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

LABORFORCE, LLC, M & K EMPLOYEE SERVICES, AND M & K TRUCK CENTERS, AS JOINT EMPLOYERS AND/OR ALTER EGOS

and

AUTOMOBILE MECHANICS' LOCAL 701, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

Case 13-CA-321415
13-CA-327735
13-CA-344076

Sylvia Posey, Esq.,
for the General Counsel.
Jack Finklea, Esq., and
Donald Vogel, Esq.,
for the Respondent.
Mr. William LePinske,
for the Charging Party.

DECISION

STATEMENT OF THE CASE

MELISSA M. OLIVERO, Administrative Law Judge. This case was tried in Chicago, Illinois, on October 8 and 9, 2024. Automobile Mechanics' Local 701, International Association of Machinists and Aerospace Workers, AFL-CIO (Union or Local 701), filed the charge in Case 13-CA-321415 on July 7, 2023, and a first amended charge on January 9, 2024. (GC Exh. 1(a), (e).) The Union filed the charge in Case 13-CA-327735 on October 12, 2023, and a first amended charge on January 9, 2024. (GC Exh. 1(c), (g).) The Union filed a charge in Case 13-CA-344076 on June 10, 2024, and a first amended charge on September 16, 2024. (GC Exh. 1(i), (u).) The General Counsel filed an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing on June 24, 2024, and a First Amended Consolidated Complaint on September 4, 2024, in Cases 13-CA-321415 and 13-CA-327735. (GC Exh. 1(k), (q).) Subsequently, the General Counsel issued an Order Further Consolidating Cases and Second Amended Consolidated Complaint on September 16, 2024, and an Amendment to the Order Further Consolidating Cases and Second Amended Consolidated Complaint on September 25, 2024, in Cases 13-CA-321415, 13-CA-327735, and 13-CA-344076.[1] (GC Exh. 1(w), (z).) The Complaint alleges that Respondents Laborforce, LLC, M&K Employee Services, and M&K Truck Centers, as joint

[1] The various iterations of the complaint in this matter shall be referred to as "the Complaint."

employers and/or alter egos, violated Section 8(a)(5) and (1) the National Labor Relations Act (Act) by twice threatening to withdraw recognition from the Union, twice withdrawing recognition from the Union, threatening to change employees' terms and conditions of employment, unilaterally changing their employees 401(k) plans, and denying the Union access to one of their facilities.[2] The Complaint further alleges that Respondents violated Section 8(a)(1) of the Act by threatening to withdraw recognition from the Union, threatening to change unit employees' terms and conditions of employment, and withdrawing recognition from the Union for part of the bargaining unit. Respondents Laborforce, LLC, M&K Employee Services, and M&K Truck Centers, (Respondents) timely filed their answers on September 18, 2024, and October 1, 2024, denying the relevant allegations and asserting 13 affirmative defenses. (GC Exh. 1(g), (y).) After thoroughly considering the evidence and testimony presented, as well as the briefs of the parties, I find that Respondents have violated the Act as alleged in the complaint.

The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. On the entire record, including my own observation of the demeanor of the witnesses,[3] and after carefully considering the briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondents Laborforce, LLC, and M&K Quality Truck Sales of Summit, LLC (d/b/a M&K Truck Centers – Summit), are Illinois Limited Liability Companies with offices and a place of business in Summit, Illinois. Respondent M&K Employee Services is also a corporation with a place of business in Summit, Illinois. Respondents Laborforce, LLC, and M&K Employee Services have been in the business of leasing employees to Respondent M&K Truck Centers. During a 12-month period ending July 10, 2023, Respondents Laborforce and M&K Employee Services, in conducting their operations, provided services valued in excess of $50,000 to M&K Truck Centers within the State of Illinois. In addition, during the 12-month period ending July 10, 2023, Respondent M&K Truck Services purchased and received goods valued in excess of $50,000 at its Summit, Illinois, facility directly from points outside of the State of Illinois. I find that Respondent Laborforce, LLC, Respondent M&K Employee Solutions, and Respondent M&K Truck Centers are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Furthermore, Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

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[2] At the outset of the hearing the General Counsel moved to amend paragraph 7(l) of GC Exhibit 1(w) to reflect the correct name of Respondent M&K Employee Services, as follows: on or about December 25, 2023, Respondent M&K Employee Services hired as a majority of its employees in the Unit individuals who were previously employees of Respondent Laborforce. There were no objections by the other parties, and I granted the motion. (GC Exh. 1(w); Tr. 26.) Subsequently, on brief, the General Counsel moved to withdraw paragraph 7(l)-7(n). (GC Brf. p. 5, fn. 8.) That motion is also granted.

[3] Citations to the record may highlight particular testimony or exhibits however my findings and conclusions are not based solely on those specific record citations, but instead on my review and consideration of the entire record for this case. My findings of fact encompass the credible testimony and evidence presented at trial, as well as any logical inferences drawn therefrom.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Respondents' Businesses and Labor Relations

Respondent M & K Truck Centers operates 28 truck dealerships across several Midwestern states. (GC Exh. 2; Tr. 265.) These dealerships sell and service semi-trucks and trailers. Each location is an independent profit center. Each dealership is registered at Respondent M&K Truck Centers' headquarters in Byron Center, Michigan. The officers of Respondent M&K Employee Services have addresses in Byron Center Michigan. (GC Exh. 9.) The events giving rise to these cases took place at Respondents' Summit, Illinois, facility (Summit facility).

Respondent M&K Truck Centers (Truck Centers) had arrangements to lease its employees from Respondent Laborforce, LLC (Laborforce) and Respondent M&K Employee Services (Employee Services). Respondent Laborforce was created in 2018 to bid on the business of leasing employees to Respondent Truck Centers' dealerships in Summit, Illinois. (GC Exh. 3.) Prior to that time, Respondent Employee Services leased employees to Respondent Truck Centers.

Rainelle Jansma is the owner of Respondent Laborforce. Respondent Laborforce has a principal place of business in Hopkins, Michigan. (GC Exh. 11.) Jansma did not appear at the hearing. Respondent admits, and I find, that Jansma is a supervisor of Respondent Laborforce within the meaning of Section 2(11) of the Act and an agent of Respondent Laborforce within the meaning of Section 2(13) of the Act.

Ron Meyering is the owner of Respondent Employee Services. (Tr. 257.) Ted Pilecki is the president of Respondent Employee Services. (Tr. 249.) Meyering and Pilecki did not testify at the hearing.

Joshua Wolf is the chief operating officer of Respondent Employee Services with an office in Byron Center, Michigan. Faith Smock is the human resources director of Respondent Employee Services with an office in Wyoming, Michigan. Smock considers Respondents Laborforce, Employee Services, and Truck Centers to be the same company. (Tr. 252, 257.) Respondents Laborforce and Truck Centers admit, and I find, that Wolf and Smock are supervisors of Respondent Laborforce within the meaning of Section 2(11) of the Act and agents of Respondents within the meaning of Section 2(13) of the Act. I further find that Wolf and Smock are supervisors of Respondents Truck Centers and Employee Services within the meaning of Section 2(11) of the Act and agents of Respondents Truck Centers and Employee Services within the meaning of Section 2(13) of the Act.

The top official at each Truck Centers facility is the general manager. The parts manager and service manager report to the general manager. The general manager for the Summit facility is Brennan Callahan. Callahan is employed by Respondent Employee Services. (Tr. 245.) He is responsible for hiring, firing, and disciplining employees at the Summit facility. His actions are reviewed by Wolf. (Tr. 287-288.) Both Wolf and Smock conducted labor negotiations for the Summit facility on behalf of Respondent Laborforce. (Tr. 286.)

Respondent Employee Services has eight employees in its human resources department, including Smock and two employees stationed at the Summit facility. The human resources department provides services to all employees at the Summit facility. (Tr. 244.) Theresa Strayer is the human resources department manager. (Tr. 246.) Laura Schnieder is the payroll coordinator at the Summit facility. (Tr. 128.) Schnieder's duties include remitting dues to the Union and welfare fund payments.[4]

Wolf testified that there are administrative service agreements between Respondent Truck Centers and Respondent Laborforce and between Respondent Employee Services and Respondent Truck Centers. (Tr, 277-278.) These agreements regarding the "terms of the labor or services being provided." (Tr. 277.) The agreements were not produced during the trial.

Since 2021, Ryan Haehnlein has served as the Union's Assistant Directing Business Representative. As such he acts as a business representative and supervises and assists other business representatives. Haehnlein was previously employed as a journeyman parts counterman at Respondent Truck Centers' Alsip location. While working there, Haehnlein was an employee of Respondent Laborforce.

Greg Costenaro is a current employee of Respondent Laborforce, working at Respondent Truck Centers' Summit facility, and serving as the Vice President of the Union. Costenaro has been Union Vice President for 4 years. He served as a Union steward at the Summit facility from 2011 until the time of the hearing.

Local 701 represents over 400 bargaining units in the Chicago area. Of those, five or six have more than one unit in a single facility. Haehnlein oversees about 40 contracts/units. Haehnlein estimated that half of Local 701's contracts have multiple stewards, one for each employee classification.

Employees at Summit facility have been represented by Local 701 since the 1950s, prior to the location's purchase by Respondent Truck Centers. At the time of Respondent Truck Centers' purchase of the Summit facility, employees there were employed by M & K Employee Solutions.[5] Beginning in 2018, the employees at the Summit facility were employed by Respondent Laborforce. The Union has a collective bargaining agreement in place with Respondent Laborforce for a unit of employees at the Summit facility, effective from October 1,

[4] Schneider did not testify at the trial.

[5] The unit was employed by M&K Employee Solutions (Employee Solutions) before Respondent Laborforce. Employee Solutions is registered with the Illinois Secretary of State at 8800 Byron Commerce Drive SW in Byron Center Michigan and Chad Boucher is listed as its manager. (GC Exh. 10.) This is the same registered address as M&K Quality Truck Sales of Summit had in 2016. (GC Exh. 12.) M&K Quality Truck Sales of Summit does business as M&K Truck Centers, The Union had a collective bargaining agreement with Employee Solutions effective July 31, 2107, to September 30, 2020. (GC Exh. 16.) Respondent admits that Respondent Laborforce hired a majority of Employee Solutions' employees. (GC Exh. 1(y), p. 11.) Haehnlein testified without contradiction that employees at the Summit facility were employed by Employee Solutions from late 2012 or early 2013 until 2019. (Tr. 43.) Respondent Laborforce admits that Employee Solutions previously leased employees to Respondent Truck Centers. (GC Exh. 1(y), p. 9.)

2020, to September 30, 2027.[6] (GC Exh. 18.) The unit is not specifically set forth in the agreement, which only states that the Union represents, "the Bargaining Unit" and indicates that the Union has been recognized in accordance with the Labor Management Relations Act of 1947. (GC Exh. 18.) The same language is used in previous iterations of the agreement. (GC Exhs. 16 and 17.) The job classifications listed in the current collective-bargaining agreement are: journeyman mechanic; mechanic leadman; partsman; parts leadman; partsman apprentice; shop apprentice; utility; warehouseman; mobile maintenance specialists; detail persons; body shop technician; parts helper; semi-skilled technician, and; parts driver. (GC Exh. 18, pp. 13-17.) Previous versions of the collective-bargaining agreement have the same job classifications listed, with the exception of parts driver. (GC Exhs. 16 and 17.) The wages section of the contract also includes a category of employee called service writer. (GC Exh. 18, p. 5-6.)

The current collective bargaining agreement requires Respondent Laborforce to remit dues to the Union upon the execution of an individual dues-checkoff authorization. (GC Exh. 18, p. 24.) Respondent is also required to remit payments to the Union's welfare fund. (GC Exh. 18, p. 11.)

Respondent Truck Centers maintains an employee handbook for the Summit location that was provided to employees there, including employees of Respondent Laborforce. (GC Exh. 20.) The handbook states, "Employees are hired by M&K Employee Services (M&K) which provides labor to the M&K dealerships, referred to as M&K Truck Centers." (GC Exh. 20, p. 3.) It goes on to state that, "M&K employs over 1,000 talented people across 29 locations in Michigan, Indiana, Illinois, Pennsylvania, West Virginia, Arkansas and Mississippi and is headquartered in Byron Center, Michigan." (Id.) The version of the handbook presented at the trial was dated April 30, 2023. (GC Exh. 20, p. 24.) The employee handbook further prohibits the use of alcohol and drugs, engaging in violent behavior, possession of dangerous materials, violations of safety/health rules, and smoking. GC Exh. 20, pp. 21-22.)

B. Respondents' Employees

Brennan Callahan, general manager of Respondent Truck Centers' Summit facility, is an employee of Respondent Employee Services.[7] The parts department manager Nate Holland and service department manager Bill Shepperd report to Callahan. Employee grievances are processed through the department manager and Callahan. (Tr. 272.)

When looking for an employee, Callahan provides the human resources department with a requisition. (Tr. 244.) Smock then provides the requisition to her recruiting team. (Tr. 244.) Prospective employees are first interviewed by a department manager and then by Callahan. (Tr. 244-245.) Department managers and the general managers contact the human resources department at Respondent Employee Services when they discipline or discharge an employee. (Tr. 246.) Human resources will ensure that all paperwork regarding the discharge or discipline has been filled out correctly. (Tr. 246.) There is no dispute that employees of Respondent

[6] A previous collective bargaining agreement was effective from July 31, 2017, to September 30, 2020, between the Union and Respondent M&K Employee Solutions. (GC Exh. 16.) Thereafter, an agreement effective February 3, 2019, to September 30, 2020, was entered into between the Union and Respondent Laborforce. (GC Exh. 17.)

[7] Callahan did not testify at the trial.

Employee Services, such as Callahan, may hire, discipline, or discharge employees for or of Respondent Laborforce. Furthermore, there is no evidence that employees of Respondent Employee Services, such as Callahan, need permission or authority from Respondent Laborforce to hire, discipline or discharge its employees

Employees in the parts and service departments at the Summit facility work a 40-hour schedule, as established in the current collective bargaining agreement. (GC Exh. 18.) Wage rates are also set forth in the collective bargaining agreement. Other terms and conditions of employment are set forth in the collective bargaining agreement. Employees at the Summit facility also have company email addresses containing their name, such as "g.costenaro@m&ktruck.com." (Tr. 134.) Managers employed by Respondent Employee Services have similar email addresses, such as "brennan.callahan@mktruck.com." (GC Exh. 25.) Employees wear uniforms with a logo identifying them as employees of Respondent Truck Centers. (Tr, 121-122.) Parts and service department employees use the same system for requesting time off. (Tr. 132.) Supervisors employed by Respondent Employee Services schedule training for Respondent Laborforce's employees. (Tr. 145.) Employees in both departments are ultimately supervised by Callahan and receive services from Respondent Employee Services' human resources department.

Employees in the parts side and service departments at the Summit facility have some differences in their working situations. Parts and service employees have different: clock-in locations; uniforms; managers; wages; job classifications; technical certifications, and; union stewards. Employees in the service department are provided with tools from Respondent Truck Centers. (Tr. 135.)

Wolf and other employees of Respondent Employee Services negotiated the collective bargaining agreement with the Union on behalf of Respondent Laborforce. (GC Exh. 18; Tr. 269.) The collective bargaining agreement sets forth all employee benefits including seniority, a defined retirement contribution plan, overtime, attendance, tardiness, vacation leave, a welfare fund, jury and bereavement leave, uniforms and tool reimbursement. (GC Exh. 18.)

Previously, the Union represented employees at another of Respondent Truck Centers' facilities in Joliet, Illinois. (GC Exh. 19.) There, the Union represented a unit of parts department and service department employees. The Union represented this unit at the Joliet location until 2017, when M&K Employee Solutions filed an RM petition for the Joliet location. (GC Exh. 21.) The petition was signed by Donald Vogel, the attorney representing Respondents in this case. The job titles on the voter list were for the Joliet facility's parts department and service department. (GC Exh. 22.) The Union lost the election and was decertified at the Joliet facility effective April 11, 2017. (GC Exh. 23.) The certification of results of election listed the bargaining unit as

> Included: All journeyman mechanics, mechanic leadmen, partsmen, parts leadmen, partsman apprentices, shop apprentices, utility workers, warehousemen, mobile maintenance specialists, detail persons, and semi-skilled technicians employed by the Employer . . .

(GC Exh. 23.)

C. Union Representation and Grievances at the Summit Facility

From November 1, 2022, through June 2023, Ryan Haehnlein periodically visited the Summit facility. He and another business representative, Joe Sheer, would take turns visiting the location. Haehnlein would enter through the front doors and let someone know he was there. He was allowed to walk through the facility and visit the departments during his visits.

Haehnlein also processed grievances at the Summit facility. He recalled two grievances for discharged employees. Both were discharged by Callahan. Both Callahan and Wolf were involved in the meetings for these grievances. (Tr. 76.) The parties' grievance procedure is contained in the collective bargaining agreement. (GC Exh. 18, pp. 29-31.)

Employee Joe Loman served as a steward for the Union in the parts department. His efforts to assist employees in the service department were rebuffed by Greg Costenaro, who told Loman to, "Mind [his] fucking business and stay on your side." (Tr. 173.) He also participated in bargaining on behalf of the Union. Loman was unsure of his employer, testifying it was, "M&K Truck Centers. M&K Employee Solutions, I believe." (Tr. 162. He also believed that he was formerly employed by Laborforce.

During contract negotiations, Respondent was represented by Ron Meyering, Ted Pelecki, Faith Smock, Josh Wolf, and Don Vogel. The Union was represented by business representatives Bob Lessman and Tony Albergo, Costenaro, and Joe Loman. (Tr. 115-116.) Lessman signed all tentative agreements for the Union. (Tr. 116.)

D. First Withdrawal of Recognition

In October 2022, Joe Loman, a parts department employee at Respondent M & K Truck Centers' Summit location, began collecting signatures from other parts department employees in an effort to decertify the Union. Loman did not receive any assistance from Respondents in soliciting signatures for his decertification effort. Loman started his decertification effort because he was not satisfied with the Union's representation.

Wolf first learned of the decertification effort in a phone call from Callahan. (Tr. 278.) He told Wolf that, "there's rumblings that they're looking to decertify." (Tr. 278.) Wolf said he needed to talk to counsel and would get back to Callahan. (Tr. 279.) Wolf told Callahan nothing should disrupt work and that Callahan should stay out of it. (Tr. 279.)

Loman gathered 19 signatures from parts department employees indicating that they no longer wanted Union representation and presented them to Callahan on July 6, 2023. Loman did not obtain any signatures from employees outside of the parts department. (Jt. Exh. 1.) On July 7, 2023, Respondent Laborforce employed 31 employees in the parts department and 51 in the service department at the Summit facility; a total of 82 employees. (Jt. Exh. 1.) So, although Loman obtained signatures from a majority of employees in the parts department, he did not have signatures from a majority of the entire bargaining unit.

Callahan called Wolf again after receiving Loman's petition. (Tr. 279.) Wolf called counsel for assistance and instructions and immediately began looking at how the parts department employees would fit into the nonunion northern Illinois skilled trade wage scale. (Tr. 279.) Wolf did not call Respondent Laborforce or its owner. (Tr. 291.)

On July 7, 2023, Respondent Laborforce posted a memorandum to employees from Faith Smock. (GC Exh. 14.) In the memo, Smock stated that Laborforce had been presented with a petition "signed by more than 50% of the Parts Department bargaining unit stating that you no longer wish to be represented by [the Union]." (GC Exh. 14.) Smock went on to state that Respondent Laborforce would withdraw recognition from the Union effective at midnight on September 30, 2023. (Id.) The memo went on to discuss changes in wages, insurance, paid time off, and the company's 401(k) plan. Employees were directed to bring any questions to Callahan. Parts Department employees were eventually moved off of the Union's health insurance plan and enrolled in Respondent Employee Services' plan. (Tr. 280.)

On July 7, Respondent Laborforce, through its attorney Donald Vogel, sent an email to the Union. (GC Exh. 13.) The email indicated that Laborforce had been presented with a petition signed by a majority of its employees in the parts department requesting that it stop recognizing the Union as the employees' bargaining representative. (GC Exh. 13.) The letter went on to indicate that Laborforce would withdraw recognition at midnight on September 30, 2023. (Id.)

Loman testified that Faith Smock and another human resources employee met with parts department employees after the presentation of the petition in July 2023. (Tr. 218-219.) During the meeting, employees were presented with a letter outlining new wages and benefits. (GC Exh. 15[8]; Tr. 219.) The letter was on Respondent Laborforce's letterhead, signed by Smock, and indicated that employees should contact human resources with any questions. (GC Exh. 15.) Smock was not sure if the health plan referenced in the letter was that of Respondent Employee Services or Respondent Truck Centers. (Tr. 253.) The 401(k) plan was also discussed, but Loman could not recall any details. (Tr. 219.)

Smock stated that drafting memo and letter template was a collaborative effort. (Tr. 243.) She did not reveal with whom she collaborated in drafting these documents.

On July 25, 2023, Respondent Laborforce filed a unit clarification petition in NLRB Region 13. (GC Exh. 6.) The petition, filed by attorney Vogel, described the present unit as including all parts and service department employees. (GC Exh. 6.) Laborforce proposed a unit including all service department employees but excluding all parts department employees. (Id.) The Regional Director of Region 13 dismissed the petition on September 7, 2023, finding clarification during the term of a collective bargaining agreement inappropriate. (GC Exh. 8, p. 2.) The Regional Director's dismissal was affirmed by the Board on December 13, 2023. (GC Exh. 7.)

Respondent Laborforce withdrew recognition from the Union for the parts department on October 1, 2023. Respondent stopped deducting union dues from parts department employees at

[8] The letter is actually a template used to convey the changes to employees. (GC Exh. 15.) Smock testified that when it was filled in, the letter did not contain a wage rate for individual employees. (Tr. 253.)

that time. (Tr. 69.) Parts department employees were given new wage rates, a less expensive health insurance plan, and an opportunity to participate in a 401(k) plan with a 3% employer match.

On October 4, 2023, the Union emailed a grievance to Josh Wolf. (GC Exh. 28.) On October 11, 2023, Wolf responded, indicating that at midnight on September 30, at the request of a majority of employees in the parts department, Respondent Laborforce withdrew recognition from the Union as the collective bargaining representative for those employees. (GC Exh. 28.) Wolf indicated that it would not be appropriate or legal to deal with the Union as it relates to that group. (GC Exh. 28.) Therefore, Wolf said, no response to the grievance was required or would be coming. (GC Exh. 28.)

Sheer again sent the grievance to Wolf on November 6, 2023. (GC Exh. 28.) Wolf responded on November 15 that Respondent Laborforce would not be responding to the grievance due to the withdrawal of recognition. (GC Exh. 28.)

On November 22, 2023, Sheer sent another email to Wolf. (GC Exh. 27.) Sheer stated that based on the company's unwillingness to respond to the grievance, the Union moved to submit the grievance for a joint grievance committee hearing. (GC Exh. 27.) Wolf responded that he could not be any clearer than he had been on November 15, stating that, "Until the Labor Board or some other authority holds otherwise, the Parts Department employees are no longer subject to the grievance mechanism contained in the CBA. I suggest you hold the grievance until that issue is decided." (GC Exh. 27.)

On December 25, 2023, parts department employees became employees of Respondent Employee Services. (GC Exh. 31.) Respondent confirmed this fact in an email to an employee of NLRB Region 13 on July 31, 2024, which also stated that all parts department employees had been offered an opportunity to be employed by Respondent Employee Services, which provided their health insurance. (GC Exh. 31.)

E. Second Withdrawal of Recognition

During the summer of 2024, Callahan again called Wolf. (Tr. 281.) Callahan said he had additional petitions for the service department. (Tr. 281.) Wolf replied to continue business as usual and that he would talk to legal counsel. (Tr. 281.) Wolf again talked to Vogel and tried to align employees into the existing nonunion skilled trade wage scales. (Tr. 282.) This time, however, he decided to continue using the Union's health insurance to avoid lapses in coverage (Tr. 282.) Wolf stated that he was afraid that if they took employees out of the Union's health plan, they could not go back in, which is what happened with the parts department. (Tr. 283-284.)

On June 10, 2024, Callahan received a petition signed by 36 of the employees in the parts and service departments stating that they no longer wanted to be represented by the Union. (Jt. Exh. 1.) At that time, Respondent had 70 employees in the parts and service departments. (Jt. Exh. 1.)

That same day, Greg Costenaro met with Callahan and Theresa Strayer. (Tr. 125-126.) Callahan started the meeting by saying that they were withdrawing recognition and that he had proper documentation. (Tr. 125.) Costenaro asked to see the documents, but Callahan did not have them. Costenaro asked about insurance and was told the insurance would remain the same. Callahan said that employees would no longer participate in the Union's 401(k) plan and would instead participate in the company's 401(k) plan. (Tr. 126.) Costenaro was given a document by Strayer that showed the highlights of the new 401(k) plan. (GC Exh. 30; Tr. 126.) Costenaro's wage rate was handwritten on the upper right corner of the document. (GC Exh. 30; Tr. 127.) Previously, his wage rate had been in the upper $30.00 per hour range; his new wage rate was $48.25 per hour. (GC Exh. 30; Tr. 127.)

On June 10, 2024, Respondent Laborforce, through attorney Donald Vogel, sent an email to the Union. (GC Exh. 4.) Vogel advised the Union that Respondent Laborforce was withdrawing recognition based upon a petition signed by a majority of the bargaining unit. (GC Exh. 4.)

On June 10, 2024, Callahan posted a memorandum to parts and service department employees at the Summit facility. (GC Exhs. 4, 26.) In the posting, Callahan stated that a majority of parts and service department employees had presented Respondent Laborforce with a petition asking to withdraw recognition from the Union. (GC Exh. 26.) Callahan informed employees that they would remain on the Union's health insurance plan until the expiration of the collective bargaining agreement with the Union. (GC Exh. 26.) However, Callahan said that Respondent Laborforce would cease making contributions to the Union's 401(k) plan immediately and would instead let employees keep the contribution amount, unless they chose to to contribute to Laborforce's 401(k) plan. (GC Exh. 26.)

On June 11, 2024, Ryan Haehnlein and Joe Sheer visited the Summit facility. (Tr. 66.) They intended to meet with unit employees. They were able to enter the main doors but were stopped by security in the lobby. Callahan came to the lobby and told them they had no business being there and to leave the premises immediately. Haehnlein responded that the Union had the right to be on the premises and still represented employees. (Tr. 67.) Callahan again told the union representatives that they had no business there and to leave or the police would be called. Haehnlein and Sheer left the building. (Tr. 67.) Article 16, paragraph (d) of the collective bargaining agreement allows for Union access to the Summit facility. (GC Exh. 18, p. 24.)

The Union filed a grievance over the denial of access on June 11, 2024. (GC Exhs. 24, 25.) The grievance was emailed to Callahan by Sheer. (GC Exh. 25.) On June 24, 2024, Callahan responded to Sheer and copied Wolf, Haehnlein, and attorney William LePinske. (GC Exh. 25.) Callahan stated

> On June 10, 2024, at the request of a majority of the employees in the combined Parts and Service Departments at the Summit location, Laborforce withdrew recognition of Local 701 as the bargaining representative of that group. We continue to honor the request of the majority of these employees, and do not feel it is appropriate or legal to deal with Local 701 as it relates to these employees. Because of the withdrawal of recognition the grievance mechanism as outlined in Article 28 of the CBA no longer applies to these employees, and no response is required or will be coming, from Laborforce.

(GC Exh. 25.)

DISCUSSION AND ANALYSIS

A. Witness Credibility

A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group,* 339 NLRB 303, 305 (2003); *Daikichi Sushi,* 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group,* 321 NLRB 586, 589 (1996)), enfd. 56 Fed.Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Daikichi Sushi,* 335 NLRB at 622. Some of my credibility findings are incorporated into the findings of fact set forth above.

I find Ryan Haehnlien to be a credible witness. He testified in a candid and straightforward manner. His testimony was not contradicted by other witnesses or evidence. In fact, much of his testimony was uncontroverted. As such, I credit Haehnlein's testimony.

I also find Gregory Costenaro to be a credible witness. He testified in a frank and direct fashion. His testimony did not waver on cross-examination and was consistent with the documentary evidence presented at the hearing. In addition, Costenaro is a current employee of Respondent Laborforce. Testimony by current employees is given at the risk of reprisal and is unlikely to be false. See *Flexsteel Industries*, 316 NLRB 745, 745 (1995) (the testimony of current employees is likely to be particularly reliable because these witnesses are testifying adversely to their pecuniary interest.), enfd. mem. 83 F.3d 419 (5th Cir. 1996). Thus, I credit Costenaro's testimony.

I found Loman to be a less than credible witness. Despite being a current employee of Respondent Truck Centers, his testimony was cursory and vague. He hedged many of his answers by starting them with, "I believe." He tended to talk over the attorneys questioning him and appeared devoted to staying on message. His testimony was contradicted by the sworn affidavit he gave during the investigation of the case. Therefore, I only credit Loman's testimony when it is corroborated by a more credible witness or evidence or where it is inherently believable.

I also found Faith Smock to be a mostly credible witness. Her brief testimony was given in a forthright manner. However, she was confused by the corporate structures and relationships between Respondents. Given her high ranking position within Respondent Employee Services and her services provided to employees of Respondent Laborforce at the Summit facility, I find this degree of confusion not believable. Therefore, I credit Smock's testimony except regarding the relationship between Respondents.

Like Smock, I found Wolf to be a mostly credible witness. Wolf's testimony regarding his conversations with Callahan regarding the decertification efforts, who was not called as a

witness, lacked detail. Furthermore, it was surprising that he, as chief operating officer of Respondent Employee Services, lacked any real knowledge regarding the relationship between the three Respondents. Thus, I credit Wolf's testimony except regarding the relationship between Respondents.

B. Legal Standards Regarding Joint Employer Status

The Board's Joint Employer Status Under the National Labor Relations Act, Final Rule, 85 Fed. Reg. 11184 (Feb. 26, 2020) (2020 Final Rule) addresses joint employer status:

> (b) For all purposes under the Act, two or more employers of the same particular employees are joint employers of those employees if the employers share or codetermine those matters governing employees' essential terms and conditions of employment.
>
> (c) To "share or codetermine those matters governing employees' essential terms and conditions of employment" means for an employer to possess the authority to control (whether directly, indirectly, or both), or to exercise the power to control (whether directly, indirectly, or both), one or more of the employees' essential terms and conditions of employment.
>
> (d) "Essential terms and conditions of employment" are
>
> (1) Wages, benefits, and other compensation;
> (2) Hours of work and scheduling;
> (3) The assignment of duties to be performed;
> (4) The supervision of the performance of duties;
> (5) Work rules and directions governing the manner, means, and methods of the performance of duties and the grounds for discipline;
> (6) The tenure of employment, including hiring and discharge; and
> (7) Working conditions related to the safety and health of employees.

See 29 U.S.C. §103.40.

C. Respondents are Joint Employers

Wages and benefits of Respondent Laborforce's employees were set forth in the collective bargaining agreement, which was negotiated by Respondent Employee Services. After the withdrawals of recognition, employee wage rates were set by Wolf, an employee of Respondent Employee Services based on pay rates at other nonunion facilities. Respondent Employee Services also changed the employee benefits for Respondent Laborforce's employees, even moving some to become Employee Services employees after withdrawing recognition.

Hours of work are set forth in the collective bargaining agreement. Vacation requests are approved by department managers, who are employees of Respondent Employee Services. Respondent Employee Services also schedules training for Respondent Laborforce's employees. (Tr. 145.)

Employees of Respondent Laborforce are supervised by Callahan, an employee of Respondent Employee Service. There is no evidence that Respondent Laborforce has any supervisors at the Summit facility or that it participates in the direction of work or training of employees at the Summit facility. Instead, all supervision of Respondent Laborforce's employees is undertaken by employees of Respondent Employee Services. Respondent Employee Services also provides human resources support to the employees of Respondent Laborforce.

Work rules for the employees of Respondent Laborforce are set forth both in the collective bargaining agreement in Respondent Employee Services' employee handbook. Loman and Costenaro both testified that they received a copy of Respondent Employee Services' handbook. (Tr. 122, 227.) The employee handbook states that employees are hired by Respondent Employee Services and provide labor for Respondent Truck Centers. (GC Exh. 20, p. 3.) Furthermore, employees of Respondent Laborforce are disciplined by Callahan, an employee of Respondent Employee Services, with support from Employee Services' human resources department.

Respondents Employee Services and Truck Centers control hiring of Respondent Laborforce's employees. Wolf and Smock both testified that Callahan, an Employee Services employee, contacts Smock and advises her when he needs an employee. Smock's recruiting team then sets up interviews. Prospective employees are interviewed by the parts or service department manager and then by Callahan. These employees are hired by Respondent Laborforce and then leased to Respondent Truck Centers.

Health and safety policies for the Summit facility are set forth in both the collective bargaining agreement between Respondent Laborforce and the Union and in Respondent Employee Services' employee handbook. The employee handbook prohibits the use of alcohol and drugs, engaging in violent behavior, possession of dangerous materials, violations of safety/health rules, and smoking. GC Exh. 20, pp. 21-22.) The control exerted by Respondent Employee Services over Respondent Laborforce's employees is done without consulting Laborforce or its owner. There is no evidence that any supervisor or manager of Respondent Laborforce is present at the Summit facility.

Furthermore, I draw an adverse inference against Respondents for its failure to provide its administrative service agreements with Respondents Laborforce and Respondent Employee Services. Wolf testified that such agreements exist. The General Counsel subpoenaed documents related to the allegation of single employer status. The administrative service agreements would have provided information as to the relationship between the three Respondents. As such, it is appropriate to draw an adverse inference that had the documents been provided, they would support the General Counsel's position. *Essex Valley Visiting Nurses Assn.,* 352 NLRB 427, 441-444 (2008), reaffd. 356 NLRB 146 (2010), enfd. 455 Fed. Appx. 5 (D.C. Cir. 2012).

D. Legal Standards for Alter Ego Status

In determining whether employers are alter egos, the Board considers several factors, including whether they have substantially identical ownership, business purpose, operations, management, supervision, premises, equipment, and customers. *Island Architectural Woodwork,*

Inc., 364 NLRB No. 73, slip op. at 4 (2016). No single factor is determinative, and not all are necessary to establish alter ego status. *Id.*

The Board also looks to whether the purpose behind the creation of the alleged alter ego was legitimate or was to evade responsibilities under the Act. *Liberty Source W*, 344 NLRB 1127, 1136 (2005), citing *Fugazy Continental Corp*., 365 NLRB 1301, 1302 (1982), enfd. 725 F.2d 1416 (DC Cir. 1984). Unlawful motive exists where there is an attempt to avoid the obligations of a collective-bargaining agreement through a sham transaction or a technical change in operations. *Carpenters' Local 1478 v. Stevens*, 743 F.2d 1271, 1276-1277 (9th Cir. 1984), cert. denied 471 U.S. 1015 (1985). The Board does not require that an illegal motive be established to find alter ego status. *Fallon-Williams,* 36 NRB 602, 602 (2001); *APF Carting, Inc*., 336 NLRB 73, 73 fn. 4 (2001). The burden of establishing an alter ego relationship rests with the General Counsel. *Island Architectural Woodwork, Inc.,* 364 NLRB No. 73, slip op. at 4 (2016).

E. Respondents are Alter Egos

Although Respondents lack common ownership, other factors lead to the conclusion that they are alter egos. The employees of Respondent Laborforce are supervised and managed by employees of Respondent Employee Services. Respondent Employee Services engaged in bargaining for an agreement with the Union on behalf of Respondent Laborforce. Respondent Laborforce was created with the specific intent of providing employees to Respondent Employee Services and Truck Centers. Employees of Respondent Laborforce are bound by the collective-bargaining agreement and by Respondent Employee Services' employee handbook, which states that the employees also work for Respondent Truck Centers. Respondent Employee Services transferred Laborforce employees to its own payroll and benefits plan following the improper first attempt at withdrawing recognition from the Union. I find these actions to be an attempt to avoid a collective bargaining obligation through a sham transaction. Therefore, I find that Respondents Laborforce, Employee Services, and Truck Centers are alter egos.[9]

F. Bargaining Unit

There is no evidence supporting Respondent's contention that the Summit facility has two bargaining units, one for parts department employees and one for service department employees. The collective-bargaining agreement between Respondent Laborforce and the Union describes a singular bargaining unit. (GC Exh. 18.) The job descriptions contained in the collective-bargaining agreement mirror those in a previously represented unit in Joliet, Illinois. (GC Exhs. 22, 23.) As such, I find that the appropriate bargaining unit in this case is:

> All full-time and regular part time parts and service department employees including: Journeymen, Mechanics, Mechanic Leadman, Partsman, Parts Leadman, Partsman Apprentice, Shop Apprentice, Service Writer, Utility,

[9] Respondents argue that Respondent Truck Centers cannot be considered an employer because it, "is not an entity." (R. Brf. P. 15-16.) However, the evidence indicates otherwise. Respondent Truck Centers filed an Annual Report with the Illinois Secretary of State. (GC Exh. 12.) Furthermore, Respondent Employee Services' employee handbook advises employees that they have been hired to provide labor to Respondent Truck Centers. (GC Exh. 20, p. 3.) Respondents' brief is signed by counsel on behalf of all three Respondents. Thus, I find Respondents' argument in this regard unavailing.

> Warehouseman, Mobile Maintenance Specialists, Detail Persons, Body Shop Technicians, Parts Helper, Semi-Skilled Technicians, and Parts Driver employed by Respondent at its Summit Illinois, facility, but excluding all other employees, guards, and supervisors as defined in the Act.

G. Respondent Violated the Act by Threatening to Withdraw Recognition for Parts Department Employees in July 2023

After receiving Loman's petition signed by parts department employees, Respondent Laborforce posted a memorandum from Faith Smock in July 2023. (GC Exh. 14.) Smock stated that Respondent Laborforce would withdraw recognition from the Union effective at midnight on September 30, 2023. This left a time period of over 2 months before Respondent Laborforce would actually withdraw recognition. This action amounted to a threat to withdraw recognition from the Union. Respondent did not have enough signatures to indicate that a majority of the bargaining unit to lawfully withdraw recognition. A threat to withdraw recognition from a union has been found to have violated the Act. See *Am-Del-Co, Inc.,* 225 NLRB No. 93, slip op. at 17 (1976). Respondents based their actions on a petition that did not have signatures of the majority of the bargaining unit at the time. Therefore, I find Respondents' action in threatening to withdraw recognition violated Section 8(a)(1) of the Act.

H. Respondents Violated the Act by Withdrawing Recognition from the Union for the Parts Department on October 1, 2023

After being presented with a petition signed by employees in the parts department, Respondents withdrew recognition from the Union for parts department employees effective October 1, 2023. The petition presented to Respondent Employee Services did not have signatures of a majority of the entire unit.

On July 7, 2023, Respondent Laborforce posted a memorandum from Faith Smock, an Employee of respondent Employee Services. (GC Exh. 14.) Smock stated that Laborforce had been presented with a petition "signed by more than 50% of the Parts Department bargaining unit stating that you no longer wish to be represented by [the Union]." (GC Exh. 14.) Smock went on to state that Respondent Laborforce would withdraw recognition from the Union effective at midnight on September 30, 2023. (Id.)

On July 7, Respondent Laborforce, through its attorney Donald Vogel, sent an email to the Union. (GC Exh. 13.) The email indicated that Laborforce had been presented with a petition signed by a majority of its employees in the parts department requesting that it stop recognizing the Union as the employees' bargaining representative. (GC Exh. 13.) The letter went on to indicate that Laborforce would withdraw recognition at midnight on September 30, 2023. (Id.)

On July 25, 2023, Respondent Laborforce filed a unit clarification petition in NLRB Region 13. (GC Exh. 6.) The petition, filed by attorney Vogel, described the present unit as including all parts and service department employees. (GC Exh. 6.) Laborforce proposed a unit including all service department employees but excluding all parts department employees. (Id.) The Regional Director of Region 13 dismissed the petition on September 7, 2023, finding clarification during the term of a collective bargaining agreement inappropriate when the objective was to change the

composition of a contractually agreed upon unit. (GC Exh. 8, p. 2.) The Regional Director's dismissal was affirmed by the Board on December 13, 2023. (GC Exh. 7.) Nevertheless, Respondents withdrew recognition from the Union from the parts department on October 1, 2023.

On October 4, 2023, the Union emailed a grievance to Josh Wolf. (GC Exh. 28.) Wolf responded, admitting that Respondent Laborforce withdrew recognition from the Union as the collective bargaining representative for parts department employees at midnight on September 30, 2023. Wolf stated that it would not be appropriate or legal to deal with the Union and that no response to the grievance was required or would be coming.

An employer may withdraw recognition from an incumbent union if the union has lost the support of the majority of the bargaining unit employees. *T-Mobile USA, Inc.,* 365 NLRB 175, 186 (2017), enfd 717 F. Appx. 1 (D.C. Cir. 2018), citing *Levitz Furniture,* 333 NLRB 717, 723 (2001). When an employer withdraws recognition, it does so at its own peril and will be required to show actual loss of majority support if the union files an unfair labor practice charge over the withdrawal. *T-Mobile USA, Inc.,* 365 NLRB at 186, citing *Levitz Furniture,* 333 NLRB at 725.

Respondent claims it believed that there were two bargaining units at the Summit facility. The collective bargaining agreement refers to the "Bargaining Unit" in the singular. The uncontroverted evidence establishes that Respondent submitted dues to the Union for the bargaining unit in a single check. Both units voted to ratify the current collective bargaining agreement. (Tr. 218.) Furthermore, before withdrawing recognition on October 1, 2023, but after receiving the petition from the parts department employees, Respondent filed a unit clarification petition with the Board's Region 13. (GC Exh. 6.) This petition sought to move the parts department into its own unit. The Regional Director dismissed the petition stating that Unit clarification is not appropriate for upsetting an agreement regarding the placement of existing employee classifications. *Robert Wood Johnson University Hospital,* 328 NLRB 912, 913 (1999). Thus, I find no merit in Respondent's argument.

The Board in *Levitz Furniture* explained

> If the union contests the withdrawal of recognition in an unfair labor practice proceeding, the employer will have to prove by a preponderance of the evidence that the union had, in fact, lost majority support at the time the employer withdrew recognition. If it fails to do so, it will not have rebutted the presumption of majority status, and the withdrawal of recognition will violate Section 8(a)(5).

333 NLRB at 725. All of the evidence in this case demonstrates that Respondent withdrew recognition from the Union for the parts department based upon the signatures of less than a majority of the unit. Therefore, Respondents' withdrawal of recognition from the Union based upon a petition signed by less than a majority of the bargaining unit violated Section 8(a)(5) and (1) of the Act.

I. Respondent Violated the Act by Unilaterally Changing Employees' 401(k) Plan and Denying Union Representatives Access to the Summit Facility

On June 11, 2024, Union representatives Ryan Haehnlein and Joe Sheer visited the Summit facility to visit with unit employees. General Manager Brennan Callahan denied access to the facility and threatened to call the police if the Union representatives did not leave the premises. Haehnlein and Sheer left the premises. Haehnlein's testimony regarding this interaction stands uncontradicted.

The collective bargaining agreement in effect between the parties on that day allows for Union access to the premises. Specifically, the contract states, "Accredited representatives of [the Union] shall be permitted to enter the Shop of the Company for business purposes during working hours." (GC Exh. 18, p. 24.) Haehnlein testified that he had never been denied access to the facility before that date.

Once employees select a representative representation is a condition of employment that cannot be unilaterally altered. *Oaktree Capital Mgmt.,* 355 NLRB 1272, 1272 (2010), enfd 452 Fed. Appx. 433 (5th Cir. 2011). Similarly, if an employer makes unilateral changes that impair a representative's ability to represent employees effectively, or that impair employees' ability to effectively support their representative, the employer violates Section 8(a)(5). Id. A union's right of access to carry out its representational duties is a mandatory subject of bargaining. *McGraw-Hill Broadcasting Co.*, 355 NLRB 1283, 1294 (2010) (right of access to represent employees is a mandatory subject of bargaining); *Regency Heritage Nursing & Rehabilitation Center*, 353 NLRB 1027, 1034 (2009) ("Union visitation is a mandatory subject of bargaining").

Respondents' change to the established union access policy was substantial and meaningful. This change came at a time when Respondent had just withdrawn recognition from the Union for the entire bargaining unit. The Union's access to the unit was crucial at this time to ascertain whether the withdrawal was valid and the unit's level of disaffection. Thus, Respondent's denial of access without giving the Union notice or an opportunity to bargain over the change violated Section 8(a)(5) and (1) of the Act.

Similarly, Respondents' change to employees' retirement plan also violated the Act. An employer has a duty to refrain from unilaterally changing any term or condition of employment for its unit employees without first giving the union notice of the proposed change and opportunity to bargain over it. *Oberthur Technologies of America Corp.,* 368 NLRB No. 5, slip op. at 2 (2019). Neither party to a collective-bargaining agreement may implement any midterm contract modification absent the other party's consent. *Healthbridge Mgmt., LLC,* 365 NLRB No. 37, slip op. at 4 (2017), enfd. 902 F.3d 37 (2d Cir. 2018).

It is undisputed that Respondents changed their employees' 401(k) plan from the Union's plan to Respondent Employee Services' plan. 401(k) plans are a mandatory subject of bargaining. *Convergence Communications*, 339 NLRB 408, 412 (2003). There is no evidence that Respondents provided the Union with notice or an opportunity to bargain over this change. Respondents claim that their changes to employees' terms and conditions of employment were privileged by the withdrawal of recognition. However, I have found that the first withdrawal of recognition was improper. As discussed more fully below, I also find that the second withdrawal

of recognition was also improper. As such, Respondents' changes to employees' 401(k) plan and the union's right of access to the facility violated Section 8(a)(5) and (1) of the Act.

J. Respondents Violated the Act by Refusing to Adhere to the Collective-Bargaining Agreement with the Union

After each withdrawal of recognition from the Union, Respondents refused to process grievances under the grievance procedure set forth in the collective bargaining agreement. (GC Exh. 18, pp. 29-31.) On October 4, 2023, after the first withdrawal of recognition, the Union emailed a grievance to Josh Wolf. Wolf replied that it would not be appropriate or legal to deal with the Union's grievance and no response to the grievance was required or would be coming.

Sheer again sent the grievance to Wolf again on November 6 and 22, 2023. (GC Exhs. 27, 28.) On both occasions, Wolf responded that Respondents would not be respond to the grievance due to the withdrawal of recognition.

Respondent withdrew recognition from the Union for the entire bargaining unit on June 10, 2024. The Union filed a grievance over the denial of access on June 11, 2024. (GC Exhs. 24, 25.) This grievance was emailed to Callahan by Sheer. Callahan responded that because of the withdrawal of recognition the grievance mechanism as outlined in the collective bargaining agreement no longer applied. Thus, Respondent Laborforce would not respond to the grievance.

An employer's refusal to arbitrate grievances pursuant to a collective-bargaining agreement violates the Act if the employer's conduct amounts to a unilateral modification of terms and conditions of employment during the contract term. *Velan Valve Corp*., 316 NLRB 1273, 1274 (1995), citing *Southwestern Electric*, 274 NLRB 922, 926 (1985). Where there is a refusal to arbitrate all grievances, or where the refusal to arbitrate a particular class of grievances amounts to a wholesale repudiation of the contract, a violation will be found. *ACS, LLC*, 345 NLRB 1080, 1081 (2005); *Indiana & Michigan Electric Co*., 284 NLRB 53, 59 (1987).

Respondents' actions regarding the grievances were unlawful. Respondents' refusal to process the grievances in any way amounted to a wholesale repudiation of the grievance procedure contained in the collective bargaining agreement. Respondents stated that the collective bargaining agreement no longer applied to the unit because of employee disaffection. I have found both withdrawals of recognition by Respondents to be improper. As such, Respondents' actions in refusing to process grievances amounted to a repudiation of the parties' collective bargaining agreement and violated Section 8(a)(5) and (1) of the Act.

K. Respondent Violated the Act by Withdrawing Recognition from the Union for All Unit Employees in June 2024

Respondent Laborforce withdrew recognition from the Union for the parts department on October 1, 2023. As discussed above, that withdrawal of recognition was unlawful. Parts department employees lost their health insurance as a result of the withdrawal of recognition. In December 2023, employees in the parts department were transferred from Respondent Laborforce to Respondent Employee Services and were placed into Employee Services' health insurance plan.

Union support eventually eroded to the point that Loman obtained signatures of a majority of unit employees on a decertification petition. On June 10, 2024, Respondents withdrew recognition from the Union for the entire unit. At this time, the parts department were employed by Respondent Employee Services, while the service department remained employed by Respondent Laborforce. After receiving the second petition, Callahan posted a notice that Respondents would withdraw recognition from the Union immediately. Callahan and others met with unit employees and explained new benefits and wages. Respondents further ceased deducting Union dues

An employer's withdrawal of recognition can be deemed unlawful because it occurred during the certification year when the union's presumption of majority support is irrebuttable; because the disaffection petition was tainted by the employer's unfair labor practices; or because the employer failed to show that the union had, in fact, lost the support of the majority of the unit employees at the time the employer withdrew recognition. *J.G. Kern Enterprises, Inc.,* 371 NLRB No. 91 (2022). Not all unremedied violations preclude a lawful withdrawal. The unremedied unfair labor practices must be of such a character as to either affect the union's status, cause employee disaffection, or improperly affect the bargaining relationship itself. *AT Systems West, Inc.,* 341 NLRB 57, 59-60 (2004).

In *Master Slack Corp.,* 271 NLRB 78, 84 (1984), the Board considered four factors in determining whether a causal relationship exists between an employer's unfair labor practices and a subsequent petition for decertification: (1) the length of time between the unfair labor practices and the withdrawal of recognition; (2) the nature of the illegal acts, including the possibility of their detrimental or lasting effect on employees; (3) any possible tendency to cause employee disaffection from the union; and (4) the effect of the unlawful conduct on employee morale, organizational activities, and membership in the union. It is the objective evidence of the commission of unfair labor practices that has the tendency to undermine the union, and not the subjective state of mind of the employees. *AT Systems West*, 341 NLRB at 60.

Applying factor 1, Respondents first threatened to withdraw recognition from the Union on July 23, 2023 and actually withdrew recognition for the first time on October 1, 2023. There was not a significant passage of time between the first, unlawful withdrawal of recognition on October 1, 2023, and the second withdrawal of recognition on June 10, 2024. In the interim, parts department employees were transferred to a new employer and had their terms and conditions of employment altered. Applying factor 2, the nature of the violations would tend to have a lasting effect on employees. Employees in the parts department lost their insurance and Respondent Laborforce refused to process grievances concerning the parts department. Thus, factors 1 and 2 weigh in favor of finding a causal link between the unfair labor practices and second withdrawal of recognition.

Moreover, applying factor 3, the violations discussed above would tend to cause disaffection from the Union. Following the first withdrawal of recognition employees in the parts department lost their insurance, changed employers, changed insurance plans, and were removed from the grievance procedure of their contract. Respondents did not announce that they had reinstated Union representation or remedied any of these unfair labor practices before withdrawing

recognition again in June 2024. As such, I find that factor 3 weighs in favor of finding a causal link between the unfair labor practices and support for the second withdrawal of recognition.

Factor 4 also weighs in favor of finding a causal link. After the first withdrawal of recognition, parts department employees were left without union representation. Respondent Employee Services offered these employees higher wage rates, less expensive health insurance, and a 401(k) plan with an employer match. There can be no dispute that Respondents' unlawful conduct would denigrate the Union and have an effect on union membership and employee morale.

Thus, I find that all four *Master Slack* factors weigh in favor of finding a causal nexus between Respondents' unlawful actions and the second decertification effort. Respondents withdrew recognition from the Union in an environment tainted by their unfair labor practices. As such, I find that the June 10, 2024, withdrawal of recognition from the Union violated Section 8(a)(5) and (1) of the Act.

L. Respondent's Affirmative Defenses and Arguments Lack Merit

Respondents raised 14 affirmative defenses in their answer to the complaint. It is well established that the burden of proving an affirmative defense lies with the party asserting it. *Marydale Products, Co., Inc.,* 133 NLRB 1232 (1961), and *Sage Development Co.*, 301 NLRB 1173, 1189 (1991). Respondent failed to provide any argument or citations to case law in their brief regarding 11 of these defenses. As such, I shall not consider them further.

In their answer to the complaint, Respondents raised several Constitutional defenses. Respondents assert that the proceedings in this case are unconstitutional for three reasons: 1) the NLRB's exercise of prosecutorial, legislative, and adjudicatory authority in the same proceedings violates the Constitution's separation of power and due process provisions; 2) NLRB Members and Administrative Law Judges operate without the constitutionally required degree of electoral accountability, in violation of the separation of powers clause of Article II of the Constitution; and 3) without a right to trial by jury, the NLRB's processes violate the Seventh Amendment to the Constitution. On brief, Respondents added that NLRB Administrative Law Judges are unconstitutionally safeguarded from executive oversight as required by Article II of the Constitution. I deny each of Respondent's constitutional challenges with the understanding that the federal courts will likely address these issues in the future. See *Nexstar Media Group, Inc*., 374 NLRB No. 5, slip op. at fn. 2 (2024); *SJT Holdings, Inc*., 372 NLRB No. 82, slip op. at 1-2 (2023).

In sum, I find that the General Counsel has established that Respondent violated Sections 8(a)(1) and 8(a)(5) and (1) of the Act, as alleged in the complaint.

CONCLUSIONS OF LAW

1. Respondent Laborforce LLC, (Laborforce), Respondent M&K Employee Services (Employee Services), and Respondent M&K Truck Centers (Truck Centers) are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of

the Act.

2. Automobile Mechanics' Local 701, International Association of Machinists and Aerospace Workers, AFL-CIO (Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent Laborforce, LLC, Respondent Employee Services, and Respondent Truck Centers have been joint employers and alter egos of each other within the meaning of the Act and are jointly and severally liable for the unfair labor practices found in this case.

4. On July 7, 2023, Respondents threatened to withdraw recognition from the Union for the parts department and threatened unit employees with changing terms and conditions of employment for employees in the parts department, in violation of Section 8(a)(1) of the Act.

5. On October 1, 2023, Respondents withdrew recognition of the Union as the exclusive collective-bargaining representative of bargaining unit employees in the parts department. Since October 1, 2023, Respondents have failed and refused to apply the terms of the collective-bargaining agreement that Respondent Laborforce LLC entered into with the Union by refusing to bargain collectively with the Union, in violation of Sections 8(a)(5) and (1) of the Act.

6. Since October 1, 2023, Respondents have repudiated and/or modified the terms and conditions of employment of their bargaining unit employees as set forth in the collective bargaining agreement with the Union without providing the Union with notice or an opportunity to bargain, in violation of Section 8(a)(5) and (1) of the Act.

7. On June 10, 2024, Respondents withdrew recognition from the Union as the exclusive collective-bargaining representative of employees in the bargaining unit. Since June 10, 2024, Respondents have failed and refused to apply the terms of the collective-bargaining agreement that Respondent Laborforce LLC entered into with the Union by refusing to bargain collectively with the Union, in violation of Sections 8(a)(5) and (1) of the Act.

8. Since June 10, 2024, Respondents unilaterally changed and/or modified their employees' 401(k) plan and denied union representatives access to the Summit facility without providing the Union with notice or an opportunity to bargain, in violation of Section 8(a)(5) and (1) of the Act.

9. The unfair labor practices committed by Respondents affect commerce within the meaning of Section 2(6) and 2(7) of the Act.

REMEDY

Having found that the Respondents are joint employers and alter egos and have engaged in certain unfair labor practices, I shall order them to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondents violated Section 8(a)(5) and (1) of the Act, I shall order them to cease modifying the terms of the collective bargaining agreement without the consent of the Union and, on request, bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of unit employees. At the request of the Union, Respondents shall reinstitute the terms and conditions of employment that existed before its unlawful actions.

Respondents shall post an appropriate informational notice, as described in the attached appendix. This notice, on a form provided by the Regional Director for Region 13, after being signed by Respondents' authorized representative(s), shall be posted by 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, Respondents shall distribute the notice electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondents customarily communicate with their employees by such means. Reasonable steps shall be taken by Respondents to ensure that the notice is not altered, defaced, or covered by any other material. If Respondents have gone out of business or closed their facility, Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by Respondents at their Summit, Illinois facilities at any time since July 7, 2023.

Respondents shall make employees whole for any loss of earnings and other benefits resulting from its unlawful unilateral mid-contract changes as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), plus interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). Under *Don Chavas, LLC*, 361 NLRB 101 (2014), they shall compensate unit employees for the adverse tax consequences, if any, of receiving any lump-sum backpay award. In addition, under *AdvoServ of New Jersey, Inc*., 363 NLRB 1324 (2016), and *Cascades Containerboard Packaging-Niagara*, 370 NLRB No. 76 (2021), as modified in 371 NLRB No. 25 (2021), it shall, within 21 days of the date any amount of backpay is fixed either by agreement or Board order (or such additional time as the Regional Director may allow for good cause shown), file with the Regional Director for Region 13 a report allocating backpay to the appropriate calendar year(s); and a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award. The Regional Director will then assume responsibility for transmitting the report and form(s) to the Social Security Administration at the appropriate time and in the appropriate manner.

Respondents, having unlawfully withdrawn recognition from the Union as the exclusive collective-bargaining representative of the unit, shall also be ordered to immediately recognize the Union and, upon request, bargain for a reasonable period of time (as set forth in *Lee Lumber & Building Material Corp*., 334 NLRB 399 (2001), enfd. 310 F.3d 209 (D.C. Cir. 2002)), with the Union as the bargaining representative of the Unit with respect to wages, hours, and other

terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed document.

Respondents, having unlawfully failed to apply the terms and conditions of employment set forth in the collective-bargaining agreement with the Union for their bargaining unit employees, shall give full force and effect to the terms and conditions of employment provided in the collective-bargaining agreement upon the Union's request.

Respondents shall further make whole their employees covered by Union benefit funds by making any delinquent contributions to those funds, including any additional amount due the funds in accordance with *Merryweather Optical Co.,* 240 NLRB 1213, 1216 fn. 7 (1979). Respondents shall be required to reimburse their unit employees for any expenses ensuing from the failure to make the required benefit fund contributions, as set forth in *Kraft Heating & Plumbing,* 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), including any medical expenses that would have been covered by the funds. Such amounts shall be computed in the manner set forth in *Ogle Protection Service,* 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as computed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB No. 8 (2010).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

Respondent Laborforce, LLC, Byron Center, Michigan, and Summit, Illinois, Respondent M&K Employee Services, Byron Center, Michigan, and Summit, Illinois, and M&K Truck Centers, Hopkins, Michigan and Summit, Illinois, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to honor the collective-bargaining agreement with Automobile Mechanics' Local 701, International Association of Machinists and Aerospace Workers, AFL-CIO (Union), in effect from October 1, 2020, to September 30, 2027, which establishes the terms and conditions of employment in the appropriate bargaining unit.

(b) Failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of Respondents' employees in the appropriate unit during the term of the collective-bargaining agreement.

(c) Threatening to withdraw recognition from the Union and threatening unit employees with changing their terms and conditions of employment.

[10] 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.

(d) Withdrawing recognition of the Union as the exclusive collective-bargaining representative of employees.

(e) Repudiating and refusing to apply the terms of the collective-bargaining agreement that Respondent Laborforce LLC entered into with the Union by refusing to bargain collectively with the Union as the exclusive collective-bargaining representative of unit employees.

(f) Unilaterally changing and/or modifying their employees' 401(k) plan and denying Union representatives access to the Summit facility without providing the Union with notice or an opportunity to bargain.

(g) 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) Upon request of the Union, give full force and effect to the terms and conditions of employment provided in the collective-bargaining agreement.

(b) On request, bargain collectively in good faith with the Union as the exclusive representative of the employees in the appropriate bargaining unit during the term of the collective-bargaining agreement.

(c) Make whole unit employees for any losses suffered as a result of Respondents' failure to honor the terms of the collective-bargaining agreement, in the manner set forth in the remedy section of this decision.

(d) Upon request of the Union, remit the fringe benefit funds payments that have become due and reimburse unit employees for any losses or expenses arising from Respondents' failure to make the required payments, in the manner set forth in the remedy section of this decision.

(e) 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.

(f) If any backpay is owed, within 21 days of the date that the amount of backpay is fixed, either by agreement or Board order, file a report allocating backpay with the Regional Director for Region 13. Respondents will be required to allocate backpay to the appropriate calendar years only. The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration at

the appropriate time and in the appropriate manner. *AdvoServ of New Jersey, Inc.,* 363 NLRB No. 143 (2016).

(a) Within 14 days after service by the Region, post at their facility in Summit, Illinois, copies of the attached notice marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondents' authorized representatives, 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, 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 Respondents customarily communicate with their employees by such means. Reasonable steps shall be taken by 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, any of the Respondents has gone out of business or closed its facility involved in these proceedings, 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 July 7, 2023.

(g) 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.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

Dated, Washington, D.C. September 18, 2025

Melissa M. Olivero
Administrative Law Judge

11 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."

12 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.

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 Automobile Mechanics' Local 701, International Association of Machinists and Aerospace Workers, AFL-CIO (the Union) as the collective-bargaining representative of our employees in the following appropriate unit:

All full-time and regular part time parts and service department employees including: Journeymen, Mechanics, Mechanic Leadman, Partsman, Parts Leadman, Partsman Apprentice, Shop Apprentice, Service Writer, Utility, Warehouseman, Mobile Maintenance Specialists, Detail Persons, Body Shop Technicians, Parts Helper, Semi-Skilled Technicians, and Parts Driver employed by Respondent at its Summit Illinois, facility, but excluding all other employees, guards, and supervisors as defined in the Act.

WE WILL recognize and, on request, bargain collectively and in good faith with the Union as your exclusive collective-bargaining representative during the term of the collective-bargaining agreement.

WE WILL NOT refuse to honor the collective-bargaining agreement with the Union, which establishes the terms and conditions of your employment.

WE WILL NOT refuse to bargain with the Union by unilaterally repudiating and/or modifying the terms and conditions of the 2020-2027 collective bargaining agreement.

WE WILL NOT threaten to withdraw recognition from the Union as your exclusive collective-bargaining representative.

WE WILL NOT unlawfully threaten to change your working conditions.

WE WILL NOT withdraw recognition from the Union or refuse to recognize and bargain with the Union as your exclusive collective-bargaining representative.

WE WILL NOT change your 401(k) retirement plan.

WE WILL NOT deny access to Union representatives to our facility.

WE WILL NOT refuse to meet and bargain in good faith with your Union over any proposed changes in wages and working conditions before putting such changes into effect and WE WILL, if requested by the Union, rescind the changes to the 401(k) retirement plan we issued without bargaining with the Union.

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

WE WILL restore the policies and practices of Union representatives' access to employees at our facility that existed before October 1, 2023.

WE WILL restore the collective-bargaining agreement at our facility for the bargaining unit that existed before June 11, 2024.

WE WILL, on request, bargain with the Union as your representative concerning wages, hours, and working conditions.

WE WILL make employees whole, with interest for any loss of earnings and benefits suffered by them as a result of our refusal to recognize the Union and comply fully with the terms of the 2020-2027 collective-bargaining agreement and WE WILL, on request of the Union, remit any fringe benefit fund payments that have become due and reimburse you for any losses or expenses arising from our failure to make any required payments.

LABORFORCE, LLC, M&K EMPLOYEE SERVICES, AND M&K TRUCK CENTERS, AS JOINT EMPLOYERS AND/OR ALTER EGOS
(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.

Dirksen Federal Building
219 South Dearborn Street, Suite 808
Chicago, IL 60604-2027
(312) 353-7570
Hours: 8:30 a.m. to 5:00 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/13-CA-321415 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 (312) 353-7170.