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

LAYLA TRANSPORTATION, INC. a/k/a LAYLA TRANSPORTATION AND TRADING, INC.

and **Case No: 22-CA-325151**

TEAMSTERS LOCAL UNION NO. 469

Trenton Hanifin, Esq.,
Counsel for the General Counsel
Jedd Mendelson, Esq. and Nicole M. Grzeskowiak, Esq.
Counsel for the Respondent
Seth Kennedy, Esq.,
Counsel for the Charging Party

DECISION

STATEMENT OF THE CASE

JEFFREY P. GARDNER, Administrative Law Judge. The charge in this matter was filed on August 29, 2023, and an amended charge was filed thereafter on December 1, 2023. The Complaint was issued on July 19, 2024. Respondent's answer was filed on August 16, 2024.

The Complaint alleges that since on or about March 27, 2023, Respondent has unlawfully failed and refused to meet and bargain with the Union as the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act. The Complaint further alleges that on or about November 14, 2023, Respondent unlawfully polled its Union-represented employees about whether they wanted the Union to represent them, in violation of Section 8(a)(1) and (5) of the Act. Respondent denies the substantive allegations of the complaint.

On January 13 and 14, 2025, I conducted a trial in Newark, NJ, during which all parties were afforded the opportunity to present their evidence. On April 3, 2025, the General Counsel and Respondent each filed timely briefs. Upon consideration of the entire record and the briefs filed, I make the following[1]

FINDINGS OF FACT

I. JURISDICTION

Respondent, Layla Transportation, Inc. a/k/a Layla Transportation and Trading, Inc., admits to the Board's jurisdiction, including that it is an employer engaged in commerce within the

[1] Abbreviations used in this decision use the following conventions: "Tr." for the Transcript, "GC Exh." for the General Counsel's exhibits, "Jt. Exh." for Joint exhibits, and "R. Exh." for Respondent's exhibits. Specific citations are included only where appropriate to aid review and are not necessarily exclusive or exhaustive.

meaning of Section 2(2), (6) and (7) of the Act. Respondent also admits that the Union is a labor organization within the meaning of Section 2(5) of the Act. As such, I find that Respondent is an employer under the Act, the Union is a labor organization under the Act, and the matter is properly before the Board.

II. ALLEGED UNFAIR LABOR PRACTICES

FACTS

Respondent is a New Jersey corporation engaged in providing school bus transportation, in this case for the Piscataway, New Jersey school district. The Charging Party Union had represented the employees of a predecessor bus company, Durham School Bus ("Durham"), prior to Respondent's taking over the Piscataway bus contract in 2018. At that time, Respondent initially disputed the Charging Party Union's status as the bargaining representative for its employees, leading to a prior charge filed on September 27, 2018, in Case 22-CA-228169, alleging Respondent's refusal to bargain as well as unlawfully refusing to hire certain employees.

That prior charge was resolved on July 16, 2019, with Respondent entering into an informal settlement with the Region and the Union in which it agreed, among other things, to recognize the Union as the collective bargaining representative of employees in the following unit:

> All full-time and regular part-time school bus Drivers, attendants, and lot employees employed by the Employer at its Ethel Road, Piscataway, NJ facility, but excluding all office clerical employees, dispatchers, professional employees, guards, and supervisors as defined by the Act.
>
> (Jt. Exh. 3).

The General Counsel's main witness was Christina Montorio, a business agent for the Union since 2021, and its recording secretary. Montorio had been with the Union since 2007 and had been servicing the unit back when the employees were employed by a predecessor of Durham called First Student, then with Durham when it took over the Piscataway contract, and finally continued to do so when Respondent took over the contract.

Once Respondent agreed to recognize the Union in the July 2019 Settlement Agreement, the parties began negotiations to bargain for a contract. Due to scheduling issues, those negotiations did not commence until March 2020, when the Union presented its first proposed contract (GC Exh. 2), modeled after the contract with Durham, which in turn had been adopted from the First Student contract. The Union continued using this initial proposed contract as the framework through negotiations at least through October 2021, making notations of agreed-to terms along the way.

The parties' negotiations continued over the span of almost three years, exclusively by Zoom video as necessitated by the Covid pandemic. The parties also communicated frequently by email and phone. For most of the parties' negotiations, Montorio was the sole representative for the Union,[2] while Respondent was initially represented by attorney Nicole Grzeskowiak and Respondent's owner Wael Hamed. Grzeskowiak had been representing Respondent since 2018, and was the main communicator with Montorio.

[2] Another Union representative, Fred Potter, who had previously serviced the unit joined the parties' first session.

In each of their bargaining sessions, the parties would go through the various issues in the proposed contract, with items one by one being agreed to, sometimes after a back-and-forth discussion. It is undisputed that the parties negotiated over a wide range of issues and made significant progress toward reaching a contract. These included bereavement leave, holiday pay, training, uniforms, drug testing, seniority and others. All parties agree that they were meeting regularly, continuously and apparently in good faith during this entire period. In addition, the parties were exchanging proposals by email between sessions. Eventually, by the Fall of 2022, there remained only a few unresolved issues, including wages, Union security, and duration of the contract.

By this point in the bargaining, with only these few outstanding issues, the Union sought to craft an updated proposal to try to resolve the remaining issues and finalize negotiations. On November 15, 2022, Montorio sent Respondent an email reiterating a request for information that Respondent had earlier agreed to provide. Specifically, the Union requested an updated list of employees with contact info and rates of pay, as well as requesting an updated proposal from Respondent regarding wages and contract duration, and updated language on picket lines. The email also attached a letter from Union counsel discussing the law with respect to Union security as it related to the Union's Union Security proposal.

Respondent responded to the Union's information request by email on December 7, 2022, just prior to what would become the parties' last negotiation session. The response included a list of employees, with their contact information and their current wages, as well as proposal for a on-time 3% wage increase in September 2023. However, as Montorio observed, the current wages for employees exceeded by $5/hour what the Union had believed they were earning, which was what the parties had been basing their wage discussions on at the bargaining table.

Upon learning of the increased wages that Respondent was paying to employees, Montorio confronted Respondent at their bargaining session, telling them the Union's initial reaction, which was that a wage increase away from the bargaining table was an unfair labor practice.[3] The Union advised that they would need time to consider what their next action would need to be based on this new information. So, the parties scheduled their next meeting for January 31, 2023.

That meeting consisted of discussion over the remaining few open items, plus the new issue that had arisen regarding the higher wages employees were already receiving. The Union confronted Respondent with the fact that Respondent's wage proposal to that point had been less than what employees were actually making, and that it had rejected Union proposals that were also less than what employees were making. Hamed had left the meeting before this subject came up, and Grzeskowiak would not provide Montorio with a response without conferring with Hamed. Grzeskowiak advised that she would have to get back to Montorio with an answer. This was the last bargaining meeting that Hamed attended. Going forward, Respondent was represented only by Grzeskowiak.

When the Union did not receive any communication from Respondent on the subject of the wage increase, on February 27, 2023, Montorio sent an email requesting to schedule a phone call to discuss the matter. She did speak by phone w/ Grzeskowiak on March 9, when they again discussed the various outstanding contract issues, but nothing was resolved. By email dated

[3] The Union ultimately did file a ULP Charge alleging an unlawful wage increase, but subsequently withdrew that charge.

March 27, 2023, Grzeskowiak advised that Respondent was going to send a written response to the outstanding issues, and that Montorio should expect to receive that later that week.

No response having been received, Montorio emailed Grzeskowiak again on May 25, 2023, advising Grzeskowiak that the Union was still awaiting her response, and requesting again Respondent's proposals on the remaining open items and its response to the issue of employees' increased wages. Again, no response was received.

On June 26, 2023, Montorio emailed Grzeskowiak to inquire what was going on, reiterating that the Union did not want to have to involve the NLRB again to resolve the issues between the parties, and requesting that Respondent please reply. Respondent did reply to this email on June 29, 2023, when Grzeskowiak emailed Montorio, "My apologies, I seem to have missed your previous email. I'm checking with my client and will get back to you." However, no follow-up communication was forthcoming.

On July 27, 2023, Montorio emailed Grzeskowiak a final time, stating "We are fast approaching the start of the school year. I'd prefer to have the contract done and the members in the Union rather than be back at the Labor Board. What is the status?" Montorio testified that the Union's contracts in other districts run from September 1 to August 31 to coincide with the school year, and she was hoping this contract could get finalized in time to do the same with the Piscataway contract.

When she did not receive an email in response, Montorio followed up by phone with Grzeskowiak, and after some back and forth, the two were able to speak on August 2, 2023. That conversation lasted approximately 5 minutes, with Montorio again reiterating where the parties stood, and Grzeskowiak again advising that she would have to check with the client and get back to Montorio. They agreed to reconnect in a couple weeks.

When two weeks passed, on August 17, Montorio emailed to inquire if there was an answer, and Grzeskowiak replied by email on August 23 advising that she had just returned from vacation and would check with the client to confirm its position on the open issues. At this point, Montorio concluded that Respondent was never going to give an adequate response, and directed Union counsel to file the ULP charge now at issue, which it did on August 29, 2023. (GC Exh. 1(b)).

Respondent maintains it did not initially receive notice of that charge, and that it did not receive any notice of that pending August 2023 charge until December 15, 2023. Nevertheless, one day after the Union's charge was filed, on August 30, 2023, Respondent filed an RM Petition in Case 22-RM-325096. Respondent did subsequently request to withdraw that Petition, which request was approved by the Region on September 14, 2023. (Jt. Exh. 5).

Thereafter, on October 27, 2023, Respondent emailed the Union a letter notifying the Union that it intended to conduct a poll of its employees on November 14, 2023, to determine if the employees continued wanting to be represented by the Union and invited the Union to participate in that poll. (GC Exh. 8).

Respondent's letter did not provide any explanation of the basis upon which Respondent was relying to conduct the poll. However, Respondent maintains that it had developed a good faith belief that the Union did not have the majority support of the employees, and that was why it decided to conduct the November 14 poll. Hamed testified about the purported basis for this belief being conversations which he had with various employees.

Hamed described being approached by employees with concerns about the Union, beginning in 2019, when Respondent posted the Settlement Agreement in which it agreed to recognize and bargain with the Union. Hamed named employee Wendy Truman as someone who mentioned to him on more than one occasion back then that she was unhappy with the Union, although Wendy left the company in 2022. He also named an employee "Ed" who expressed dissatisfaction with the Union, although Ed since passed away. And he referenced another employee who is also no longer with the company saying the same, as well as an employee Lakisha, who left the company in 2019, who Hamed heard second-hand had not liked the Union. (Tr. at 132).

Hamed then explained that "during the years, the following years," other employees expressing dissatisfaction, including Ernest Beryl in 2021 and Mac White. (Tr. at 127). White told Hamed at the time of the poll that he didn't want the Union. Hamed named other employees he spoke with as well, including Tonia Simmons in May of 2023, Tai Lo in March 2023, and Diane Heilman many times over the years, who did not want the Union. According to Hamed, Heilman also told him about 2 other employees, Ivette Rios and Xionara Prins, though he did not clarify what those employees were purported to have said. (Tr. 128).

Hamed also identified employee Mike Owens as having approached him to say he did not want the Union in February 2023. Hamed said he spoke with employee Edann Moses in 2019 and Cicily Francois in 2021 and/or 2022. In addition, Hamed testified that the dispatcher told him other employees complained as well. (Tr. 129). Hamed said he spoke with employee Earl Mcauley on more than one occasion in 2023, 2024 and 2025 who stated he did not want the Union. (Tr. at 131).

Dispatcher Kevin Miller also testified about employees telling him that they were unhappy with the Union, although he identified by name only ones already identified by Hamed, including Tai Lo, Diane Heilman, Tonia Simmons and Earl McCauley. Miller also says that other drivers talk with each other, and "they communicate with those people, and those people communicate with me." (Tr. at 177). He identified Yvette Rios and Xiomar Prins as two of the "other drivers" he heard were against the Union.

The total number of employees who Hamed testified spoke to him about the Union at any time in the year 2023 was 8 or 9 out of the over 30 employees employed at the time. In the affidavit which he gave during the investigation of the charge, Hamed mentioned only that 2 employees had approached him in the critical period of August and September of 2023 about not wanting the Union. None of the identified employees were called to testify at the hearing.

The Union did not reply to Respondent's email announcing the poll, and did not participate in the poll in any way. Instead, on November 9, 2023, Montorio sent Grzeskowiak a revised contract proposal, including a revised wage proposal, and some minor other changes in an attempt to jumpstart negotiations. Montorio followed up with an email on November 20 asking Respondent to reply. On November 26, 2023, Grzeskowiak emailed back stating that she had been out sick the prior week, but that she would follow up with her client and get back to Montorio. Respondent never provided a response to the Union's November 9 proposal.

In the meantime, Respondent proceeded with its announced poll of employees on November 14, 2023. Grzeskowiak testified as to her understanding of how the poll was conducted, though she was not present on the day of the poll. Employees were provided with a notice that there would be a secret ballot poll and included a proviso that "Note that this is a poll,

NOT an election." That notice advised that employees were not required to vote in the poll, that it was completely voluntary, and that employees would not face any consequences from management for voting or not voting, or for the outcome of the poll. The notice also advised that the poll would be anonymous, and that there would be no names or signatures used. The notice was posted on the bulletin board in the trailer, with a sample ballot attached, and it was produced in English and Spanish. (R Exhs. 13-14). In addition to the Notice, a list of instructions and procedures employees would use to vote was also posted outside of the storage room, i.e., in the drivers' room, also in English and Spanish. (R. Exhs. 15-16).

The poll was conducted at Respondent's Ethel Road facility in the trailer. The trailer has 3 rooms: the dispatcher's office, the drivers' room, and a storage room. On the day of the poll, the security cameras in the driver's room of the trailer were unplugged, although Miller testified that he did not notify the employees of this fact. Also, post-it notes were placed over the cameras.

The polling itself took place in the storage room. Miller helped prepare the storage room for the polling by having the room cleared out so there was an empty table to use. Miller testified that he remained in his office the whole day and did not see anyone come into the trailer, or see anyone vote. He did acknowledge that employees would be aware that he was present in his office either because he radioed them, and that his office was adjacent to the drivers' room, which in turn was adjacent to the polling place.

In the polling room, there was a sealed ballot box, numbered ballots, and an observer. The observer was employee Diane Heilman, who volunteered to verify voters at the poll.[4] The ballots were numbered, but the numbers did not correspond to any particular employee. Dispatcher Miller was present in his office for the duration of the voting, but was instructed not to observe. He was visible to employees from outside the trailer.

At the end of the polling day, the box was unsealed, and the ballots counted publicly in front of any drivers who wanted to attend. There were 38 employees who voted, and 31 voted not to be represented by the Union. Later in November, Grzeskowiak notified the Union in a phone call that a majority of the employees had voted against Union membership, and that Respondent was therefore requesting a pause in bargaining. The Union did not agree to a pause.

On November 29, 2023, Respondent filed a new RM Petition in Case 22-RM-331041 (Jt. Exh. 6), whereupon the Union amended the within charge to allege that Respondent's November 14 poll was unlawful. (GC Exh. 1(d)). The Region dismissed Respondent's RM petition on January 8, 2024, finding there was insufficient evidence to demonstrate Respondent had a good faith reasonable uncertainty concerning the Union's continuing majority status. (Jt. Exh. 7).

III. CREDIBILITY DETERMINATIONS

My factual findings set forth above are based on my observations of witnesses' testimonial demeanor.[5] Testifying at the hearing were Union Business Agent Christina Montorio, Respondent

[4] Heilman was also the employee who had told Hamed she did not want the Union and gave him names of 2 other employees whom she claimed also did not want the Union.

[5] Where credibility resolution is not based on observations of witnesses' testimonial demeanor, the choice between conflicting testimonies rests on the weight of the evidence, established or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole. *Taylor Motors, Inc.*, 366 NLRB No. 69 slip op. 1 at fn. 3 (2018); *Lignotock Corp.*, 298 NLRB 209, 209 fn. 1 (1990).

Counsel Nicole Grzeskowiak, Respondent Owner Wael Hamed, and Respondent Dispatcher/Site Manager Kevin Miller.

I found Union business agent Christina Montorio to be a very credible witness. She demonstrated a thorough understanding of the bargaining relationship and appeared candid as she testified about her communications with the employer, including quickly correcting herself when realizing a mistake, and maintaining a consistent demeanor on both direct and cross examination.

I also found Respondent's Counsel, Nicole Grzeskowiak to be mostly credible. She was fairly straightforward in her testimony, and her demeanor likewise remained the same on direct and cross. But, she did not have a credible explanation for the long gaps in responses to communications from the Union, or the failure of those responses to substantively respond to the Union's requests. In addition, her testimony about what took place at Respondent's poll was second-hand, reported to her by an associate from her law firm. And that person did not testify.

I did not find Wael Hamed to be credible. While he was congenial and cooperative at all times, his testimony was contradicted by his own prior affidavit on the critical issue of whether Respondent had a good faith reasonable belief as to whether the Union had majority support. He was also unconvincing in his attempt to explain Respondent's failure to respond to the Union's repeated requests for its position on outstanding issues.

I did find the testimony of Kevin Miller to be mostly credible. While he was somewhat defensive when pressed on whether employees could see into his office, overall, he seemed to be an honest witness, testifying in a straightforward manner about what he saw and heard.

ANALYSIS

A. Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to meet and bargain with the Union.

Section 8(d) of the Act defines the scope of collective bargaining under the Act. The duty to bargain in good faith under Section 8(d) of the Act requires parties to negotiate with a "sincere purpose to find a basis of agreement." *Atlanta Hilton & Tower*, 271 NLRB 1600, 1603 (1984) quoting *NLRB v. Herman Sausage Co*., 275 F.2d 229, 231 (5th Cir. 1960). An employer is required to make "some reasonable effort in some direction to compose his differences with the union, if § 8(a)(5) is to be read as imposing any substantial obligation at all." *Id.* "[M]ere pretense at negotiations with a completely closed mind and without a spirit of cooperation does not satisfy the requirements of the Act." *Hardesty Co., Inc. d/b/a Mid-Continent Concrete*, 336 NLRB 258, 259 (2001), enfd. 308 F.3d 859 (8th Cir. 2002).

The fact that parties have met and bargained in the past or agreed to some number of terms and conditions for a contract does not excuse a party's refusal to continue to bargain. For example, as the Board found in *Sunbelt Rentals, Inc*., 370 NLRB No. 102 (2021), a "[r]espondent's 4-month refusal to submit a wage counterproposal – despite its previous willingness to discuss other economic subjects, such as health insurance and retirement plans – reflected an unlawful intent to stall negotiations." Id. at p. 3.

Here, this case involves an unfortunate breakdown of what appeared to be a productive bargaining relationship headed in the right direction beginning in July 2019, after an initial bumpy start when Respondent first took over the bus contract for the Piscataway school district. Indeed,

from that point through to early 2023, the parties had been meeting via Zoom on a regular basis, communicating by email and phone between meetings, and seemingly progressing toward finally reaching a new contract after 3 long years of bargaining. Only 3 issues remained outstanding – wages, union security, and duration of the contract.

However, once it became known in December 2022 that Respondent had granted a significant wage increase without the Union's knowledge, and the Union pressed Respondent to explain the increase in the context of the parties' wage proposals in contract negotiations, things took a dramatic turn, and Respondent's bargaining conduct began to change completely. The parties agreed to meet on January 31, 2023, to discuss this issue along with the few remaining outstanding items, but Hamed left the session before the topic of the waqe increase was addressed, and Grzeskowiak would not address it in his absence.

When Montorio and Grzeskowiak spoke by phone on March 9, 2023, there was still no formal response from Respondent on the wage increase issue, or a counterproposal on wages. Indeed, Grzeskowiak acknowledged that a response was still owed when on March 27, 2023, she emailed Montorio to advise that she was working on the issues the two had discussed and "should have an update for you later this week." (GC Exh. 7). But none was ever forthcoming.

What emerged instead was a repeated pattern of Respondent's counsel acknowledging communications from the Union with the assertion that counsel needed to check with the client to obtain its position. While there is nothing wrong with consulting with a client before responding to an inquiry, the problem that arose was that, for whatever reason, Respondent counsel repeatedly failed to respond to the Union with the client's position. And did so over long stretches of time, often only to then say again that she needed to check with the client.

In fact, Respondent never provided any substantive update on the wage increase and never provided an updated proposal on the parties' outstanding issues. The only communications came in the form of Grzeskowiak repeatedly stating – on March 27, on June 29, on August 2, and again on August 23 - that she needed to check with the client and would get back to the Union. The next substantive communication on the subject of bargaining didn't come until November 30, 2023, following its polling of employees when Respondent asked to pause the parties' bargaining altogether. I find that conduct reflected "an unlawful intent to stall negotiations" as found in *Sunbelt Rentals, supra*, that supports a finding of bad faith bargaining.

I am not persuaded by Respondent's argument that the parties had a history of bargaining slowly, with gaps between bargaining sessions of multiple months during the three-year period that the parties were actively engaged in bargaining. During that period, the parties were in communication, exchanging proposals and progressing toward a contract. What took place in 2023 was categorically different, as Respondent's repeated failure to provide any substantive response to the Union evidenced its bad faith.

Accordingly, considering the totality of the circumstances, I find that beginning March 27, 2023, Respondent unlawfully failed and refused to bargain in good faith with the Union in violation of Section 8(a)(5) and (1) of the Act.

B. Respondent violated Section 8(a)(1) of the Act by conducting a poll of bargaining unit employees without objective evidence of loss of support.

The General Counsel alleges Respondent violated Section 8(a)(1) by conducting its November 14, 2023 poll of employees to determine whether employees wanted the Union to be

their exclusive collective-bargaining representative, which the General Counsel maintains was unlawful under *Struksnes Constr. Co.*, 165 NLRB 1062 (1967).

Absent unusual circumstances, the polling of employees by an employer will be violative of Section 8(a)(1) of the Act. As the Board in *Struksnes* noted, "any attempt by an employer to ascertain employee views and sympathies regarding unionism generally tends to cause fear of reprisal and, therefore, tends to impinge on section 7 rights." *Id*. at 1063.

Accordingly, in order for an employer to lawfully conduct a poll of its employees, it must as an initial matter, have "sufficient objective evidence of loss of union support." *Id.* In the absence of that initial minimum threshold of having a good faith reasonable belief that the Union does not have majority support, no polling of employees for their support of the Union is permitted by an employer.

In addition, where an employer has good-faith doubts regarding a union's claim of majority status, the employer may only lawfully poll its employees about their support for the union if certain safeguards are enacted. Specifically, in *Struksnes*, the Board held that in order for the polling of employees to be lawful, the following safeguards must be observed:

> (1) the purpose of the poll is to determine the truth of a union's claims of majority;
> (2) this purpose is communicated to the employees;
> (3) assurances against reprisals are given;
> (4) the employees are polled by secret ballot, and
> (5) the employer has not engaged in unfair labor practices or otherwise created a coercive atmosphere.
>
> *Struksnes*, 165 NLRB at 1063.

The non-observance of any one of these safeguards renders a poll of employees' union sympathies violative of 8(a)(1) of the Act. Importantly, "it is Respondent's burden to establish the affirmative defense that, against a background free from other coercion" it met all of the *Struksnes* elements. *Burns International Security Services*, 225 NLRB 271, 275-276 (1976).[6] I find that Respondent has not met its burden here.

First, it is not apparent that Respondent had a good faith doubt as to the Union's majority status. Respondent's asserted reasons for conducting the poll were absent from its October 27, 2023, letter to the Union announcing the poll. However, Respondent takes the position that its good faith doubt was based on conversations between Hamed and various unit employees about their dissatisfaction with the Union, and similar conversations some of those same employees had with Miller.[7]

Respondent correctly notes that expressions of employee disaffection from or with a union are the most persuasive evidence supporting an employer's good faith doubt of a union's loss of majority status. *NLRB v. Albany Steel*, 17 F.3d 564, 570-71 (2d Cir. 1994) (R Brief at 12). However, general statements that employees are "dissatisfied" with their union, or that they were

[6] Enforcement denied, on other grounds, in *Burns Intern. Security Services, Inc. v. N.L.R.B.* (10th Cir. 1977).

[7] Respondent adds in its brief that a lack of active communication between the Union and its members is an additional factor to consider, but it is not the persuasive factor that evidence of employee disaffection would be, and I would not rely on that in the context of Respondent's contemporaneous failure to bargain.

unhappy with a union's performance in the past are not the same as evidence that they no longer wish to be represented.

More importantly here, as General Counsel correctly notes, statements of employee dissatisfaction that are remote in time are not "'objective, identifiable acts' [that] … can form the basis for an employer's doubts." Wagon Wheel Bowl, Inc., 310 NLRB 915, 917 (1993). By Hamed's own account, his conversations with employees took place over the course of multiple years, some with employees who had not worked for Respondent for over a year, and many of them quite remote from the November 14, 2023, date of the poll.

In addition, multiple examples of employees he claimed to be relying on to form his doubts about the Union's majority support, as well as those described by Miller, were second-hand accounts, and even when including those, the grand total number of current employees reportedly expressing a desire not to continue with the Union over the span of 3 years was a fraction of the total number of employees in the unit. The total number of employees that Hamed identified as speaking to him specifically at or near the time Respondent claimed to have a reasonable doubt about the Union's was at most a small handful.[8]

Given the dearth of specific contemporaneous expressions of disaffection with the Union that could support a finding that Respondent had "sufficient objective evidence of loss of union support" when it announced in October 2023 its attention to poll employees in November 2023, I find that Respondent was not privileged to poll its employees at that time.

As for the poll itself, even if Respondent did have a justification to conduct a poll of its employees, Respondent failed to meet at least one of the *Struksness* safeguards. It does appear from the documents in evidence that safeguards (1), (2) and (3) were met. The notice provided to employees made the purpose of the poll clear, communicated that to employees, and gave appropriate assurances to employees that there would be no reprisals.

While the poll was purported to be by secret ballot, in compliance with safeguard (4), Respondent offered no first-hand witness testimony to affirm exactly what the employees were told when they were voting, who was actually in the room, and whether employees in fact voted in secret. It is Respondent's burden to affirmatively prove each of the safeguards were met, and they failed to present witnesses in their control with first-hand knowledge of what actually took place in the storage room voting area. So, I am not persuaded that safeguard (4) has been adequately proven.

In addition, and significantly, it is undisputed that dispatcher Kevin Miller was present in his office adjacent to the room employees entered to get to the polling place, and that employees were aware of this. I find that Miller's presence so near to the polling area for the duration of the poll does not satisfy safeguard (5) of Struksnes because it necessarily created a coercive atmosphere to Respondent's polling.

Most importantly, however, the election was conducted in the context of Respondent's unlawful failure to bargain, violating what could be viewed as the most important safeguard delineated in *Struksnes*, creating a coercive atmosphere that renders the poll unreliable and unlawful. Having found that Respondent was unlawfully refusing to bargain with the Union since March 27, 2023, I find that Respondent did not and could not satisfy safeguard (5) of Struksnes by conducting a poll of employees in the context of this unremedied unfair labor practice.

[8] Indeed, Hamed's sworn affidavit given a year prior to the trial put that number at 2.

Accordingly, I find the November 14, 2023 poll of employees was unlawful, and that by conducting the poll, Respondent violated Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. Respondent, Layla Transportation, Inc. a/k/a Layla Transportation and Trading, Inc., is an Employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. Teamsters Local Union No. 469 (the Union), is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(5) and (1) by failing and refusing to meet and bargain with the Union beginning March 27, 2025.

4. Respondent violated Section 8(a)(1) by conducting a poll of its employees on November 14, 2023, without objective evidence of loss of support.

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

REMEDY

As I have concluded that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent having unlawfully failed and refused to meet and bargain with the Union, I shall recommend that Respondent be ordered to meet and bargain with the Union as the collective bargaining representative of its employees. Having found Respondent's poll to have been unlawful, I shall recommend that Respondent be ordered to cease and desist from polling its employees about their Union support. I shall also recommend that the Respondent be required to notify its employees of these unfair labor practices.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[9]

ORDER

The Respondent, Layla Transportation, Inc. a/k/a Layla Transportation and Trading, Inc., its officers, agents, and representatives, shall

1. Cease and desist from:

[9] 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.

(a) Failing and refusing to meet and bargain collectively in good faith with the Union, Teamsters Local Union 469 as the exclusive collective-bargaining representative of its employees in the bargaining unit.

(b) Polling its employees regarding their support for the Union in the absence of a good faith reasonable belief that the Union does not have majority support.

(c) In any like or related manner, interfering with, restraining or coercing employees in the exercise of their rights under Section 7 of the Act.

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

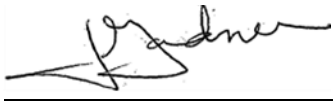
(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time school bus Drivers, attendants, and lot employees employed by the Employer at its Ethel Road, Piscataway, NJ facility, but excluding all office clerical employees, dispatchers, professional employees, guards, and supervisors as defined by the Act.

(b) Within 14 days after service by the Region, post at its Piscataway, NJ location copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 22 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 the physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or 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 lost access to the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 27, 2023.

(e) 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., June 5, 2026.



Jeffrey P. Gardner
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Teamsters Local Union 469 (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit:

All full-time and regular part-time school bus Drivers, attendants, and lot employees employed by the Employer at its Ethel Road, Piscataway, NJ facility, but excluding all office clerical employees, dispatchers, professional employees, guards, and supervisors as defined by the Act.

WE WILL NOT poll our employees about their support for the Union in the absence of a good faith reasonable belief that the Union does not have majority support.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of their rights under Section 7 of the Act.

WE WILL recognize and, on request, bargain with the Union as the exclusive representative of the employees in the bargaining unit concerning terms and conditions of employment, and, if an understanding is reached, embody the understanding in a signed agreement.

Layla Transportation, Inc. a/k/a Layla Transportation and Trading, Inc.
(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:

20 Washington Place, 5th Floor, Newark, NJ 07102–3110
(973) 645–2100, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/22-CA-325151 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.