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Littlejohn Electrical Solutions, LLC and International Brotherhood of Electrical Workers, Local Union No. 20. Case 16–CA–214170

September 17, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN
AND KAPLAN

On March 4, 2019, Administrative Law Judge Robert A. Ringler issued the attached decision. The Respondent filed exceptions and a supporting brief, the Charging Party and the General Counsel each filed answering briefs, and the Respondent filed a reply brief. The General Counsel also filed limited cross-exceptions.

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

The 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 conclusions² and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Littlejohn Electrical Solutions, LLC, Denton, Texas, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Dated, Washington, D.C. September 17, 2019

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

In its exceptions, the Respondent states that the Board lacks jurisdiction because the charge should have been deferred to the parties’ contractual grievance-arbitration process. Because it failed to raise that contention to the judge and because its brief in support of exceptions does not advance any argument in support of this contention, the Respondent has waived it. See *Yorkaire, Inc.*, 297 NLRB 401, 401 (1989) (“A contention raised for the first time in exceptions to the Board is ordinarily untimely raised and, thus, deemed waived.”), *enfd.* 922 F.2d 832 (3d Cir. 1990); *Holsum de Puerto Rico, Inc.*, 344 NLRB 694, 694 fn. 1 (2005) (unsupported exceptions may be disregarded), *enfd.* 456 F.3d 265 (1st Cir. 2006). In any event, under Sec. 10(a) of the Act, the Board’s jurisdiction over unfair labor practice allegations “shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement[.]” Moreover, the Board does not defer charges to arbitration when, as here, a party has wholly repudiated the very agreement that allows for arbitration in the first place. See, e.g., *United Cerebral Palsy of New York City*, 347 NLRB 603, 606 (2006).

John F. Ring, Chairman

Lauren McFerran, Member

Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Becky Mata, Esq., for the General Counsel.
Clinton Kyle Littlejohn,¹ for the Respondent.
David K. Watsky, Esq. (Lyon, Gorsky & Gilbert, LLP), for the Charging Party.

DECISION

STATEMENT OF THE CASE

ROBERT A. RINGLER, Administrative Law Judge. This case was heard in Fort Worth, Texas, on August 20 and 21, 2018. The complaint alleged that Littlejohn Electrical Solutions, LLC (LES or the Respondent) violated Section 8(a)(5) of the National Labor Relations Act (the Act) by, *inter alia*, failing to recognize the International Brotherhood of Electrical Workers, Local Union No. 20 (the Union) as the limited collective-bargaining representative of a unit of electricians, refusing to apply its 8(f) collective-bargaining agreement, and disregarding the Union’s information requests. On the entire record, including my observation of witness demeanor and consideration of posthearing briefs, I make the following

Because the Respondent failed to raise it to the judge we similarly find the Respondent has waived its contention that the Union operated an illegal hiring hall by requiring prospective employees to become union members. *Yorkaire*, *supra*. However, even if we were to reach that issue, the record contains no credited evidence supporting the Respondent’s contention. In fact, Union Agent Adrian Cepeda credibly testified that the Union allowed nonmembers to register in its hiring hall and that the Union’s problem with the Respondent was its failure to use the hiring hall, not the membership status of its employees.

We also find no merit in the Respondent’s contention that the Union’s alleged breaches of the parties’ collective-bargaining agreement privileged the Respondent to withdraw recognition. Breaches of an 8(f) pre-hire agreement do not nullify it; the agreement remains in effect until its expiration date, and neither party may repudiate the 8(f) bargaining relationship during the term of the agreement. *John Deklewa & Sons*, 282 NLRB 1375, 1387–1388 (1987), *enfd.* sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), *cert denied* 488 U.S. 889 (1988). Moreover, the Respondent did not file any grievances over the Union’s alleged breaches, and the record does not substantiate the Respondent’s claim that the Union breached the agreement.

² The judge inadvertently wrote the name of a different employer in his fourth conclusion of law. We modify that conclusion to substitute “LES” for “ADT.”

¹ The Respondent was pro se.

FINDINGS OF FACT²

I. JURISDICTION

At all material times, LES, a corporation with an office and place of business in Denton, Texas, has been owned by Clinton Kyle Littlejohn (Littlejohn), and has been an electrical contractor in the construction field. In 2017, it provided contracting services exceeding \$50,000 for the Tanger Outlets, Sur LaTable and Wells Fargo bank (i.e., enterprises that are all directly engaged in interstate commerce). It, therefore, admits, and I find, that it is an employer engaged in commerce, within the meaning of Section 2(2), (6), and (7) of the Act. It further admits, and I find, that the Union is a Section 2(5) labor organization.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Labor Agreement

The Union has a master 8(f) agreement (the CBA) with the North Texas Chapter, National Electrical Contractors Association (the NECA), which is executed by signatory employers within the Union's jurisdiction.³ (GC Exh. 6.) Several parts the CBA are relevant herein.

1. Duration and termination clause

Article I of the CBA contains this duration and termination clause:

This Agreement . . . [is] effect[ive from] . . . December 1, 2016 . . . to November 30, 2019. . . . [nd] shall continue . . . from year to year thereafter, from December 1 through November 30 of each year, unless changed or terminated. . . .

[An] Employer . . . desiring to . . . terminate this Agreement must provide written notification at least 90 days prior to the expiration date of the Agreement or any anniversary date occurring thereafter.

(Id. at 2.)

2. Bargaining unit

The CBA describes the Union as the limited exclusive collective-bargaining representative of the following bargaining unit of employees (the unit):

All journeymen wiremen, foremen and apprentices performing inside electrical work in the northern Texas counties of Collin, Comanche, Cooke, Dallas, Delta, Denton, Ellis, Erath, Fannin, Grayson, Hood, Hunt, Jack, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell, Tarrant, and Wise, but, excluding office clerical employees, guards and supervisors as

defined in the Act.

(Id. at 5, 13–14).

3. Apprenticeship program

Article IV of the CBA provides the following apprenticeship program:

There shall be a local Joint Apprenticeship and Training Committee (JATC). . . .

The JATC shall be responsible for the training of Apprentices, Journeymen, Installers . . . and all others. . . .⁴

(Id. at 8–9); see also (GC Exh. 5). JATC Training Director Kim Allen testified that, in addition to substantive electrician training, apprentices are repeatedly introduced to the CBA and the Union's hiring hall procedures throughout their apprenticeship. Union Business Manager Karsten Frentrup corroborated this testimony.

B. 2011—Littlejohn Joins, and is Expelled from, the JATC

On April 28, 2011, Littlejohn joined the JATC and signed a mandatory Scholarship Loan Agreement (the SLA). (GC Exh. 4(a).) His SLA had a 5-year term and required him to reimburse the Union \$12,500 for the cost of his JATC education on a sliding scale basis, if he breached the SLA.⁵ Littlejohn's apprenticeship abruptly ended, however, after his employer fired him for stealing wire, and he was consequently expelled from the JATC. (Tr. 94.)

C. May 3, 2012—Littlejohn Rejoins the JATC and Learns about the CBA

Following his firing and expulsion, Littlejohn reapplied to the JATC, and sought a fresh start. He was reinstated and signed a new SLA with the same provisions.⁶ (GC Exh. 4(b).)

D. Early 2016—Littlejohn Intentionally Breaches the SLA

In spite of the Union granting him a second chance to rejoin the JATC and his knowledge of the SLA's clear ban against working for a nonunion signatory, Littlejohn covertly breached the SLA and formed LES (i.e., a nonunion electrical contractor), without notifying the Union or becoming a signatory 8(f) employer. On April 26, 2016, he surreptitiously incorporated LES. (Tr. 123.) His breach triggered his obligation to repay \$12,500 to the JATC, which the Union sought to enforce after his sham was exposed.

E. Early February 2017—Union Discovers LES Jobsite and SLA Breach

In early-February, the Union discovered Littlejohn's ruse, and learned that LES was performing electrical contracting work in

² Unless otherwise stated, factual findings arise from joint exhibits, stipulations, and undisputed evidence.

³ Under §8(f) of the Act, the Company, a construction industry employer, may grant recognition to a union, without regard to the establishment of its majority status. See *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988).

⁴ The JATC is a 5-year training program, which culminates in the receipt of a journeyman electrician license.

⁵ The SLA provided that an apprentice is liable for the pro-rata portion of their scholarship loan, if the "Apprentice's training agreement is terminated by either the Apprentice's voluntary action or by the action of the Committee during the period of training provided for in this Agreement." (GC Exh. 4(a)). The SLA defined, by way of example, a breach as an apprentice performing work for a non-Union entity.

⁶ The 2012 SLA was effectively identical to the 2011 SLA.

violation of the SLA. JATC Training Director Allen told Littlejohn that the JATC intended to expel him and require him to repay \$12,500 under the 2012 SLA. Littlejohn responded with a creative solution; he asked to avoid his JATC expulsion and \$12,500 debt by becoming a signatory contractor.

F. February 23, 2017—LES Becomes a Signatory Employer

Frentrup testified that, although the JATC initially wanted to expel Littlejohn and end its relationship with a worker who repaid a substantial second chance with another sham, he eventually viewed LES becoming a signatory employer as a win-win situation that would save Littlejohn a \$12,500 fine, allow him to continue his apprenticeship, and, most critically, provide union members with job opportunities at LES. On February 23, 2017, the parties memorialized Littlejohn's creative solution into a written agreement, and signed a Letter of Assent (the LOA), which provided that:

[LES] hereby authorize[s] North Texas Chapter NECA as its collective bargaining representative for all matters contained in . . . the current and any subsequent approved inside labor agreement between the North Texas Chapter, NECA and Local Union 20, IBEW. . . . [T]he undersigned firm agrees to comply with . . . all of the provisions contained in said current and subsequent labor agreements. This authorization . . . shall become effective [immediately]. . . .

It shall remain in effect until terminated by the undersigned employer giving written notice to the North Texas Chapter NECA and to the Local Union at least one hundred fifty (150) days prior to the then current anniversary date of the applicable approved labor agreement.

(GC Exh. 2.) Union Organizer Cepeda recalled the Union clearly reminding Littlejohn that signing the LOA meant that LES was now a union contractor, which had to obtain electricians from the Union's hiring hall. He said that Littlejohn was given the CBA for guidance. (Tr. 48–49.) He said that Littlejohn did not ask questions about the LOA or CBA, and, instead, focused upon how electricians were obtained from the Union's hiring hall. He stated that Littlejohn was controlled and not under duress. (Tr. 51–52.) Frentrup corroborated his account. (Tr. 211–213.)

Littlejohn testified that he was deeply distraught, when he signed the LOA. He said that he was faced with a dire situation: either pay a \$12,500 fine and be expelled by the JATC, or sign an undesired LOA. He said, while he settled on the LOA, his acceptance was involuntary. He remarkably claimed that he did not even know about the CBA at that point. (Tr. 324–326.)

For several reasons, I do not credit Littlejohn's contention that he was unaware of the CBA or that his LOA acceptance was the involuntary product of insurmountable duress. *First*, after having a JATC relationship with the Union dating back as far as 2011, it is implausible that he was unaware of the CBA. The testimony that he was repeatedly exposed to the CBA during his

JATC training is persuasive and plausible. *Second*, it is unconvincing that Littlejohn was placed under such a high degree of duress that his acceptance of the LOA was rendered involuntary. The LOA was plainly written, and it is improbable Littlejohn, a relatively successful small business owner who could handle his own affairs, was left so traumatized that he was left unable to make rational decisions or understand the LOA. This testimony, very candidly, appeared to be a concocted effort to avoid his legal obligations. *Third*, Littlejohn's willingness to engage in other instances of deceitful conduct (e.g., stealing wire, surreptitiously creating LES in violation of his SLA, etc.) undercuts his overall credibility. *Finally*, Cepeda and Frentrup were generally credible and cooperative witnesses, with strong demeanors. In sum, I find that Littlejohn's signing of the LOA was knowing and voluntary, and that he was well-aware of the CBA and his obligations.⁷

G. February 27, 2017—LES' Violates the CBA by Using Non-Union Workers

Between February 27 and December 24, 2017 (i.e., after Littlejohn signed the LOA requiring usage of the Union's hiring hall to obtain electricians), LES performed unit work in the North Texas area with workers that were not referred by the Union's hiring hall. See, e.g. (GC Exhs. 8, 9 (LES personnel records) (LES attorney letter); Tr. 167–171, 180–182). Littlejohn conceded that he "hired employees outside of the Union's hiring hall in 2017 and that [this practice] continued into 2018."⁸ (Tr. 140, LL. 15–19); see also (Tr. 143, 163.)

H. January 2018—Union's Discovers LES' Violation of the CBA

Union Organizer Cepeda visited the Toyota Music Factory jobsite in Irving, Texas with fellow Union Organizer Cesar Martinez to distribute organizing materials to nonunion electricians. Cepeda testified that, during this visit, they observed LES performing electrical work at a Gloria's Restaurant jobsite with non-union personnel. He said that, when they approached Littlejohn, he did not deny his actions and said, "do what you need to do." (Tr. 60.) When Cepeda relayed this breach to Frentrup, he also determined that LES was not making benefit payments in violation of the CBA.

I. Mid-January 2018—Union Meeting with Littlejohn

Littlejohn, Frentrup, and NECA Representative Steve Corley met at Corley's office to discuss the Gloria's Restaurant discovery, LES' ongoing noncompliance with the LOA and CBA, and its effective repudiation of its collective-bargaining relationship with the Union. Frentrup said that his goal for the meeting was to reach a resolution, although his efforts were unsuccessful.

J. January 26, 2018—Information Request

The Union sent a letter to LES, which sought to investigate LES' CBA breaches:

Please provide the following. . . .

that he chose a different option, does not render his initial choice involuntary.

⁸ He identified Clay Carney, Enoch Ramirez, Andrew Matos, and Andres Olivares as examples. (Tr. 140–143.)

⁷ Or put another way, Littlejohn made a rational decision to sign the LOA, which he likely deemed at the time to be the lesser of two competing evils. The mere fact that he engaged in damage control, which is common to many business decisions, or that he now wishes in hindsight

[1] The names, addresses, phone numbers, . . . License classification, pay rates, hours worked, benefits contributions paid, and termination dates of all employees hired over the last 12 months. . . .

[2] List of employees hired by methods other than those prescribed by the Collective Bargaining Agreement. . . .

[3] The name and locations of all projects performed in the last 12 months. . . .

[4] The names of . . . Foreman and General Foreman . . . on each project . . . in the last 12 months.

(GC Exh. 13.) Frentrup said that, in March 2018, LES' attorney partially replied to paragraph 1, and provided workers' names and their employment status, but ignored the remainder of par. 1, and paragraphs 2 through 4 in their entirety. See also (GC Exh. 14).

K. LES' Attempts to Terminate the Bargaining Relationship

1. January 26 and 30, 2018 letters

On January 26, 2018, LES unsuccessfully attempted to terminate its limited collective-bargaining relationship with the Union, and sent the following letter:

Please be informed that effective immediately, Littlejohn Electrical Solutions is withdrawing from the Letter of Assent dated February 23, 2017 and all other related agreements between the Company and the [Union]. . . .

(R. Exh. 16); see also (R. Exh. 17). On January 30, 2018, LES sent another letter to the Union, and restated its desire to terminate its bargaining relationship. (R. Exh. 18.)

2. Union's position on LES' withdrawal attempts

Frentrup opined that LES' withdrawal attempts were invalid for the following reasons:

[T]wo things were missing . . . [He] did not terminate his bargaining rights with NECA. And . . . his opt-out letter . . . [needed to be] at the close of the contract duration, which would have been a long time later. . . .

(Tr. 240–241). Frentrup's position was consistent with the LOA and CBA.

III. ANALYSIS

A. Section 8(a)(5)—Failure to Recognize the Union and Repudiation of the CBA⁹

LES violated Section 8(a)(5). Since February 27, 2017, it has failed to recognize the Union as the limited exclusive collective-bargaining representative of the unit and adhere to the CBA.

1. Legal precedent

Under 8(f), construction industry employers and unions can

enter into collective-bargaining agreements, absent a union establishing its majority status. Parties entering into 8(f) agreements are bound to those contracts for their terms, although they remain free to repudiate a contract following its expiration. See *John Deklewa & Sons*, 282 NLRB 1375, 1386 (1987), *enfd. sub nom. Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), *cert denied* 488 U.S. 889 (1988). Moreover, construction contractors can bind themselves to 8(f) agreements by various means; they can do so directly, through membership in multiemployer associations bargaining on their behalf, or by signing “me-too” agreements that bind them to agreements negotiated by the union and the association (i.e., as LES did). See *GEM Management Co.*, 339 NLRB 489, 496 (2003), *enfd. 107 Fed.Appx. 576* (6th Cir. 2004). Such “me-too” agreements may bind an employer not only to an existing agreement, but to successor master contracts negotiated between the association and union. See, e.g., *W. J. Holloway & Son*, 307 NLRB 487, 489 (1992) (agreement employer signed bound it to terms of current master agreement and “any successor agreements”); *Construction Labor Unlimited*, 312 NLRB 364, 367 (1993), *enfd. 41 F.3d 1501* (2d Cir. 1994) (acceptance agreement bound an employer to current master agreement and “any successor agreement(s)”). In order to determine an employer's obligation under a “me-too” agreement, the Board will look to the terms of the agreement. If the agreements has an automatic renewal provisions, it will be given effect and bind the non-signatory “me-too” employer to the continuation of the agreements. See *Cedar Valley Corp.*, 302 NLRB 823, 823 (1991), *enfd. 977 F.2d 1211* (8th Cir. 1992) (employer was bound by “me-too” contract and attempted repudiation during its term was invalid).

2. Analysis

LES was bound by the LOA. Littlejohn knowingly signed the LOA, which bound LES to the CBA until its November 30, 2019 expiration. See, e.g., *W. J. Holloway & Son*, *supra*; *Construction Labor Unlimited*, *supra*. LES' efforts to terminate the CBA during its term were ineffective, and it remained bound. See *Cedar Valley*, *supra*, 302 NLRB at 823 (“party may not lawfully repudiate an 8(f) agreement during its term.”) (citing *John Deklewa & Sons*, *supra*). As a result, LES's failure to recognize the Union as the limited collective-bargaining representative of the unit, and its repudiation of the CBA, violated Section 8(a)(5).¹⁰

B. Section 8(a)(5)—Information Request¹¹

LES unlawfully failed to reply to the Union's January 26, 2018 information request. Given that its recognition withdrawal was invalid, it remained obligated to fulfill the Union's valid information request.

1. Legal precedent

Generally, an employer must provide requested information to a union representing its employees, whenever there is a

requisite written notice of its intention to withdraw **WELL BEFORE** “at least one hundred fifty (150) days prior to” November 30, 2019.

(GC Exh. 2.) Such notice should be sent in a way that will allow LES to prove such service at a later date (e.g., by overnight mail, certified mail, etc.), and must be sent to **BOTH** the Union and the North Texas Chapter, NECA, which LES previously neglected to do. (Id.)

¹¹ These allegations are listed under complaint pars. 6 and 8.

⁹ These allegations are listed under complaint pars. 5, 7 and 8.

¹⁰ LES is presently locked into the LOA and CBA during its term (i.e., until it expires on November 30, 2019), cannot presently withdraw from this CBA, and must diligently apply its terms. LES would be wise to carefully study the termination procedures described in the LOA and CBA, and make certain to timely serve its withdrawal from any successor agreements and automatic renewals, if so desired, by supplying the

probability that the information sought is necessary and relevant to its representational duties. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). This duty covers relevant bargaining and grievance materials. *Postal Service*, 337 NLRB 820, 822 (2002). Information, which concerns unit terms and conditions of employment, is “so intrinsic to the core of the employer-employee relationship” that it is presumptively relevant. *U.S. Information Services*, 341 NLRB 988 (2004). “[A]n unreasonable delay in furnishing such information is as much a violation of the Act as a refusal to furnish the information at all.” *Postal Service*, 332 NLRB 635, 640 (2000). “Absent evidence justifying an employer’s delay in furnishing . . . relevant information, such a delay will constitute a violation. *Woodland Clinic*, 331 NLRB 735, 737 (2000). Multimonth delays in providing information are generally invalid. *Bundy Corp.*, 292 NLRB 671 (1989) (2.5 months); *Woodland Clinic*, supra, 331 NLRB at 737 (1.5 months).

3. Analysis

On January 26, 2018, the Union validly requested the following information: (1) names, contact information, licensing data, pay rates, hours worked, benefits paid, and termination dates of all employees performing unit work over the last 12 months; (2) employees hired outside the CBA’s procedures; (3) names and locations of all projects performed in the last 12 months; and (4) names of Foreman and General Foreman on each project performed in the last 12 months. (GC Exh. 13.) The Union needed this information in order to investigate LES’ repudiation of the CBA and evaluate an appropriate remedy, which was relevant to its representational duties to the unit. LES, thus, violated the Act by unreasonably delaying until March 2018 (i.e., waiting 2 months) to supply a partial response to paragraph 1 (see, e.g., *Woodland Clinic*, supra), and by failing to supply the remaining information covered by paragraphs 1 to 4.

CONCLUSIONS OF LAW

1. LES is an employer engaged in commerce under Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Union is, and, at all material times, was the limited exclusive bargaining representative of the following appropriate unit:

[A]ll employees employed by LES, including journeymen wiremen, foremen and apprentices performing inside electrical work in the northern Texas counties of Collin, Comanche, Cooke, Dallas, Delta, Denton, Ellis, Erath, Fannin, Grayson, Hood, Hunt, Jack, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell, Tarrant, and Wise, but, excluding office clerical employees, guards and supervisors as defined in the Act.

4. ADT violated Section 8(a)(5) by:

¹² Backpay is the traditional remedy in construction industry repudiation cases; the calculation of such backpay is reserved for the compliance phase. *J. E. Brown Electric*, 315 NLRB 620, 622–623 fn. 8 (1994).

¹³ Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate set in

(a) Failing and refusing to recognize the Union as the limited exclusive collective-bargaining representative of its unit employees during the term of the CBA.

(b) Refusing to apply, and repudiating, the CBA effective from December 1, 2016, through November 30, 2019, to which it is a signatory, and any automatic extensions thereof.

(c) Refusing to bargain collectively with the Union, by failing and refusing to provide requested information, and unreasonably delaying the provision of information, that is necessary and relevant to its role as the limited exclusive representative of LES’ unit employees.

5. The unfair labor practices set forth above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that LES committed unfair labor practices, it is ordered to cease and desist and to take certain affirmative action designed to effectuate the Act’s policies.

Because LES and the Union had an 8(f) bargaining relationship, LES must recognize the Union as the limited exclusive collective-bargaining representative of their unit employees. *Allied Mechanical Services*, 351 NLRB 79, 83 & fn. 18 (2007). It shall commence assigning unit work to qualified applicants from the Union’s hiring hall, and make unit employees and hiring hall applicants whole for any loss of earnings and other benefits they may have suffered as a result of its unlawful conduct.¹² Backpay shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), that is compounded daily as set forth in *Kentucky River Medical Center*, 356 NLRB 6 (2010). Under *King Soopers, Inc.*, 364 NLRB No. 93 (2016), it shall compensate affected employees for search-for-work and interim employment expenses, regardless of whether those expenses exceed their interim earnings.¹³ Under *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014), it shall compensate affected unit employees for the adverse tax consequences, if any, of receiving a lump sum backpay award, and, under *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016), within 21 days of the date the amount of backpay is fixed either by agreement or Board order, it shall file with the Regional Director for Region 16 a report allocating backpay to the appropriate calendar year. The Regional Director is responsible for transmitting the report to the Social Security Administration.

Having found that LES violated Section 8(a)(5) by failing to comply with the terms and conditions of the CBA, including by failing to make health, welfare and pension benefit contributions on behalf of unit employees, it must now comply with the agreement, and make all the required benefits contributions that have not been made since around February 27, 2017, including any additional amounts due the benefit funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).¹⁴ LES shall reimburse unit employees for any expenses

New Horizons, supra, compounded daily under *Kentucky River Medical Center*, supra.

¹⁴ To the extent that any employees made personal contributions to union funds that were accepted by the funds in lieu of the Respondents’ delinquent contributions during the period of the delinquency, LES will

ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 44 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987). LES shall rescind those actions that have been found to constitute repudiation of the LOA and CBA, recognize and bargain in good faith with the Union as the limited exclusive collective-bargaining representative of unit employees, and give full force and effect to the CBA that is effective from December 1, 2016, through November 30, 2019, and any automatic extensions thereof.

Regarding LES' failure to provide relevant requested information to the Union, it shall provide such information to the extent that it has not already done so. It shall post the attached notice in accord with *J. Picini Flooring*, 356 NLRB 11 (2010).

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended¹⁵

ORDER

Littlejohn Electrical Solutions, LLC, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the Union by failing and refusing to furnish it with information, and unreasonably delaying the provision of information, that is relevant and necessary to it as the limited exclusive collective-bargaining representative of unit employees.

(b) Altering unit employees' terms and conditions of employment by not assigning them work and acquiring workers from outside the Union's hiring hall to perform unit work.(c)

(c) Failing and refusing to continue in effect unit employees' terms and conditions of employment in the LOA and CBA effective from December 1, 2016, through November 30, 2019, to which it is signatory, and any automatic extensions thereof, by failing and/or refusing to make payments to the Union's health, welfare and pension funds.

(d) Repudiating its limited collective-bargaining relationship, the LOA, and the CBA effective from December 1, 2016, through November 30, 2019, and any automatic extensions thereof, with the Union.

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

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

(a) Furnish to the Union, to the extent that it has not already done so, in a timely manner the information requested by it since January 26, 2018.

(b) Rescind the changes in terms and conditions of employment for its unit employees that were implemented since about February 27, 2017, and restore the terms and conditions of employment that were in effect before it made the changes, including its termination of unit health, welfare and pension fund

contributions, suspension of assigning work to unit employees, and cessation of obtaining qualified applicants from the Union's hiring hall to perform unit work.

(c) Within 14 days from the date of this Order, offer unit employees to whom it has failed and refused to offer work assignments since February 27, 2017, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(d) Within 14 days of the date of this Order, offer reinstatement to qualified applicants who would have been referred to LES for employment through the Union's hiring hall to perform unit work were it not for LES' unlawful conduct without prejudice to their seniority or any other rights or privileges to which they would have been entitled.

(e) Make unit employees and applicants whole for any loss of earnings and other benefits suffered as a result of the unilateral changes in their terms and conditions of employment, in the manner set forth in the remedy section of this decision.

(f) Compensate affected employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 16, within 21 days of the date the amount of backpay is fixed, either by agreement or Board Order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(g) Give full force and effect to the terms and conditions of employment provided in the CBA effective from December 1, 2016 through November 30, 2019, and any automatic extensions thereof, by making all required payments to the Union's health, welfare and pension funds that have not been made since about February 27, 2017, including any additional amounts due the funds, in the manner set forth in the remedy section of this decision.

(h) Recognize and bargain in good faith with the Union as the limited exclusive collective-bargaining representative of employees in the unit identified in the CBA during the term of the agreement, and any automatic extensions thereof.

(i) Rescind its repudiation of the CBA effective through November 30, 2019, and give full force and effect to the terms and conditions of employment provided in the agreement during the terms of the agreement, and any automatic extensions thereof.

(j) 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 analyze the amount of backpay due under this Order.

(k) Within 14 days after service by the Region, post at its Denton, Texas facility copies of the attached notice marked

reimburse the employees, but the amount of such reimbursement will constitute a setoff to the amount that it otherwise owes the funds. See, e.g., *Oliva Supermarkets LLC*, 363 NLRB No. 170, slip op. at 1 fn. 5 (2016).

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

“Appendix.”¹⁶ Copies of the notice, on forms provided by the Regional Director for Region 16, 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. 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 Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If 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 February 27, 2017.

(1) Within 21 days after service by the Region, file with the Regional Director for Region 16 a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

Dated Washington, D.C. March 4, 2019

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 collectively with the International Brotherhood of Electrical Workers, Local Union No. 20 (the Union) by failing and refusing to furnish it with, and unreasonably delaying the provision of, requested information that is relevant and necessary to the Union’s performance of its functions as the limited exclusive collective-bargaining representative of our unit employees.

WE WILL NOT change your terms and conditions of employment by ceasing to assign you work and ceasing to obtain qualified applicants from the Union’s hiring hall to perform unit work.

WE WILL NOT fail and refuse to continue in effect the terms and conditions of employment contained in our collective-bargaining agreement with the Union, which is effective from December 1, 2016 through November 30, 2019 (the CBA), and any automatic extensions thereof, by failing and/or refusing to make payments to the Union’s health, welfare and pension plans.

WE WILL NOT repudiate our limited collective-bargaining

relationship, or the CBA, which is effective from December 1, 2016, through November 30, 2019, and any automatic extensions thereof.

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 furnish to the Union in a timely manner the information requested by the Union on January 26, 2016.

WE WILL rescind the changes in the terms and conditions of employment for our unit employees that were unilaterally implemented about February 27, 2017, and restore the terms and conditions of employment that were in effect before we made the changes, including assigning work to Unit employees and obtaining qualified applicants from the applicable local union office to perform unit work.

WE WILL, within 14 days from the date of the Board’s Order, offer unit employees to whom we have failed and refused to offer work assignments since February 27, 2017, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL, within 14 days from the date of the Board’s Order, offer reinstatement to qualified applicants who would have been referred to us for employment through the applicable local union hiring hall to perform unit work were it not for our unlawful conduct, without prejudice to their seniority or any other rights or privileges to which they would have been entitled.

WE WILL make unit employees and applicants whole for any loss of earnings and other benefits suffered as a result of the unilateral changes in their terms and conditions of employment, plus interest, less any net interim earnings, plus reasonable search-for-work and interim employment expenses.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 16, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

WE WILL give full force and effect to the terms and conditions of employment provided in the CBA effective from December 1, 2016 to November 30, 2019, and any automatic extensions thereof, by making all required payments to the Union’s health, welfare and pension funds that have not been made since about February 27, 2017, including any additional amounts due the funds.

WE WILL recognize and bargain in good faith with the Union as the limited exclusive collective-bargaining representative of our employees in the bargaining unit identified in the CBA during the terms of the agreement, and any automatic extensions thereof.

WE WILL rescind our repudiation of the CBA effective from December 1, 2016, to November 30, 2019, and give full force and effect to the terms and conditions of employment provided in the agreement during its term, and any automatic extension

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.”

thereof.

LITTLEJOHN ELECTRICAL SOLUTIONS, LLC

The Administrative Law Judge's decision can be found at www.nlr.gov/case/16-CA-214170 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.

