UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES, SAN FRANCISCO BRANCH OFFICE

PACIFIC COAST SUPPLY, LLC d/b/a
ANDERSON LUMBER COMPANY

and **Case 20-CA-086308**

CHAUFFEURS, TEAMSTERS, AND HELPERS
LOCAL 150, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

Elvira T. Pereda, Esq.* and *Matthew C. Peterson, Esq.
for the Acting General Counsel
Costa Kerestenzis, Esq., for the Charging Party
Stephen Thomas Davenport, Esq., for the Respondent

DECISION

Mary Miller Cracraft, Administrative Law Judge: On July 20, 2012, Pacific Coast Supply, LLC d/b/a Anderson Lumber Company (Respondent) withdrew recognition from Chauffeurs, Teamsters, and Helpers Local 150, International Brotherhood of Teamsters (the Union). The issue in this case[1] is whether the withdrawal of recognition was lawful pursuant to *Levitz Furniture Co. of the Pacific,* 333 NLRB 717 (2001)(employer may unilaterally withdraw recognition only if it can demonstrate that "the union has actually lost the support of the majority of the bargaining unit employees.")

The parties' collective-bargaining agreement expired shortly before withdrawal of recognition. There is no claim that supervisory involvement tainted the signatures nor are there any contemporaneous, unremedied unfair labor practices at issue. The parties agree that all signatures are authentic and that the unit consisted of fifteen employees at the time of withdrawal of recognition. The parties' dispute is whether the eight statements of disaffection indicated that these eight employees no longer desired Union representation.

I find that four of the eight statements relied upon by Respondent do not reflect that those employees no longer wish to be represented by the Union. Thus, I find that withdrawal of recognition was not based upon proof that the Union had actually lost the support of a majority of unit employees. Accordingly, I find that Respondent has violated Section 8(a)(1) and (5) of the Act in withdrawing recognition from the Union.

[1] The unfair labor practice charge was filed on July 27, 2012, and complaint was issued on January 31, 2013.

Hearing was held in Sacramento, California on April 16, 2013. On the entire record, including my observation of the demeanor of the witnesses,[2] and after considering the briefs filed by counsel for the Acting General Counsel and counsel for the Respondent, I make the following findings of fact and conclusions of law.

Findings of Fact

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

Respondent is a California corporation in the business of supplying lumber to home builders. It has an office and place of business in North Highlands, California. Respondent admits and I find that it meets the interstate commerce criteria for direct inflow and further admits and I find that it is an employer within the meaning of Section 2(2), (6), and (7) of the National Labor Relations Act (the Act).[3]

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

Respondent further admits and I find that the Union is a labor organization with the meaning of Section 2(5) of the Act.

3. Since the late 1960s, the Union has been the exclusive representative of employees of Respondent within the meaning of Section 9(a) of the Act in a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

The parties have had a collective-bargaining relationship since the late 1960s with successive contracts throughout the years. The most recent contract, in effect from April 1, 2011 to February 28, 2012[4] covers saw tail off employees (who stack materials from the saw, operate forklifts and perform yard work), material handlers, sawyers, and drivers. The parties agree and I find that this unit is appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act. The parties further agree and I find that the Union has been the exclusive representative of these employees within the meaning of Section 9(a) since the late 1960s.

4. Upon expiration of the most recent collective-bargaining agreement on February 28 and after an initial bargaining session on March 27, Respondent withdrew recognition of the Union on July 20.

Upon expiration of the most recent agreement, the parties began bargaining for a successor agreement with their first negotiating session held on March 27. The next session was scheduled for July 30. On July 20, Mark Ingram, Respondent's Labor Consultant, an admitted agent of Respondent within the meaning of Section 2(13) of the Act, who was

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[2] Credibility resolutions have been made based upon a review of the entire record and all exhibits in this proceeding. Witness demeanor and inherent probability of the testimony have been utilized to assess credibility. Testimony contrary to my findings has been discredited on some occasions because it was in conflict with credited testimony or documents or because it was inherently incredible and unworthy of belief.

[3] 29 U.S.C. Sec. 152(2), (6), and (7).

[4] All dates are in 2012 unless otherwise referenced.

authorized to communicate on Respondent's behalf regarding withdrawal of recognition, spoke by telephone with Michael C. Tobin, Business Agent of the Union and the assigned representative of the unit employees of Respondent. Ingram told Tobin that Respondent did not think that the Union had majority support. Tobin responded, "Where's your proof." Ingram said he would send it to Tobin.

5. Respondent's withdrawal of recognition was based solely upon statements signed by eight of its fifteen bargaining unit employees.

At the time of this July 20 conversation, the parties stipulated and I find that there were fifteen bargaining unit employees, as follows: Jorge Alvarado, Donald Davis, Vital Estacio, Jorge Garcia, Luis Gonzalez, Craig Hartog, Miguel Hernandez, Don Hogg, Ricky Otto, Mario Ramos Pompa, Richard Remner, Mark Rocha, Ralph Schow, Sandeep Singh, and Terry Tillis.

After the phone conversation, Ingram sent an e-mail to Tobin around 5 pm stating in relevant part,

> Following up on our conversation this morning, attached for your review are eight (8) individual statements from bargaining unit employees working at [Respondent]. As you can see, a majority of the employees have told [Respondent] they no longer wish to be represented by [the Union].
>
> While we've enjoyed a good working relationship over the years, both the Union and [Respondent] have an obligation to respect the employees' choice in this regard. Accordingly, [Respondent] must now withdraw recognition for [the Union].
>
> As we discussed, under the circumstances, it would not be appropriate for the parties to continue in collective bargaining negotiations.

After receiving this e-mail,[5] Tobin called Ingram and told him he disputed that the eight statements showed the employees no longer wanted the Union and the Union would be filing an unfair labor practice charge. The parties have not engaged in further bargaining. In withdrawing recognition, the Respondent relied only on these eight statements.

The signed and dated statements of the 8 employees are as follows:[6]

- Chris if it is all possible I Donald Davis would like to exit the union. This is due to the union not doing any services for the cost that they are charging. (July 16)
- My name is Jorge Garcia and I am a load/bldr at [Respondent] and do not wish to be a part of the Union now or in the future. (July 16)
- My name is Luis Gonzalez am working for [Respondent] in the production area Load/bldr. I do not wish to be part of the union. Thank you. (July 16)
- Hi my name is Craig Hartag. I am employed with [Respondent]. I no longer wish to be a part of [the Union]. (July 12)

[5] Although Tobin could not access the attached employee statements, they were later faxed to him by Ingram.

[6] The 8 employee statements are written in English although 5 of the 8 employees testified in Spanish and stated that they spoke and wrote only a little English. Some of the non-English speaking employees had assistance from a co-worker who drafted the statement in English for them and translated it into Spanish for them.

- I resign from [the Union]. Miguel Hernandez. (July 19)
- I Mario Ramos [Pompa][7] am working at [Respondent]. I do not wish to be part of the Union. (July 16)
- I Mark A. Rocha do not wish to be a Union member. (July 17)
- I Sandeep Singh employee of [Respondent] wish to get out of the Union. (July 17)

There is no dispute that the signatures of these individuals are authentic.

ANALYSIS AND CONCLUSIONS OF LAW

1. An employer may unilaterally withdraw recognition only on a showing that the union has in fact lost the support of a majority of employees

The foundation for exclusive bargaining representative status is majority support of unit employees. *Auciello Iron Works v. NLRB,* 517 U.S. 781, 786 (1996). In order to foster industrial peace and stability in bargaining relationships as well as employee free choice, the Board presumes that an incumbent union retains its majority status. Id. 785-786. This presumption is irrebutable during the term of a collective-bargaining agreement not to exceed three years. *Trailmobile Trailer, LLC,* 343 NLRB 95, 97-98 (2004). At the expiration of a collective-bargaining agreement, the presumption becomes rebuttable. *NLRB v. Curtin Matheson Scientific, Inc.,* 494 U.S. 775, 778 (1990). Withdrawal of recognition in this case occurred after the most recent contract expired; thus, the presumption of majority status was rebuttable.

In *Levitz,* the Board overruled *Celanese Corp.,* 95 NLRB 664, 671-673 (1951)(employer may withdraw recognition from incumbent union on basis of reasonable good-faith doubt as clarified in *Allentown Mack*[8] to a "genuine, reasonable uncertainty") and held that "an employer may rebut the continuing presumption of an incumbent union's majority status, and unilaterally withdraw recognition, only on a showing that the union has, in fact, lost the support of a majority of the employees in the bargaining unit." *Levitz,* supra*,* 333 NLRB at 725. Because the presumption of continued majority status is based on important principles underlying the Act, those of fostering industrial stability as well as employee rights to designate their collective-bargaining representative, the Board noted, id., that the evidence of loss of majority must be objective and that the employer acts at its peril by withdrawing unilaterally:

> We emphasize that an employer with objective evidence that the union has lost majority support – for example, a petition signed by a majority of the employees in the bargaining unit – withdraws recognition at its peril. If the union contests the withdrawal of recognition in an unfair labor practice proceeding the employer will have to prove by a preponderance of the evidence that the union has, in fact, lost majority support at the time the employer withdrew recognition.

In rejecting the lower *Celanese* standard (genuine reasonable uncertainty) and adopting the more stringent *Levitz Furniture* standard of actual loss of majority, the Board relied heavily on its parallel holding that when in doubt, an employer may forego unilateral action and resolve the issue in a representation proceeding based on a lower "uncertainty" standard. Id. at 727.

Respondent relied on statements from eight employees in a unit of fifteen employees. It

[7] The parties stipulated that employee Mario Ramos Pampa wrote this statement which is signed "Mario Ramos."

[8] *Allentown Mack Sales and Service, Inc. v. NLRB,* 522 U.S. 359, 367 (1998).

is undisputed that the remaining seven unit employees would not constitute majority support for the Union. There is no evidence of supervisory taint on the record nor is there any evidence of contemporaneous, unremedied unfair labor practices.

2. Respondent has failed to show by a preponderance of the evidence that the Union lost the support of a majority of employees.

It remains for consideration whether the eight statements satisfy Respondent's burden to show by a preponderance of the evidence that a majority of employees no longer supported the Union. In order to sustain the preponderance of the evidence burden, an employer must show that it relied upon a "reasonable interpretation" of the language utilized to prove loss of majority support. *Wurtland Nursing & Rehabilitation Center,* 351 NLRB 817 (2007). In other words, as the Board explained, id., the language need not be unambiguous.

> [T]he preponderance-of-the-evidence standard "simply requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence." The extent to which specific evidence is ambiguous is merely a factor to be considered in determining whether the employer has met the preponderance standard. Here, the majority of the employees signed the petition [stating they desired "a vote to remove the union"], and, as explained above, we conclude that the more reasonable interpretation of the petition language is that the signatory employees rejected union representation. Accordingly, it is more probable than not that the employees rejected union representation.

a. Four of the eight statements of disaffection clearly indicate that these four employees desired to withdraw from Union membership.

I find that four of the statements, those of Davis (I would like to exit the union), Hernandez (I resign from the Union), Rocha (I do not wish to be a Union member), and Singh (I wish to get out of the Union), clearly state a desire to withdraw from membership in the Union. They are not in the least ambiguous.

b. Statements of a desire to withdraw from union membership may not be relied upon to withdraw recognition.

Statements of desire to terminate union membership do not support withdrawal of recognition. Termination of membership in a union means only that an employee does not wish to pay dues to the union. It does not mean that the employee no longer wishes the union to represent employees. Thus, the statements of Davis, Hernandez, Rocha, and Singh are an insufficient basis to support unilateral withdrawal of recognition. *DaNite Sign Co.,* 356 NLRB No. 124 (2011);[9] *Crete Cold Storage, LLC,* 354 NLRB 1000 fn. 2 (2009)(determination of majority

[9] The Board adopted Administrative Law Judge Amchan's decision which stated: The Board has held for over 40 years that "there is no necessary correlation between membership and the number of union supporters since no one could know how many employees who favor union bargaining do not become or remain members thereof," *Terrell Machine Co.,* 173 NLRB 1480, 1481 (1969), [enfd. 427 F.2d 1088 (4th Cir. 1970)]. The reasons as to why there is no such correlation was explained by Administrative Law Judge Fannie Boyls (then called a trial examiner) in *Gulfmont Hotel Co.,* 147 NLRB 997 (1964), enfd. 362 F.2d 588 (5th Cir. 1966), at pp. 1000–1001: Employees for various reasons unconnected with their desire to have a union represent them, may fail to execute check off authorizations. There may be some who prefer, as

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support turns on whether a majority of unit employees wish to be represented by a particular union, not on whether a majority choose to become members of the union).[10] See also, *Narricot Industries,* supra, 353 NLRB at 776 (decreased union membership does not constitute objective proof of a union's loss of majority support).

Respondent argues that these cases are inapplicable in California, a non-right-to-work state, because Respondent operated as a closed shop.[11] Thus, Respondent claims an employee's resignation from the Union under closed shop circumstances in which Union membership is a condition of continued employment can only mean that the employee no longer desires to be represented by the Union. I reject this argument as it rests on a misapprehension of the law. Closed shops are prohibited by Section 8(a)(3) of the Act. Union shop or agency shop provisions are common in both right-to-work and non-right-to-work states. However, these provisions do not compel full union membership. Rather, membership as a condition of employment is whittled down to its financial core. *NLRB v. General Motors Corp.,* 373 U.S. 734, 742 (1963).

c. Were it necessary to determine the meaning of the four remaining statements, I would find they support withdrawal of recognition.

It is unnecessary to determine whether the remaining four statements are clear or ambiguous and, if ambiguous, whether it is more probable than not that they reflect an intention to no longer be represented by the Union. Were it necessary to consider these statements – those of Garcia (I do not wish to be a part of the Union), Gonzalez (I do not wish to be a part of the union), Hartag (I no longer wish to be a part of [the Union], and Pompa (I do not wish to be a part of the Union) -- I would find they are ambiguous and further find that the more reasonable understanding of these statements is that these four employees no longer desired to be represented by the Union.

My finding regarding the Garcia, Gonzalez, Hartag, and Pompa statements is based not only on the reasonable meaning of the words used but also on a pre-*Levitz* decision. In *Green Oak Manor,* 215 NLRB 658 (1974), the employer relied on oral statements from a majority of unit employees that they did not want the union or did not want any part of the union. The Board adopted the administrative law judge's conclusion, id. at 663-664, that these statements meant that employees were dissatisfied with the union's representation and no longer desired the union to represent them.

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a matter of principle, to pay their financial obligations in person; there may be others who prefer to decide when and if they can afford to spare the money for dues and fees; and there may even be some who are willing to vote for and accept union representation but who decide to be free riders and enjoy the expected benefits of representation without paying for them at all. Accordingly, although the voluntary signing of check off authorization by a majority in the unit may be considered as evidence of a union's majority status, the converse is not true. . . .

[10] The Board cited *Trans-Lux Midwest Corp.,*335 NLRB 230, 232 (2001), enfd. mem 53 Fed. Appx. 571 (D.C. Cir. 2002); *TLC St. Petersburg, Inc.*, 307 NLRB 605 (1992), enfd. 985 F.2d 579 (11th Cir. 1993); see also, generally, *Narricot Industries,* 353 NLRB 775, 776 (2009), enfd. 587 F.3d 654 (4th Cir. 2009), cert denied, 131 S.Ct. 59 (2010).

[11] Respondent cites *Terrell Machine Co. v. NLRB,* 427 F.2d 1088, 1090 (4th Cir. 1970), in support of this argument. However, I do not find that *Terrell* supports the argument. It merely notes that in a right to work state, evidence of union membership is entitled to little or no weight as evidence of employee disaffection because many employees in these states are content to reap the benefits of the union's representation without paying union dues.

d. Respondent has failed to rebut the presumption of majority support.

Four of the eight employee statements of disaffection indicated a desire to withdraw from membership in the Union. These statements do not indicate that those four employees no longer desired Union representation. Those four employees plus the seven remaining employees who did not submit statements of disaffection (11 in total) constitute a majority of the 15-employee unit – a clear majority -- who continue to support the Union. Thus, Respondent has failed to rebut the Union's continuing presumption of majority support.

3. By withdrawing recognition from the Union without proof of loss of majority support, Respondent has failed to rebut the presumption of continuing majority status and has violated Section 8(a)(1) and (5) of the Act.

Respondent withdrew recognition after its most recent collective-bargaining agreement expired and thus at a time when the presumption of majority status was rebuttable. Respondent relied on eight statements of disaffection. Four of the statements indicated a desire to terminate membership in the Union. Those four statements could not be relied upon to withdraw recognition and thus the presumption of continuing majority has not been rebutted. Evidence of a desire to withdraw from membership in a union is insufficient to satisfy the *Levitz* requirement of proof that the Union has in fact lost the support of a majority of the unit. Thus, by unilaterally withdrawing recognition from the Union without proof that the Union had in fact lost majority support, Respondent violated Section 8(a)(1) and (5) of the Act. This unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

4. Respondent's post-withdrawal, subjective evidence is irrelevant

Respondent argued at the hearing and on brief that subjective, after-acquired evidence is relevant to the question of whether a majority of unit employees supported the Union. In disagreement, I find the evidence irrelevant not only because the *Levitz* standard is objective and Respondent's proffered evidence was subjective, but also because *Levitz* requires that Respondent have objective evidence of loss of majority status at the time it withdraws recognition – not later.

Respondent avers that in January 2013, it learned that when the eight employees were asked the question "When you wrote [your statement], did you mean you wanted to be represented by the Union or you did not want to be represented by the Union for purposes of collective bargaining?" the employees uniformly meant that they did not want to be represented by the Union for purposes of collective bargaining.[12]

General Counsel strenuously objected to introduction of this subjective, after-acquired evidence. I sustained these objections and thereafter rejected the Respondent's question and answer offers of proof on this issue because the evidence was subjective and because it post-dated the withdrawal of recognition and therefore Respondent was not aware of this evidence at the time it withdrew recognition.

Moreover, given the leading format of the offer of proof question that elicited these

[12] Respondent produced acknowledgements signed by the eight employees regarding their *Johnnie's Poultry* rights. See *Johnnie's Poultry,* 146 NLRB 770, 774, 775 (1964), *enforcement denied,* 344 F.2d 617 (8th Cir. 1965)(setting out safeguards for pre-trial employee questioning).

subjective revelations, "When you wrote [your statement], did you mean you wanted to be represented by the Union or you did not want to be represented by the Union for purposes of collective bargaining?," I would be unwilling to accord the responses much weight even were there no objection to the questions. In any event, during the offer of proof each of the eight employees stated that what they meant was that they did not wish to be represented by the Union for purposes of collective bargaining.

Similarly, after withdrawing recognition, Respondent learned that five unit employees of, at that time, twelve total unit employees signed an attendance sheet at a March 22, 2013 Union meeting to discuss Respondent's bargaining proposals. Not only does this after-acquired evidence not tend to support Respondent's position,[13] it also fails to rise to the level of objective proof necessary under *Levitz*. In any event, this evidence was acquired long after withdrawal of recognition, was not relied on by Respondent in withdrawing recognition, and is not relevant for that reason.[14]

In *Highlands Regional Medical Center,* 347 NLRB 1404, 1407 fn. 17 (2006), enfd. 508 F.3d 28, 32 (D.C. Cir. 2007), the Board stated,

> We need not address the sufficiency of the hearing testimony regarding employees' bare recollections of their sentiments for or against union representation as of April 12, because this evidence was not before the Respondent when it withdrew recognition. As the judge explained, *Levitz* makes clear that an employer may withdraw recognition from a union that represents its employees only when it acts on objective evidence showing that the union lacks the support of a majority of bargaining-unit members. *Levitz,* 333 NLRB at 723-726. Accordingly, the judge correctly deemed the foregoing employee testimony [of recollections of their sentiments] irrelevant.

In agreement, the court stated,

> *Levitz* places the burden on [respondent] to prove by a preponderance of the evidence that on April 12, the day the collective bargaining agreement expired [and the date recognition was withdrawn], the union "had, in fact, lost majority support. Id. [at 725].

* * * * * * *

> [The respondent] insists that it did have additional evidence of loss of majority support. Specifically, it points to the hearing testimony of thirty-five nurses, five of whom had declined to sign the petition but later claimed, after the [May 26] pay raise, to have opposed the union. Both the Board and ALJ, however, refused to credit this testimony, and for good cause: [respondent] had no knowledge of that corroborating evidence on the day it withdrew recognition. On that crucial date, then, besides the committee's petition, [respondent] had only unsubstantiated hearsay assertions that other employees opposed the

[13] For instance, there is no proof that everyone present actually signed the sheet. Additionally, five of twelve employees attending an informational meeting might be considered considerable support thus not warranting an inference of lack of majority support.

[14] Additionally, Respondent sought to introduce post-withdrawal NLRB affidavits of three of the eight employees. These statements were rejected as after-acquired.

> union, which "certainly do not establish the fact of . . . disfavor with the degree of reliability ordinarily demanded in legal proceedings." [Citations omitted]

Thus, the Board and the court clearly rejected use of after-acquired evidence regarding employee sentiment. See also, *RTP Co.,* 334 NLRB 466, 469 (2001), enfd. 315 F.3d 951 (8th Cir. 2003), cert. denied 540 U.S. 811 (2003)("In analyzing the adequacy of an employer's defense to a withdrawal of recognition allegation, the Board will only examine factors 'actually relied on' by the employer. Conduct of which the employer may have been aware, but on which the employer 'did not base' its decision to withdraw recognition from the Union, is of 'no legal significance.'") [citations omitted]. Accordingly, I find that Respondent may not rely on the evidence it received after withdrawal of recognition – either in NLRB affidavits or at the hearing herein.

5. Respondent's claim that it was forced to withdraw recognition or face a claim that it violated Section 8(a)(2) by continuing to recognize a minority union is unfounded.

The Board held in *Levitz* that an employer acts at its peril in withdrawing recognition based on objective evidence that the union has lost majority support. Due to the presumption of continuing majority, an employer who cannot meet this burden is not in jeopardy of a finding that he has rendered unlawful assistance to the union. *Levitz,* supra, 333 NLRB at 725. The Board anticipated that by raising the bar for unilateral withdrawal of recognition and lowering the bar for obtaining an RM election, there would be less temptation to act unilaterally. Id. The Board rejected the dissent position that the majority holding in *Levitz* places employers in a "no-win situation." The majority stated, id. at 726:

> That dilemma, however, is more apparent than real. An employer with evidence of actual loss of majority status can petition for an RM election rather than withdraw recognition immediately; we would not find that the employer violated 8(a)(2) by failing to withdraw recognition while the representation proceeding was pending. [Footnotes omitted]

Thus, Respondent's argument that it would violate Section 8(a)(2) unless it withdrew recognition is without merit.

THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, I find that it must be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. Respondent must recognize the Union as the bargaining representative of the bargaining unit of employees. Although there is no evidence one way or the other as to continuation of the terms and conditions of employment of the expired collective-bargaining agreement, if the terms have not been adhered to, then restoration of the status quo ante requires that Respondent must, upon request of the Union, continue the terms and conditions of its expired agreement unless and until changed through collective bargaining with the Union. Respondent must bargain upon request with the Union as the exclusive collective-bargaining representative of employees in the appropriate bargaining unit and embody any understanding reached in a signed agreement.

If the terms and conditions of the expired collective-bargaining agreement have not been adhered to since July 20, 2012, Respondent shall make whole its employees for losses in

earnings and other benefits which they may have suffered as a result of Respondent's repudiation of the collective-bargaining agreement with such losses to be calculated in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971). Interest on all such sums shall be computed as prescribed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB No. 8 (2010). Additionally, Respondent shall reimburse the unit employees for any expenses ensuing from failure to make the required contributions, as set forth in *Kraft Plumbing & Heating,* 252 NLRB 891, 891 fn. 2 (1980), enfd. mem. 661 F2d 940 (9th Cir. 1981). Such amounts are to be computed in the manner set forth in *Ogle Protection Service,* supra, with interest as prescribed in *New Horizons for the Retarded,* supra, and *Kentucky River Medical Center,* supra. Further, in accordance with *Latino Express,* 359 NLRB No. 44 (2012), Respondent must compensate unit employees for any adverse tax consequences of receiving lump-sum backpay awards and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each unit employee.

Respondent shall post an appropriate informational notice, as described in the attached appendix. This notice shall be posted in Respondent's facility or wherever the notices to employees are regularly posted for 60 days without anything covering it up or defacing its contents. When the notice is issued to Respondent, it shall sign it or otherwise notify Region 20 of the Board what action it will take with respect to this decision. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since July 20, 2012.

Respondent shall, 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 analyze the amount of backpay due, if any, under the terms of this Order.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:[15]

ORDER

Respondent Pacific Coast Supply, LLC d/b/a Anderson Lumber Company, North Highlands, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

    a. Failing and refusing to recognize and bargain with the Union as the exclusive bargaining representative for the following bargaining unit of its employees as described in the parties' most recent collective-bargaining agreement in effect

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

from April 1, 2011 to February 28, 2012: saw tail off employees (who stack materials from the saw, operate forklifts and perform yard work), material handlers, sawyers, and drivers.

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

2. Take the following affirmative action which is necessary to effectuate the purposes of the Act:

a. Recognize the Union as the exclusive collective-bargaining representative of the bargaining unit employees described above.

b. Upon request of the Union, adhere to the terms and conditions set out in the expired collective-bargaining agreement giving effect to its terms retroactive to July 20, 2012, and continuing those terms and conditions in effect unless and until changed through collective bargaining with the Union. If no such request is made by the Union, bargain upon request with the Union as the exclusive collective-bargaining representative of employees in the bargaining unit described above and embody any understanding reached in a signed Agreement.

c. In the absence of a collective-bargaining agreement, before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the above descried unit.

d. Make all affected employees whole, with interest, in the manner set forth in the remedy section of this Decision and Order for any loss of earnings and other benefits suffered as a result of Respondent's repudiation of the collective-bargaining relationship and compensate them for any adverse tax consequences of receiving lump sum backpay and file a report with the Social Security Administration allocating the backpay to the appropriate calendar quarters.

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

f. Within 14 days after service by the Region, post at its facility in North Highlands, California, copies of the attached notice marked "Appendix."[16] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by

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

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 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 proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at that facility at any time since July 20, 2012.

g. Within 21 days after service by the Region, file with the Regional Director of Region 20 a sworn certificate of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply with the provision of this Order.

Dated, Washington, D.C. June 19, 2013

Mary Miller Cracraft
Administrative Law Judge

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 has 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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post, mail, and abide by this notice.

WE WILL NOT refuse to bargain collectively in good faith with Chauffeurs, Teamsters, and Helpers Local 150, International Brotherhood of Teamsters by withdrawing recognition from them without proof that they no longer represent a majority of our cover saw tail off employees (who stack material from the saw, operate forklifts and perform yard work), material handlers, sawyers, and drivers.

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.

WE WILL recognize and, on request, bargain collectively with the Union as the exclusive representative of our employees with respect to wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed document, and WE WILL make employees whole for their losses, if any.

PACIFIC COAST SUPPLY, LLC d/b/a
ANDERSON LUMBER CO.
(Employer)

Dated _____ By _____
(Representative) (Title)

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

901 Market Street, Suite 400

San Francisco, California 94103-1735

Hours: 8:30 a.m. to 5 p.m.

415-356-5130.

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

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 415-356-5139.