Masonic Temple Association of Detroit and 450 Temple, Inc., *and* Local 324, International Union of Operating Engineers (IUOE), AFL–CIO. Case 07–CA–144521

November 29, 2016

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA AND MCFERRAN

On June 6, 2016, Administrative Law Judge Christine E. Dibble issued the attached decision. The Respondents filed exceptions and a supporting brief and the General Counsel filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified and set forth in full below.[2]

ORDER

The National Labor Relations Board orders that the Respondents, Masonic Temple Association of Detroit and 450 Temple, Inc., Detroit, Michigan, a single employer, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Local 324, International Union of Operating Engineers (IUOE), AFL–CIO as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) 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.

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

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time employees in the classifications of Chief Engineer, Assistant Chief Engineer, General Maintenance Engineers I and II, and Maintenance Helpers employed by the Employer at its facility located at 500 Temple Avenue, Detroit, Michigan, but excluding housekeeping employees, office clerical employees, temporary employees, guards, watchmen, supervisors as defined in the Act, and all other employees.

(b) Within 14 days after service by the Region, post at its facility in Detroit, 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 Respondents' authorized repre-

[1] In agreeing with the judge that the instant proceeding is not time-barred, we rely upon established Board precedent holding that the 6-month limitations period prescribed by Sec. 10(b) of the Act begins to run only when a party has clear and unequivocal notice of a violation of the Act; actual or constructive notice will not be found where a party sends conflicting signals or otherwise engages in ambiguous conduct. *CAB Associates*, 340 NLRB 1391, 1392 (2003). Here, prior to January 13, 2015, the Respondents did not manifest a clear and unequivocal repudiation of their overall bargaining obligation sufficient to begin the running of the 10(b) period. Although the Respondents had failed to respond to the Union's repeated demands to negotiate a new collective-bargaining agreement, they continued to remit dues and medical and insurance payments to the Union until May 2014. Moreover, it was not until January 13, 2015, that the Respondents clearly and unequivocally informed the Union that they would not recognize or bargain with it because there were no longer any union members in the bargaining unit. Accordingly, we agree with the judge that the unfair labor practice charge filed 3 days later, on January 16, 2015, was timely.

In addition, in affirming the judge's findings, we do not rely on her citation to *Crete Cold Storage, LLC*, 354 NLRB 1000 (2009), a case decided by a two-member Board. See *New Process Steel, L.P. v. NLRB*, 560 U.S. 674 (2010).

[2] We shall modify the judge's recommended Order to conform to the Board's standard remedial language, to add a description of the bargaining unit, and to provide for the posting of the notice in accord with *J. Picini Flooring*, 356 NLRB 11 (2010). We shall substitute a new notice to conform to the Order as modified.

There are no exceptions to the judge's grant of an affirmative bargaining order to remedy the Respondents' unlawful refusal to recognize and bargain with the Union. Therefore, we find it unnecessary to provide a specific justification for this affirmative bargaining order. *SKC Electric, Inc.*, 350 NLRB 857, 862 fn. 15 (2007); *Heritage Container, Inc.*, 334 NLRB 455, 455 fn. 4 (2001). See also *Scepter, Inc., v. NLRB*, 280 F.3d 1053, 1057 (D.C. Cir. 2002).

Member Miscimarra believes the Board should evaluate the appropriateness of an affirmative bargaining order, which is an "extraordinary remedy," *Lee Lumber and Building Material Corp. v. NLRB*, 117 F.3d 1454, 1461 (D.C. Cir. 1997), by giving "due consideration to the employees' section 7 rights," determining whether "other purposes . . . override the rights of the employees to choose their bargaining representatives," and evaluating whether "other remedies, less destructive to employees' rights, are . . . adequate." *Peoples Gas System, Inc. v. NLRB*, 629 F.2d 35, 46 (D.C. Cir. 1980); see also *Lee Lumber*, above, 117 F.3d at 1460–1462. However, he agrees that such an evaluation is unnecessary here given the absence of exceptions to the bargaining order in this case.

[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."

sentative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondents customarily communicate with their employees by such means. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since January 13, 2015.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 7 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. November 29, 2016

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Lauren McFerran, Member

(SEAL) 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 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.

WE WILL NOT fail and refuse to recognize and bargain with Local 324, International Union of Operating Engineers (IUOE), AFL–CIO (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time employees in the classifications of Chief Engineer, Assistant Chief Engineer, General Maintenance Engineers I and II, and Maintenance Helpers employed by the Employer at its facility located at 500 Temple Avenue, Detroit, Michigan, but excluding housekeeping employees, office clerical employees, temporary employees, guards, watchmen, supervisors as defined in the Act, and all other employees.

MASONIC TEMPLE ASSOCIATION OF DETROIT AND 450 TEMPLE, INC.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/07–CA–144521 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

Scott Preston, Esq., for the General Counsel.
Eric I. Frankie, Esq., of Detroit, Michigan, for the Respondent.
Amy Bachelder, Esq., of Detroit, Michigan, for the Charging Party.

DECISION

STATEMENT OF THE CASE

CHRISTINE E. DIBBLE, Administrative Law Judge. This case was tried in Detroit, Michigan, on November 10, 2015. The original charge in this case was filed by Local 324, International Union of Operating Engineers (IOUE), AFL–CIO (the Union/Charging Party) on January 16, 2015. The Charging Party filed amendments to the charge on August 17, and September 9, 2015. On September 14, 2015, the National Labor Relations Board (NLRB/the Board) Region 7 issued the complaint. The complaint alleges that Masonic Temple Association of Detroit (Respondent MTA) and 450 Temple, Inc. (Respondent 450), is a single employer within the meaning of the National Labor Relations Act (NLRA/the Act), and since about January 13, 2015, has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the unit in violation of the Section 8(a)(1) and (5) of the Act.

After the trial, the General Counsel, Respondent MTA and Respondent 450 filed briefs, which I have read and considered.[1] Based on those briefs and the entire record, including the testimony of the witnesses and my observation of their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent MTA and Respondent 450 are corporations with an office and facility located at 500 Temple Avenue in Detroit, Michigan. They have been engaged in the business of operating a theater, a special events venue, and providing banquet facilities for various functions. The complaint alleges as follows:

> At all material times, Respondents have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; have interrelated operations with common purchasing and sales, and events scheduling; and have held themselves out to the public as a single integrated business enterprise.

(GC Exh. 1(j)) Respondents filed a joint answer denying that they are a single-integrated business enterprise and a single employer within the meaning of the Act. However, Respondents presented no evidence at the trial, nor made an argument in its posthearing brief to support a finding that they are not a single-integrated business enterprise and a single employer within the meaning of the Act. The evidence is undisputed that Respondent 450 was established as the "business arm of the Temple." (GC Exh. 8; Tr. 101.) Since the mid to late 1990s the officers of Respondent MTA have been elected to also serve as officers of Respondent 450. (Tr. 99; GC Exh. 7.) Trustees of Respondent MTA can make motions and vote on decisions affecting Respondent 450. Moreover, Respondent MTA has 100 percent ownership of Respondent 450. They also operate out of the same office. Consequently, I find that Respondent MTA and Respondent 450[2] are a single-integrated business enterprise and a single employer within the meaning of the Act. *Rogan Bros. Sanitation*, 362 NLRB No. 61, slip op. at 4 (2015); *Bolivar-Tees, Inc.*, 349 NLRB 720 (2007); *Denart Coal Co., Inc.*, 315 NLRB 850, 851 (1994); *Herbert Industrial Insulation Corp.*, 319 NLRB 510, 524 (1995).

During a representative 1-year period, Respondents derived gross revenues in excess of $500,000 and purchased and collectively received, at its Detroit facility goods valued in excess of $5000 directly from points outside the state of Michigan. Accordingly, I find, as Respondents admit, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

I also find, as Respondents admit, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

The Facts

Background

The backdrop for this dispute is the Masonic Temple (the Temple) building at 500 Temple Avenue in Detroit, Michigan. Although it is owned by Respondents, it has been managed by different entities at various points in its existence. The Temple is a massive approximately 500,000 square foot building with a 20 story tower that houses different lodge rooms of fraternal organizations. The building also consists of a 4000 seat theater, a ballroom, a drill hall, and at various times restaurants. The Temple is home to Masonic fraternities and is also used to host public events (e.g., weddings, parties, concerts, live theater).

The Temple began as a financially viable entity. However, in about 2004, its financial picture began to dim, in part, because of losses in rental income. The Shriners, who paid approximately $25,000 in monthly rent, terminated its rental agreement with Respondent MTA and relocated to Southfield, Michigan. The following year the Scottish Rite organization, which also paid about $25,000 in monthly rent, moved its headquarters from the Temple to Dearborn, Michigan. Sometime in 2010, the financial situation of the Temple (and by association Respondents) further deteriorated. Respondents experienced difficulty paying utility bills, property taxes, and pay-

[1] Administrative law judge exhibits are identified as "ALJ Exh." General Counsel exhibits are identified as "GC Exh." Respondent exhibits are identified as "R. Exh." Charging Party exhibits are identified as "CP. Exh." Joint exhibits are identified as "Jt. Exh." The hearing transcript is identified as "Tr." The General Counsel, Respondents, and Charging Party posthearing briefs are identified as "GC Br.", "R Br.", and "CP Br.", respectively. Respondent MTA and Respondent 450 filed a joint posthearing brief.

[2] Since I have found that Respondent MTA and Respondent 450 are a single-integrated business enterprise and a single-employer, I will refer to them as "Respondents" except where a clear distinction is required.

roll. At some point, Respondents was in arrears on payment to the Union's healthcare fund.[3]

Since about January 2008, Roger Sobran (Sobran) has been president of Respondents. He is responsible for overseeing the daily operations of the Temple. Steven Genther (Genther) is the Temple's general manager. The record does not establish his dates of employment at the Temple, except to show that he has been a supervisor since at least 2007. In 2013 and 2014, Genther was also a trustee for Respondent 450. James Lloyd (Lloyd), a full-time bargaining unit employee, began working as an engineer at the Temple in January 1989. He also served as the union steward from 2007 until his resignation from his employment with Respondents on June 30, 2013. During his tenure at the Temple, Lloyd received successive promotions from engineer to group leader, assistant chief engineer and finally chief engineer. When Lloyd resigned there remained approximately seven bargaining unit engineers employed by Respondents. Paul Buono (Buono) was also part of the engineering crew and a full-time bargaining unit member at the Temple. Buono resigned his employment in about June 2014.[4]

In May 2010, James Arini (Arini) succeeded Tom Scott (Scott) as the union's business representative for its stationary division.[5] Since December 2010, Arini has represented the Temple's bargaining unit employees. In his role as the business representative, Arini ensures that bargaining unit members are represented by negotiating and monitoring the proper enforcement of the collective-bargaining agreement (CBA). He has also served as the Union's treasurer for about the past 3-½ years.

Since about 1968, Local 547 IUOE had represented bargaining unit employees working at the Temple. However, in approximately 2007 or 2008, Local 547 merged and was subsumed into Local 324 IUOE. Consequently, since at least 1968, maintenance engineers, boiler operators, and operating engineers working at the Temple have been represented by the Union or its predecessor. These employees have entered into CBAs with various Temple operators since about 1968. Beginning in the early 1980s until 2007, the Nederlanders operated the Temple but the unit employees worked for Respondent MTA. (Tr. 20.) The most recent CBA of record between the Union and Respondent MTA was effective from August 1, 2003, through July 31, 2006. (GC Exh. 3.) The CBA recognized the unit as:

> [A]ll full-time and regular part-time maintenance engineers, maintenance helpers, watchman and chief engineer employed by the Employer at its facility located at 500 Temple Avenue, Detroit, Michigan, but excluding housekeeping employees, office clerical employees, temporary employees, guards, supervisors as defined in the Act, and all other employees.

(GC Exh. 3.) The evidence also established that the city code required that commercial buildings use licensed operators to work on their boiler and refrigeration equipment. Likewise, the CBAs negotiated by the Union mandated that bargaining unit employees perform work on those units.[6] Although the parties never agreed to another CBA after its expiration, Respondents continued to remit dues to the Union that it received from its union employees. Respondents also continued to make payments, albeit irregularly, to the Union's healthcare fund.

From 2007 to 2010, Olympia Entertainment operated the Temple and employed the unit employees. It entered into a CBA with the Union, which was effective from January 1, 2008 through December 31, 2009. (GC Exh. 2.) The Union and Olympia Entertainment agreed to a 30-day extension of the CBA following its expiration. (GC Exh. 2.) The CBA essentially maintained the same recognition clause as the most recent CBA between the Union and Respondent MTA with only minor changes. It recognized the unit as:

> [A]ll full-time and regular part-time employees in the classification of Chief Engineer, Assistant Chief Engineer, General Maintenance Engineers I and II, and Maintenance Helpers employed by the Employer at its facility located at 500 Temple Avenue, Detroit, Michigan, but excluding housekeeping employees, office clerical employees, temporary employees, guards, watchmen, supervisors as defined in the Act, and all other employees.

(GC Exh. 2.) On or about December 1, 2010, Olympia Entertainment ended its relationship with the Temple and terminated its employees. It is undisputed that after the expiration of the contract extension between the Union and Olympia Entertainment, there were no other CBAs in effect between the Union and other entities affiliated with the Temple. After Olympia Entertainment left, its dues paying bargaining unit employees, Lloyd and Buono, and the remaining six to eight non-dues paying bargaining unit employees became employees of Respondent MTA. Respondent MTA resumed operations of the Temple with Olympia Entertainment's exit.

December 15, 2010, Union's Formal Request to Bargain

In December 2010, Genther approached Lloyd and told him that Sobran said the Respondent MTA was going to suspend or refuse to recognize the Union.[7] Lloyd informed Scott who

[3] Although a majority of the bargaining unit members were not dues paying union members, the Union's healthcare fund was available to all bargaining unit members. In 2014, one union member and approximately five nonunion members were receiving health coverage through the Union's healthcare fund.

[4] James Arini and Sobran provided contradictory testimony on whether bargaining unit members remained after Buono resigned. Sobran insisted that after Buono resigned, there were no other bargaining unit members employed by Respondent. He bases this assertion on the fact that there were no other *dues paying* union members after Buono resigned. (emphasis added) I find Sobran's argument is without merit for reasons discussed more fully in the analysis portion of this decision.

[5] The stationary division is defined as, "[the] operating engineers that typically operate boilers, refrigeration equipment, chillers, and maintain office buildings and other buildings throughout the state." (Tr. 56.)

[6] Arini provided undisputed testimony about the city code requirement, and the mandate of the CBA regarding boiler and refrigeration work.

[7] Sobran denied making the statement. However, I do not find Sobran's denial credible. Sobran provided shifting reasons for not engaging in contract negotiations. He also admitted that he felt contract

responded that Respondent could not take that action. Lloyd relayed this information to Genther who said that Sobran, as an agent of Respondent, had decided to eliminate the Union. When Lloyd told Scott about the conversation he had with Genther, Scott stated that Sobran did not have the authority to eliminate the Union. During the same timeframe, early December 2010, Arini introduced himself to Lloyd and Genther. He briefly talked with Genther about steps the Union and Respondent MTA needed to take to negotiate an agreement. However, Arini did not get a response from Respondent MTA about starting bargaining sessions. Although Sobran denied Arini made attempts to start contract negotiations, I do not find his denials credible. It is undisputed that in December 2010, Arini told Genther that the Union wanted to start contract negotiations with Sobran, Respondent's agent. It is equally clear there is no evidence Sobran responded to this request. Even assuming Genther did not relay this request to Sobran, it is irrelevant to Respondent MTA's obligation to bargain because the request was made to one of Respondent's admitted agents, Genther. I therefore find that Arini communicated to Respondent MTA that the Union wanted to engage in negotiation of a new CBA but Sobran failed to respond.

Consequently, by letter dated December 15, 2010, Arini sent Sobran a written request to bargain over a new CBA. The letter read:

> Please consider this communication the formal request to the Masonic Temple Association to meet and fulfill its obligation to bargain with the International Union of Operating Engineers, Local 324 regarding wages, benefits, and working conditions for all Operating Engineers employed at the Masonic Temple.

(CP Exh. 1.) As a result of Respondent MTA's failure to respond to the request, in January 2011, the Union filed, with NLRB, an unfair labor practice charge against Respondent MTA for refusing and failing to bargain in good faith with the Union. Subsequently, the parties entered into a settlement agreement with Respondent MTA agreeing to "recognize the Union and bargain in good faith as a successor employer" (GC Exh. 4.)[8] Beginning in late January 2011 until May 2011, there were negotiation sessions between Respondent MTA and the Union that occurred about once a month.[9] Arini and Lloyd negotiated on behalf of the Union and Sobran and Genther represented Respondent MTA at the bargaining sessions. The parties were unable to reach an agreement; and there were no other bargaining sessions after May 2011.

After their last negotiation session in May 2011, the Union was informed that a new unnamed entity would take over management of the Temple; and the Union should wait until the changeover to negotiate a CBA with it. In the fall of 2011, the Detroit Masonic Temple Theater Company (DMTTC) took over management of the Temple. The Union held one negotiation session with DMTTC that occurred in January 2012. Again, Arini and Lloyd represented the Union with Sobran representing Respondent MTA and Attorney Mike Smith representing DMTTC. Within months of its takeover of the Temple's operations, DMTTC became involved in a dispute with Respondent MTA over lease payments. Consequently, the Union was precluded from engaging in another bargaining session because of the dispute. In September 2012, Sobran met with employees to inform them that DMTTC would be leaving. On November 9, 2012, DMTTC and Respondent MTA ended their association. Shortly thereafter it was decided that Respondent 450 would become the for-profit business arm of the Temple and take over its management. Respondent MTA was organized as the nonprofit side of the Temple. There is no evidence that employees were notified by Respondent MTA that Respondent 450 was taking over management of the Temple.[10]

Attempts to Engage in Collective Bargaining from 2012 to January 2015

From late 2012 to January 13, 2015, Arini made multiple attempts to restart contract talks between the Union and Respondents. During this period, he would visit the Temple monthly and frequently telephone the office in an effort to get Sobran to respond to his queries about scheduling bargaining sessions. He would leave messages for Sobran with the receptionist and, or Genther who both assured him that they would give Sobran the messages. While admitting that he had not been very aggressive in his attempts because of the Temple's precarious financial situation, nevertheless, in October 2014, Arini increased his efforts to get a CBA in place because the Union's last dues paying member, Buono, had resigned in June 2014; and the Respondents were demanding that the Union refund the medical/insurance payments made by them on behalf of Buono. From October 2014, through January 2015, Arini spoke primarily with Genther about Respondents' arrears to the Union's healthcare fund but would always end the conversation by reminding Genther that he needed to speak with Sobran about starting contract talks. During several of these discussions, Arini informed Genther that if a contract was not negoti-

negotiations were pointless because the majority of unit employees were not dues paying union members. It is therefore more plausible than not that he told Genther he intended to withdraw recognition of the Union. Regardless, Arini's testimony that Genther relayed this information to him is undisputed.

[8] Sobran testified that he did not understand he was signing an agreement to bargain in good faith with the Union. I find his denial is nonsensical because the agreement clearly states that Respondent MTA agrees to "recognize the Union and bargain in good faith…" (GC Exh. 4) The phrase leaves no room for misinterpretation.

[9] Sobran denied that their meetings were bargaining sessions. He testified that the parties met twice in early 2011 to discuss nonunion employees' healthcare coverage. However, I do not find him credible on this point. Sobran admitted the meetings were held to discuss the settlement agreement that specifically mandated Respondent MTA engage in bargaining sessions. Regardless, this point is relatively insignificant to the complaint at issue.

[10] Lloyd provided undisputed testimony that he did not notice Respondent 450 was managing the Temple until about June 2012, when his checks started being issued by it. After the changeover, the terms and conditions of his employment (and presumably that of the other employees) remained unchanged, including work equipment, work rules, work policies, and suppliers. Genther, who was Lloyd's direct supervisor under Olympia Entertainment's management and Respondent MTA, continued as his direct supervisor.

ated soon, the Union's trustees were going to discontinue extending healthcare coverage to nonunion employees. Genther would always assure him that he would relay the message to Sobran.

January 13, 2015 Attempts to Start Collective-Bargaining Sessions

On January 13, 2015, Arini was finally able to speak with Sobran on the telephone about starting negotiation sessions. At some point in the discussion, Arini told Sobran that the Union's trustees would no longer fund healthcare for nonunion employees if a CBA was not negotiated. Arini also informed Sobran that the Union would file an unfair labor practice charge with the NLRB unless he agreed to negotiate. Sobran refused by telling Arini that Respondents would never again be a union employer because Michigan was now a right-to-work state.[11] Following the conversation, Arini filed the charge at issue with NLRB alleging that Respondents, as a single employer, failed and refused to bargain in good faith. Arini has not contacted Respondents since their failed discussion on January 13, 2015.

Discussion and Analysis

The 8(a)(1) and (5) Violation—Failure to Bargain in Good Faith

Section 8(a)(1) of the Act reads that it is an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7." Section 8(a)(5) prohibits an employer from refusing to "bargain collectively" with its employees' representatives. The good-faith standard is used by the courts and the Board to determine if the parties have met their obligation to bargain under the Act. The Board takes a case-by-case approach in assessing whether parties have met, conferred, and negotiated in good faith. *National Licorice Co. v. NLRB*, 309 U.S. 350 (1940) (the Court adopted the "good faith" standard for an employer's conduct); *St. George Warehouse, Inc.,* 349 NLRB 870 (2007) (the Board reviews the totality of the employer's conduct in deciding if the employer has satisfied its obligation to confer in good faith).

Respondents deny violating the Act by arguing that (1) the unfair labor practice charge at issue is untimely; (2) the Union never made a valid demand to bargain; and (3) the Union is not the exclusive representative of a majority of Respondents employees in an appropriate bargaining unit. The General Counsel contends, however, that Respondents' reasons for refusing to bargain with the Union are invalid. According to the General Counsel, the law does not support the premise that expiration of a CBA relieves the employer from engaging in good-faith bargaining if requested by a union. The General Counsel also argues that the evidence is clear the Union made several demands to bargain; and Respondents' argument that it can withdraw union recognition because the remaining employees are nonunion is contrary to Board law. Last, the General Counsel contends that Sobran admitted that the Union presented him with a request to bargain on January 13, 2015, thus making the complaint timely.

Complaint is timely under Section 10(b) of the Act

Respondents contend that the unfair labor practice charge at issue was filed outside of the 6-month limitation period set forth in Section 10(b) of the Act. Specifically, Respondents argue that the Union was aware as early as December 2010 that "Sobran and Respondents were, allegedly, refusing to bargain in good faith." (R. Br. 6.) Respondents points to Lloyd's and Arini's actions noting Lloyd admitted that he learned in December 2010 that Sobran did not want to bargain with the Union and "Sobran did not change his position on this issue from December, 2010, until June 30, 2013." Id. Respondents also note Arini telephoned Sobran on January 13, 2015, because Arini believed that since the January 16, 2011 settlement agreement, Respondents had not responded to the Union's request to bargain or Arini's monthly attempts to contact Sobran to request bargaining. (R. Br. 5.)

I find that Respondents' argument is without merit. As previously noted, in December 2010, Lloyd learned that Sobran was threatening not to recognize the Union. The facts establish that from December 2010 to 2013, Lloyd did not submit a written demand to bargain to Sobran or Genther. Nonetheless, on December 15, 2010, the Union submitted a written request to bargain to Respondent MTA; and filed an unfair labor practice charge with the NLRB when Respondent MTA failed to respond to the demand. The parties entered into a settlement agreement whereby Respondent MTA agreed to "bargain in good faith as a successor employer." (CP Exh. 1; GC Exh. 4) Consequently, it is irrelevant that Lloyd, as a union steward, did not submit a demand to bargain because Arini, in his official capacity as the union's business representative, submitted a request to bargain soon after Lloyd learned of Respondents refusal to recognize the Union, which ultimately led to Respondent MTA's consent to bargain. I also find that it was not unreasonable for the Union to assume after the January 2011 settlement agreement that Respondents would continue to recognize it as the exclusive representative for Respondents' bargaining unit employees. Further, Respondents continued to remit union dues and make healthcare contributions to the Union's healthcare trust fund until at least May 2014. Respondents also made payments for Lloyd's and Buono's health insurance until their resignations in June 2013, and May 2014, respectively. Given these facts, I do not find that it is plausible Respondents would have informed the Union prior to May 2014 that it was withdrawing recognition and refusing to bargain with the Union.

The record also establishes that despite Arini's repeated attempts to contact him, Sobran would not respond to him until their telephone conversation on January 13, 2015. It was during this conversation that Sobran told Arini that because there were no longer any union members working for Respondents, he did not feel it necessary and would not bargain with the Union. There is no evidence that between May 2014, and January 13, 2015, Respondents informed the Union that it would not recognize it as the exclusive bargaining representative of an

[11] Sobran denied making this comment and disagreed with Arini's version of the discussion. I do not find Sobran credible on this point. During his testimony, Sobran admitted several times that he understood Arini was trying to get him to negotiate a CBA by threatening to file a charge against Respondents for refusing to bargain. (Tr. 121, 124 & 133–134.)

appropriate bargaining unit, and would not bargain with the Union for a new CBA. It is clear, therefore, that January 13, 2015, is when the Union was made aware of Respondents' decision not to recognize and/or bargain with it. The charge in this case was filed 3 days later, well within the 6-month time period established in Section 10(b) of the Act.

Accordingly, I find that Respondents argument that the complaint at issue it untimely is without merit.

Respondents failed to rebut the presumption of majority union support

It is presumed that an incumbent union retains its majority status. This presumption is irrefutable during the term of a CBA that does not exceed 3 years. *Trailmobile Trailer, LLC*, 343 NLRB 95, 97–98 (2004); *Auciello Iron Works, Inc. v. NLRB*, 517 U.S. 781, 785–787, 116 S.Ct. 1754, 135 L.Ed.2d 64 (1996). If, however, a CBA has expired, the presumption that the incumbent union has majority status is rebuttable. *NLRB v. Curtin Matheson Scientific*, 494 U.S. 775, 778 (1990); *McDonald Partners, Inc. v. NLRB*, 331 F.3d 1002, 1004 (D.C.Cir. 2003). The Board has held, "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 Furniture Co.,* 333 NLRB 717, 725 (2001). See also *Champion Home Builders Co.,* 350 NLRB 788, 791 (2007).

In the case at hand the CBA has expired. Consequently, there is a rebuttable presumption that the Union retains its majority status. Respondents have the burden of proof on this point. I find, however, that Respondents have failed to sustain its burden.

The only "evidence" Respondents present to support its argument that the Union lost its majority status is Sobran's testimony that after Buono resigned, none of the remaining workers told him that they were currently or wanted to be union members. This argument was reiterated in the posthearing brief filed by Respondents' counsel. The posthearing brief reads in relevant part,

> Sobran testified, without contradiction, that no current employees of Respondents have indicated that they are or wish to be Charging Party's members. Arini admitted that he had no idea of how many of Respondents' employees could possibly be in Charging Party's claimed bargaining unit. Thus, Sobran was correct in January, 2015, to tell Arini that there would be not (sic) purpose to bargain because Charging Party had no members on site.

(R. Br. 7.) Respondents' argument is contrary to current Board law. In Anderson Lumber Co.[12] the Board adopted the administrative law judge's decision holding that bargaining unit employees' union membership status is not determinative of the employer's obligation to bargain. On appeal, to the United States Court of Appeals, District of Columbia Circuit noted that the Levitz rule did not create a rule "requiring employees to expressly state that they no longer want the union to represent them."[13] See also *Crete Cold Storage, LLC*, 354 NLRB 1000, fn. 2 (2009) (determination of majority 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).

The record is devoid of evidence showing that action was taken by the remaining bargaining unit employees to express their lack of support for the incumbent Union. Respondents failed, for example, to present a petition from the majority of remaining bargaining unit employees seeking to decertify the Union; present statements from the majority of remaining bargaining unit employees that they no longer wished to be represented by the Union; or present other substantive evidence that the majority of the bargaining unit employees wanted to withdraw their support of the incumbent Union. Since Levitz, the Board has consistently held that evidence of a desire to withdraw from membership in the union is insufficient proof that the Union has in fact lost the support of a majority of the unit. In Pacific Coast Supply the court noted,

> The Board has long maintained a distinction between an employee's desire to be represented by a union, and his or her desire to be a member of a union. Whether a union has "majority support turns on whether most unit employees wish to have union representation, not on whether most unit employees are members of a particular union."'

Id. at 327 (quoting *Trans-Lux Midwest Corp.,* 335 NLRB 230, 232 (2001). Respondents fail to grasp this distinction.

Accordingly, I find that the evidence shows the Union has maintained its majority support even after the expiration of the CBA, which Respondents failed to rebut.

The bargaining unit at issue is appropriate for collective bargaining

In its answer to the complaint, Respondents deny that the employees identified in paragraph nine of the complaint constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act. Respondents, however, presented no argument or evidence to support its position. The bargaining unit is the same unit that is contained in the 2006 CBA with Respondent MTA and the 2008 CBA with Olympia Entertainment. (GC Exhs. 2, 3.) It is also the same bargaining unit agreed upon by the parties in the January 2011 settlement agreement recognizing the bargaining unit as,

> All full-time and regular part-time employees in the classifications of Chief Engineer, Assistant Chief Engineer, General Maintenance Engineers I and II, and Maintenance Helpers employed by the Employer at its facility located at 500 Temple Avenue, Detroit, Michigan, but excluding housekeeping employees, office clerical employees, temporary employees, guards, watchmen, supervisors as defined in the Act, and all other employees.

(GC Exh. 4.) Lloyd provided undisputed testimony that there were approximately seven bargaining unit engineers when he resigned in June 2013. Likewise, Sobran acknowledged that there are about six to eight current employees (general building

[12] 360 NLRB No. 67 (2014).

[13] *Pacific Coast Supply, LLC v. NLRB*, 801 F.3d 321, 331 (2015).

maintenance and a part-time engineer) who fit within the description of the bargaining unit set forth in the January 2011 settlement agreement. (Id.) Moreover, Arini testified, without contradiction, that the city code required licensed operators to work the Temple's boiler and refrigeration equipment; and the successive CBAs mandated that this work be performed by bargaining unit employees. Respondents presented nothing to contradict these facts.

Based on the evidence, therefore, I find that the Union is the exclusive representative of Respondents' employees in an appropriate bargaining unit.

The Union made a valid demand to bargain which Respondents refused

Respondents contend that the complaint should be dismissed because the Union "did not make any written demand to bargain to Respondents since the settlement agreement (G C Exh. 4) was entered [into] January, 2011." (R. Br. 6.) I find however that the evidence shows the Union made repeated requests to bargain with Respondents.

The counsel for the General Counsel rightly notes in his posthearing brief that during his testimony Sobran admitted during their telephone conversation on January 13, 2015, Arini was trying to get him to "negotiate" by threatening to file an unfair labor practice charge with the NLRB. Sobran testified,

> Well, I think the beginning of the call, I felt a little threatened that he was just trying to threaten me into negotiating with him. My question to him was negotiate what; we have no union people…

(Tr. 121–122.) Despite his subsequent attempt to reframe the conversation with Arini as a "chat", Sobran's own words show that he clearly understood that Arini was asking him to negotiate a new CBA. He also acknowledged that he believed Arini "wanted to come in and negotiate an agreement for people" that in his mind "aren't even represented by the union." (Tr. 133–134.) Moreover, the chain of events leading to the January 13, 2015 telephone call support a finding that Respondents were aware of the Union's demand to bargain and attempts to get negotiations scheduled. First, there was the December 15, 2010 written demand to bargain, followed by the January 2011 unfair labor practice charge and subsequent settlement agreement mandating Respondent MTA engage in good-faith bargaining with the Union. From December 2012, to January 13, 2015, Arini made monthly visits to the Temple expressing to Genther on seven to eight occasions the Union's desire to negotiate a contract, and to tell Sobran of the need to schedule negotiating sessions. These actions culminated in the Union's final demand to bargain made in January 2015.

Accordingly, I find that the Union made a valid demand to bargain which Respondents refused in violation of Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

1. By failing and refusing to bargain with the Union as as the exclusive collective-bargaining representative of unit employees, Respondents violated Section 8(a)(1) and (5) of the Act.

2. The above violation constitutes an unfair labor practice that affects interstate commerce within the meaning of the Act.

3. Respondents have not otherwise violated the Act.

REMEDY

Having found that Respondents committed the unfair labor practice set forth above, I shall order it to cease and desist from its unlawful conduct and to post an appropriate notice and take other affirmative action designed to effectuate the purposes of the Act. More specifically, Respondent will be ordered to recognize and bargain in good faith with the Union for a reasonable period of time over the establishment of a collective-bargaining agreement.

On these findings of fact and conclusions of law, and on the entire record herein, I issue the following recommended[14]

ORDER

The Respondents, Masonic Temple Association of Detroit and 450 Temple, Inc., a single employer, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with, or withdrawing recognition from, the Union as the exclusive bargaining representative of the unit employees at Respondents facility located at 500 Temple Avenue in Detroit Michigan.

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

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

(a) Within 14 days from a request, bargain collectively with the Union as the exclusive bargaining representative of unit employees at Respondents 500 Temple Avenue facility located in Detroit, Michigan.

(b) Within 14 days after service by the Region, post at Respondents' facility at 500 Temple Avenue in Detroit, Michigan copies of the attached notice marked "Appendix."[15] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondents' authorized representative, shall be posted by the Respondents 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 Respondents 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, the Respondents have gone out of business or closed the facilities involved in these proceedings, the Respondents shall duplicate and mail, at its own expense, a copy of the no-

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

[15] 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."

tice to all current employees and former employees employed at those facilities by Respondent at any time since January 13, 2015.

(c) 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 Respondents have taken to comply.

Dated at Washington, D.C. June 6, 2016.

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.

WE WILL NOT refuse to bargain with, or withdraw recognition from, the Union as the exclusive bargaining representative of the employees at Respondents' facility at 500 Temple Avenue in Detroit, Michigan.

WE WILL NOT, in any like or related manner interfere with, restrain, or coerce employees in the exercise of right guaranteed them in Section 7 of the Act.

WE WILL, within 14 days from a request, bargain collectively with the Union as the exclusive bargaining representative of employees employed at our facility at 500 Temple Avenue in Detroit, Michigan.

MASONIC TEMPLE ASSOCIATION OF DETROIT AND 450 TEMPLE, INC.