UNIVERSAL STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

SOUTHWEST DISPLAYS & EVENTS d/b/a
SWXGLOBAL DESIGN & PRODUCTION

Case No 16-CA-264618

CENTRAL SOUTH CARPENTERS REGIONAL
COUNCIL, CARPENTERS LOCAL UNION 429

Phill H. Melton, Esq. for the General Counsel.
Stephen C. Key, Esq. (Brown Fox, PLLC, Dallas, Texas)
for the Respondent.
Barry Jewell, Esq. (The Youngdahl Law Firm, P.C., Houston, Texas) for the Charging Party.

DECISION

STATEMENT OF THE CASE

Arthur J. Amchan, Administrative Law Judge. This case was submitted to me on a stipulated record on August 23, 2021. The Union filed the charge on August 13, 2020. The General Counsel issued the complaint on March 18, 2021.

The General Counsel alleges that Respondent violated Section 8(a)(5) and (1) of the Act by withdrawing recognition of the Union and failing and refusing to provide the Union information it requested regarding the impact of COVID-19 on bargaining unit employees. Respondent’s short post-trial brief essentially concedes the allegations in the complaint.

Respondent in its brief submits that it reversed its decision to withdraw recognition of the Union in June 2021 and has been negotiating with the Union for a successor agreement ever since. This does not absolve or negate the fact that Respondent violated the Act, as alleged. For one thing, the repudiation of its unfair labor practices is not sufficiently timely. It is settled that under certain circumstances an employer may relieve himself of liability for unlawful conduct by repudiating the conduct. To be effective, however, such repudiation must be “timely,” “unambiguous,” “specific in nature to the coercive conduct,” and “free from other proscribed illegal conduct.” Passavant Memorial Hospital, 237 NLRB 138 (1978).

On the entire record, after considering the briefs and statement filed by the Charging Party, I make the following
FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Texas corporation, manufactures, assembles, installs and transports trade show exhibits from its facility in Carrollton, Texas. In the 12-month period ending on December 31, 2020, Respondent sold and shipped goods valued in excess of $50,000 directly to points outside of Texas. The Respondent 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 and that the Union is a labor organization within the meaning of Section 2(5) of the Act.  

II. ALLEGED UNFAIR LABOR PRACTICES

Respondent has had a Section 9(a) bargaining relationship with the Union since 2018. This relationship is memorialized in a collective bargaining agreement effective September 1, 2018. That Agreement describes the appropriate bargaining unit as all employees performing production work in the plant of the Employer in the DFW Metroplex jurisdiction covered by the Union. Excluded from the Unit are all other employees, sign pictorial preparations, transportation, painting, drayage, office employees, clerical employees, supervisors, guards and professionals as defined in the NLRA.

Respondent’s recognition was extended by mutual agreement without any changes until August 31, 2020. On June 19, 2020 Union Executive Secretary-Treasurer Jason Engels sent Respondent’s Chief Executive Officer Brian Cree an email. That email stated that the Union desired to amend the collective bargaining agreement. On June 20, 2020, CEO Cree responded by informing the Union that it would not be extending its collective bargaining agreement with the Union.

On June 25 the parties had a conference call. On June 30, Respondent emailed the Union, attaching a letter that Respondent intended to terminate its bargaining relationship with the Union in 60 days.

The Union sent Respondent an information request on July 24, 2020. The information the Union asked Respondent to provide by August 3, 2020 included the following:

4. Please provide information about the effect of the COVID-19 virus on company operations, whether rebranded or not.
   a. Please list the number and classification of any employees who have been quarantined or who have gotten the virus.
   b. The number of workdays lost to COVID-19 related matters.
   c. All steps taken to protect the health and safety of the workforce from the effect of COVID-19.

1 Although Respondent denied jurisdiction in its Answer, it admits in paragraph 11 of the parties’ stipulation that the Board has jurisdiction over Respondent.
As of June 17, 2021, Respondent had not provided the information requested in paragraph 4 above, that the Union requested on July 24, 2020.2

On August 4, 2020, Respondent’s Vice-President of Operations, Eric Lewis spoke with Kavin Griffin, Executive Assistant to the Union Secretary-Treasurer Engels. Lewis asked Griffin to schedule a time to discuss issues between the Union and Respondent. Griffin texted Lewis on August 13, asking to meet at 0900 on Monday, August 17. The company did not respond to that text. The Union filed the initial charge in this matter the same day.

Analysis

Section 8(a)(5) of the Act requires that an employer must recognize and bargain with the labor organization that its employees have properly chosen. Once a labor organization is recognized, it enjoys a continued presumption of majority support by employees. But when the union has been the collective-bargaining representative of the employees for over a year that presumption can be rebutted by the employer. The employer, which carries the burden of proof, must establish an actual loss of majority employee support before withdrawing recognition of a union. See Levitz Furniture Co. of the Pacific, 333 NLRB 717, 723 (2001) (“[A]n employer may not ‘withdraw recognition unless it can prove that an incumbent union has, in fact, lost majority support’”).

Absent the preferred method of requesting the Board to conduct a representation election, an employer may choose at its peril to unilaterally withdraw recognition if presented with evidence of an asserted loss of majority support. See Levitz, supra at 725. If a union disputes the grounds for withdrawal of recognition, the employer must prove by a preponderance of the evidence “that the union had, in fact, lost majority support at the time [it] withdrew recognition.” Id. The employer may only rely upon evidence that existed at the time of the withdrawal of recognition. Objective evidence relied upon by the employer when withdrawing recognition may include admissions by union officials that the union no longer has majority support and written and oral statements which clearly state that the bargaining unit employees do not want to be represented by the union. If the employer fails to meet its burden of proof, the withdrawal of recognition is a violation of Section 8(a)(5) and (1) of the Act. Respondent has not met this evidentiary burden in the instant case.

Finally, information concerning the health and safety of bargaining unit employees is relevant and necessary to the Union’s role as collective bargaining representative of those employees. Thus, Respondent also violated Section 8(a)(5) and (1) in failing to provide this requested information, in a timely manner, Minnesota Mining and Manufacturing Co., 261 NLRB 27, 29 (1982).

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2 The General Counsel does not allege a violation of the Act with regard to the first 3 paragraphs of the information request.
Conclusions of Law

Respondent Southwest Display and Events violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from the Union in August 2020 and failing and refusing to timely provide information requested by the Union.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

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

ORDER

The Respondent, Southwest Displays and Events, its officers, agents, successors, and assigns, shall

1. Cease and desist from
   (a) Failing and refusing to provide the Union with relevant information requested on July 24, 2020.
   (b) Withdrawing recognition from the Union and subsequently failing and refusing to bargain with the Union as the exclusive collective bargaining representative of the unit employees.
   (c) In any like or related manner 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) Recognize and, on request, bargain with the Union as the exclusive collective bargaining representative of all employees performing production work in the plant of the Employer in the DFW Metroplex jurisdiction covered by the Union, and if an understanding is reached, embody the understanding in a signed agreement.
   (b) Furnish to the Union in a timely manner the information requested by the Union on July 24, 2020.
   (c) On request by the Union, rescind any changes in the terms and conditions of employment that were unilaterally implemented since August 13, 2020.
   (d) Make unit employees whole for any loss of earnings and other benefits (including contributions to union benefit funds) suffered as a result of Respondent’s withdrawal of recognition and failure to bargain with the Union.3

3 If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.
4 Whether and to what extent Respondent may have to make payments pursuant to this Order will be
(e) Compensate 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 award to the appropriate calendar years.

(f) Compensate employees for their search-for work and interim employment expenses regardless of whether those expenses exceed their interim earnings.

(g) File with the Regional Director for Region 16 a copy of the W-2 forms reflecting any backpay award.

(h) 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 the terms of this Order.

(i) Within 14 days after service by the Region, post at its Texas facilities copies of the attached notice marked “Appendix.”5 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, the 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former unit employees employed by the Respondent at any time since August 13, 2020.

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

Dated, Washington, D.C. September 27, 2021

Arthur J. Amchan
Administrative Law Judge

determined at the compliance stage of this proceeding.

5 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.”
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 withdraw recognition from the Union, Carpenters Local Union 429, without objective evidence that the Union has lost majority support in the bargaining unit.

WE WILL NOT fail and/or refuse to provide the Union with relevant information that it requests.

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, on request, bargain with the Union, Carpenters Local Union 429, and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All employees performing production work in the plant of the Employer in the DFW Metroplex jurisdiction covered by the Union,

WE WILL make employees whole for any loss of earnings and/or benefits (including contributions to union benefit funds) resulting from our withdrawal of recognition from the Union and/or unilateral changes that we have made to unit members since we withdrew recognition and refused or failed to bargain with the Union.

WE WILL, at the Union’s request, rescind any unilateral changes we have made to unit employees terms and conditions of employment.

WE WILL compensate employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award and will file with the Regional Director of 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 to the appropriate calendar years.
WE WILL compensate employees for their search for work and interim employment expenses regardless of whether those expenses exceed their interim earnings.

SOUTHWEST DISPLAYS & EVENTS d/b/a
SWXGLOBAL DESIGN & PRODUCTION

(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.

819 Taylor Street, Room 8A24, Fort Worth, TX  76102-6178
(817) 978-2921, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge’s decision can be found at www.nlrb.gov/case/16-CA-264618 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.

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, (817) 978-2925.