result of those unilateral change, plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

15 Consistent with *Cook County School Bus, Inc.*, supra at 648 and 654, and *Children’s Hospital*, 312 NLRB 920, 931 (1993), the Respondent shall not rescind the unilaterally changed benefit with regard to vacation eligibility unless requested to do so by the Union.

20 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

ORDER

25 The Respondent, ADT Security Services, Inc., Wyoming, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

30 (a) Withdrawing recognition from and failing and refusing to recognize and bargain with Local Union 131, International Brotherhood of Electrical Workers (IBEW), AFL-CIO, as the exclusive collective bargaining representative of employees in the following appropriate unit:

35 All full-time and regular part-time servicemen regularly assigned to work in the Kalamazoo service territory employed at its Wyoming, Michigan, facility; but excluding branch managers, service supervisors, chief clerks, office clerical associates, professional associates, guards, sales associates and supervisors as defined in the Act.

40 (b) Unilaterally, without notice to and bargaining with the Union, changing the manner in which overtime is paid to unit employees, increasing unpaid travel time from 30 minutes to 45 minutes, and altering vacation eligibility.

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

45 2. Take the following affirmative action necessary to effectuate the policies of the Act:

² If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

5 (a) Rescind the withdrawal of recognition and extend recognition to the Union as the bargaining representative of its former Kalamazoo employees, reinstate the collective-bargaining agreement without retracting any benefit conferred, and bargain collectively in good faith with Local Union 131, International Brotherhood of Electrical Workers (IBEW), AFL-CIO, as the exclusive collective bargaining representative of employees in the appropriate unit set out above.

10 (b) Rescind the unilateral changes made in the manner in which overtime and travel time are paid to unit employees and make whole any employees whose benefits were decreased as a result of those unilateral changes plus interest.

(c) Only upon request by the Union, rescind the manner in which vacation eligibility is determined.

15 (d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to determine the amount of backpay due under the terms of this
20 Order.

25 (e) Within 14 days after service by the Region, post at its facility in Wyoming, Michigan, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these
30 proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 19, 2008.

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

Dated, Washington, D.C., December 30, 2008.

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45 _____
George Carson II
Administrative Law Judge

³ If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT withdraw recognition from and fail and refuse to recognize and bargain with Local Union 131, International Brotherhood of Electrical Workers (IBEW), AFL-CIO, as the exclusive collective bargaining representative of employees in the following appropriate unit:

All full-time and regular part-time servicemen regularly assigned to work in the Kalamazoo service territory employed at its Wyoming, Michigan, facility; but excluding branch managers, service supervisors, chief clerks, office clerical associates, professional associates, guards, sales associates and supervisors as defined in the Act.

WE WILL NOT unilaterally, without notice to and bargaining with the Union, change the manner in which overtime is paid to you who are in the foregoing unit, increase your unpaid travel time from 30 minutes to 45 minutes, or alter vacation eligibility.

WE WILL rescind our withdrawal of recognition from the Union, and WE WILL extend recognition to the Union as the bargaining representative of our former Kalamazoo employees, reinstate the collective-bargaining agreement without retracting any benefit conferred, and bargain collectively in good faith with the Union as the exclusive collective bargaining representative of the employees in the foregoing appropriate unit.

WE WILL rescind the unilateral changes made in the manner in which overtime and travel time are paid to unit employees and make whole any of you whose benefits were decreased as a result of those unilateral changes plus interest.

WE WILL, only if requested by the Union, rescind the manner in which vacation eligibility is determined.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

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ADT SECURITY SERVICES, INC.

(Employer)

Dated _____

By _____

(Representative)

(Title)

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The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

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477 Michigan Avenue, Federal Building, Room 300, Detroit, MI 48226–2569
(313) 226–3200, Hours: 8:15 a.m. to 4:45 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

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THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (313) 226–3244

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