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

INDIANA BELL TELEPHONE COMPANY, INC.

and Case 25–CA–285855

COMMUNICATIONS WORKERS OF AMERICA
LOCAL 4900, A/W COMMUNICATIONS
WORKERS OF AMERICA, AFL–CIO

THE OHIO BELL TELEPHONE COMPANY

And Case 09–CA–286149

COMMUNICATIONS WORKERS OF AMERICA
LOCAL 4320, A/W COMMUNICATIONS
WORKERS OF AMERICA, AFL–CIO

Derek Johnson, Esq.
for the General Counsel.
Robert W. Cameron, Esq., and
Alexandra Farone, Esq.
for the Respondent.

DECISION

STATEMENT OF THE CASE

KIMBERLY R. SORG-GRAVES, Administrative Law Judge. On November 5, 2021, the Communication Workers of America Local 4900, a/w Communications Workers of America, AFL–CIO (Local 4900) filed the charge in Case 25–CA–285855 in Region 25 of the National Labor Relations Board (Board), and on November 12, 2021, the Communication Workers of America Local 4320, a/w Communications Workers of America, AFL–CIO (Local 4320) filed the charge in Case 09–CA–286149 in Region 9 of the Board alleging that Indiana Bell Telephone Company, Inc. and The Ohio Bell Telephone Company (collectively the Respondent) violated Section 8(a)(5) and (1) of the National Labor Relations Act (Act) by failing and refusing to provide information requested by Local 4900 and Local 4320 and necessary for their bargaining duty and unilaterally changed terms and conditions of employees represented by the Locals. On February 12, 2024, Region 25 issued a consolidated complaint (complaint) in the

cases. On February 26, 2024, Respondent filed an answer to the consolidated complaint. (GC Exh. 1(m)-(o).)[1]

I heard this matter on September 16 and 17, 2024, in Indianapolis, Indiana. I afforded all parties a full opportunity to appear, introduce evidence, examine, and cross-examine witnesses, and argue orally on the record. General Counsel and Respondent filed posttrial briefs in support of their positions.

After carefully considering the entire record, including the demeanor of the witnesses and the parties' briefs, I make the following findings and conclusions:

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION STATUS

Respondent is a corporation with offices and places of business in Indianapolis, Indiana and Columbus, Ohio where it engages in the business of providing telecommunication services. In conducting its operations, Respondent annually derived gross revenues in excess of $100,000 at each of its locations and provided services valued in excess of $50,000 directly to customers outside the State of Indiana. Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent admits, and I find, that Local 4900 and Local 4320 are labor organizations within the meaning of Section 2(5) of the Act. (GC Exh. 1(m)-(o).) I find that this dispute affects commerce, and the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES FACTS[2]

A. Background

Local 4900, located in Indianapolis, Indiana and covering the geographical area from the Indianapolis metropolitan area north to the Indiana/Michigan border, and Local 4320, located in and covering Columbus, Ohio, are in Communication Workers District 4's (District 4) area. District 4 covers Indiana, Illinois, Wisconsin, and Michigan and is the collective bargaining representative that negotiates collective-bargaining agreements with Respondent for the unit employees in more than 40 Communication Workers local unions throughout its geographical area. (Tr. 29–32, 71, 73, 103, 104, 141.) District 4's Assistant to the Vice President Hess, (Dist. 4's Asst. VP Hess) acted as a co-chair with District 4's Vice President Hinton, (Dist. 4's VP Hinton) in representing District 4 in contract negotiations in 2015 and chaired the 2018 and 2022 negotiations. (Tr. 31, 209, 210; R. Exh. 2.) The collective-bargaining agreement effective from April 2018 to 2022 (2018 CBA) was ratified in August 2019 and effective retroactively. In 2022,

[1] Abbreviations used in this decision are as follows: "Tr." for the Transcript, "GC Exh." for the General Counsel's exhibits, "GC Brief" for General Counsel's posthearing brief, "R. Exh." for Respondent's exhibits, and "R. Brief" for Respondent's posthearing brief. Specific citations to the transcript and exhibits are included where appropriate to aid review and are not necessarily exclusive or exhaustive. My findings and conclusions are not based solely on the record citations contained in this decision but rather are based upon my consideration of the entire record for these cases.

[2] The parties exchanged a significant amount of written communication concerning the issues in this case. My resuscitation of the facts and resolution of credibility issues relies heavily on the written communications.

the 2018 CBA was extended until 2026, (CBA) with economic, date, and a few other modifications not at issue in this proceeding.[3] (GC Exhs. 2–4.) Local 4900 President Strong and Local 4320 President Walther were members of the 2018 CBA bargaining committee and remained as bargaining committee members through the time of the hearing. (Tr. 74, 75, 102, 104, 211.)

The 2015 to 2018 collective bargaining agreement's Article 10 described under what circumstances a union official would be paid by Respondent for performing union duties, such as during joint employer/union meetings for grievance processing, other duties required by the collective-bargaining agreement, and other time approved by management under Article 10.06. Article 10 also allowed union officials, with manager approval, to attend union conferences and trainings up to 1080 hours per year without affecting their seniority or other benefits based upon hours worked, but those hours would not be paid by Respondent. (Tr. 37; GC Exh. 2.)

Historically, before June 1, 2021, as discussed more below, in addition to the effective collective-bargaining agreement, local management officials had standing local agreements approving paid union time for various frequently occurring events, such as travel time to and from labor/management meetings to resolve issues before a formal grievance was filed, etc. Local management and union officials traditionally negotiated other site-specific issues such as work and vacation schedules, safety issues, appropriate lighting in work areas, etc. (Tr. 173–175.) Local officials recorded their paid union time on their time keeping system which was reviewed and approved by local management. The Respondent had the ability to search time records to determine the amount of paid union time taken by each union official/employee, and in many cases, the category under which the time was taken. (Tr. 288–291.)

The parties engaged in a significant amount of written comm

B. Negotiations for the 2018–2022 CBA

Prior to the end of the 2015–2018 contract, on February 27, 2018, Respondent's Vice President, Labor Relations White, (LRMgr. White) sent Dist. 4's VP Hinton a letter stating:

> By this letter, the Company is notifying the Union under section 8(d) of the National Labor Relations Act its intent to change the custom and practice below to the extent that there is a binding custom and practice, which the company does not admit.
>
> The Company intends to implement procedures to verify that payments for joint meeting time are made and excused absences for union business are taken only for purposes permitted by and under conditions provided for in the collective bargaining agreement.

[3] These successive collective-bargaining agreements have been effective throughout District 4's geographical area which includes unit employees employed by *Michigan Bell Telephone Co. & AT&T Services, Inc*. (Tr. 70, 141, 208; GC Exhs. 2, 3.) The unit of employees covered in each of the successive collective-bargaining agreements is as described in Article I and Appendix B, and the Memoranda of Agreement contained in Appendix F of the collective-bargaining agreement between the Communication Workers of America, AFL-CIO and AT&T Midwest signatories, including Indiana Bell Telephone Company, Inc. and The Ohio Bell Telephone Company which was effective from April 15, 2018, through April 9, 2022, and extended through April 11, 2026.

> The Company intends to change the above practice during the term of the Parties' new labor agreement. If you wish to discuss this matter during upcoming collective bargaining, please let me know. (Tr. 77–79, 155, 216; GC Exh. 5.)

On March 1, Dist. 4's VP Hinton responded in pertinent part, that "[t]he Union believes there is a binding past practice in place and, therefore, by this letter, the Union is notifying the Company of its objection to this change. If the Company still plans to implement this change, the Union's position is this change may not be implemented unilaterally." (Tr. GC Exh. 6.) Local 4320 President Walther testified the past practice predating his start was that, "anytime there was a disciplinary meeting, anytime there was grievances covered in there, review boards, investigations, the various interactions with, even Local discussions over things that are going on in the Local area. Anytime we're meeting with AT&T management, it was paid…. The travel time to and from them was generally covered as well." (Tr. 106, 109, 110, 112.) Union time was coded on the union representative's daily electronic timecard that was approved by their manager. (Tr. 108, 112.)

On March 9, Respondent's Director of Labor Relations Hunter, later the Assistant Vice President of Labor Relations (Asst. VP-LR Hunter) replied:

> This will respond to your letter to Randy White of March 1, 2018, concerning the above-referenced matter. The Company understands that the parties disagree on the issue of whether a binding past practice exists with respect to the procedures for enforcing the joint meeting time and absence for union business provisions of the labor contract. Binding or not, there can be no reasonable expectation that the existing practices will continue through the term of the new labor agreement.
>
> Be assured that the Company has no intention of making a unilateral change concerning this issue without giving the Union an opportunity to request bargaining. The Company will provide the Union with detailed procedures before they are implemented. Then, upon request, the Company will discuss its intentions with the Union's duly authorized representatives before implementing changes. (Tr. 219; GC Exh. 7.)

Through this letter Hunter informed District 4 that the Respondent's "intent was with the new collective bargaining agreement that any of those practices would not continue into the next collective bargaining agreement. So our intent here is to eliminate any practices, particularly those that did not conform with the terms of the collective bargaining agreement." (Tr. 218–219.)

During negotiations for the 2018 CBA, the parties discussed changing the 2015 contract language in Article 10. Ultimately, only the language referring to medical plans in the provision was changed to clarify which plan(s) were being referenced in the 2018–2022 CBA. (Tr. 41–42, 113, 114, 154, 155, 205-212; GC Exhs. 2 and 3.) Despite the letter notifying District 4 of Respondent's intent to change procedures surrounding the use of union time, neither party proposed any changes. (Tr. 219.) Although retroactive from April 10, 2018, the 2018–2022 CBA was not signed until August 2019.

Article 10 in the 2018 CBA remained identical in the 2022–2026 extension (CBA) of the 2018 CBA agreement. Article 10.06, the most pertinent portion of the agreement still allows local union and management officials to agree for specific meetings to be paid union time as the parties historically had done, therefore, Hess, from a contract negotiation position, did not see the contract as altering any past practice. (Tr. 81.) Hess noted that the customs and practices were not negotiated or held by District 4. Those agreements were between the locals and management. (Tr. 82.) The parties referred to the following portions of the Article (emphasis added below):

> **Payment For Joint Meeting Time**
>
> 10.05 For purposes of processing grievances, the Company agrees for authorized Union representatives to confer with representatives of the Company without loss of pay during such employees' regularly scheduled working hours. In addition, such employees shall suffer no loss in pay for time spent during such regularly scheduled working hours in traveling for grievance meetings. All time so paid will be at the basic hourly wage rate plus applicable differentials or premium rate, however, such will not be paid at an overtime rate.
>
> 10.06 When the Company meets with a Union representative(s) during such employee's regularly scheduled working hours for purposes other than the processing of grievances and further agrees to pay for the time involved, all time so paid will be at the basic hourly wage rate plus applicable differentials or premium rate, however, such will not be paid at an overtime rate.
>
> 10.07 Employees who are excused in accordance with the provisions of this Section and Article 8 (Collective Bargaining Procedures), shall give their immediate Supervisor reasonable advance notice of the intended absence and of the probable duration of the absence. s
>
> **Absence For Union Business**
>
> 10.08 The Company, insofar as work schedules permit, agrees to grant to any employee who is an Officer or properly designated representative of the Union reasonable time off of up to one thousand and eighty (1,080) hours during a calendar year, unless mutually agreed otherwise with Labor Relations, without pay. to transact business of the Union, provided that the Company is given reasonable advance notice of such absence.
>
> **Cross Entity Representation**
>
> 10.09 In situations where Union representatives from AT&T Midwest entity covered by this Collective Bargaining Agreement represent employees of another AT&T Company (with respect to their operations in the Midwest) with which the Union has a contractual relationship, the Union representatives may be on either Union Business (Unpaid) or Joint Meeting (Paid) time as is appropriate under the circumstances.
>
> **Leave Of Absence For Union Business**
>
> 10.10 Subject to service requirements, an authorized Union representative who requires time off of more than one thousand and eighty (1,080) working hours during a calendar year for Union business, may be granted a leave of absence of not more than one (1) year upon request of the Union provided…
>
> (GC Exh. 3, p. 14.)

In contending that it has no duty to bargain with Local officials over the payment of union time, the Respondent also points to Article 8.01 of the CBA, which states:

> All collective bargaining with respect to rates of pay, wages, commissions, hours of work and other terms and conditions of employment shall be conducted by duly authorized representatives of the Union and the Company respectively. (Tr. 213; GC Exh. 3, p. 13.)

The Respondent also points to Article 17.01 and Article 23.05, which specifically provide for bargaining by local management and union officials concerning scheduling issues. (Tr. 213, 214.)

C. Negotiations Between Respondent and District 4

After the 2018 CBA was signed in August, on November 19, 2019, Asst. VP-LR Hunter sent a letter to the Union seeking bargaining over a new system for reporting paid union time under the 2018 CBA. Hunter's reasons for making changes were a few examples of local union officials inappropriately/falsely claiming union time and others relying upon unclear local agreements, none of which had resulted in any allegations that the Respondent was inappropriately supporting the Union or its officials. (Tr. 281, 284; GC Exh. 8.) Hunter sought to negotiate these issues with District 4 and not with the separate locals. (Tr. 298.) The letter states in pertinent part that:

> any CWA claims of customs or practices regarding language in…Articles 10.05-.10 providing for payment for joint meeting time and absences for union business…
>
> As you may recall, on February 27, 2018, the Company advised the Union that it intended to implement procedures to verify that payments for joint meeting time are made and excused absences for union business are taken only for purposes permitted by and under conditions provided for in the Parties' collective bargaining agreement. Subsequent correspondence on these topics was also exchanged during bargaining. However, no changes to these contract provisions were negotiated.
>
> Based on the continued issues arising under this language, the Company intends to apply the strict terms of the CBA as written, giving the normal meaning to the words. The Company further intends to initiate a reporting and audit process to ensure that local management and local union officials understand and adhere to these terms. Before doing so, however, the Company intends to invite its CWA partners to discuss new procedures. In preparation for these discussions, please identify any customs or practices regarding payments for joint meeting time and excused absences for Union business that are not specifically provided for in the collective bargaining agreement. (Tr. 43, 220; GC Exh. 8.)

The parties engaged in phone conversations in response to the November 19 letter. The Respondent sought to bargain with the District 4 bargaining representatives regarding its goals to adhere more closely to the contract language and discontinue any customs or practices that had

arisen around the provision. (Tr. 223, 224; R. Exh. 3.) In 2020, the COVID-19 pandemic stalled in person negotiations, but the parties engaged in 10 to 12 phone and videoconference communications. (Tr. 44, 54.) Hess and the District 4 Administrative Director Handley handled these interactions and relayed information to the bargaining team and District 4 VP Hinton. (Tr. 45, 87–88.) Asst. VP-LR Hunter and Labor Manager Plant represented the Respondent. (Tr. 46.)

Hess testified that Hunter and Plant requested a list of all past practices admitting that they were aware they existed but neither Respondent's representatives nor the Union representatives had knowledge of all the local agreements, and Hess communicated the District's position that Respondent had to bargain with the locals concerning those agreements. (Tr. 47, 48, 51.) Locals have the autonomy to make agreements with local management if it does not infringe on the language of the CBA in a way that would affect other locals. (Tr. 49.) Throughout the process, Respondent contended that it was District 4's responsibility to bring any local agreements to the table. In the January 30, 2020, phone conversation, District 4 President Hinton stated that she would speak to the local representatives and get back with Respondent. (Tr. 225; R. Exh. 3.) During a February 3, 2020, conversation between Hess and Hunter, Hess stated that the call with the locals was arranged for the next Wednesday. (Tr. 226; R. Exh. 4.)

On February 5, 2020, Respondent sent its first draft of the proposed matrix listing specific instances when union time would be paid. (Tr. 227–229; R. Exh. 5.) On February 21, the parties met by phone again and there was significant back and forth about how the use of the matrix might result in changes in what local management would agree to under Article 10.06. Respondent representatives continued to insist on the stricter reporting requirements, while the Union sought clarification on the practical effects in the field. Management insisted that it wanted more accountability in the field and mostly brushed off the Union's concern for those issues. (R. Exh. 6.)

On March 10, 2020, the parties conducted another bargaining meeting. Hunter sent the District 4 representatives a copy of the Respondent proposed form on which union paid time would be approved and tracked. (Tr. 235; R. Exh. 7.) The Union objected to the formality of the form and raised concerns that it would obstruct discussions of issues between the parties, because often these relationships are fluid in nature, differed between locals, and "had always been handled in the field between [the Local Union] and local management." (Tr. 238, 47–49; R. Exh. 8.) Hunter continued to insist that Respondent would implement and follow a new procedure that was consistent across all the locals. (Tr. 239; R. Exh. 19, p. 640.)

Sometime in March 2020, the District held a call and informed the locals that the Company had proposed changes to ensure that the use of paid union time adhered to guidelines set forth in the Labor-Management Reporting and Disclosure Act and the parties' 2018 CBA. (R. Exh. 1.) Often issues initially discussed between the management and District 4 do not come to fruition, so its first mention by the District 4 leadership did not garner much attention from local leaders. (Tr. 156, 157.)

After a period of disruption caused by the COVID-19 pandemic, on May 21, 2020, Asst. VP-LR Hunter emailed Asst. to VP Dist. 4 Hess asking to restart bargaining over the procedures for reporting and approving Company paid union time. (Tr. 240, 242; R. Exh. 9.) They

conducted a call on August 25, 2020, at which management continued to push its reporting system that was limited to contractual provisions. District 4 continued to assert that this would upset the local unions by changing past practice. (Tr. 240; R. Exh. 10.)

On September 11, 2020, the parties bargained again and discussed basically the same issues. (Tr. 242; R. Exh. 11.) When they bargained on September 23, they began to discuss situations that had historically been paid as union time and possible changes to the form and/or matrix proposed by Respondent. Hunter explained that when they took statistics from one of their payroll systems they were able to see that 61% of the paid union time was coded as "other" instead of a specified category of paid union time. (Tr. 243–245; R. Exh. 12.)

On October 22, 2020, Hunter sent District 4 representatives the proposed training materials for the new reporting system that Respondent proposed, which was discussed during their October 23 meeting. The Union raised concerns that the matrix did not specifically allow for union time for investigatory/disciplinary meetings and the Company agreed to consider these concerns. (Tr. 246–249; R. Exhs. 13 and 14.)

On November 6, 2020, the parties discussed paid union time again. The Company continued to want a limited list of approved meetings for paid union time and the Union sought more leeway for local management and union officials to agree to and report paid union time. They discussed the training materials and agreed that a question-and-answer section would be helpful. In discussing questions and answers, Hunter asked the District 4 representatives to bring at least the Local's union representatives that were on the bargaining committee. (Tr. 251–254; R. Exh. 15.)

During the November 20, 2020 bargaining, disagreements arose over the specificity of Respondent's proposed reporting form. When Hunter indicated that management wanted an agreement on the new process, Hess responded that prior memorandums of agreement had been negotiated with the entire bargaining committee and at least the entire committee would have to be involved. Hunter replied that he had "no issue with you bringing in the bargaining team into the discussion before making an agreement," but the bargaining committee never attended. (Tr. 255; R. Exh. 16.)

On January 21, 2021, Dist. 4's Asst. VP Hess emailed Asst. VP-LR Hunter a sample of a union time reporting form "for discussion purposes only." (R. Exh. 18.) The parties bargained again about Respondent's desire for a "[memorandum of understanding] and a form for accountability," and the Union having "trepidation about the whole thing," including agreeing to anything without the Company bargaining over local practices. (R. Exh. 18; Tr. 255.) The parties discussed the form presented by Hess. (Tr. 256; R. Exh. 19.)

On February 10, 2021, the parties again discussed the implementation of the reporting form. The parties discussed portions of the 2018 CBA that contemplated the presence of one or more union officials at a joint meeting for which there was no language in the CBA indicating that the union officials would be paid union time. The Company agreed to pay for some of these situations. For example, Respondent agreed to pay union time for union officials' attendance during review board meetings as a part of the grievance procedure. (Tr. 260–262; R. Exh. 20.)

The Union representatives continued emphasizing the effects on local agreements although the District 4 representatives refused to negotiate on behalf of the Locals over local agreements. District 4 representatives were especially concerned about the effects on locals whose officials must travel long distances to represent their members. Hunter stated that the Company wanted to limit the paid union time to what was required by the 2018 CBA, that the Company was going to roll out the new procedures, and local agreements would not be a part of that procedure. (Tr. 259–264, 300; R. Exh. 20.)

On February 23, Hunter emailed District 4 an updated list of situations for which union time would be paid, the reporting form, and training materials. (R. Exh. 21.) On February 24, the parties discussed the revised documents. Hess said that he would talk to the bargaining team members about the Company's proposals, but he believed that a segment of the local leadership would see the new system as a unilateral change, eliminating local agreements. (Tr. 267, 301; R. Exh. 22.)

Between February 26, and March 25, 2021, the parties continued to share documents and discussed the use and recording of union time. During their March 25 telephone call, Hess asked if they could table the discussions until the next collective-bargaining negotiations to which Hunter said the Company had presented its final offer and was intending to roll it out. (Tr. 267–270; R. Exhs. 23–28.) Hunter testified that he believed the parties were at impasse after their March 25 telephone call. (Tr. 271.) That same day Hess sent an email to the local officials informing them that the Company had not proposed any changes to the language in the CBA, but that its planned implementation of new paid union time procedures would likely affect local practices that varied greatly amongst the locals. Hess planned to discuss the issue more during the next call with local presidents. (R. Exh. 1.)

D. Declaration of Impasse

On April 7, 2021, Asst. VP-LR Hunter sent a letter to the Union stating: "Our discussions on [future application of Article 10 of the 2018 CBA] began on February 21, 2020, and have been exhaustive. (Tr. 54, 55, 114, 272; GC Exh. 9.) Based on the discussions described below, I believe the Parties are at impasse." The letter goes on to discuss the back and forth bargaining between Respondent and District 4. The letter concludes with the following statements:

> Accordingly, the Company intends to implement its final proposal on procedures to verify that payments for joint meeting time are made, and excused absences for union business are taken in compliance with the CBA. The procedures can be summarized as follows:
> • The Company will make an on-line training course available to all management employees and authorized Union Representative on or after April 21, 2021.
> • The training will include the Pay Treatment (No Docking) for Union Time (CWA 04) documents which list all "Reasons for Absence" for which Union Reps would not be docked for attendance at joint meetings.
> • The Company will implement the tracking and audit processes effective May 17, 2021.
> • The process will consist of:

> -Form (Company Paid Union Time Tracking Form - CWA 04) to be completed by Union Representative for all joint meetings for which they claim pay.
> -Union Representative will present completed form to their direct supervisor or designee each week with the time report for all time coded as MXUP (management/union meeting paid).
> -Audit Process managed by Labor Relations. (GC Exh. 9.)

On April 12, Ast. Dist. 4 VP Hess disputed Hunter's take on the bargaining concerning Article 10 and in part stated:

> The Union's willingness to entertain these discussions *or* the compelled participation of Local Officers in any Company developed training(s) regarding changes to existing customs and practices should not be construed as a concession that the Company is privileged to alter the existing CBA and practices incorporated therein. Additionally, you have indicated the Company intends to proceed with implementation, and believes the Parties are at impasse. The Union disagrees that the Parties are at a lawful impasse. Further, as you know, paid union time practices vary from Local to Local. As I have maintained throughout our discussions, any changes to Local practices must be bargained with each respective Local. (Tr. 57, 58; GC Exh. 10.)

Despite, this language, Hunter disputed in his testimony that Hess informed him that any changes to Local practices would have to be bargained at the local level. (Tr. 273.) This testimony conflicts with that of Hess, who I credit over Hunter, based upon the written communications between the parties.

During a call on April 21, Hunter told Hess that they would start training on the new union time reporting form and matrix on May 19 with implementation planned for June 1. (Tr. 274; GC Exh. 29.)

On April 30, Hunter responded that the Union had failed to provide Respondent with information about any past practices, that Respondent believed that the parties were at impasse, and that Respondent was going forward with training on May 10 and implementation of the new reporting form on June 1, 2021. (Tr. 89, 275; GC Exh. 11; R. Exh. 30.) The form lists the articles and appendices of the CBA that require payment of union time for certain meetings and other situations, not specifically contained in the CBA, for which Respondent agreed to pay union time. (Tr. 310.) Most importantly for consideration here, item 15 of the form lists Article 10.06 as paid union time when a Union representative is in "attendance at meetings with managers where manager specifically agrees to pay." (Tr. 95–99, 292, 293; GC Exh. 37.) Locals 4900 and 4320 most strenuously object to the requirement that a manager specifically agree to granting paid union time for each meeting, travel time to meetings, etc., which had been standing practices in the past.

E. Respondent's Interactions with the Locals

On May 7, 2021, Hunter sent an email to all the District 4 local union officials, stating: "This communication is to inform you of the Company's plan to implement procedures to ensure that absences from work by CWA 04 Union Representatives for Union activities, and payment by AT&T for such time, conforms to the terms of the Collective Bargaining Agreement." The email notified them that online training would be available starting May 10 and the new system would be implemented on June 1, 2021. (Tr. 158; GC Exh. 12.) The letter also stated that [t]his "new process will replace any local practices that Union Representatives may have relied on in the past regarding absences to conduct Union business, or to determine when it is appropriate to charge the Company for joint meeting time." (underlining added) (Tr. 306–308; GC Exh. 12; R. Exhs. 31, 32, 33.)

On May 14, Local 4320 President Walther emailed Hunter noting that changes to Article 10 were not negotiated during the prior contract negotiations. Walther concludes the email stating:

> Your communication also recognizes the existence of multiple local practices related to the use of union time. Since the Company clearly recognized the need to bargain over this topic, you reasonably should also recognize that bargaining over changes to local practices would need to be bargained by the parties who made them which in this instance would be Local Management and the Local Union. Any attempt to change these at a District level as your communication indicates would have needed to be achieved at the bargaining table which the Company chose not to do.
> We would be willing to confer over our local practices at a local level as you clearly recognize local agreements. Please respond to us no later than noon on May 19, 2021 to address this situation. We look forward to further discussions on this matter. (Tr. 120; GC Exh. 14.)

Hunter responded by email recapping Respondent's position and stating that "local management is not authorized to circumvent or disregard compliance with these provisions of Article 10, so these requests are inappropriate." (GC Exh. 15, R. Exh. 34.) Hunter's position was that the Company had bargained to impasse with District 4, the authorized bargaining representative for the Union, and therefore, any further negotiations with the locals was inappropriate. (Tr. 277.)

On May 20, Local 4900 President Strong replied to Hunter's May 7 email by also asserting that Respondent was required to bargain with the CWA's local officials over changes in past practices agreed to between local management and local union officials. (Tr. 120; GC Exh. 13.) Local 4320 President Walther also sent an email that same day renewing his request to bargain and requesting a response by May 21. (Tr 121; GC Exh. 16.)

On May 21, Asst. VP-LR Hunter responded to several locals that Respondent would provide any relevant information requested, and took the position that:

> Contrary to the assertions of these locals, the Company is not required to engage in dozens of mini negotiations over how to construe or administer Article 10 of the CBA, which is language common to the entire bargaining unit. Of course, the Company will discuss any local issues on a local basis as the new process is implemented and expects to reach understandings on local issues that are consistent with the language of the CBA and the requirements of the law. For example, Article 10.06 allows a manager participating in a meeting with a union official to agree to pay that official for the meeting. To that end, Labor Relations Case Managers are available to discuss the revival of local practices that are consistent with the new process and the law, but be advised that **only those case managers are authorized as agents to discuss such practices**. The Company has no intention of reviving any practices that provide for pay not permitted by the CBA (e.g., for time spent not meeting with management) as that would constitute a violation of the law.
>
> I have copied the locals who wrote to demand bargaining and hereby advise them that this is the Company's response to those requests. (underlining added) (Tr. 307, 308; GC Exh. 17[4]; R. Exh. 39.)

This letter was forwarded to Locals 4320 and 4900 on May 24. (R. Exh. 39.)

On May 21, Local 4320 President Walther sent Respondent's Labor Relations Case Manager (LR Mgr. Biehl), who covers Locals 4320 and 4900, a request for answers to numerous questions about how union officials would record union time, how or to whom would they submit requests, and/or who would be responsible for approving such requests under Respondent's new requirements. (Tr. 122–125, 126–130, 315; GC Exh. 18; R Exh. 37.) On May 25, Local 4900 President Strong sent LR Mgr. Biehl a similar request for information. (Tr. 121, 316; GC Exh. 19; R. Exhs. 36 and 40.) Hunter responded to some of the requests, but Local 4900 and Local 4320 deny receiving and ultimately the complaint alleges that Responded failed and refused to provide information to the following three requests made by the Local Unions:

> (i) "If a Company representative reaches out to a union representative via Company email for a company/union related matter is the union representative allowed to use the Company device for the associated union business?"
>
> (ii) "If management schedules a meeting with a Union representative where joint time is to be paid and then management delays the meeting will the representative be compensated for the time of the delay'? If so, how is that time to be coded?"
>
> (iii) "If management 'pauses' and leaves a joint meeting that is in progress does the Union representative continue to be paid while waiting for the management representative to return, how is the time on 'pause' coded and accounted for by the Union representative?"

(Tr. 123–125, 167–170; GC Exh. 18, items 12, 19, 20; GC Exh. 19, items 11, 19, 21, GC Exh. 22; GC Exh. 23.) While posed as hypothetical questions with the use of the word "if," each of

[4] I note that GC Exhibit 17 is missing page 2 of the 3-page exhibit, but Bates page number 1128 of Respondent Exhibit 39 is identical to the missing page of GC Exhibit 17.

these questions could have started with the word "when." In an email sent to Biehl on May 28, Local 4320 President Walther explained that the scenarios in the questions happen regularly at the local level. (Tr. 123, 316, 328; R. Exh. 43.) LR Mgr. Biehl testified that she believed she answered all the questions posed by Local 4900 and Local 4320 either through the frequently asked questions and answers document that was distributed to the locals that sought information or verbally during meetings with Walther and Strong in the summer of 2021. (Tr. 319, 323, 357, 358; R. Exh. 53.) Yet, Biehl's testimony concerning the information requests was conclusory with no real explanation as to how or when she provided the information. Respondent does not point to any communication or meeting notes that evidence that the information was provided.

Between May 24 and May 28, Local Presidents Walther and Strong communicated with Biehl about their requests for information and bargaining and about changes in how local officials will be assigned to represent their members because of the new procedures. (Tr. 325–328; R. Exhs. 38, 39, 41, 42, 43, and 44.)

On May 27, Strong posed the following questions and received the following responses from Asst. VP-LR Hunter:

> --Does your letter embody the company's final decision to not bargain with the Local over the elimination of customs and practices that are eliminated by the company's "new process"?
> Response: The Company has already bargained with District 4 - the authorized representative of the union - over the new process and implemented that process after the parties reached an impasse in bargaining. The new process eliminates any prior alleged practices including alleged local practices. The Company stands ready to bargain with the local concerning any concerns it has or wishes to express regarding the new process, or over any new local agreements or new (or revived) practices the local would like to establish that are consistent with the new process and the law.
>
> --Further clarification- I have scheduled a meeting with [LR Mgr.] Biehl to discuss "local practices". Am I to understand, by your answer directly above, that the company will not only discuss but also "bargain with the Local". If the company "stands ready to bargain with the Local", is this to be performed with Local Labor relations?
> --Does the company recognize Local 4900 as an "authorized representative or the international union or their designated representative" per the CBA?
> Response: Please cite the CBA provision you quote. Is it Article 8.01? If so, see response above.
>
> --Further clarification- I am actually referring to Article 12.17; does this change your answer directly above?
> --Does your letter represent the company's final decision to implement the "new process" prior to answering the relevant questions, submitted in correspondence to state Labor relations case managers, about said process?
> Response: The Company has already implemented the new process. In addition, see response to your first question above.

--By your letter, are you requesting that the Local identify, to you, practices it "intends to maintain"?
Response: My May 21st letter to Mr. Hess offered that "Labor Relations Case Managers are available to discuss the revival of local practices that are consistent with the new process and the law." In addition, see response to your first question above.

--What contractual articles of the CBA are altered, in meaning and intent upon implementation of the "new process"?
Response: The Company objects to this request as vague and ambiguous. Without waiving these objections, the Company does not believe that the new process alters the CBA but is consistent with its language and intent.

--RFI-Local 4900 is requesting a list of all Local Agreements that could be affected under the provisions of Article 12.13 of the CBA.
Response: It is the Company's position that no local agreements exist.

--Lastly, the Local demands unilateral implementation of the "new process" cease until the Local is provided the answers to its questions above, and presented to the State Labor case manager; and until the Local has had an opportunity to Collectively Bargain these "mid-term changes".
Response: See responses above. (Tr. 175–177; GC Exh. 22.)

On June 1, 2021, more than a year and a half after the 2018 CBA was executed in 2019, Respondent implemented the new union time reporting matrix and ended numerous local oral agreements and practices. (Tr. 281.) Local management officials discontinued their past practices of regularly approving paid union time under Section 10.06 for: union/management joint discussions about terms and conditions outside of a formal grievance procedure; travel time to and from paid joint union/company meetings; union officials participating in safety meetings, new employee orientations, and local negotiations over vacation schedules as required by the contract, and for time used to respond to management emails and phone calls regarding union business, and other previously paid circumstances. (Tr. 61, 66, 116–119, 133–134, 150, 151, 158–162, 165–166, 169, 182–183, 187–188.) Since at least 2010, Local 4900 President Strong and several other local union presidents were so busy with union work that their local managers allowed them to code their time as 4 hours of Company paid time and 4 hours of Union paid time each day. (Tr. 152, 153, 187.) These arrangements were abandoned on June 1, 2021. (Tr. 152, 158.)

The new procedure requires union representatives to complete a weekly union time form in addition to noting it on their electronic timecards. (Tr. 116.) A similar form and/or the requirement that union officials send emails explaining for what they were claiming union time had been sporadically implemented between local management and some union officials over the years. (Tr. 181.) The real concern for the local unions was the change in what was approved and what was not. (Tr. 181.) The union time that used to be paid by Respondent is reimbursed by the local resulting in additional expenses for the local. (Tr. 120, 152, 163.) To lessen some of its expenses, the locals have discontinued trying to resolve work issues through discussions with management before filing a grievance, because they will be paid union time for the same travel and meeting time if it occurs after a grievance is filed. (Tr. 163, 164, 188.)

On June 2, Local 4900 President Strong sent an email to LR Mgr. Biehl renewing his demand that Respondent provide the information requested before the June 1 implementation of the new procedures, to provide additional information, including which local practices were being eliminated, to rescind the new union time recording process, and to bargain. (GC Exh. 20; R. Exh. 48.) Biehl responded that they were still working on providing the information. (Tr. 364; R. Exh. 48.) Strong and Walther sent a joint letter to LR Manager Biehl requesting a meeting to discuss reviving the local practice with regards to agreeing to paid union time. (Tr. 330–333: GC Exh. 21; R. Exhs. 45 and 46.)

On June 4, Biehl emailed Walther explaining that the Company's February 2018 letter seeking to bargain these issues "extinguished" any such practices, despite those practices continuing at the local level until June 1, 2021. On June 9, 2021, Walther emailed Biehl requesting clarification as to which past practices that the Company was willing to "revive." (Tr. 333; R. Exh. 49.) On June 9, Local 4320 President Walther sent an email to Manager Jones requesting that much of the same information. (Tr. 125–126; GC Exh. 23.)

On June 16, Strong, Walther, and Local 4322 President Frazier, who acted as the notetaker, represented Locals 4900 and 4320 during negotiations with LR Mgr. Biehl and another LR Mgr. Texeira. (Tr. 131, 336.) The Locals asserted that Respondent's unilateral elimination of local past practices was an unfair labor practice, and they wanted to bargain those issues. Respondent's representatives repeatedly stated that they only met with the Local officials to discuss, not bargain about these past practices. Biehl stated that the Company had met its responsibility by bargaining with District 4 but subsequently agreed to take proposals from the locals. (Tr. 132 178–179, 339.) The local unions submitted 29 bargaining proposals concerning the application of Article 10. (Tr. 132; GC Exhs. 24, 25, 26.)

The Company asked why they were asserting that union time should be paid in certain of the proposals, and the Locals' representatives discussed their past practices and the reasons for them. (Tr. 135.) Despite receiving and discussing these topics, Biehl denied that Local Union officials ever informed her of the past practices at issue.[5] (Tr. 339, 340, 341, 346, 353, 341.) The Company did not agree to "revive" any of the proposals. Instead, the Company continued to assert that all past practices ceased at the end of the prior agreement, and that certain situations could be covered under Article 10.06 with local management agreement on a case-by-case basis. (Tr. 183, 336; R. Exhs. 50 and 51.) The parties discussed Article 29.04 which nullifies any past practice with the issuance of a new contract, but that "Local Agreements would be adhered to as long as they complied with the letter of the CBA and with law." (Tr. 338.) Biehl did not address how these past practices could be eliminated when they continued after the effective date of the then current contract.

On June 20, President Walther sent an email to Hunter again expressing the Local's opposition to Respondent's "intent to cancel our local practices and agreements regarding Union time and unilaterally implement changes that the Company did not obtain through bargaining

[5] The record contains no evidence that local managers discontinued or in any way changed their established practices of approving paid union time between the expiration of the 2015–2018 CBA and June 1, 2021. The Local Unions did not provide the Company with any written local agreements on paid union time. (Tr. 340.) Biehl considered only written agreements to be local agreements, otherwise she considered them past practices.

during the most recent contract negotiations." Walther reasserted his demand to bargain over the changes to local practices and agreements regarding paid union time. (GC Exh. 16.)

On June 29, President Walther filed a grievance asserting that management had failed to provide necessary and relevant information requested by the Local 4320. The grievance was processed but the information at issue was not provided. (Tr. 126; GC Exh. 35.)

On July 12, 2021, Company officials Biehl and Texeira met with Local Union officials Walther, Strong and Frazier. The Company declined to have a blanket policy on the Company paying for travel time to meetings. Local officials would have to get approval of local management on a case-by-case basis for time that had been routinely paid before June 1. The Union submitted more bargaining proposals. (Tr. 136, 137, 184, 345, 348; GC Exh. 28; R. Exhs. 54 and 55.)

On July 21, Biehl sent Strong and Walther an email stating that their bargaining proposals requesting union paid time under Article 10.06 for tasks that are not supported by other language in the contract would not be paid, except for those already included in the reporting form bargained with District 4. She stated that "the Company does not believe the CBA gives it discretion to agree to not dock pay for union officials" on an ongoing basis as had occurred in the past. Local officials would have to seek authorization on a case-by-case basis under Article 10.06. (Tr. 137. 184, 347, 348; GC Exh. 31; R. Exh. 55.) Also, Biehl verified that the Company would not pay travel time to and from paid joint union/management meetings unless the CBA specifically provided for it. (Tr. 349.)

The parties met again on August 6, 2021. The Locals requested explanations for the answers provided and whether it was the Company's position that it did not need to bargain with the Locals. Texeira responded that outside the few exceptions that Respondent agreed to with District 4, the Company was not going to agree to pay union time unless it was specifically required by the CBA.[6] (Tr. 138, 185.) The Local officials specifically asked if the Company was going to respond to any of their proposals. (Tr. 139.) Biehl stated that these issues were bargained with District 4. (Tr. 350, 352.)

Later in 2021, Biehl came to an understanding with Local 4900 that its officials would receive 30 minutes paid time for attending orientation meetings to be listed under Article 10.06 on the recording form. (Tr. 162, 366.) This understanding was not memorialized in a written document but was a standing agreement that still existed at the time of the hearing. (Tr. 366, 367.)

[6] To Biehl denied recalling Texeira making this statement and Company notes from the bargaining session does not reflect this comment. (Tr. 354.) Regardless of whether Texeira made this direct comment in the meeting, I find that it was the message that all of Respondent's actions and communications conveyed, including Biehl's admitted comment to Walther at a December 13, 2021, grievance meeting. Walther asked why she had not responded to his information requests about paid union time. Biehl responded that it was a District issue and not a Local issue that we responded to [District 4]." (Tr. 355; R. Exh. 60.)

On December 13, 2021, Biehl met with representatives of Local 4320 to discuss the grievance alleging that Respondent had not provided the Local all the information it requested. (Tr. 367.) Biehl admitted that some information was still outstanding.

F. Extension of the 2018 CBA to 2026

In April of 2022, the parties met and bargained a successor contract. The resulting 2022–2026 CBA contained modifications to economic provisions of the 2018 CBA and other necessary changes, such as effective dates, but left unmodified most of the 2018 CBA's provisions through April 11, 2026, including the language of Article 10. (Tr. 66–67; GC Exh. 4.)

III. ANALYSIS

A. Unilateral Change Allegations

It is well established that unless an employer has a valid defense excusing it from its bargaining obligation, the employer violates Section 8(a)(5)'s duty to bargain under the unilateral change theory when it makes a material, substantial, and significant change to mandatory subjects of bargaining without bargaining with the Union. See *NLRB v. Katz*, 369 U.S. 736, 747 (1962) ("Unilateral action by an employer without prior discussion with the union does amount to a refusal to negotiate about the affected conditions of employment under negotiation, and must of necessity obstruct bargaining . . ."); *C&S Industries*, 158 NLRB 454, 456–459 (1966); *Mead Corp*., 318 NLRB 201, 202 (1995); *Toledo Blade Co.*, 343 NLRB 385 (2004); *Flambeau Airmold Corp.*, 334 NLRB 165 (2001). A violation of Section 8(a)(5) does not require a finding of bad faith. *Katz*, supra at 743 and 747.

Paid time and related benefits provided to an employee who performs union functions "inure to the benefit of all of the members of the bargaining unit by contributing to more effective collective-bargaining representation and thus 'vitally affect' the relationship between an employer and employee." *Axelson, Inc.*, 234 NLRB 414, 415 (1978), enfd. 599 F.2d 91 (5th Cir. 1979). Therefore, providing paid time for union representatives to administer a collective-bargaining agreement, including grievance processing, is a mandatory subject of bargaining. *BASF Wyandotte Corp.*, 276 NLRB 1576 (1985); *BASF Wyandotte Corp.*, 274 NLRB 978 (1985), enfd. 798 F.2d 849 (5th Cir. 1986); *American Ship Building Co.*, 226 NLRB 788 (1976), affd. sub nom., 574 F.2d 636 (D.C. Cir. 1978) (unpublished opinion), cert. denied 439 U.S. 860 (1978). "An employer cannot unilaterally change the wages, hours, or working conditions of employee union representatives or stewards that have been established by practice." *Michigan Bell Telephone Co. & AT&T Services, Inc., Joint Employers*, 369 NLRB No. 124 (2020).

"A past practice must occur with such regularity and frequency that employees could reasonably expect the 'practice' to continue or reoccur on a regular and consistent basis." *Sunoco, Inc.*, 349 NLRB 240, 244 (2007) (citations omitted). A unilateral change in a mandatory subject of bargaining is unlawful only if it is material, substantial, and significant. *Flambeau Airmold Corp.*, supra at 166.

Here, Respondent sought to and ultimately implemented a new reporting form in addition to what is coded in the time keeping system and discontinued the long-term practice of local

managers granting paid work time for certain representational activities. Those changes were material, substantial, and significant changes to a mandatory subject of bargaining. They resulted in the requirement of an additional form, the cessation of payment for numerous hours of union time used to represent the unit employees, and a decrease in unpaid union time available to perform other tasks. Thus, the issue is whether Respondent met its duty to bargain by bargaining with District 4 and not the Locals.

General Counsel relies upon the Board's decision in *Michigan Bell Telephone Co. & AT&T Services, Inc.*, which involved the same contractual language that is at issue here. The Board found that Michigan Bell violated the Act by discontinuing its practice of paying a local union official for performing union duties full-time and returning him to his previous job duties. 369 NLRB No. 124, slip op. pgs. 1–4 (2020). In *Michigan Bell Telephone*, the Board found that the provisions of the contract did not allow the employer to unilaterally change its past practice of providing paid union time that arose out of an oral agreement between management and the local union official. Id.

General Counsel argues that this case stands for the proposition that Respondent had a duty to bargain with each of the locals about local agreements/practices regarding Article 10 and that bargaining with District 4 over these issues was insufficient. (GC Br. at 20–22.) To the contrary, I find that the Board in *Michigan Bell Telephone* did not address the pertinent issue in this case. That case contains no evidence that the company provided notice and opportunity to bargain to any level of the union before implementing the change, and therefore, does not explore the issue of whether there was a duty to bargain specifically with the local union.

In countering General Counsel's position, Respondent points to the Board's sua sponte correction of its notice to employees ordering Respondent Indiana Bell Telephone Co., Inc. to "bargain in good faith with the Communications Workers of America, District 4 *and/or* Communications Workers of America, Local 4900, a/w Communications Workers of America, District 4"… "before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees…" *Indiana Bell Tel. Co., Inc.*, 372 NLRB No. 62 (Feb. 28, 2023). I find that this language only acknowledges that the proper bargaining representative is one, the other, or both entities; and therefore, it is not instructive in determining whether Respondent met its duty to bargain in the specific circumstances here.

Respondent also relies upon Board decisions holding that an employer, while engaged in national negotiations with the parent union, may violate Section 8(a)(5) by attempting to deal separately with locals on matters which are properly the subject of national negotiations. *M & M Transportation Co.*, 239 NLRB 73, 76 (1978); *General Electric Co.*, 150 NLRB 192, 193 (1964), enfd. 418 F.2d 736, 755 (2d Cir. 1969), cert. denied 397 U.S. 965 (1970). Yet, in those and related cases the Board has conversely held that the employer did not violate Section 8(a)(5) by dealing with a local union, even though the parent international is the designated or certified collective-bargaining representative, when the international had acquiesced in such bargaining at the local level. *Braeburn Alloy Steel Division, Continental Copper & Steel Industries, Inc.*, 202 NLRB 1127 (1973); *American Laundry Machinery Company*, 107 NLRB 1574, 1577 (1954). As was stated in *Radio Corporation of America*, 135 NLRB 980, 983 (1962) "the Board is not such a prisoner of a narrow interpretation of its own findings concerning appropriateness of a separate bargaining unit that it cannot recognize a workable pattern of bargaining developed by the parties which … seeks to accommodate the interests of local and national bargaining." See also, *The*

Musical Arts Association, 356 NLRB 1470, 1480 (2011). "In sum, the Board looks to the realities of the relationship among the parties, not merely to the identity of the designated or certified collective-bargaining representative." *M & M Transportation*, supra at 76. In these cases, the Board often finds that it is appropriate for an employer to negotiate with an international or district union regarding multiunit issues and with local unions involving local issues. Therefore, I assess the issues here considering the realities of the relationships among the parties.

The Respondent gave notice that it sought to end all past practices in relation to Article 10 of the contract in seeking to bargain a successor contract but failed to negotiate any substantive changes to the contractual language and continued the past practices well into the term of the successor contract. Therefore, I find that such notice does not excuse Respondent' duty to give subsequent notice and bargain over any changes to past practices and extra-contractual agreements mid-contract.

Respondent gave notice to and bargained with District 4 representatives over the paid union time reporting procedure and there is no allegation by District 4 that Respondent failed to negotiate to impasse in those negotiations, which introduced a new reporting system for all the locals. Nothing in the negotiated form changed the language of Article 10, nor does it forbid the use of Article 10.6 by management to agree to pay for joint union and management meeting time as is allowed by the successive CBAs. This is reflected by Biehl's standing agreement to pay Local 4900 representatives 30 minutes of paid time for attending new employee orientation meetings with management. Despite the language of the new reporting form associated with Article 10.06, by the standing agreement with Biehl the Local officials are not required to seek approval every time they attend orientation meetings but must report the time on the new form. Therefore, I find nothing in Respondent's new reporting form prevents the continuation of standing local agreements/past practices established by management and local union officials.

The new reporting form is required to be completed by all the local unions' representatives like the coding in the time-keeping systems historically used by the employees. Even though some Local officials have been required to complete additional reporting forms in the past, that was on a case-by-case basis. The record contains no evidence that the time keeping reporting of paid union time was negotiated at the local union level, and some version of the time keeping system was used by all the locals to seek reimbursement for paid union time. Therefore, I find that Respondent appropriately bargained with District 4 in implementing additional District-wide reporting documentation beyond what is done in time keeping systems. Accordingly, to the extent that the consolidated complaint's allegation in paragraph 6 refers to the completion of the new paid union time reporting documentation, I do not find the new documentation constitutes an unlawful unilateral change.

While bargaining with District 4, Respondent made clear that in addition to the new reporting documentation it wanted to discontinue the local practices without negotiating with each local. I do not credit Respondent's contention that it was not aware of any of these past practices, because Respondent repeatedly referred to them in communications with District 4 and the Locals. Respondent's repeated requests to bargain the local agreements with District 4 representatives evidences its knowledge, as does District 4 repeated position that Respondent needed to address local agreements/understandings at the local level because those agreements were bargained between representatives at that level, who were familiar with all the local

agreements and the circumstances around those agreements. Furthermore, I find disingenuous Respondent's claim that it was without knowledge of those agreements and past practices because its local managers were a party to them. Accordingly, I give no credit to Respondent's claim that it was unaware or unable to become aware of longstanding past practices agreed to by local management and union officials.

Respondent further contends that its position is supported by the terms of the successive CBAs which requires negotiations to be with District 4, the designee of the International Union, and not at the local level unless the CBA contains specific language allowing such bargaining. As an example of such an exception Respondent points to Article 23.05, vacation scheduling, which states: "Management shall review its vacation selection guidelines with the appropriate Local President and/or designee." Respondent contends that no such language exists regarding paid union time, but I find to the contrary. Article 10.06 explains the rate of pay, "[w]hen the Company meets with a Union representative(s) during such employee's regularly scheduled working hours for purposes other than the processing of grievances and further agrees to pay for the time involved." The provision explicitly states that it provides for paid time for representative "*employee's regularly scheduled working hours"* as agreed by the Company, which is referred to as managers in the new reporting form. Thus, the plain language of the provision explicitly states that it applies to union representatives who are employees. The District 4 officials are employed by the Union and not the Respondent. Consistent with this language, the parties historically allowed local management to agree to compensate local union officials for their time spent away from their normal work duties to perform representational duties in numerous situations that were not specifically described in the CBA.

Also consistent with this language, in negotiating the new reporting form, Respondent agreed to grant paid union time in specific instances which had historically been paid but are not listed in the CBA. Respondent justified paying in these under either Article 10.06 or as part of the paid time for processing grievances. Well after Respondent implemented these changes, Biehl negotiated an oral agreement with Local 4900, as had been the practice of local management, to pay for 30 minutes of time for Local officials to attend orientation meetings under Article 10.06. Thus, the evidence establishes Respondent's long practice of interpreting Article 10.06 as allowing standing agreements, including those between management and local union officials.

Finally, Respondent points out that it had given direct notice and opportunity to bargain to District 4 and that District 4 had provided some notification of this issue to the locals. Considering Respondent's position that it did not need nor want to bargain with the Locals, I decline to find that Respondent provided the locals with notice and opportunity to bargain. Instead, I find that Respondent announced a *fait accompli* to the Locals in its May 7, 2021, communication setting forth its new process and stating that it would "replace any local practices that Union Representatives may have relied on in the past regarding absences to conduct Union business." Nor do that find Biehl's subsequent meetings with the Locals to discuss "reviving" local practices excused Respondent's duty to give notice and opportunity to bargain before implementing the changes.

Accordingly, I find that Respondent violated Section 8(a)(5) and (1), by failing to give the Local Unions notice and opportunity to bargain before eliminating all local agreements

regarding the granting of paid union time for performing representational duties during work hours.

B. Requests for Information

Section 8(a)(5) of the Act provides that it is an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of its employees." 29 U.S.C. § 158(a)(5). An employer has a general duty to provide information needed by the bargaining representative in contract negotiations and administration. See *A–1 Door & Building Solutions*, 356 NLRB 499, 500 (2011); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152–153 (1956). Typically, information concerning wages, hours, and other terms and conditions of employment for unit employees is presumptively relevant to the union's role as exclusive collective-bargaining representative. See *Southern California Gas Co.*, 344 NLRB 231, 235 (2005).

"The Board uses a broad, discovery-type of standard in determining relevance in information requests." *Caldwell Mfg. Co.*, 346 NLRB 1159, 1160 (2006); *NLRB v. Acme Industrial Co.*, supra, at 437. The issue is whether the Union's request for information is of "probable" or "potential" relevance. *Transport of New Jersey,* 233 NLRB 694, 694 (1977) (citing *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967)); *Pennsylvania Power & Light Co.*, 301 NLRB 1104, 1105 (1991) ("the information need not be dispositive of the issue between the parties but must merely have some bearing on it"). *W–L Moulding Co.*, 272 NLRB 1239, 1240 (1984), quoting *NLRB v. Rockwell–Standard Corp.*, 410 F.2d 953, 957 (6th Cir. 1969) and *Acme Industrial*, supra at 437. It is not the Board's role to pass on the merits of the Union's claim, "[t]he Board's only function in such situation is in 'acting upon the possibility that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities.'"

The Board has also found that "[a]n unreasonable delay in furnishing such information is as much of a violation of Section 8(a)(5) of the Act as a refusal to furnish the information at all." *Monmouth Care Center*, 354 NLRB 11, 41 (2009) (citations omitted), reaffirmed and incorporated by reference, 356 NLRB 152 (2010), enfd. 672 F.3d 1085 (D.C. Cir. 2012). "[I]t is well established that the duty to furnish requested information cannot be defined in terms of a per se rule. What is required is a reasonable, good faith effort to respond to the request as promptly as circumstances allow." *Good Life Beverage Co.*, 312 NLRB 1060, 1062 fn. 9 (1993). "In evaluating the promptness of the employer's response, 'the Board will consider the complexity and extent of information sought, its availability, and the difficulty in retrieving the information.'" *West Penn Power Co.*, 339 NLRB 585, 587 (2003) (quoting *Samaritan Medical Center*, 319 NLRB 392, 398 (1995)), enfd. in relevant part 394 F.2d 233 (4th Cir. 2005).

Having found that Respondent had a duty to bargain separately with the Locals over the changes to their past practices, I find that Respondent had a duty to provide the information. The requests were clearly relevant to the Locals' understanding of the new procedures implemented by Respondent and the Locals' requests to bargain concerning the changes to past practices of granting paid union time for certain activities. In addition, the information requests at issue were concerning employee union representatives' work hours, pay, and use of company equipment for union business. Therefore, I find they are presumptively relevant to the bargaining duties of the Locals, because they concerned unit employees' terms and conditions of work.

Biehl testified that she provided all the requested information either through electronic communications or orally during her meetings with the Locals' representatives but never provided any specific recollection nor pointed to any written communication or notes to support that assertion. During her last meeting with the Local representatives, she acknowledged that not all the information had been provided. Therefore, I find insufficient evidence to establish that the information in the three requests at issue was timely provided.

Accordingly, I find that Respondent failed and refused to timely provide the information requested in the 3 listed items in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. Indiana Bell Telephone Company, Inc. and The Ohio Bell Telephone Company (collectively the Respondent) is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Communication Workers of America Local 4900, a/w Communications Workers of America, AFL–CIO (Local 4900) is a labor organization within the meaning of Section 2(5) of the Act.
3. Communication Workers of America Local 4320, a/w Communications Workers of America, AFL–CIO (Local 4320) is a labor organization within the meaning of Section 2(5) of the Act.
4. At all times since at least April 15, 2018, Local 4900 has been the exclusive collective-bargaining representative of the following unit (Local 4900 unit) of employees of Respondent working in Local 4900's geographical area stretching from the Indianapolis metro area north to the Indiana/Michigan border, which unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(a) of the Act:

> The employees as described in Article I and Appendix B, and the Memoranda of Agreement contained in Appendix F of the collective-bargaining agreement between the Communication Workers of America, AFL-CIO and AT&T Midwest signatories, including Indiana Bell Telephone Company, Inc., which was effective from April 15, 2018, through April 9, 2022, and extended through April 11, 2026.

5. At all times since at least April 15, 2018, Local 4320 has been the exclusive collective-bargaining representative of the following unit (Local 4320 unit) of employees of Respondent working in Local 4320's geographical area in the Columbus, Ohio area, which unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(a) of the Act:

> The employees as described in Article I and Appendix B, and the Memoranda of Agreement contained in Appendix F of the collective-bargaining agreement between the Communication Workers of America, AFL-CIO and AT&T Midwest signatories, including Ohio Bell Telephone Company, which was effective from April 15, 2018, through April 9, 2022, and extended through April 11, 2026.

6. Since about May 7, 2021, Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to bargain in good faith with Local 4900 and Local 4320 as the collective-bargaining representative of their respective unit employees, as described above, concerning local agreements and past practices governing the use of paid union time.
7. Since about May 21, 2021, Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing in a timely manner to furnish Local 4900 and Local 4320 with relevant and necessary information concerning union representatives using company-provided technology resources and coding time for delays and pauses during joint union-management meetings.

8. Since about June 1, 2021, Respondent has violated Section 8(a)(5) and (1) of the Act by unilaterally changing the terms and conditions of employment for Local 4900 and Local 4320 units' employee officials by no longer honoring past practices and agreements granting paid union time for the Locals' officials while performing certain representational tasks.
9. The unfair labor practices by the Respondent affected commerce within the meaning of Section 2(6) and (7) of the Act.
10. Respondent has not violated the Act except as set forth above.

REMEDY

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

Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by failing to provide Local 4900 and Local 4320 in a timely manner with requested relevant information, to the extent it has not already done so, Respondent shall furnish to Local 4900 and Local 4320 in a timely manner the requested information concerning union representatives using company-provided technology resources and coding time for delays and pauses during joint union-management meetings.

Having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally changing under what circumstances Local 4900 and Local 4320 employee representatives are granted paid union leave to perform necessary tasks in representing unit employees on about June 1, 2021, Respondent shall restore the status quo ante.

The Respondent shall make whole its employees for any loss of earnings, expenses, and other benefits suffered because of the unlawful changes to when it granted Local 4900 and/or Local 4320 representatives paid union time since about June 1, 2021. Backpay owed, because of changes to granting, shall be computed as prescribed in *Ogle Protection Service,* 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB 6 (2010).

Additionally, Respondent shall compensate affected unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, in accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014), and file with the Regional Director for Region 25, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year for each affected employee in accordance with *AdvoServ of New Jersey, Inc*., 363 NLRB 1324 (2016). In addition to the backpay-allocation report, I find that Respondent must be ordered to file with the Regional Director for Region 25 a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award. *Cascades Containerboard Packaging*, 370 NLRB No. 76 (2021).

Respondent shall make whole Local 4900 and Local 4320 for any reimbursements made to any of their officers or representatives for lost wages as a result of the June 1, 2021, changes

to procedures regarding paid time off for union representatives and absences for union business, plus daily compound interest.

Moreover, Respondent shall bargain in good faith with Local 4900 and Local 4320 as the exclusive collective-bargaining representative of their respective unit employees before changing local agreements and past practices.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

ORDER

The National Labor Relations Board orders that the Respondent Indiana Bell Telephone Company, Inc. and The Ohio Bell Telephone Company (collectively the Respondent), its officers, agents, successors, and assigns, shall:

1. Cease and desist from

(a) Failing and refusing to furnish, or unreasonably delaying in furnishing, the Communication Workers of America Local 4900 (Local 4900) and the Communication Workers of America Local 4320, (Local 4320) a/w Communications Workers of America, AFL–CIO with requested information that is relevant and necessary to their role as collective-bargaining representatives.

(b) Unilaterally changing the terms and conditions of employment of its unit employees by eliminating agreements and past practices regarding the use of paid union time for Local 4900 and Local 4320 representatives to perform certain tasks in representing unit employees.

(c) Failing and refusing to bargain collectively with the Local 4900 as the bargaining representative for the Local 4900 unit employees regarding local agreements concerning the use of paid union time.

(d) Failing and refusing to bargain collectively with the Local 4320 as the bargaining representative for the Local 4430 unit employees regarding local agreements concerning the use of paid union time.

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

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

(a) On request, bargain in good faith with Local 4900 regarding local practices and agreements as the designated bargaining representative for such issues by the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> The employees as described in Article I and Appendix B, and the Memoranda of Agreement contained in Appendix F of the collective-bargaining agreement between the Communication Workers of America, AFL-CIO and AT&T Midwest signatories, including Indiana Bell Telephone Company, Inc., which was effective from April 15, 2018, through April 9, 2022, and extended through April 11, 2026.

(b) On request, bargain in good faith with Local 4320 regarding local practices and agreements as the designated bargaining representative for such issues by the exclusive collective-bargaining representative of the employees in the following appropriate unit:

[7] If no exceptions are filed as provided by Sec. 102.48 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.

The employees as described in Article I and Appendix B, and the Memoranda of Agreement contained in Appendix F of the collective-bargaining agreement between the Communication Workers of America, AFL-CIO and AT&T Midwest signatories, including The Ohio Bell Telephone Company, which was effective from April 15, 2018, through April 9, 2022, and extended through April 11, 2026.

(c) To the extent not already done, furnish to Local 4900 and Local 4320 in a timely manner the information requested by the Locals concerning union representatives using company-provided technology resources and coding time for delays and pauses during joint union-management meetings.

(d) On request by Local 4900, rescind the changes in the terms and conditions of employment for its unit employees, specifically changes to local agreements and past practices of granting paid union time for specific tasks related to representational duties, that were unilaterally eliminated on about June 1, 2021.

(e) On request by Local 4320, rescind the changes in the terms and conditions of employment for its unit employees, specifically changes to local agreements and past practices of granting paid union time for specific tasks related to representational duties, that were unilaterally eliminated on about June 1, 2021.

(f) Make whole Local 4900 and Local 4320 for any reimbursements made to any of their officers or representatives for lost wages as a result of the unlawful changes to the granting of paid union time that that occurred on June 1, 2021, plus daily compound interest.

(g) Make whole Local 4900 and Local 4320 unit employee officials for losses suffered because of Respondent's unlawful changes to the granting of paid union time that that occurred on June 1, 2021, in the manner set forth in the remedy section of the decision.

(g) Compensate each backpay recipient for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 25, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years for each recipient.

(h) File with the Regional Director for Region 25, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of each backpay recipient's corresponding W-2 forms reflecting the backpay award.

(i) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, personnel records and reports, all records reflecting healthcare premiums withheld from unit employees' pay, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(j) Post at its facilities within Local 4900's and Local 4320's geographical areas copies of the attached notice marked "Appendix." Copies of the notices, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the

Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees, within the units described herein, employed by the Respondent at any time since May 1, 2021.

(k) Within 21 days after service by the Region, file with the Regional Director for Region 25 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.

(l) IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. July 10, 2025

Kimberly Sorg-Graves

Kimberly Sorg-Graves
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES
POSTED AND MAILED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT fail and refuse to bargain in good faith with Communication Workers of America Local 4900, a/w Communications Workers of America, AFL–CIO (Local 4900) as the designated bargaining representative regarding local practices and agreements for unit employees employed at facilities within the Local 4900 geographical area in the following appropriate unit:

> The employees as described in Article I and Appendix B, and the Memoranda of Agreement contained in Appendix F of the collective-bargaining agreement between the Communication Workers of America, AFL-CIO and AT&T Midwest signatories, including Indiana Bell Telephone Company, Inc., which was effective from April 15, 2018, through April 9, 2022, and extended through April 11, 2026.

WE WILL NOT fail and refuse to bargain in good faith with Communication Workers of America Local 4320, a/w Communications Workers of America, AFL–CIO (Local 4320) as the designated bargaining representative regarding local practices and agreements for unit employees employed at facilities within the Local 4320 geographical area in the following appropriate unit:

> The employees as described in Article I and Appendix B, and the Memoranda of Agreement contained in Appendix F of the collective-bargaining agreement between Communication Workers of America, AFL-CIO and AT&T Midwest signatories, including The Ohio Bell Telephone Company, which was effective from April 15, 2018, through April 9, 2022, and extended through April 11, 2026.

WE WILL NOT unilaterally change local terms and conditions of employment of our unit employees in Local 4900's geographical area or Local 4320's geographical area, including making unilaterally changes to the granting of paid union time for the Locals' officials, without giving the Locals notice and opportunity to bargain.

WE WILL NOT fail and refuse to furnish, or unreasonably delay in furnishing, Local 4900 and Local 4320 with requested information that is relevant and necessary to the Locals' roles as collective-bargaining representatives.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain in good faith with Local 4900 regarding local practices and agreements as the designated bargaining representative for such issues for unit employees in its geographical area.

WE WILL, on request, bargain in good faith with Local 4320 regarding local practices and agreements as the designated bargaining representative for such issues for unit employees in its geographical area.

WE WILL, on request by Local 4900, rescind the changes in the terms and conditions of employment for our Local 4900 unit employees, specifically changes to the granting of paid union time to the Local's officials, that were unilaterally implemented on about June 1, 2021.

WE WILL, on request by Local 4320, rescind the changes in the terms and conditions of employment for our Local 4320 unit employees, specifically changes to the granting of paid union time to the Local's officials, that were unilaterally implemented on about June 1, 2021.

WE WILL make whole Local 4900 and Local 4320 for any reimbursements made to any of their officers or representatives for lost wages as a result of the unlawful changes to the granting of paid union time that occurred on June 1, 2021, plus daily compound interest.

WE WILL make whole our employees, who are or have been Local 4900 officials and/or Local 4320 officials at any time since June 1, 2021, with interest, for any loss of earnings and other benefits suffered because of the changes in their terms and conditions of employment that were unilaterally implemented on about June 1, 2021.

WE WILL compensate each backpay recipient for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 25, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each recipient.

WE WILL file with the Regional Director for Region 25, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of each backpay recipient's corresponding W-2 forms reflecting the backpay award.

INDIANA BELL
TELEPHONECOMPANY, 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. You may also obtain information from the Board's website: www.nlrb.gov

NLRB Region 25
575 N. Pennsylvania Avenue, Ste 238, Indianapolis, IN 46204
(317) 226–7381, Hours: 8:30 a.m. to 5:00 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/25-CA-285855 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, (317) 991-7644.