In the

United States Court of Appeals

For the Seventh Circuit

Nos. 22-1629 & 22-1483

ADT, LLC,

Petitioner/Cross-Respondent,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent/Cross-Petitioner.

Petition for Review and Cross-Application for Enforcement of an Order of the National Labor Relations Board.
Nos. 18-CA-264654, 18-CA-266951, 18-CA-270402.

ARGUED OCTOBER 24, 2022 — DECIDED DECEMBER 2, 2022

Before HAMILTON, ST. EVE, and KIRSCH, *Circuit Judges*.

HAMILTON, *Circuit Judge*. This case presents a disappointing and transparent attempt by an employer to avoid its obligations under the National Labor Relations Act, 29 U.S.C. § 151 et seq. Petitioner ADT combined a unionized office with a non-union office and tried unilaterally to withdraw recognition of the union based on a supposed decertification petition not signed by a single member of the bargaining unit. It's tempting to call the attempt unprecedented, but it is not. ADT

tried a nearly identical maneuver in 2008 in Kalamazoo, Michigan. The National Labor Relations Board found unfair labor practices then, and the Sixth Circuit enforced the Board's order. *NLRB v. ADT Security Servs., Inc.*, 689 F.3d 628 (6th Cir. 2012). We agree with their reasoning in that case, and the findings and decision of the Board in this case are supported by substantial evidence. We deny ADT's petition for review and enforce the Board's order.

I. *Factual Background*

Drawn from the administrative record, the following facts accord with those found by the Administrative Law Judge and adopted by the Board in *ADT, LLC & International Brotherhood of Electrical Workers Local Union 364*, 371 NLRB No. 67, 2022 WL 511012, at *1–6 (Feb. 17, 2022).

ADT installs and services security systems. Before 2020, ADT had separate offices in Rockford, Illinois, and Madison, Wisconsin. Since 1994 the Rockford employees have been represented by the International Brotherhood of Electrical Workers Local 364. As certified, the Rockford bargaining unit encompassed "All full-time and regular part-time installers, technicians and service personnel employed by [ADT] at its 510 LaFayette Avenue, Rockford, Illinois facility." Over their almost 30-year bargaining history, ADT and the union have successfully negotiated eight or nine collective bargaining agreements. The most recent agreement ran from September 1, 2017 to August 31, 2020. The employees who worked out of the Madison office were not represented by a union.

In May 2019 ADT announced that it had decided to close both the Rockford and Madison facilities and to combine the operations in a new office in Janesville, Wisconsin. Rockford

employees were concerned about what the consolidation would mean for their bargaining unit. They asked ADT management what would change. ADT was clear: other than the new facility location, "nothing would change." The Rockford employees would "stay in the Union" and work the same service area around Rockford that they had been covering for decades.

And at first, nothing did change. A few months later, though, ADT took an extraordinary step against the union. It purported to withdraw recognition of the union for the Rockford employees. ADT took this step based on a decertification petition that had not been signed by *any* member of the certified bargaining unit, let alone the majority that would be required. ADT then unilaterally changed several terms and conditions of the union members' employment. When members of the Rockford unit questioned these changes, management told them they were no longer "in the Union," that management "had done it in other branches," and that "it was all legal."

The Rockford unit employees did not take management's word on that score. The union filed unfair labor practice charges against ADT with the National Labor Relations Board. An Administrative Law Judge and the Board agreed with the employees and the union that ADT had violated multiple sections of the National Labor Relations Act. *ADT, LLC*, 2022 WL 511012, at *1. The Board found that ADT had unlawfully withdrawn recognition from the union, unlawfully made unilateral changes to the Rockford unit employees' terms and conditions of employment, and unlawfully interrogated and threatened a Rockford unit employee about his support for the union. *Id.* Based in part on ADT's history as "a

recidivist violator of the Act" and "its evident disdain" for the rights of employees under the Act, the Board issued a broad remedial order. *Id.* at *1–2. ADT has petitioned for judicial review, and the Board has cross-petitioned for enforcement of its order.

II. *Legal Standards*

A. *Judicial Review of Board Decisions*

"Our review of a Board decision is limited." *Constellation Brands U.S. Operations, Inc. v. NLRB*, 992 F.3d 642, 646 (7th Cir. 2021). "We look for whether substantial evidence supports the Board's factual findings and whether legal conclusions have a reasonable basis in law." *Id.*; 29 U.S.C. § 160(e) & (f). "These standards are not demanding: a finding is supported by substantial evidence if 'a reasonable mind might accept' its truth." *Id.*, quoting *SCA Tissue N. Am. LLC v. NLRB*, 371 F.3d 983, 988 (7th Cir. 2004). We "do not reweigh the evidence," and the "presence of contrary evidence does not compel us to reverse the Board's order." *Contemporary Cars, Inc. v. NLRB*, 814 F.3d 859, 868–69 (7th Cir. 2016), citing *NLRB v. KSM Industries, Inc.*, 682 F.3d 537, 543–44 (7th Cir. 2012), and *NLRB v. Teamsters "General" Local Union No. 200*, 723 F.3d 778, 783 (7th Cir. 2013).

Our deferential review extends to questions of substantive labor law. We will accept "the Board's interpretations of the law 'unless they are irrational or inconsistent with the Act.'" *KSM Industries*, 682 F.3d at 544, quoting *Loparex LLC v. NLRB*, 591 F.3d 540, 545 (7th Cir. 2009); *NLRB v. GranCare, Inc.*, 170 F.3d 662, 666 (7th Cir. 1999) (en banc). "Where, as here, the Board adopts the ALJ's findings of fact and conclusions of law, our review focuses on the ALJ's order." *Constellation*

Brands, 992 F.3d at 646. "The party challenging the Board's determination bears the burden of proof." *Id.* We should add, though, that even if we did not defer to the Board's interpretations of the law, we would agree with and enforce its order.

B. *Withdrawal of Recognition*

Under the National Labor Relations Act, employees "have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." 29 U.S.C. § 157. An employer is guilty of unfair labor practices when it "refuse[s] to bargain collectively with the representatives of [its] employees." § 158(a)(5). The only representatives with whom an employer may bargain are those "designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes." § 159(a).

The central issue on the merits is whether changed circumstances, here the closing and consolidation of the Rockford and Madison offices, call for a change in the bargaining unit. There is also an issue about ADT's decision to withdraw recognition unilaterally, let alone on the basis of a decertification petition not signed by a majority of the bargaining unit. The Board explained in the nearly identical ADT case from Kalamazoo that, where "the issue is whether an existing unit remains appropriate in light of changed circumstances, the Board gives significant weight to the parties' history of bargaining." *ADT Security Servs., Inc. & Local Union 131, Int'l Bhd. of Electrical Workers*, 355 NLRB No. 223, 355 NLRB 1388, 1388 (2010), enforced, *NLRB v. ADT Security Servs., Inc.*, 689 F.3d 628 (6th Cir. 2012).

Consistent with the deference we show Board decisions, we likewise pay heed to a "significant bargaining history" of the kind that exists between ADT and Local 364 in Rockford. *Id.* at 1396, quoting *Canal Carting, Inc.*, 339 NLRB No. 121, 339 NLRB 969, 970 (2003); *ADT Security Servs.*, 689 F.3d at 634 (noting "the Board's authority and its expertise" to consider whether changed circumstances "overcome the significance of the bargaining history" and according weight to an "almost twenty-nine-year bargaining history between" ADT and a union); see also *KSM Industries*, 682 F.3d at 543 ("Our review of the Board's decision is subject to a deferential standard."). In light of these legal standards, we turn to the more specific facts and issues in this case, again giving deference to the ALJ's and Board's factual findings.

III. *ADT's Unilateral Withdrawal of Recognition*

ADT's principal legal theory is that in combining the Rockford and Madison offices, it changed the work of the two groups of employees so substantially that it would be intolerable to keep them split for purposes of a bargaining unit. At relevant times, there was one more Madison employee than Rockford employees, so everyone expected that a majority vote of the combined group, if that were the proper bargaining unit, would reject union representation.

We start with ADT's announcement that it was withdrawing recognition of the union. We then consider in detail the facts relevant to whether the Rockford employees continued to be an appropriate bargaining unit, including the history of bargaining between the union and the employer and the facts about how the employees actually did their jobs.

A. *The Withdrawal*

In June 2020, after consolidation in Janesville, ADT Director of Labor Relations James Nixdorf informed Local 364 that "a majority of the ADT employees of the … Local 364 bargaining unit in Janesville" had submitted to ADT a decertification petition demanding that the company "withdraw recognition of the Union immediately." With the existing collective bargaining agreement set to expire on August 31, 2020, ADT also announced its intention to withdraw recognition of the Rockford bargaining unit on that same date.

The decertification petition was in fact not signed by any members of the existing Rockford bargaining unit. There was no "Janesville" bargaining unit. As Local 364 explained to ADT, all "Rockford bargaining unit members who were transferred to Janesville continue to want Local 364 to represent them." So Local 364 "expect[ed] ADT to continue to abide by and to bargain in good faith over the collective bargaining agreement for the Rockford bargaining unit." Between July and September, Local 364 sent ADT no fewer than seven requests to bargain. ADT did not bother to respond.

In cases of supposed consolidation of union and non-union employees, the Board applies a strong presumption in favor of the status quo: such an "historic bargaining relationship will not be disturbed absent compelling circumstances." *ADT Security Servs.*, 355 NLRB at 1396, quoting *Canal Carting*, 339 NLRB at 970. As the party challenging the historical bargaining unit's continued propriety, ADT must show compelling circumstances. *Id.* More specifically, in cases where a group of unionized employees is combined with a group of non-union employees, an employer that seeks to withdraw recognition lawfully "must show that the Union no longer

enjoys a majority because the unit, which has been combined with similar employees," no longer has "a distinct identity from the larger group of employees." *Dodge of Naperville, Inc.*, 357 NLRB No. 183, 357 NLRB 2252, 2253 (2012), citing *Serramonte Oldsmobile, Inc.*, 318 NLRB No. 6, 318 NLRB 80, 104 (1995), enforced in relevant part, *Serramonte Oldsmobile, Inc. v. NLRB*, 86 F.3d 227 (D.C. Cir. 1996). This is "a heavy evidentiary burden," *Banknote Corp. of America*, 315 NLRB No. 155, 315 NLRB 1041, 1043 (1994), and ADT has not come close to carrying it.

B. *Compelling Circumstances?*

"Typically," where bargaining unit employees "work side-by-side" with other employees and "have the same supervision, terms and conditions of employment, uniforms, work assignments, skill set, training, and job functions" as the non-unit employees, the necessary "compelling circumstances" may exist to justify withdrawing recognition. *Dodge of Naperville*, 357 NLRB at 2253.[1]

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[1] Although the Board regards these kinds of circumstances as "typically" supporting an employer's withdrawal of recognition, where non-managerial employees—some of whom are union and some of whom are non-union—are "merged" at a single facility, a broader set of comparative problems arises than in the run-of-the-mine case where a subset of employees in a larger non-union workforce seeks union recognition. Given the Board's broad discretion, which "reflect[s] Congress' recognition 'of the need for flexibility in shaping the [bargaining] unit *to the particular case*,'" the Board is best positioned to decide which facts matter most in evaluating such complex consolidations. *NLRB v. Action Automotive, Inc.*, 469 U.S. 490, 494 (1985), quoting *NLRB v. Hearst Publ'ns, Inc.*, 322 U.S. 111, 134 (1944) (emphasis added). Our deference to the Board on these factual determinations is commensurate with both the Board's discretion and its expertise. See *Consolidated Papers, Inc. v. NLRB*, 670 F.2d 754, 757 (7th Cir.

Recall that when ADT announced the plan to combine the two facilities, the Rockford employees asked what would change, including with respect to the union. Management told them nothing would change except that they would visit a different facility once a week. That turned out to be true until ADT tried to decertify the union.

In terms of bargaining history, Local 364 has represented the Rockford bargaining unit in negotiations with ADT since 1994. Across nearly three decades of bargaining history, ADT and Local 364 have successfully negotiated eight or nine collective bargaining agreements. This history "weighs heavily in favor of a finding that" the Rockford bargaining unit remains "appropriate." *ADT Security Servs.*, 355 NLRB at 1396, quoting *Canal Carting*, 339 NLRB at 970.

Turning to how the Rockford employees did their jobs, they typically started their days at their homes and went straight to their first service assignments, received by computer or telephone. Those assignments were based on their home addresses. When safety concerns or time constraints required more than one technician, a Rockford employee usually teamed up with another Rockford employee. But the Rockford technicians mostly worked alone, spending the bulk of their time covering service calls near Rockford in northern Illinois. Occasionally they handled assignments in Iowa or Wisconsin, usually just across the state line in Beloit. If they ran into problems in the field, they would communicate with their direct supervisor, Matt Ides. On Fridays they would stop by the Rockford office for an hour or so to dispose of waste

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1982) ("[T]he Board uses its expertise to determine the most appropriate employee composition for a particular unit.").

and replenish supplies and equipment. They would usually talk with Ides there. For emergency and off-hours service appointments in the Rockford area, ADT maintained a list of Rockford employees who would rotate serving as the "on-call" technician for a week at a time.

Unlike the Rockford employees, the Madison employees have never been represented by a union. But the Madison employees worked in essentially the same way as their Rockford counterparts and reported to the same supervisor, Ides, who split his time between Rockford and Madison. The Madison technicians primarily handled service calls in Wisconsin, but they occasionally ventured into northern Illinois. Like the Rockford employees, the Madison employees had their own "on-call" list of Madison technicians who would handle emergency or off-hours calls in the Madison area.

After ADT announced the consolidation of the Rockford and Madison offices in the new Janesville facility, the Rockford employees and their union took their concerns to ADT management. Local 364 Assistant Business Manager Larry Rowlett discussed the impending move with ADT General Manager Shawn Bell, who was Ides' direct supervisor. Bell told Rowlett that the relocation was motivated purely by economics, that ADT would now have "one centralized location" halfway between the Madison and Rockford facilities, which would make "more economic sense." Bell was clear, however, that "everything would stay the same" for the Rockford bargaining unit. The Rockford employees "would still cover the same areas that they" had for decades, and the Madison employees "would continue to cover their area in Wisconsin that they represent." The Rockford unit would continue to work under their collective bargaining agreement, "and everything

would be the same other than when they went to an office location."

Ides told the Rockford employees the same thing. He assured them "that nothing would change," and that "everything would stay the same as far as the Union." The geographic area the Rockford technicians serviced "would remain the same." The Madison and Rockford employees would "stay separated." There would be a "Madison side" and a "Rockford side," and the Rockford side "would still stay in the Union." Since "nothing was going to change," Local 364 did not request "effects bargaining."[2]

When the Janesville office opened in December 2019, very little changed for the Rockford technicians. Day-to-day working conditions "remained the same." They still started their days at their homes. Through phones or computers, they received their daily service assignments, which were still determined based on their home addresses. Generally alone in the field, they continued to "perform the same kind of work," spending the vast majority of their time covering service calls near Rockford. They still reported to Ides, the same supervisor as before, communicating with him throughout the day.

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[2] "Effects bargaining" refers to bargaining over significant changes in working conditions, which is required under 29 U.S.C. § 158(a)(5). See *First Nat'l Maint. Corp. v. NLRB*, 452 U.S. 666, 681 (1981); *Columbia Coll. Chicago v. NLRB*, 847 F.3d 547, 552 (7th Cir. 2017). An employer like ADT must "give adequate notice to the Union" of impending changes for effects bargaining to be possible "'in a meaningful manner and at a meaningful time.'" *NLRB v. Emsing's Supermarket, Inc.*, 872 F.2d 1279, 1286 (7th Cir. 1989), quoting *First Nat'l Maint. Corp.*, 452 U.S. at 682. Here, because ADT promised that there would be no changes, it did not give notice of anticipated changes, so the union naturally never requested effects bargaining.

On Fridays they stopped by the Janesville office for an hour or so to dispose of waste and replenish supplies and equipment. After those weekly appearances in Janesville, they almost always returned to their traditional service area around Rockford to make service calls.

Much the same was true for the Madison employees. They still dispatched from their homes, did the same work in the same service area as before, continued to report to Ides, and headed to Janesville on Tuesdays to pick up parts. After the base for both groups of employees was relocated to Janesville, ADT continued to maintain separate "on-call" lists, one for the former Rockford employees and one for the former Madison employees.

Shortly after the Janesville office opened, ADT brought in all of the technicians, both from Rockford and Madison, for a training session on new products that lasted a couple of hours. ADT followed that up with a 60-minute welcome breakfast. In the words of one employee, it was "a pretty nice breakfast."

After those two introductory gatherings, the Rockford and Madison groups rarely met. Along with technicians from Milwaukee, Minnesota, and Iowa, the Rockford and Madison employees would attend weekly online training and administrative meetings. But the two groups visited Janesville on different days of the week to pick up supplies, and aside from the occasional coincidental encounter when a Rockford and Madison employee happened to be at the office at the same time, they saw each other no more than they had before the move to Janesville.

We agree with the Board that, since the withdrawal petition was not signed by any of the bargaining unit employees formerly assigned to Rockford, the petition did not evince any "erosion of support for the Union." 2022 WL 511012, at *6. Without more, the decertification petition could not justify ADT's withdrawal of recognition. See *Serramonte Oldsmobile*, 86 F.3d at 234 (rejecting employer's reliance on a decertification petition signed by employees who were outside "the scope of the bargaining unit"). And to be clear, ADT has not offered *any* precedent or other legal support for its reliance on a supposed decertification petition not signed by *any* member of the bargaining unit.

C. *ADT's Arguments*

To defend its extraordinary attempt at decertification, ADT argues that the Rockford bargaining unit is no longer appropriate because the Rockford employees now lack "a distinct identity from the larger group of employees" assigned to the Janesville office. See *Dodge of Naperville*, 357 NLRB at 2253. ADT claims that all Janesville technicians have become "fully integrated" with one another as they "work side-by-side" at "the same facility, serving the same geographic areas, under the same terms and conditions of employment." They "share a community of interest," ADT says, because both unit and non-unit employees "perform identical work, drive the same trucks, use the same tools/equipment, wear the same uniforms and report to the same managers."

This theory collapses on the factual record and the ALJ's and Board's factual findings, summarized above. At the threshold we can dispense with ADT's common "terms and conditions of employment" contention quite simply. The Rockford and Madison employees now work under the same

terms and conditions of employment only because ADT unilaterally changed the Rockford bargaining unit's terms and conditions to match those of the other Janesville employees. Absent those unilateral and illegal changes, the Rockford and Madison employees would have different employment benefits, wages, overtime pay, bonuses, and paid time off.

It is true that all technicians perform the same work with the same tools while wearing the same uniforms, driving the same trucks, and reporting to the same supervisor. The problem for ADT's theory is that the same was also true before the relocation to Janesville. Because the technicians "work out of their homes, have no onsite supervision, and, in fact, do not even see their supervisors on a daily basis," like the Board, "we do not accord the absence of separate supervision here the weight it bears in other cases." *ADT Security Servs.*, 355 NLRB at 1389 n.2.

There is no evidence, and the ALJ and Board were certainly not required to find, that these distinct groups have become "fully integrated" or otherwise "share a community of interest." The two groups of employees rarely see or talk with each other. Aside from a single training session, weekly online meetings, some random encounters at the Janesville office, and a welcome breakfast, these employees almost never interact. We do not doubt the testimony that it was "a pretty nice breakfast," but it would take a lot more than even a nice breakfast to fully integrate these distinct groups.

This result could not surprise ADT. As we noted above, the company has been here before, claiming unsuccessfully that similarly superficial efforts at "integration" following a consolidation of union and non-union facilities could overcome a significant bargaining history. In 2008, ADT closed a

unionized facility in Kalamazoo, Michigan and reassigned the union service technicians to a different branch in Wyoming, Michigan. *ADT Security Servs.*, 355 NLRB at 1388, enforced, *NLRB v. ADT Security Servs., Inc.*, 689 F.3d 628 (6th Cir. 2012). Although the technicians continued to work in the same service territory near Kalamazoo that they had for 29 years, ADT withdrew recognition of their bargaining unit. ADT claimed that the union employees had "integrated" with the non-union employees in Wyoming. *Id.*

The Board rejected ADT's arguments for the same reasons that the Board rejected them here. ADT could not show any compelling circumstances needed to overcome the parties' almost three decades of bargaining history. "Even after the closure of the Kalamazoo facility, the employees in the unit continued to perform the same work in the same distinct geographical area under largely unchanged terms and conditions of employment." *Id.* Likewise, as here, "both before and after the closing" of the old facility, the employees never worked "at the facility" but "in the field, reporting" to the office "only to replenish their parts supply approximately once a week." *Id.* Rather, they would "work out of their homes," with "no onsite supervision," keeping in touch with the same supervisor as their Wyoming counterparts. *Id.* at 1389 n.2. And, as here, ADT continued to maintain a "separate, dual 'on call' list" and "continued to separate" the Kalamazoo employees from the Wyoming employees. *Id.* at 1388.

"Accordingly," the Board found that the historical Kalamazoo bargaining unit "'maintained its integrity' following the closure of the Kalamazoo facility and continued to be an appropriate unit with which [ADT] was obligated to bargain." *Id.* at 1388–89. The Sixth Circuit enforced the Board's

order, finding "substantial evidence to support the Board's factual conclusion that the Kalamazoo employees were not functionally integrated into the Wyoming facility and remained a distinct unit of servicemen." *ADT Security Servs.*, 689 F.3d at 634.[3]

At the end of the day, ADT can hang its hat only on the fact that all technicians are now "reporting to the same central hub" in Janesville. But relocating a bargaining unit from one facility to another does not alone create the compelling circumstances needed to justify withdrawal of recognition. See *Serramonte Oldsmobile*, 86 F.3d at 234–35 (affirming Board's finding of unlawful withdrawal of recognition: "the Board rightly concluded that the employer could not rely on an insignificant change of work location to withdraw recognition"); *Molded Acoustical Products, Inc. v. NLRB*, 815 F.2d 934, 940–41 (3d Cir. 1987) (rejecting employer's attempt to avoid union certification based on transfer of operations from one town to another).

Rather, "notwithstanding having been transferred to a common facility," the Rockford "bargaining unit employees" themselves "possess a significant community of interests so as to continue to retain [their] separate identity as an appropriate unit." *Fisher Broadcasting, Inc.*, 324 NLRB No. 39, 324 NLRB 256, 263 (1997). For the same reasons that the Sixth Circuit affirmed the Board's findings against ADT in Kalamazoo, we affirm the Board's findings against ADT here. Substantial

[3] The same ADT official, Director of Labor Relations James Nixdorf, oversaw the attempted withdrawals of recognition of both the Kalamazoo and Rockford bargaining units. See *ADT Security Servs.*, 355 NLRB at 1393.

evidence supports the Board's conclusion that ADT unlawfully withdrew recognition of the Rockford bargaining unit.

IV. *The Board's New Definition of the Bargaining Unit*

Unable to show that compelling circumstances made the Rockford bargaining unit no longer appropriate, ADT attacks the Board's revised definition of the unit with hyperbolic rhetoric, calling it "nonsensical," "arbitrary," and "irrational." We disagree.

Whether a group of employees forms an appropriate bargaining unit under § 159(b) "lies largely within the discretion of the Board, whose decision, 'if not final, is rarely to be disturbed.'" *South Prairie Constr. Co. v. Local No. 627*, 425 U.S. 800, 805 (1976) (per curiam), quoting *Packard Motor Car Co. v. NLRB*, 330 U.S. 485, 491 (1947); see also *Dunbar Armored, Inc. v. NLRB*, 186 F.3d 844, 847 (7th Cir. 1999) ("Bargaining unit determinations are firmly committed to the Board's discretion."). This discretion reflects "Congress' recognition of the need for flexibility in shaping the bargaining unit to the particular case." *Overnite Transp. Co.*, 322 NLRB No. 122, 322 NLRB 723, 724 (1996), quoting *NLRB v. Action Automotive, Inc.*, 469 U.S. 490, 494 (1985) (cleaned up). And within this "power and discretion" lies the authority to modify a "bargaining-unit description" so that it will "more accurately describe" an existing bargaining unit. *ADT Security Servs.*, 689 F.3d at 636, citing *Comar, Inc.*, 339 NLRB No. 110, 339 NLRB 903, 904 (2003) (ordering employer to recognize and bargain with union representing relocated employees performing "work that was formerly done" at a shuttered facility).

Before the Board's order in this case, the Rockford bargaining unit was defined by reference to the now closed Rockford

facility: "All full-time and regular part-time installers, technicians and service personnel employed by [ADT] at its 510 LaFayette Avenue, Rockford, Illinois facility." Because that facility no longer exists, the Board exercised its broad discretion to redefine the bargaining unit according to both its current and historical practical dimensions: "All full-time and regular part-time installers, technicians and service personnel employed by [ADT] at its Janesville, Wisconsin facility *who are regularly assigned to work in the service territory of* [*ADT's*] *former Rockford, Illinois facility*." 2022 WL 511012, at *3 (emphasis added).[4]

Contrary to ADT's unsupported assertion that there is no such "service territory," the evidence shows that when they were based out of Rockford, the Rockford bargaining unit technicians would "spend the bulk of [their] workday" in "the Rockford area" and "the surrounding smaller towns" like Belvidere, DeKalb, Freeport, Janes, Machesney Park, Rockton, Roscoe, and South Beloit. Most of the time they were "within 20 miles of Rockford," but sometimes they would

[4] ADT argues as well that the Board's new definition "improperly attempts to gerrymander" the Rockford bargaining unit "back into existence." The cases cited by ADT are inapposite because they did not involve historical bargaining units. For example, in *PCC Structurals, Inc.*, to ensure that the bargaining unit was not "arbitrary, irrational, or 'fractured'—that is, composed of a gerrymandered grouping of employees whose interests are insufficiently distinct from those of other employees," the Board assessed "whether the sought-after employees' interests" were "sufficiently distinct from those of employees excluded from the *petitioned-for group*." 365 NLRB No. 160, 2017 WL 6507219, at *7 (2017) (emphasis added). Here, the Rockford bargaining unit cannot be gerrymandered "back into existence" because it never ceased to exist outside of ADT's unlawful withdrawal of recognition. Regardless of ADT's unlawful conduct, the Rockford bargaining unit persisted.

work "out as far as" Galena, Rock Falls, or Savanna or cross the state line into Wisconsin for a service call in Beloit. When necessary, they might travel further into Wisconsin, taking appointments in places like Fond du Lac, Fort Atkinson, Janesville, and even Madison itself. But it was "not often" that they ventured so far from Rockford. And only on a "rare occasion" would the Rockford technicians "cover the same area" as the Madison technicians, who took appointments in their own "normal work area" near Madison.

Just as ADT managers promised, after relocating to Janesville, the Rockford employees "still cover[ed] the same areas" that they always had. They did not travel to Wisconsin any "more regularly than they did when the Rockford office was open." They did "more or less … what they have always done in the past." Even when they dropped by Janesville on Fridays for supplies, the Rockford technicians went "back into Illinois to do their job." In short, the territory they work has "remained the same." As in Kalamazoo, the fact that the Rockford technicians and the Madison technicians occasionally cross paths or work in each other's territories does not diminish the fact that they spend the majority of their time covering distinct service areas. See *ADT Security Servs.*, 355 NLRB at 1397 ("Both before and after" the closing of the Kalamazoo branch, "Kalamazoo employees were sent to work outside the Kalamazoo area and employees from other locations were sent to the Kalamazoo area when needed.").

The Board's new definition for the Rockford bargaining unit is therefore not arbitrary but a reasonable exercise of the Board's judgment. The definition's reference to "the service territory of [ADT's] former Rockford, Illinois facility" is grounded in the realities of the Rockford bargaining unit's

daily work. It "reflects" the reality that the Rockford bargaining unit employees are simply "no longer employed at the" Rockford facility. *ADT Security Servs.*, 689 F.3d at 636 (affirming Board modification of bargaining-unit definition where ADT closed its Kalamazoo facility and then unlawfully withdrew recognition of the bargaining unit formerly based in that facility).

ADT argues that even if the Rockford service territory exists, the Board's inclusion of all Janesville technicians "regularly assigned" to that territory makes the new definition "so vague and obtuse" as to be "unworkable" and "unenforceable." ADT contends that all Janesville employees "regularly" work in that area. As do technicians from Chicago. And the former Rockford technicians regularly work "in states other than Illinois, including Iowa, Wisconsin and Minnesota." In short, ADT challenges the usefulness of the word "regularly" to define the bargaining unit going forward.

We are not persuaded that the Board's definition will prove unworkable or unenforceable. Rather than look to dictionary definitions, as ADT suggests, the better course is to look at the evidence before us to understand what "regularly" means *for this employer and its employees*. For the bargaining unit employees, it means spending the majority of their time in Rockford and the surrounding areas. It means spending a "minimal amount" of time outside of those areas. And it means working in other areas only "on rare occasion." As in the Kalamazoo case, the Board's definition "appropriately flows from the evidence in the record." *ADT Security Servs.*, 689 F.3d at 635–36 (rejecting ADT's contention that Board's modified definition of bargaining unit was "impermissibly vague"). If circumstances change and future problems arise,

ADT and Local 364 can address them through bargaining. But in the case before us, there is nothing vague about the word "regularly." The Board's decision to redefine the bargaining unit was grounded in substantial evidence and was not an abuse of its broad discretion.

V. *Unilateral Changes to Terms & Conditions of Employment*

ADT's only defense of its unilateral changes to the bargaining unit's terms and conditions of employment fails as a matter of logic. "Because ADT had lawfully withdrawn recognition based on the Union's lack of majority status," ADT argues that it "cannot be found to have an obligation to bargain with the Union over any of the changes that the Board erroneously deemed to be unlawful."

We join the ALJ and the Board in rejecting the premise of the argument. ADT's withdrawal of recognition was not lawful, so its unilateral changes to the bargaining unit's terms and conditions of employment were also unlawful. See *Serramonte Oldsmobile*, 86 F.3d at 235 (where employer unlawfully withdraws recognition, "unilateral changes imposed … after the withdrawal of recognition" are likewise unlawful); *Texas Petrochemicals Corp.*, 296 NLRB No. 136, 296 NLRB 1057, 1075 (1989) ("Because the withdrawal of recognition was illegal, the unilateral changes were illegal."), enforcement denied on other grounds, *Texas Petrochemicals Corp. v. NLRB*, 923 F.2d 398 (5th Cir. 1991).

VI. *Unlawful Coercion*

An employer engages in unfair labor practices when it attempts to "interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157" of the National Labor Relations Act. 29 U.S.C. § 158(a)(1). Substantial

evidence also supports the Board's finding that ADT manager Ides coercively interrogated Rockford technician David Anderson.

Soon after ADT withdrew recognition of the Rockford bargaining unit, ADT managers Gary Talma and Matt Ides set up individual meetings with the Rockford technicians. The managers told them that they were no longer in the union and told them how pay and other terms and conditions of employment would change going forward. The Rockford technicians would be paid higher hourly wages. Where they previously had earned overtime for working more than eight hours per day, now they would earn overtime only when they worked more than forty hours per week. The existing leave policy, which separately categorized vacation and sick leave allowances, was being replaced by a single paid-time-off allowance. Customer survey responses would now be considered in employee performance evaluations and would affect potential pay increases. And the Rockford employees would now participate in a bonus program.

In one of these individual meetings, employee David Anderson asked Talma and Ides, "what do you mean we are not in the Union anymore?" They told him (falsely) that there had been "a decertification vote" and the union had been "voted out." When Anderson protested that he "never took part in any vote," the managers said that "it was done" just as ADT "had done it in other branches and that it was all legal."

A month later, Ides called Anderson and told him that he "was doing very well" and had "received the highest bonus out of the office." Ides then asked Anderson if he was "aware that if you guys go back to the Union that this will go away, that you will not be part of the bonus program?" "ADT would

not do both," so "if you are part of the Union, you can't have the bonus program." Anderson replied that, "if we are part of the Union, everything is up to negotiation." Ides reiterated that "ADT would not do both" and asked Anderson why he "wanted to be in the Union"? The conversation ended when Anderson rejoined, "why don't you guys want the Union?"

In November, Ides and Anderson had another, similar conversation in Ides' office. Several other technicians, including Danny Sissum, were present. Anderson knew he would be receiving subpoena from the Board. He told Ides that he would need to be blocked off the schedule when that happened. Ides responded by repeating what he had told Anderson over the phone in October: "if you guys go back to the Union," then the "bonus program will go away." ADT was "very firm on this" and would "not do both."[5]

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[5] All of the record evidence relating to the two conversations between Ides and Anderson comes from Anderson's testimony. ADT did not offer contrary evidence. Still, ADT attacks Anderson's testimony about his second conversation with Ides by pointing out that his account was not corroborated by fellow technician Danny Sissum, who was also present. But ADT chose not to question Sissum about that conversation at trial, and it did not even call Ides to testify. Any failure to put Anderson's testimony in dispute falls squarely on ADT's shoulders. ADT also questions Anderson's credibility, calling him "an admittedly biased witness." It's not unusual for both union and management witnesses to be subject to bias in labor disputes. Where, as here, the ALJ has observed the witness's demeanor, the ALJ's "credibility findings … are to be accorded exceptional weight by a reviewing court." *NLRB v. Cutting, Inc.*, 701 F.2d 659, 663 (7th Cir. 1983); see also *Contemporary Cars*, 814 F.3d at 869 ("[W]e give particular deference to the Board's credibility determinations, which we will disturb only in extraordinary circumstances, such as obvious incredibility or clear bias."). And where, as here, a party seeks to "discredit[] direct, uncontroverted testimony[,]" the testimony "must be internally

Whether Ides' statements in these conversations amounted to coercive interrogation in violation of the Act "depends on the factual context in which the questioning" took place. *Multi-Ad Servs., Inc. v. NLRB*, 255 F.3d 363, 372 (7th Cir. 2001). We consider "the tone, duration, and purpose of the questioning, whether it is repeated, how many workers are involved, the setting, the authority of the person asking the question, and whether the company otherwise had shown hostility to the union." *Id*; see also *Parts Depot, Inc.*, 332 NLRB No. 64, 332 NLRB 670, 673 (2000) ("To determine whether the inquiry is coercive, the Board considers the following factors: the background, the nature of the information sought, the identity of the questioner, and the place and method of interrogation.").

Ides was the branch manager and Anderson's direct supervisor. See *Boar's Head Provisions Co.*, 370 NLRB No. 124, 2021 WL 1854735, at *4 (May 6, 2021) (finding coercive interrogation where questioning was conducted by "*direct* supervisors … reasonably tend[ing] to make the questioning that much more threatening") (emphasis in original); *Intertape Polymer Corp.*, 360 NLRB No. 114, 360 NLRB 957, 958 (2014) (same), enforced in relevant part, *Intertape Polymer Corp. v. NLRB*, 801 F.3d 224, 231 (4th Cir. 2015); *Parts Depot*, 332 NLRB at 673 (finding unlawful coercion where "the highest

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contradictory or inherently improbable" to justify setting aside the credibility findings of the ALJ and the Board. 701 F.2d at 665 (rejecting an ALJ's credibility findings where the ALJ's adverse inferences were "contrary to direct, positive testimony"). The ALJ and the Board found Anderson's testimony credible, 2022 WL 511012, at *1 n.1, and ADT has not pointed to any internal contradictions or improbabilities that would cast doubt on those findings.

management official at the facility" conducted the interrogation), enforced, *Parts Depot, Inc. v. NLRB*, 24 F. App'x 1 (D.C. Cir. 2001) (non-precedential).

In the first conversation, Ides asked Anderson why he "wanted to be in the Union?" Such questioning alone can amount to unlawful interrogation, for employers are "not free to probe 'directly or indirectly into an employee's reason for supporting the union.'" *Beverly Cal. Corp. v. NLRB*, 227 F.3d 817, 835 (7th Cir. 2000) (affirming Board's finding of coercive interrogation where labor consultant asked employees "about what they thought a union would do"), quoting *TRW-United Greenfield Div. v. NLRB*, 637 F.2d 410, 418 (5th Cir. 1981) (cleaned up); see also *Multi-Ad Servs.*, 255 F.3d at 372 (affirming Board's finding of coercive interrogation where an employee was asked "why he would want to bring a union into the company").

In both conversations, Ides explicitly tied continued bonuses to rejecting the union. Over the phone, Ides asked Anderson if he was "aware that if you guys go back to the Union that [the bonuses] will go away, that you will not be part of the bonus program?" Then, in his office—where his authority was enhanced—Ides repeated this threat in the presence of other bargaining unit employees: "if you guys go back to the Union," then the "bonus program will go away."

An employer threatening employees with lost "benefit[s] and economic reprisal" for supporting a union is quintessential coercive interrogation. *NLRB v. Marsh Supermarkets, Inc.*, 327 F.2d 109, 111 (7th Cir. 1963) (affirming Board finding of coercive interrogation where officials threatened that "if a union got in," then "everything would be wiped clean"); see also *Boar's Head Provisions*, 2021 WL 1854735, at *1, *4 (agreeing

with ALJ that employer had violated Section 8(a)(1) by "threatening employees with the loss of benefits," including bonuses, if the employees unionized); *Lucky Cab Co.*, 360 NLRB No. 43, 360 NLRB 271, 271, 288 (2014) (same); *Hudson Moving & Storage Co.*, 322 NLRB No. 187, 322 NLRB 1028, 1028, 1033 (1997) (same where employer threatened to "discontinue its practice of giving Christmas bonuses" because of employees' union activities).

Adding to this already substantial evidence, Ides made these statements "against a background of other unfair labor practices." *Greenfield Die & Mfg. Corp.*, 327 NLRB No. 52, 327 NLRB 237, 237 (1998) (agreeing with ALJ that interrogations against such a backdrop violate Section 8(a)(1)). Before both of Ides' conversations with Anderson, ADT had already unlawfully withdrawn recognition of Local 364 and unilaterally changed the bargaining unit's terms and conditions of employment. "Where the interrogation is accompanied by threats or other violations of Section 8(a)(1), as this one was, there can be no question as to the coercive effect of the inquiry." *Parts Depot*, 332 NLRB at 673. In *Multi-Ad Services* we found "more than enough evidence to sustain the Board's findings" of coercive interrogation where "company managers had [merely] expressed uneasiness over union activity." 255 F.3d at 372. Here, ADT's withdrawal of recognition and unilateral changes to the terms and conditions of employment make the evidence of unlawful coercion compelling.

VII. *Remedies*

Regarding the Board's remedial orders, we respect the Board's "broad discretion to devise remedies that effectuate the policies of the Act, subject only to limited judicial review." *NLRB v. Intersweet, Inc.*, 125 F.3d 1064, 1067 (7th Cir. 1997),

quoting *America's Best Quality Coatings Corp. v. NLRB*, 44 F.3d 516, 520 (7th Cir. 1995). "We therefore review the Board's decision with deference and will interfere only if the Board's order reflects an abuse of its discretion." *Id.*

Here the Board found that ADT "demonstrated [a] proclivity to violate the Act" and an "evident disdain for employees'" rights. 2022 WL 511012, at *2. Because the Board found ADT to be "a recidivist violator of the Act" that "has committed multiple, serious unfair labor practices in this case," the Board agreed with the ALJ that a broad cease-and-desist order was necessary and that ADT should "be required to read the remedial notice to employees." *Id.* We agree with the Board.

A broad order is warranted where, as here, "a respondent is shown to have a proclivity to violate the Act or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for the employees' fundamental statutory rights." *Apex Linen Serv., Inc.*, 370 NLRB No. 75, 2021 WL 352062, at *1–2 (Jan. 29, 2021), quoting *Hickmott Foods*, 242 NLRB No. 177, 242 NLRB 1357, 1357 (1979) (Board broadening ALJ's order where employer had been found guilty of unfair labor practices in three cases over three years); see also *Ozburn-Hessey Logistics, LLC*, 366 NLRB No. 177, 2018 WL 4184225, at *1, *16–17 (Aug. 27, 2018) (Board enhancing remedial order to include posting remedial notice for three years after employer had been found to have engaged in unfair labor practices five times in nine years), enforced in relevant part, *Ozburn-Hessey Logistics, LLC v. NLRB*, 803 F. App'x 876, 888–89 (6th Cir. 2020) (non-precedential); *Latino Express, Inc.*, 360 NLRB No. 112, 360 NLRB 911, 911, 927–28 (2014) (issuing broad remedial order where employer, whose

"proclivity to violate the Act" was "undeniable," had violated a narrower recent order).

As the Board recognized, ADT "has been found to have committed unfair labor practices" in no fewer than seven cases since 2015. 2022 WL 511012, at *2. Not including ADT's serious violations in this case, that's seven times ADT has violated the Act in as many years. See *Local Union 43 v. NLRB*, 9 F.4th 63, 67 (2d Cir. 2021) (ADT unlawfully failed to bargain before instituting unilateral changes to terms and conditions of employment); *ADT Security Servs., Inc.*, 2020 WL 7496119, at *1 (NLRB Dec. 18, 2020) (ADT unlawfully refused to provide union with information), adopted, *ADT Security Servs., Inc.*, 2021 WL 1815000, at *1 (NLRB Jan. 29, 2021); *ADT, LLC*, 369 NLRB No. 31, 2020 WL 996271, at *1 (Feb. 27, 2020) (ADT unlawfully "bypassed the Union and dealt directly with" employees); *ADT, LLC*, 369 NLRB No. 23, 2020 WL 591740, at *1 (Feb. 5, 2020) (ADT unlawfully discharged employees who "engaged in protected union activity"); *ADT, LLC*, 2019 WL 2501867, at *1 (NLRB June 17, 2019) (ADT unlawfully and coercively interrogated employees regarding support for union, unlawfully solicited union decertification, unlawfully withdrew recognition of union, unlawfully refused to bargain, and unlawfully failed to abide by terms of collective bargaining agreement), adopted, *ADT, LLC*, 2019 WL 3451539, at *1 (NLRB July 29, 2019); *ADT, LLC*, 2018 WL 2263547 (NLRB May 16, 2018) (ADT unlawfully closed a "facility without affording the Union an opportunity to bargain regarding the effects of that decision" and unlawfully refused to provide union with information), adopted, *ADT, LLC*, 2018 WL 3091018, at *1 (NLRB June 21, 2018); *ADT, LLC*, 363 NLRB No. 36, 363 NLRB 352, 352 (2015) (ADT unlawfully refused to provide union with information).

Attempting to minimize this history, ADT contends that the other cases dealt with "unrelated matters" and that "there is no evidence of a 'lengthy record of unfair labor practices' relating to the employee group that is involved in this particular case." *Some* of these prior cases addressed different violations than the ones ADT is guilty of in this case, and the other cases involved different employee groups—from Iowa, Maryland, New York, Virginia, and Washington. These distinctions are not controlling.

Recidivism under the National Labor Relations Act does not necessarily depend on the employer's particular violations or their locations. The Board sensibly accounts for the "variety … of the violations committed" when assessing whether an employer "has exhibited a proclivity to violate the Act." *Control Servs., Inc.*, 314 NLRB No. 72, 314 NLRB 421, 421 (1994); see *Shamrock Foods Co.*, 369 NLRB No. 5, 2020 WL 104401, at *1 & n.3 (Jan. 7, 2020) (ordering reading of remedial notice where employer had unlawfully restricted and granted benefits and had previously been found guilty of other violations of the Act), citing *Shamrock Foods Co.*, 366 NLRB No. 117, 2018 WL 3109956, at *1 (June 22, 2018) (employer unlawfully discharged, threatened, and interrogated employees, solicited complaints and grievances, surveilled union activity, and promulgated unlawful rules), and *Shamrock Foods Co.*, 366 NLRB No. 107, 2018 WL 3109951, at *1 (June 22, 2018) (employer unlawfully restricted employees' break schedule, and unlawfully supervised, counseled, and warned an employee), both enforced, *Shamrock Foods Co. v. NLRB*, 779 F. App'x 752, 756 (D.C. Cir. 2019) (non-precedential); *Latino Express*, 360 NLRB at 911, 927–28 (issuing broad remedial order, including notice reading, where employer had unlawfully withdrawn recognition and instituted unilateral changes

to terms and conditions of employment and had previously been found guilty of other violations of the Act), citing *Latino Express, Inc.*, 358 NLRB No. 94, 358 NLRB 823, 823 (2012) (employer unlawfully discharged employees for supporting union and unlawfully granted wage increases during union organizing drive).

We are not aware of any corner of our law where treating a wrongdoer as a recidivist depends upon repetition of the *same* prohibited act. The first-time arsonist is no less recidivist simply because he previously trafficked in stolen goods or extortion. The first-time bank robber is no less a recidivist because he had previously robbed convenience stores or extorted small shops for protection money. Nor is a veteran bank robber less a recidivist because his prior bank robberies were in several other states. The same is true under the National Labor Relations Act.

Further, even if the nature of prior violations were decisive, ADT is a recidivist violator with respect to the specific violations in this case. See *Local Union 43*, 9 F.4th at 67 (unilateral changes); *ADT, LLC*, 2019 WL 2501867, at *1 (coercive interrogation, withdrawal of recognition); *ADT, LLC*, 2018 WL 2263547, at *10 (closing a facility without effects bargaining); *ADT Security Servs.*, 355 NLRB at 1397–98 (withdrawal of recognition, unilateral changes), enforced, *ADT Security Servs.*, 689 F.3d at 636.

ADT also argues that recidivism can be found only where an employer has repeatedly violated the rights of the *same* employee group. Not only do we "lack authority to reach the merits of this argument because [ADT] did not raise it before the Board," but this argument has no basis in law. See *KSM Industries*, 682 F.3d at 544. If it did, we would call a "serial

killer" just a "killer." Under the National Labor Relations Act, an employer need not violate the rights of the same victim to be a repeat offender. See *Grinnell Fire Prot. Systems Co.*, 335 NLRB No. 40, 335 NLRB 473, 473 (2001) (imposing broad remedial order where employer was a "repeat offender" whose prior violations spanned multiple facilities), enforced, *NLRB v. Grinnell Fire Prot. Systems Co.*, No. 01-9538, 2001 WL 34041228, at *1 (10th Cir. Dec. 6, 2001); *Control Servs.*, 314 NLRB at 421, 432 (1994) (same).

Taking into account ADT's substantial history of earlier violations of federal labor law, as well as its serious violations of the National Labor Relations Act in this case, the Board acted well within its "broad discretion to devise remedies that effectuate the policies of the Act." *Intersweet*, 125 F.3d at 1067, quoting *America's Best Quality Coatings*, 44 F.3d at 520.

For these reasons, we DENY ADT's petition for judicial review and GRANT the Board's cross-application for enforcement.