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ADT, LLC and International Brotherhood of Electrical Workers, Local Union No. 369, AFL-CIO.
Cases 09-CA-286214, 09-CA-286231, 09-CA-286239, 09-CA-286245, 09-CA-286257, 09-CA-285281, 09-CA-286294, 09-CA-288628, and 09-CA-288632

May 5, 2026

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY
AND MAYER

On December 23, 2022, Administrative Law Judge Andrew S. Gollin issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and Union each filed answering briefs, and the Respondent filed reply briefs. The General Counsel filed exceptions and a supporting brief, the Respondent filed an answering brief, and the General Counsel filed a reply brief.

The National Labor Relations Board has considered the judge's decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order as modified and set forth in full below.²

The judge found, in relevant part, that the Respondent violated Section 8(a)(5) and (1) by: (1) withdrawing recognition from the Union and failing and refusing to bargain with it as the exclusive collective-bargaining representative of unit employees; (2) failing and refusing to recognize and bargain with the Union before unilaterally changing wages, overtime, job titles, pay periods, leave accrual, and attendance, and applying a compensation program and other benefits; (3) failing to deduct and remit dues to the Union during the term of the parties' collective-bargaining agreement and after the expiration of the agreement; (4) failing and refusing to bargain collectively and in good faith with the Union by failing and refusing to furnish or delaying in timely providing the Union with information requested on August 25, 2021, and between August 25 and October 8, 2021; (5) promising employees increased benefits, implementation of certain benefits, and improved terms and conditions of employment if they got rid of the Union; (6) soliciting the decertification of the

Union by preparing a decertification petition and providing it to employees to sign and to solicit other employees to sign; (7) assisting in the antiunion activities of unit employees by notifying employees of others who wanted to sign the decertification petition; and (8) bypassing the Union and dealing directly with employees.

For the reasons stated by the judge, we adopt the judge's findings that the Respondent violated Section 8(a)(5) and (1) when it unlawfully withdrew recognition from the Union, failed to deduct and remit dues during the term of the parties' collective-bargaining agreement, and prepared a decertification petition and provided it to employees to sign and to solicit other employees to sign. For the reasons stated by the judge, as well as the reasons stated below, we also adopt the judge's direct dealing findings. Lastly, we adopt the judge's other findings either in light of the

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d

Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² We shall substitute a new notice to conform to the Order as modified.

limitations of the exceptions filed³ or in the absence of exceptions⁴

DIRECT DEALING

In adopting the judge's finding that the Respondent violated Section 8(a)(5) and (1) by bypassing the Union and dealing directly with unit employees, we find that all of the elements set forth in *Permanente Medical Group*, 332 NLRB 1143, 1144 (2000), have been met.

The first element—an employer communicates directly with union-represented employees—has been met as the Respondent, through managers across multiple levels, communicated directly with union-represented employees about the Tech Force Excellence Program (TFE Program) and admittedly provided employees with related materials.⁵

The second element—the discussion was for the purpose of establishing or changing wages, hours, and terms and conditions of employment or undercutting the union's role in bargaining—has also been met as the discussion pertained to switching to the TFE Program, which is a change from the wages set forth in the parties' collective-bargaining agreement. Additionally, the record supports the conclusion that the communication was for the

purpose of undercutting the Union's role in bargaining. Instead of bargaining with the Union, the Respondent provided the TFE Program directly to employees and explained that they would earn more and be able to acquire additional vacation under the TFE Program but would need to get rid of the Union first, while simultaneously providing employees with decertification papers. These actions suggested to unit employees that the Union was impeding their ability to get the touted benefits of this new program. By providing employees with the TFE Program days before providing it to the Union and denying the Union the opportunity to review it, discuss it with employees, and then have informed bargaining, the Respondent's communications had the foreseeable consequence of undermining the Union as employees' bargaining representative. See *Detroit Edison Co.*, 310 NLRB 564, 564–565 (1992) (affirming a judge's finding that an employer violated Section 8(a)(5) and (1) by bypassing the Union and dealing directly with employees where the union was not afforded any meaningful opportunity to consider “sweetened proposal” before the proposal was communicated directly to employees). Moreover, as the judge found, the Respondent's aim “was not to have the

³ In adopting the Sec. 8(a)(5) decertification solicitation violation, we find it unnecessary to reach the issue of whether this violation exceeded the scope of the General Counsel's complaint, as the Respondent's exception was limited to challenging the administrative law judge's fact findings and not the legal conclusion. See *Kalithia Group Hotels, Inc.*, 366 NLRB No. 1118, slip op. at 1 fn. 2 (2018) (affirming judge's finding that the respondent violated Sec. 8(a)(5) by soliciting employee signatures on a decertification petition and noting that the respondent excepted to the judge's factual and credibility findings regarding the decertification petition, but did not argue on exceptions that the judge's Sec. 8(a)(5) legal conclusion was unwarranted).

While Member Prouty agrees that the Respondent's decertification solicitation exception was limited to the judge's findings of fact, even if the Respondent had properly excepted to the judge's finding of a Sec. 8(a)(5) violation, he would affirm the violation. In reliance on *Haymarket Bookbinders*, 183 NLRB 121, 121 (1970), and *Alle Arcelco Corp.*, 264 NLRB 1267, 1267 fn. 1, 1274 (1982), cited by the judge, he emphasizes the context in which the Respondent initiated the decertification activity. Specifically, the Respondent solicited decertification amidst unlawful direct dealing and promises of benefits as the parties bargained for a successor contract. This conduct was “antithetical to good-faith bargaining” and, therefore, violates Sec. 8(a)(5) and (1). See *Haymarket Bookbinders*, supra (affirming the Trial Examiner's finding that the employer engaged in “the first of many acts antithetical to good-faith bargaining by soliciting a unit member to obtain employee signatures on a decertification petition”).

The judge also found that the Respondent violated Sec. 8(a)(5) and (1) by promising unit employees that they would receive increased benefits, implementation of certain benefits, and improved terms and conditions of employment if they decertified the Union. Although the Respondent excepted to these findings, it failed to provide any supporting arguments in its brief in support of exceptions, instead focusing on the judge's finding that it provided copies of the decertification petition for employees to sign and to solicit others to sign. Consistent with the Board's Rules, we disregard these exceptions. See Sec. 102.46(a)(1)(ii)

of the Board's Rules and Regulations (“Any exception which fails to comply with the foregoing requirements [which include providing argument in support of the exception] may be disregarded.”); see also *St. Paul Park Refining Co., LLC d/b/a Western Refining*, 366 NLRB No. 83, slip op. at 1 fn. 3 (2018), enfd. 929 F.3d 610 (8th Cir. 2019).

⁴ In the absence of exceptions, we adopt the judge's finding that the Respondent violated Sec. 8(a)(5) and (1) by: (1) failing to deduct and remit dues post expiration of the agreement; (2) failing and refusing to bargain collectively and in good faith with the Union by failing and refusing to furnish the Union with information and unreasonably delaying in providing information requested on August 25, 2021, and between August 25 and October 8, 2021; (3) notifying unit employees of others who wanted to sign the decertification petition; and (4) failing and refusing to recognize and bargain with the Union before unilaterally changing employee wages, overtime, job titles, pay periods, accrual and use of paid time off, and the attendance policy, and applying the Tech Force Excellence Program.

As noted above, the Respondent does not except to the judge's finding that the Respondent violated Sec. 8(a)(5) and (1) by failing to deduct and remit dues after the contract expired, a finding the judge made by applying *Valley Hospital Med. Ctr.*, 371 NLRB No. 160 (2022), enfd. 100 F.4th 994 (9th Cir. 2024). Chairman Murphy and Member Mayer did not participate in *Valley Hospital* and express no opinion whether the Board correctly decided the issue in that case.

We also adopt, in the absence of exceptions, the judge's dismissal of the allegations that the Respondent unlawfully discharged an employee and constructively discharged another.

⁵ In adopting the judge's finding, we find that the Respondent presented the Union and employees with two distinct compensation programs at different times. The record shows that the Respondent presented the Tech Engineers Program to the Union during bargaining on September 30, 2021, and presented the *TFE Program* to the Union on October 8, 2021, after presenting it to employees beginning on October 4, 2021.

employees attempt to convince the Union to agree with the program (particularly when [the Union] was not aware), but rather to get the employees to support decertification.”

Lastly, the third element—such communication was made to the exclusion of the union—has been met because the Respondent provided the TFE Program to unit employees without the knowledge of the Union, which, as noted above, had not yet been provided with that information by the Respondent. See *Metalcraft of Mayfield, Inc.*, 367 NLRB No. 116, slip op. at 8 (2019) (noting that the third *Permanente* element was met where an employer sent a letter directly to unit employees and did not provide a copy to the Union).

AMENDED REMEDY

Having found that the Respondent engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, in addition to the Board’s ordinary remedies for the violations found, we adopt the judge’s recommendation to grant the General Counsel’s request for a broad cease-and-desist order,⁶ a bargaining order,⁷ and notice reading.⁸

Additionally, having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally ceasing dues checkoff after the expiration of the parties’ collective-bargaining agreement, we shall order the Respondent to make the Union whole for any dues it would have received but for the Respondent’s failure to comply with its obligation to provide notice and an opportunity to bargain before changing terms and conditions of employment.⁹ See *Hood*

⁶ We find it appropriate to order a broad cease-and-desist order in this case under *Hickmott Foods*, 242 NLRB 1357, 1357 (1979).

⁷ In adopting the judge’s recommendation to grant a bargaining order, we note that the appropriate period during which the Respondent shall be ordered to bargain with the Union is “for a reasonable period of time.” See *Lee Lumber & Building Material Corp.*, 334 NLRB 399, 399 fn. 7 (2001).

⁸ In the circumstances of this case, we find it appropriate to adopt the judge’s recommendation to order notice reading, as well as order the distribution of the notice during the notice reading and require that all managers and supervisors attend the notice reading. See *ADT, LLC*, 371 NLRB No. 67, slip op. at 2 (2022) (ordering notice reading in prior case involving ADT). In addition, Member Prouty notes that he would find these to be appropriate remedies under the circumstances presented even without the Respondent’s recidivism.

We do not find that the mailing of the notice is warranted in the circumstances of this case. The Respondent is being ordered to distribute the notice electronically, in addition to posting the notice, which is more than sufficient to reach the Respondent’s employees.

Contrary to his colleagues, Member Prouty would adopt the judge’s unaccepted-to recommendation to order notice mailing. Mailing the notice to each employee will reach individuals who would not otherwise see the posted and distributed documents but who were affected by the Respondent’s unlawful conduct. This includes individuals who, because of the significant length of time that has passed between the violations and this decision, now lack access to the facility, such as former

River Distillers, Inc., supra at slip op. at 5–6 (and cases cited therein). This order requires only that the Respondent make the Union whole for dues it would have received from employees who have individually signed dues-checkoff authorizations. *Id.* The make-whole remedy shall be remitted to the Union 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).

We also grant the General Counsel’s request that the Respondent process all grievances pending at the time of the Respondent’s unlawful withdrawal of recognition.¹⁰ This allows the parties to be restored, as nearly as possible, to the situation they would have been in but for the Respondent’s unfair labor practice. See *Royal Plating & Polishing Co., Inc.*, 148 NLRB 545, 548–549 (1964) (“In fashioning remedies[,] the Board must bear in mind that the remedy should ‘be adapted to the situation that calls for redress,’ with a view toward ‘restoring the situation as nearly as possible, to that which would have obtained but for [the unfair labor practice].’”).

Lastly, in light of the violations found and the fact that several of the Respondent’s managers and supervisors participated directly in the unfair labor practices, which necessitated a broad order, we order that copies of the notice be distributed to employees during notice reading and that all managers and supervisors be required to attend notice reading. See *Noah’s Ark Processors*, 372 NLRB No. 80, slip op. at 8 (2023) (citing *HTH Corp. d/b/a Pacific Beach Hotel*, 361 NLRB 709, 716 (2014), *enfd. in rel. part*

employees, and those unable to attend the meeting at which the Notice is to be read and distributed. In addition, a mailing remedy will give employees who do attend the meeting a chance to review the documents in private, particularly if they are uncomfortable publicly accepting and reviewing the notice in the facility in possible view of their employer.

⁹ To prevent double recovery by the Union, payment by the Respondent to the Union shall be offset by any dues the Union collected during the relevant period on behalf of employees covered by the dues-payment order. *Hood River Distillers, Inc.*, 372 NLRB No. 126, slip op. at fn. 19 (2023).

In addition, in ordering this remedy, we make clear that the Respondent is prohibited from seeking to recoup from the employees any dues amount it is required to reimburse to the Union. *Id.* (citing *Alamo Rent-A-Car*, 362 NLRB 1091, 1091 fn. 1 (2015) (quoting *West Coast Cintas Corp.*, 291 NLRB 152, 156 fn. 6 (1988) (“[T]he financial responsibility for making the [u]nion whole for dues it would have received but for [r]espondent’s unlawful conduct rests entirely on the [r]espondent and not the employees.”), *enfd.* 831 F.3d 534 (D.C. Cir. 2016))).

¹⁰ Member Prouty would also grant the General Counsel’s request that the cease-and-desist order, notice reading, and notice distribution be nationwide. In his opinion, nationwide relief is justified based on the Respondent’s demonstrated proclivity to violate the Act, as outlined by the judge in footnote 2 of his decision, and the fact that the violations that occurred herein and at the Respondent’s other locations cannot reasonably be viewed as isolated occurrences with no connection to central management.

sub nom. *HTH Corp. v. NLRB*, 823 F.3d 668 (D.C. Cir. 2016), and *Ozburn-Hessey Logistics, LLC*, 366 NLRB No. 177, slip op. at 14 (2018)).

ORDER

The National Labor Relations Board orders that the Respondent, ADT, LLC, Louisville and Lexington, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain in good faith with the Union as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) Withdrawing recognition from the Union and failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of the unit employees.

(c) Refusing to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to its role as collective-bargaining representative of the unit employees.

(d) Refusing to bargain collectively with the Union by unreasonably delaying in furnishing it with requested information that is necessary and relevant to its role as collective-bargaining representative of the unit employees.

(e) Promising unit employees increased benefits and improved terms and conditions of employment if they got rid of the Union.

(f) Soliciting the decertification of the Union by telling unit employees that they would receive the Tech Force Excellence Program and other benefits if they got rid of the Union.

(g) Promising unit employees that it would implement the Tech Force Excellence Program and other benefits, such as better wages, more vacation time, and performance bonuses, if they got rid of the Union.

(h) Soliciting the decertification of the Union by preparing a decertification petition and providing it to unit employees to sign and to solicit other unit employees to sign.

(i) Assisting in the antiunion activities of unit employees by preparing and providing a decertification petition for unit employees to sign and circulate for others to sign and notifying unit employees of others who wanted to sign the decertification petition.

(j) Bypassing the Union as the exclusive collective-bargaining representative of unit employees and dealing directly with them regarding their wages and other terms and conditions of employment.

(k) Changing the terms and conditions of employment of unit employees without first notifying the Union and giving it an opportunity to bargain or reaching an overall good-faith impasse in bargaining.

(l) Failing to continue in effect all the terms and conditions of any collective-bargaining agreement in effect with the Union.

(m) In any other 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) Recognize and, on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the following unit of employees:

All full-time and regular part-time employees originally described in the certification dated on January 25, 1971 (Case Number 09-RC-8733), classified by the Employer as residential and small business installers, residential and small business high volume commissioned installers, residential and small business service technicians, employed by the Employer at its facilities in Louisville and Lexington, Kentucky; but excluding all a km service investigators, relief supervisors, all office clerical employees and professional employees, guards and supervisors as defined in the Act; and excluding all commercial installers and commercial service technicians unless the employees are employed by the Employer and are located at, or are directly supervised by the Employer's supervisors located at its Louisville and Lexington, Kentucky facilities. If during the terms of this Agreement the Employer relocates the covered employees from Louisville or Lexington, Kentucky office to another, this provision shall apply to the new office.

(b) Process any and all grievances which have been filed by honoring the grievance procedure set forth in the collective-bargaining agreement between the Respondent and the Union that was in effect from October 15, 2018 through October 14, 2021.

(c) Furnish to the Union in a timely manner the outstanding information requested by the Union on August 25, 2021.

(d) On request by the Union, rescind the unilateral changes in unit employees' terms and conditions of employment that were implemented on and after November 9, 2021, including the changes to compensation, overtime, paid time off, vacation, job titles, pay periods, and the attendance policy. Nothing in this Order is to be construed as requiring the Respondent to rescind any changes that benefited the unit employees unless the Union requests it to do so.

(e) Make unit employees whole for any loss of earnings or other benefits, and for any other direct or foreseeable pecuniary harms, suffered as a result of Respondent's unilateral changes in terms and conditions of employment, in

the manner set forth in the remedy section of the judge’s decision.

(f) Compensate affected employees for the adverse tax consequences, if any, of receiving lump sum backpay awards, and file with the Regional Director for Region 9, 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 employee.

(g) File with the Regional Director for Region 9, 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 form(s) reflecting the backpay award.

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

(i) Make the Union whole, at no cost to employees, for any dues the Respondent failed to deduct and remit that were required by the 2018–2021 collective-bargaining agreement during the term of that agreement.

(j) Make the Union whole, at no cost to employees, for any dues the Respondent failed to deduct and remit after the 2018–2021 collective-bargaining agreement expired, in the manner set forth in the amended remedy section of this decision.

(k) Within 14 days after service by the Region, post at its 2115 Stanley Gault Parkway, Louisville, Kentucky 40224 and 2456 Fortune Drive, Lexington, Kentucky 40509 locations copies of the attached notice marked “Appendix.”¹¹ Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for a period of 60 consecutive days in conspicuous places, including in all places where notices to employees are customarily posted. In addition to the physical posting of paper notices, the Respondent shall distribute the notices electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to

ensure that the notices are not altered, defaced, or covered by any other material.

(l) Within 14 days after service by the Region, hold a meeting or meetings, during work hours at its facilities in Louisville and Lexington, Kentucky, scheduled to ensure the widest possible attendance of bargaining unit employees on each shift, at which the attached Notice to Employees will be read to employees in English and in additional languages if the Regional Director decides that it is appropriate to do so, by a responsible management official of the Respondent in the presence of a Board agent and, if the Union so desires, a union representative, or, at the Respondent’s option, by a Board agent in the presence of a responsible management official and, if the Union so desires, a union representative. Supervisors/managers must be present at each reading, and each supervisor/manager must attend at least one reading. A copy of the notice, in English and any other languages deemed appropriate by the Regional Director, will be distributed by a Board agent during this meeting or meetings to each unit employee in attendance before the notice is read.

(m) Within 21 days after service by the Region, file with the Regional Director for Region 9 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 5, 2026

James R. Murphy, Chairman

David M. Prouty, Member

Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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

¹¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the

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 do anything to interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL NOT fail or refuse to bargain in good faith with the International Brotherhood of Electrical Workers, AFL-CIO (IBEW), Local Union 369 (Union), which is the exclusive collective-bargaining representative of our employees in the following appropriate unit ("unit employees"):

All full-time and regular part-time employees originally described in the certification dated on January 25, 1971 (Case Number 9-RC-8733), classified by the Employer as residential and small business installers, residential and small business high volume commissioned installers, residential and small business service technicians, employed by the Employer at its facilities in Louisville and Lexington, KY; but excluding all alarm service investigators, relief supervisors, all office clerical employees and professional employees, guards and supervisors as defined in the Act; and excluding all commercial installers and commercial service technicians unless the employees are employed by the Employer and are located at, or are directly supervised by the Employer's supervisors located at, Its Louisville and Lexington, Kentucky facilities. If during the terms of this Agreement the Employer relocates the covered employees from Louisville or Lexington, Kentucky office to another, this provision shall apply to the new office.

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

WE WILL NOT refuse to provide the Union with information that is necessary and relevant to its role as your collective-bargaining representative.

WE WILL NOT delay in timely providing the Union with information that is necessary and relevant to its role as your bargaining representative.

WE WILL NOT promise to give you increased benefits and improved terms and conditions of employment if you get rid of the Union.

WE WILL NOT solicit the decertification of the Union by telling you that you will receive the Tech Force Excellence Program and other benefits if you get rid of the Union.

WE WILL NOT promise to place you under the Tech Force Excellence Program and give you other benefits, such as better wages, more vacation time, and performance bonuses, if you get rid of the Union.

WE WILL NOT solicit the decertification of the Union by preparing a decertification petition for you to sign and to solicit others to sign.

WE WILL NOT assist in the anti-union activities of the unit by preparing or providing you with a decertification petition for unit employees to sign and circulate or by notifying unit employees of others who want to sign the decertification petition.

WE WILL NOT bypass the Union as your exclusive collective-bargaining representative and deal directly with you regarding your wages and other terms and conditions of employment.

WE WILL NOT make any changes to your terms and conditions of employment without giving the Union an opportunity to bargain or reaching an overall good-faith impasse in bargaining.

WE WILL NOT fail to continue in effect all of the terms and conditions of any collective-bargaining agreement in effect with the Union.

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

WE WILL recognize the Union as the exclusive collective-bargaining representative of the Unit and WE WILL, on request, bargain with the Union as your representative concerning wages, hours, and working conditions. If an agreement is reached with the Union, we will sign a document containing that agreement.

WE WILL process any and all grievances which have been filed by honoring the grievance procedure set forth in the collective-bargaining agreement between the Respondent and the Union that was in effect from October 15, 2018, through October 14, 2021.

WE WILL, to the extent we have not already done so, provide the Union with the information it requested on August 25, 2021.

WE WILL, upon request by the Union, rescind any changes that we implemented after we withdrew recognition from the Union, including the changes to compensation, overtime, paid time off, vacation, job titles, pay periods and the attendance policy that were unilaterally implemented on and after November 9, 2021, but WE WILL

NOT rescind any changes that benefited you unless the Union asks us to do so.

WE WILL make you whole, with interest, for any loss of earnings or other benefits, and for any other direct or foreseeable pecuniary harms, suffered as a result of changes in your terms and conditions of employment that we made without bargaining with the Union.

WE WILL compensate affected employees for any adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 9, 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 year for each employee.

WE WILL file with the Regional Director for Region 9, 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 form(s) reflecting his or her backpay award.

WE WILL make the Union whole, at no cost to employees, for any dues that we failed to deduct and remit that were required by the 2018–2021 collective-bargaining agreement during the term of that agreement.

WE WILL make the Union whole, at no cost to employees, for any dues that we failed to deduct and remit after the collective-bargaining agreement expired, in the manner set forth in the amended remedy section of this decision.

ADT, LLC

The Board's decision can be found at www.nlr.gov/case/09-CA-286231 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.



Jonathan Duffey and Jamie L. Ireland, Esq., for the General Counsel.

Jeremy C. Moritz and Sara E. Olschewske, Esqs., for Respondent.

Benjamin Basil, Esq., for Union.

DECISION

STATEMENT OF THE CASE¹

ANDREW S. GOLLIN, ADMINISTRATIVE LAW JUDGE. The hearing in the above cases was held on May 23–25 and August 29–30, 2022, in Louisville, Kentucky. The International Brotherhood of Electrical Workers, Local Union No. 369, AFL–CIO (Union) filed the underlying charges between November 12, 2021, and January 7, 2022. After investigating those charges, the Regional Director for Region 9, on behalf of the General Counsel, issued an order consolidating cases and consolidated complaint on March 25, 2022. The General Counsel alleges that ADT, LLC (Respondent) violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act (Act) when it: (1) failed to continue in effect the terms and conditions of the parties' prior collective-bargaining agreement by failing to deduct and remit dues to the Union; (2) failed and/or unreasonably delayed in providing the Union with requested information relevant to its negotiations over a successor agreement; (3) promised employees increased benefits and improved terms and conditions of employment, including better wages, more vacation time, and performance bonuses as part of an incentive program, if they got rid of the Union; (4) solicited and assisted employees in decertifying the Union by preparing and providing copies of petitions for employees to sign and to circulate for others to sign, and by notifying employees of others who wanted to sign the petitions; (5) bypassed the Union and dealt directly with unit employees by soliciting them to agree to the implementation of an incentive program and other benefits without the Union's involvement; (6) discharged Union Steward Mark Frazier; (7) withdrew recognition of the Union based on the decertification petition, and thereafter failed and refused to bargain with the Union and unilaterally changed the unit employees' wages, benefits, and other terms and conditions of employment; and (8) constructively discharged Union Steward Marcus Rodriguez.² On April 8, 2022,

¹ Abbreviations used in this decision are as follows: Transcript citations are "Tr."; General Counsel Exhibits are "GC Exh. ___"; Respondent Exhibits are "R. Exh. ___"; and Joint Exhibits are "Jt. Exh. ___" Although I have included several citations to the record to highlight specific testimony or exhibits, my findings and conclusions are not limited to those portions and instead are based on my review and consideration of the entire record.

² Respondent has a history of committing violations similar to those alleged in the complaint. See e.g., *ADT, LLC*, 371 NLRB No. 67 (2022), *enfd.* 2022 U.S. App. LEXIS 33453, ___ F.4th ___ (7th Cir. 2022) (withdrew recognition and unilaterally changed employees' method of compensation, overtime, and paid time off, and implemented bonus system previously only offered to unrepresented employees); *ADT, LLC*, 369 NLRB No. 31 (2020) (bypassed union and dealt directly with unit

Respondent filed its answer denying the alleged violations and raising various affirmative defenses. At the hearing, all parties were afforded the right to call and examine witnesses, present any relevant documentary evidence, and argue their respective legal positions.³ The General Counsel, Respondent, and Union filed post-hearing briefs, which I have carefully considered.⁴

For the reasons stated below, I conclude that Respondent committed the alleged violations except those relating to Frazier and Rodriguez.

FINDINGS OF FACT⁵

Jurisdiction and Labor Organization

Respondent has been engaged in the installation and servicing of security systems out of its facilities in Louisville and Lexington, Kentucky. In conducting its operations during the 12-month period ending March 1, 2022, Respondent derived gross revenues in excess of \$500,000, and it purchased and received goods valued in excess of \$50,000 directly from outside the Commonwealth of Kentucky. Respondent admits, and I find, it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent further admits, and I find, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

Collective-Bargaining Relationship and Agreement

In 1971, Respondent recognized the Union as the exclusive bargaining representative for the installers and service technicians at issue. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was from October 15, 2018, through October 14, 2021 (“CBA”). (Jt. Exh. 1). Article 1, Section 1 of the CBA describes the unit as

employees over terms and conditions of employment); *ADT, LLC*, 369 NLRB No. 23 (2020) (discharged employees who engaged in protected union activity); *ADT, LLC*, 2019 NLRB LEXIS 350, 2019 WL 2501867 (2019), adopted 2019 NLRB LEXIS 431, 2019 WL 3451539 (2019) (solicited union decertification, withdrew recognition, refused to bargain and abide by collective-bargaining agreement, and coercive interrogation); *ADT LLC*, 2018 NLRB LEXIS 681, 2018 WL 2263547 (2018), adopted 2018 NLRB LEXIS 680, 2018 WL 3091018 (2018) (failed to bargain over the effects of facility closure and failed and refused to timely furnish union with relevant information); *ADT, LLC*, 363 NLRB No. 36 (2015) (failed to provide union with relevant information); and *ADT Security Service, Inc.*, 355 NLRB 1388 (2010) (withdrew recognition and failed and refused to bargain with union).

³ The General Counsel orally amended paragraph 9(a) of the complaint to correct the dates to be from May 11 to October 14, 2021. Respondent orally amended par. 4(a) of its answer to admit that all the named individuals are 2(11) supervisors and 2(13) agents, for limited purposes, under the Act. (Tr. 25–26.)

On the second day of hearing, the General Counsel moved to amend par. 14 of the complaint to allege that supervisor/agent Michael Garcia bypassed the Union and dealt directly with unit employees by soliciting them to agree to an incentive program without the Union’s involvement, in violation of Sec. 8(a)(5) and (1) of the Act. (GC Exh. 67). I allowed the amendment, over Respondent’s objections, because the allegation was closely related to those in that same paragraph involving other supervisors/agents at around the same time, and because Respondent had more than 3 months after hearing the General Counsel’s case to prepare and present its defense.

follows (“unit employees”):

All full-time and regular part-time employees originally described in the certification dated on January 25, 1971 (Case Number 9-RC-8733) classified by the Employer as residential and small business installers, residential and small business high volume commissioned installers, residential and small business service technicians, employed by the Employer at its facilities in Louisville and Lexington, Kentucky; but excluding all alarm service investigators, relief supervisors, all office clerical employees and professional employees, guards and supervisors as defined in the Act; and excluding all commercial installers and commercial service technicians unless the employees are employed by the Employer and are located at, or are directly supervised by the Employer’s supervisors located at, its Louisville and Lexington, Kentucky facilities.

Article 3 of the CBA addresses dues checkoff. Respondent is required to deduct and remit monthly membership dues for any unit employee who submits a signed dues-checkoff authorization form.⁶ Respondent also is required to provide the Union with a list each month of those employees in job classifications covered by the CBA who: (a) have been hired or rehired, (b) are entering or returning from military service, (c) are revoking authorization to deduct Union dues, and (d) are leaving the company. Article 6 covers hours of work and overtime. Overtime is paid for time worked over 8 hours in a day and over 40 hours in a week. Article 8 addresses vacation. Employees can earn up to 4 weeks of vacation based on their years of service. Article 9 covers paid absences, and it is broken down by bereavement, jury duty, and sick leave. Article 12 addresses seniority. Respondent generally

⁴ On June 9, 2022, the Regional Director filed a petition for injunctive relief under Sec. 10(j) of the Act. On October 31, 2022, District Court Judge Claria Horn Boom of the U.S. District Court for the Western District of Kentucky granted it in part and denied it in part. *Denholm v. ADT, LLC*, Civil Action No. 3:22-MC-005-CHB.

⁵ The Findings of Fact are a compilation of the stipulated facts, credible testimony, and other evidence, as well as logical inferences drawn therefrom. To the extent testimony contradicts with the findings herein, such testimony has been discredited, either as in conflict with credited evidence or because it was incredible and unworthy of belief. In assessing credibility, I primarily relied upon witness demeanor. I also considered the context of the testimony, the quality of their recollection, testimonial consistency, the presence or absence of corroboration, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. *See Double D Constr. Grp.*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Auto. Dealership Grp.*, 321 NLRB 586, 589 (1996)), *enfd. sub nom.*, 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions. Indeed, nothing is more common in judicial decisions than to believe some, but not all, of a witness’s testimony. *Daikichi Sushi*, *supra* at 622; *Jerry Ryce Builders*, 352 NLRB 1262, 1262 fn. 2 (2008) (citing *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 754 (2d Cir. 1950), *rev’d. on other grounds* 340 U.S. 474 (1951)).

⁶ The amount deducted and remitted each month for dues is set forth in the Union’s bylaws and based on the employee’s job classification and wage rate. (GC Exh. 3.) Dues were roughly \$1 plus 1.5 percent of the gross monthly earnings. Respondent would forward the deducted amounts the month after the hours were worked. (Tr. 34–35.)

agrees to not subcontract if it will result in the layoff of any employee, and if employees are on layoff Respondent will not subcontract except in an exceptional situation. Article 15 covers wages. Schedule A contains the hourly wage rates based on the employee's length of service and classification. Schedule C contains the attendance policy. Under Schedule C, absenteeism is considered excessive if there are 3 or more absences within any 12-consecutive months. The first 5 days of absences (whether consecutive or individual days) will not count, but each additional absence will. After the third absence, a verbal warning is issued; the fourth absence results in a written warning; the fifth absence will result in a suspension; and the sixth absence will result in additional discipline, up to and including discharge.⁷

Alleged Unfair Labor Practices

Background

In 2021, Respondent had approximately 20 unit employees working out of its Louisville facility and 10 unit employees working out of its Lexington facility. (Tr. 31.) These employees typically left directly from their homes in a company vehicle to perform their assignments and then returned home at the end of the day. Supervisors emailed them assignments throughout the day. Employees went to their assigned facility periodically to pick up supplies, have their inventory checked, or attend meetings.

James Nixdorf is Director of Labor Relations. Michael Garcia is the Group General Manager. William (Tyler) Allen is the Area Administrative Manager. Elliott Cook is the General Manager of Operations. Paul McRae, Tony Preston, and Eric Sanders are all Managers. Each of these individuals is a supervisor and an agent of Respondent within the meaning of Sections 2(11) and (13) of the Act.

Edward Devine IV is the Union's Assistant Business Manager. The Union typically has one Steward for each of the two facilities. In early 2021, Charles Herald was the Steward for Lexington, and Marcus Rodriguez was the Steward for Louisville. (Tr. 32.) Herald resigned in May 2021. Mark Frazier was appointed Steward for Lexington on October 29. Between May and October 2021, Rodriguez acted as Steward for both facilities. (Tr. 289.)

Union Dues Deduction and Remittance

The Union had signed dues-checkoff authorization forms from 28 unit employees. (GC Exh. 6.) It provided those forms to Respondent for the purpose of deducting and remitting monthly dues in accordance with Article 3 of the CBA. In 2021, of those 28 employees, Respondent only deducted and remitted dues for 13 in May, 7 in June, 12 in July, 15 in August, 13 in September, 8 in October, and 7 in November. (GC Exh. 4.) James Nixdorf testified the discrepancies likely were caused

⁷ The record reflects Respondent did not follow this progressive disciplinary scheme. For example, it issued a written warning to an employee after he missed 30 individual days and was tardy for one day. (GC Exh. 82) (R. Exh. 29). It issued a written warning to another employee for 9 absences (after he previously received a verbal coaching). (GC Exh. 83.) It issued a final warning to a third employee after 10.5 absences. That employee was later suspended and placed on a last-chance agreement. (GC Exh. 83.)

when the company's payroll system provider (Kronos) suffered an outage during the year.⁸

Prior to expiration of the CBA, the Union filed a grievance over Respondent's failure to deduct and remit dues for these months. Following the expiration of the CBA, Respondent ceased deducting dues for all employees, including those with valid (unrevoked) dues-checkoff authorizations. (Tr. 39–40.)

Information Requests

On August 24, 2021,⁹ Devine sent Nixdorf a request for dates to begin negotiations over a successor agreement. (GC Exh. 8.) On August 25, he also sent Nixdorf a letter requesting information "in order to prepare for the upcoming contract negotiations." (Jt. Exh. 2.) The letter sought the following (Requests):

- (1) List of all bargaining unit employees that shows birth dates, hire dates, job classifications and rates of pay for each employee.
- (2) Total number of bargaining unit employees on 12/31/2018, 12/31/2019, and 12/31/2020.
- (3) Total number of regular hours actually worked by bargaining unit employees in 2018, 2019, and 2020.
- (4) Total number of overtime hours worked by bargaining unit employees broken down by classification for years 2018, 2019, and 2020.
- (5) Copy of current benefit plans and summary plan descriptions (health, prescription drug, vision, dental, life, short/long term disability) for active and retiree bargaining unit employees.
- (6) Copy of current 401(k) plan.
- (7) Number of bargaining unit employees voluntarily participating in 401(k) plan.
- (8) List of bargaining unit employees showing the percentage each employee is currently voluntarily contributing to 401(k) plan;
- (9) Number of bargaining unit employees enrolled in each medical, prescription drug, and dental insurance plan showing the number of employees enrolled as single, single and one and family, etc. and the cost for individuals per plan.
- (10) Actual cost per month of each medical, prescription drug, dental and vision plans for the years 2018, 2019, and 2020.
- (11) Total number of OSHA recordables for 2018, 2019, and 2020.
- (12) Number of lost time accidents and total number of lost time days in 2018, 2019, and 2020.
- (13) Copy of all Company rules and/or policies applicable to bargaining unit employees.
- (14) List of work contracted out in 2018, 2019, and 2020 with total number of man hours, start dates and completion dates and total cost of each job, and the contractor who performed the work.

⁸ There was no evidence presented about the Kronos outage, such as when it occurred or how long it lasted. There also was no evidence about any communications between Respondent and the Union regarding the outage and steps Respondent was taking to ensure the dues payments were made.

⁹ Hereinafter, all dates refer to 2021, unless otherwise stated.

(Jt. Exh. 2.)

Devine also emailed Manager Tyler Allen requesting “the most up to date seniority roster for the Louisville and Lexington offices.” (GC Exh. 7.) Devine requested this information to prepare for negotiations and to try to clarify the discrepancies regarding dues.

On August 31, Nixdorf emailed Devine about his availability for negotiations and that he was working on a response to the Union’s information request. (GC Exh. 9.) On September 21, Devine sent Nixdorf an email that he still had not received any of the information he had requested. (GC Exh. 10.)¹⁰

September 29–30 Negotiation Sessions

The first negotiation session was on September 29. Nixdorf was present for Respondent, and Devine and Steward Marcus Rodriguez were present for the Union. Respondent still had not provided any of the requested information, and Devine again requested it. (Tr. 218.)

The first topic discussed during negotiations was Respondent’s January 2020 acquisition of a company called Defender and the hiring of its 8–9 technical engineers (TEs). TE is an entry level position that performs basic installation work.¹¹ Nixdorf informed Devine that Respondent was paying TEs under a performance-based compensation program (called the “TE program”) rather than under Schedule A of the CBA. This was the first Devine heard about the TEs. He told Nixdorf that if they performed installation work for Respondent, they should have been placed in the unit and subjected to the terms of the CBA, including the Schedule A wage rates. Nixdorf said Respondent was willing to bargain the effects of hiring the TEs, and that included whether to place them in the unit and, if so, under what terms and conditions.¹² Devine asked Nixdorf for a copy of the TE program to see how they were paid.

Later during this session, Respondent submitted its initial proposals. (GC Exh. 12.) Among its proposals, Respondent sought to modify Article 15 to state that Schedule A represents the minimum hourly wages, and that nothing in the CBA limits management’s ability to increase individual employees’ hourly rate(s) or offer alternate systems of compensation, provided such systems do not drop their compensation below their Schedule A rate. The proposal further stated any rates above the Schedule A rates, or any compensation system introduced, may be modified or discontinued at any time and for any reason, and those changes would not be subject to the contractual grievance and arbitration provision. While the proposal referenced compensation systems, Respondent did not identify or provide a copy of any system it planned to implement. Nor did it indicate it planned to

implement the TE program for the unit employees.

Respondent also proposed modifying Article 9, Section 3 (Paid Absences) to give unit employees up to 24 hours of paid sick time, and up to 16 hours of paid personal time, per calendar year. Finally, Respondent proposed eliminating Schedule C and replacing it with Respondent’s absenteeism policy. Respondent provided the Union with a copy of that policy. The parties eventually reached a tentative agreement to replace Schedule C with Respondent’s absenteeism policy as part of an overall agreement.

The parties met again on September 30. They continued discussing the TEs. Nixdorf stated the unions at Respondent’s Philadelphia and New Jersey facilities had agreed to move the TEs into the bargaining unit, and he proposed doing the same. The parties caucused. During the caucus, Nixdorf provided the Union with an employee roster. (Jt. Exh. 3.) He also emailed Devine a copy of the TE program. (GC Exh. 17.) The roster shows there were 8 TEs working at the Louisville and Lexington facilities. Only one had been hired at the time of the Defender acquisition. The rest were hired between May and July 2021. When negotiations resumed, Devine confronted Nixdorf about how he had misrepresented that the TEs were hired as part of the acquisition. Nixdorf had no response.

Conversations about Incentive Program and Decertification Effort

Respondent offers performance-based incentive programs at its nonunion facilities. On October 4, General Manager Michal Garcia emailed Nixdorf asking whether he could share a copy of one of those programs with the unit employees. Nixdorf replied he could since Respondent had “a proposal on the table.” (GC Exh. 68.) That same day, Manager Tony Preston received a blank decertification petition from a manager at Respondent’s Bowie, Maryland facility. (GC Exh. 70.) Preston forwarded the petition to fellow managers Paul McRae, Eric Sanders, Elliott Cook, Tyler Allen, and Garcia. (GC Exh. 70.) There was no evidence of employee disaffection or inquiries about removing the Union at or around this time.

On around October 4, Sanders approached unit technician Michael Covert at the Lexington facility. Sanders, who was Covert’s supervisor, began discussing the Install Tech Forces Excellence Program (TFE incentive program) Respondent offered at its nonunion facilities. He explained how employees would earn more and be able to acquire additional vacation under the program, but the employees would need to get rid of the Union first. Sanders told Covert he should talk to his coworkers about the program and promote its benefits. That same morning, Sanders handed Covert blank copies of the decertification petition to

¹⁰ In January, Respondent provided the Union with copies of its policies in response to an information request. On September 29, Nixdorf emailed Devine the attendance policy with the message, “Took me a minute –wanted to make sure there hadn’t been any updates.” (GC Exh. 15). Nixdorf testified this email was confirmation that there had been no updates to any of Respondent’s policies since January.

¹¹ Unit installers primarily perform more complex system installations, which TEs are not trained to perform.

¹² Respondent introduced evidence regarding a December 2012 agreement between ADT and a consortium of IBEW leaders regarding future

acquisitions and mergers. They agreed the recognition language would not apply to employees hired as part of future mergers/acquisitions except for those who are located at or are directly supervised by employees located at the covered facilities, which included the Louisville/Lexington facilities. (R. Exh. 35.) The TEs at issue were located at and were supervised by employees at the Louisville/Lexington facilities, but they were not classified as unit installers and, as stated, not subject to the terms of the CBA.

distribute. When Covert asked Sanders why he was giving him so many copies of the petition, Sanders stated it was in case someone wanted to sign without having anyone else know. Sanders also told Covert they needed signatures from “50 percent plus one” of the employees at both facilities to remove the Union. Sanders concluded by telling Covert to return the signed petitions back to him. (Tr. 135–138.)

On October 5, Sanders emailed Covert a copy of the TFE incentive program. (GC Exh. 75.) He later followed up with additional information on how Covert would personally benefit under the program. He later showed Covert communications from higher-level managers about compensation levels at other facilities working under the program. (Tr. 138–142.)

In early October, Manager Tony Preston spoke with Svetozar “Zar” Nenadovic, a unit service technician out of the Louisville facility, about an “alternative compensation plan.” Preston, who was Nenadovic’s supervisor, described the TFE incentive program and gave Nenadovic a copy to review. After this, Nenadovic talked to his coworkers and shared information about the program. At some point in October, Nenadovic asked Preston if there was a way for the Louisville employees to switch over to the TFE incentive program. Preston responded, “you would have to sign some papers.” (Tr. 416–417.) Preston said the “papers” would be left on the local dispatcher’s desk at the Louisville facility. A day or so later, Nenadovic went to the facility, looked at the dispatcher’s desk, and found blank copies of the decertification petition. He took the petitions and began circulating them among the Louisville employees.

Zoom Union Meetings with Employees

Unit employees later reported to Steward Mark Rodriguez that supervisors were approaching them to promote an incentive program. Rodriguez called Preston about the program. Preston had been part of the bargaining unit until September when he moved into management, and he told Rodriguez he wished the program was available when he was a unit employee because he would have earned more money, and he wanted the employees to know about the program. Rodriguez and unit employee Mark Frazier notified Devine that managers were promoting an incentive program. Frazier arranged for Devine to hold an October 7 union meeting with the Lexington employees via Zoom. There were about 9–10 employees, including TEs, on the call. The TFE incentive program was brought up. Employees asked questions, but Devine, who had not seen the program, had no information. Covert relayed the information he had received from Sanders. He also mentioned what Sanders said about needing to decertify the Union. There were discussions among the employees about the incentive program. Unit employee James Hutchinson, who worked under the program while employed by Respondent in Alabama, stated he favored the program and thought it would be beneficial for the employees.¹³ (Tr. 145–146.)

Follow-Up Information Requests and Partial Responses

On October 7, Devine sent Nixdorf a letter reiterating his

¹³ At some point, Hutchinson asked Covert for a copy of the decertification petition. Covert stated he did not have any with him. Later, Hutchinson was at jobsite with a TE (Eli Brashear) and Sanders. Hutchinson happened to see blank copies of the petition sitting inside

August 25 information request. He also asked Nixdorf for “Compensation Program information, or TP, or TFE, for Installation, Service Technicians, and Technical Engineers.” Devine noted that information had been provided directly to union members, and the Union wanted it as soon as possible. (GC Exh. 20.)

On October 8, Nixdorf emailed Devine regarding the information request. Regarding Request 1, Nixdorf wrote he would continue to provide the information “as it comes in.” (GC Exh. 21.) He also provided copies of the requested incentive programs. He wrote “with respect to TE and TFE, as you know the company has a proposal on the table to address both (and any other future compensation plan) . . . Management has provided employees information in order to explain [its] current proposals. The parties have never agreed to any rules in negotiations to keep employees in the dark regarding both management or union proposals.” (GC Exh. 21.)

In a separate email, Nixdorf partially responded to Requests 3 and 4 with reports showing the hours worked by unit employees in 2020 and 2021. (GC Exh. 24.) He did not provide that information for 2018 or 2019. Nixdorf also responded to Requests 5 and 6. (Tr. 77.)

On October 12, Nixdorf responded to Requests 7, 8, 11, and 12, and partially responded to Request 14. (GC Exhs. 25–26.) Regarding Request 14, Nixdorf did not provide the total costs or the total number of man-hours worked. (Tr. 79.) Respondent never provided information responsive to Requests 2, 9, 10, or 13 (other than the attendance policy). (Tr. 80.)

Nenadovic’s October 9 Email Regarding TFE Program

On October 9, Nenadovic emailed several employees with information not contained in the TFE incentive program document that had been distributed. He reported from his research that everything in the program (e.g., bonuses, vacation, pay scale) had remained unchanged in the 7 years since it was launched at the company’s other facilities and employees were guaranteed not to lose money. He went on to state, in relevant part:

This is a decision to either vote for TFE or union. As of right now we can’t do both. We can’t have half and half. If you union guys want to take this to the union to negotiate, then by all means do it. See if they’re willing to do it. You have all the documents.

With the last statement above. The vote will be during the same time people are voting for the new union contract. Once everyone gets the information about the new union contract, that EVERYONE HAS to vote on, you can decide if you want to stay union, go TFE or keep negotiating with the union. If you want to go TFE route, I will have the paperwork with me. TFE is not an option anymore if union is signed, at least not till the end of the contract.

(R. Exh. 6.)

Sanders’ truck and he asked if he could take a couple to sign. Sanders agreed but said, “I didn’t hand it to you.” (Tr. 528–529.) Hutchinson and Brashear signed on November 4. (Jt. Exh. 4.)

October 12 Negotiation Session and Preexpiration Grievances

The parties next met for negotiations on October 12. Devine stated he heard the company was having unit employees circulate decertification petition(s). Nixdorf stated he informed managers not to talk to the guys about the petition, but he could not make any guarantees. (Tr. 81.)

During a caucus, the Union submitted its initial economic proposal, seeking a \$3-per-hour wage increase in 2021, and 3-percent wage increases in 2022 and 2023. The proposal also stated language would be added to Schedule A that nothing prevents the employer from providing compensation programs in addition to the wages provided therein. (GC Exh. 27.) Respondent countered with a 1.9-percent increase for 2021, and a 2-percent increase for 2022. It also maintained its proposal to add language to Article 15 giving it discretion to increase individual employees' hourly rates or offer alternative systems of compensation, while allowing Respondent the right to modify or discontinue those systems at any time and for any reason, without being subject to the grievance and arbitration process. (GC Exh. 28.) The Union countered, proposing a \$2-an-hour rate increase in 2021, and a 2.75-percent increase in 2022 and 2023. It also proposed language allowing Respondent to provide compensation programs in addition to the wages set forth in Schedule A, and that such systems could be modified or discontinued at any time and for any reason, without it being subject to the grievance and arbitration provisions. (GC Exh. 29.) This largely tracked the language Respondent was proposing.

The parties again discussed the TEs. Devine stated the Union's position was they should be placed in the unit and subject to the terms of the CBA. Nixdorf stated the matter needed to be negotiated, and that Respondent was willing to include the TEs in the unit, but it wanted them to remain covered under the TE program. The parties' positions did not change on this issue.

Later, Devine sent Nixdorf an agreement to extend the CBA until the end of November. (GC Exh. 31.) Nixdorf did not agree to the extension. On October 13, the Union filed several grievances. (GC Exh. 33.) One grievance alleged Respondent violated the CBA by failing to deduct/remit dues to the Union. Another grievance alleged Respondent violated the CBA when it failed to place the TEs in the unit (Tr. 85.) The parties never met on or discussed these grievances.

Following expiration of the CBA, Respondent ceased deducting and remitting dues to the Union.

Continued Conversations of Incentive Program and Decertification Effort

In mid-October, Sanders continued to talk to Covert about the TFE incentive program. He asked Covert what the employees' reactions were to the program and how it was going with circulating the decertification petition(s). Covert informed Sanders some employees were concerned they would lose money. Sanders tried to assure him that was not true. Covert eventually told Sanders he no longer wanted to discuss these topics, but Sanders continued to raise them nearly every other day. (Tr. 145–148.)

Also in October, Preston and Manager Paul McRae spoke individually with employees at the Louisville facility about the TFE incentive program. They spoke with unit technicians Benjamin Davis and Mark Elliott. Each was called into the

supervisor's office where Preston and McRae explained the program and how they would benefit under it. Neither Davis nor Elliott was aware Respondent and the Union were engaged in negotiations at the time. (Tr. 400–409.) Unlike his discussion with Nenadovic, Preston did not mention or tie implementation of the TFE incentive program to decertification.

Throughout October, Nenadovic continued speaking to employees about switching to the TFE incentive program. One of the employees he spoke to was Stephen Meade, a unit service technician. Nenadovic told Meade Respondent wanted to remove the Union and switch over to a new pay scale, and Respondent would give them more money, bonuses, and up to 5 weeks of vacation. (Tr. 167.) Following their conversation, Meade called Sanders and asked him what was going on. Initially, Sanders told Meade he was not supposed to talk about it, but then he talked to Meade about the program and said employees at other offices were getting higher wages, bonuses, and up to 5 weeks of vacation under the program. Sanders told Meade that if they got the Union out, then they could switch over to this new pay scale. (Tr. 168.)

Later, when Meade was out at a job site and needed parts, he called Sanders. While reporting his situation, Meade also told Sanders he was interested in signing the decertification petition. Sanders then sent James Hutchinson out to deliver the parts to Meade and to give him a copy of the petition to sign. Meade signed the petition on November 4 and gave it back to Hutchinson. (Tr. 173–174.)

Conversation Between Garcia and Covert

In mid-October, after Covert expressed concerns to Sanders about the TFE incentive program, Garcia called Covert. Covert did not answer because he was not familiar with Garcia's number. Sanders later left a message for Covert to call Garcia back. When Covert eventually called, Garcia asked him what the views were regarding the incentive program. Covert explained that employees had concerns about losing money. Garcia tried to assure Covert no one would lose money under the program, but he understood employees may be scared because it was new and different. Garcia concluded by saying it was up to the employees to do what was best for them. Covert listened respectfully to Garcia because he was a higher-level manager. (Tr. 150–152.)

October 26 Negotiation Session

The parties met for their fourth (and final) negotiation session on October 26. The Union initially made another wage proposal, seeking annual wage increases of 2.75 percent in 2021, 2022, and 2023. (GC Exh. 34.) The Union indicated it was no longer interested in performance-based incentive plans that Respondent could offer, modify, and eliminate unilaterally. Later, via an email, Respondent countered with a 2-percent wage increase upon ratification. It maintained its position about implementing incentive plans. It also proposed moving to a biweekly pay period. (GC Exh. 35.) To try to reach an agreement, the Union agreed to a 2-percent increase in 2021, but it rejected moving to a biweekly pay period (GC Exh. 36.) The parties did not reach an agreement.

When employees learned the Union had changed its position on allowing incentive plans, some were upset and signed the

decertification petition.

Discharge of Mark Frazier

During the pandemic, Respondent had a policy requiring that its employees perform daily wellness checks. If they were experiencing possible COVID-19 symptoms, were exposed to someone with COVID-19, or were awaiting COVID-19 test results, they were to notify their supervisor and not report for work.

In 2021, Frazier missed several days of work for various reasons.¹⁴ He was ill on January 19–22. He was quarantining and awaiting COVID test results on January 25–February 2. He had a headache on February 10. He was unable to move his company van out of his driveway because of snow and ice on February 11, 12, 16–18, 20, and 22.¹⁵ Other employees were absent during this period because of the snow, but Frazier missed more days. (GC Exh. 73.) Frazier had a doctor’s appointment to treat a back strain on February 24. He was ill and could not get his van to start on February 27. He again could not get his van to start on March 12 and 17. He had headaches on March 20, 22, and 26, and April 2. His supervisor, Greg Turner, regularly texted Frazier asking for updates and whether he was going to be coming to work. After Frazier reported he would be absent on April 2, Frazier texted him, “Got to get this fixed – missing way too much work.” (GC Exh. 52, p. 36.)

Frazier was again absent on April 15 and 27–30, and May 1, because he was ill and awaiting COVID test results. He was ill on May 27. He had shoulder pain on June 5 and 8. On June 8, Turner emailed Frazier, stating “Come see me Thursday morning and we will go over all the days you have been out this year.” (R. Exh. 4.) Frazier responded that most of his absences were related to COVID symptoms or tests, and, under company policy, they should not count. Turner replied by providing Frazier with highlighted copies of Article 9 (Paid Absences) and Schedule C (Attendance Policy) of the CBA, noting Frazier was “way over” on the number of absences. (R. Exh. 4.) Frazier was absent June 9, 19, and 22. He was absent August 31, and September 1–2, because of a pinched nerve.

In around September, Sanders replaced Turner as Frazier’s supervisor. On September 15, Respondent’s human resources directed Sanders to issue Frazier a written warning for his absences up that point in the year, totaling more than 40 days.¹⁶ The warning states that any future violations may result in further disciplinary action, up to and including termination. (GC Exh. 50.)

¹⁴ Much of the evidence regarding Frazier’s absences is limited to his testimony. In general, I found Frazier to be an unreliable witness. He lacked a candid and forthright demeanor, and his testimony was often uncorroborated and, at times, vague, self-serving, or implausible. Frazier admitted to having a “terrible” memory, but he presented as having a clear recollection about specific conversations, weather conditions, and transactions when it supported his narrative.

¹⁵ On February 12, Frazier texted his supervisor that he could not move his company van out of his driveway due to the snow and ice. He said he did not have salt or a shovel. (GC Exh. 52.) He further expressed concern that if he tried to move the van it might slide back and hit his personal vehicle, stating it moved closer every time he touched the pedal. Turner requested photos. The photos Frazier took show his personal vehicle parked in front of, not behind, the van. They also show only a few inches of snow on the driveway, as well as sets of tire tracks indicating the driveway was traversable. (GC Exh. 52.) On February 21, Frazier

in early October, Frazier told Sanders he had a potentially serious medical condition and would need to take a leave of absence. Sanders directed him to contact Matrix, Respondent’s third-party attendance system provider, to apply for a leave of absence. (GC Exh. 54.) Frazier later applied with Matrix for leave under the FMLA and the ADA. He was absent on October 6–9. On October 6, Manager Tyler Allen emailed Sanders, “Looks like Mark did file for FMLA yesterday. It is waiting on medical documentation, we are all pretty sure it will come back denied but we have to wait and see.” (R. Exh. 21.) On October 12, Matrix sent Frazier a text stating it had received his medical certification. However, two days later, Matrix sent him another text that it had not received the certification. (GC Exh. 58.) Frazier contacted Matrix, and the representative confirmed they had not received his certification.¹⁷ Frazier then contacted his doctor and told them to be on the lookout for a fax from Matrix.

On October 16, Allen emailed Matrix (copying Sanders) asking for an update on whether Frazier’s leave request(s) had been approved. On October 19, Allen emailed Matrix again for an update. That day, a Matrix representative responded that Frazier’s request for FMLA leave had been denied, but his request for ADA leave remained pending. Allen forwarded this information to Sanders and Garcia. Garcia responded, “So regardless of outcome, we need to stick to the actions. Only until ADA is approved must we accommodate.” (GC Exh. 72.)

On October 19, Sanders issued Frazier a written warning for a below standard inventory count. Respondent conducts these counts every 90 days to ensure employees have the necessary supplies in their vehicles. Frazier’s inventory count had been checked 2 weeks prior and it was below standard. When it was rechecked, Frazier received a score of 77 percent. (Tr. 707–709.) The warning stated his inventory would be recounted on November 2, and he needed to be at 85 percent or above. (GC Exh. 59.)¹⁸

On October 21, Matrix emailed Frazier that it still had not received his medical certification to support his leave request(s). (GC Exh. 62.) On October 26, Frazier was absent from work due to illness. A day later, Sanders issued him a final warning. (GC Exh. 60.)

At some point in October, Devine spoke to Frazier about becoming union steward for the Lexington facility, and Frazier agreed.¹⁹ On October 22, Frazier emailed Devine wondering if

reported he had (finally) purchased a shovel and shoveled for 4 hours, but he made minimal progress.

¹⁶ The parties stipulated to correct the dates of Frazier’s absences on the disciplinary warnings to the above dates.

¹⁷ Frazier testified he or his doctors provided Matrix with his medical certification, but he presented no other evidence.

¹⁸ There is no other documented discipline for inventory counts in 2020 or 2021. Sanders testified at around the same time he issued this discipline to Frazier, he warned another employee for a repeated inventory count issue. (Tr. 712.)

¹⁹ Frazier testified he texted Sanders in early to mid-October that he would soon be the union steward and to let him know of any discipline. (Tr. 338–339.) I do not credit this testimony. As stated above, I found Frazier to be unreliable witness, particularly, where as here, there is no evidence corroborating his testimony. This text Frazier allegedly sent to Sanders was not introduced. Frazier explained that was because it was

he had been placed in the steward position because employees were coming to him in that capacity. Four days later, Devine replied to Frazier that he would “take care of it.” (GC Exh. 61.) On October 29, Devine sent Sanders a letter notifying him that Frazier had been appointed steward. (GC Exh. 41.)

On October 30, Matrix emailed Frazier denying his FMLA request, stating he had not met the eligibility requirements. The cover email also stated Matrix had not received the required medical certification. (GC Exh. 63.) On November 1, Matrix sent Frazier a letter that his request for an accommodation/leave under the ADA had been closed because he had not submitted the necessary documentation. (GC Exh. 64.) On November 2, Allen emailed Sanders, Garcia, and Cook that Frazier’s leave requests had been denied. The information was presented to Respondent’s human resources department, and then to Nixdorf. Nixdorf made the decision to discharge Frazier for excessive absenteeism. On November 3, Sanders met with Frazier and informed him he was being discharged. Frazier was not given any paperwork about his discharge.

Withdrawal of Recognition, Cessation of Bargaining, and Unilateral Changes

On November 8, Respondent received decertification petitions with a total of 19 signatures. Nenadovic gathered (15) signatures from the Louisville employees and Hutchinson gathered (4) signatures from the Lexington facility.²⁰ Of the 19 employees, 7 were TEs. Respondent had a total of 37 employees, with the TEs. (Tr. 800–801) (R. Exh. 36). Without the TEs, there were 30 employees, and only 12 signatures.

On November 8, Nixdorf emailed Devine that Respondent had objective evidence the Union no longer had majority support and it was withdrawing recognition immediately. Devine responded by asking Nixdorf to send him the evidence because the Union believed it maintained majority support. (GC Exh. 38.) Nixdorf did not respond. On November 9, Garcia emailed employees notifying them Respondent had withdrawn recognition. He stated, “As we move forward, we do so without the corrosive effect of a third party which many times seemed only to create artificial barriers and divide us as a team.” (GC Exh. 47.)

Within a few days of withdrawing recognition, Respondent unilaterally changed the unit employees’ wages rates, implemented the incentive program, modified vacation, altered job titles, moved from weekly to biweekly pay periods, eliminated daily overtime, and changed the attendance policy to allow for paid time off days rather than sick, bereavement, and jury duty leave.

sent using his work phone, which he lost access to following his discharge. It is unclear whether the General Counsel or Union subpoenaed this information from Respondent, and, if so, whether it was produced. Many of Frazier’s other communications were introduced, and they show he regularly used his *personal* phone when texting with management, including about his medical condition(s), absences, leave requests, job assignments, training, etc. (GC Exh. 54) (Tr. 326). There was no explanation why he would use his work phone to send the text at issue.

Similarly, I do not credit Frazier’s testimony that he communicated about wanting to become Steward on group text chats that included Sanders both before and briefly after he became a supervisor. (Tr. 296–297.)

Resignation of Marcus Rodriguez

At some point, Marcus Rodriguez applied for a job with Johnson Controls Inc. (JCI) (Tr. 243–245; 254–256). On October 7, JCI offered him a job, which he later accepted. (R. Exh. 3.) The exact date of his acceptance is not clear. Rodriguez testified “the last straw” in his decision to leave Respondent was when supervisors were “direct dealing” with unit employees on around October 26. (Tr. 244.) On October 29, JCI sent Rodriguez a letter confirming he had accepted its offer and that his start date would be November 15. (R. Exh. 3.)

On around October 30, Rodriguez went on sick leave for approximately 2 weeks. On the morning of November 15, he arrived at Respondent’s facility and notified his supervisor, Paul McRae, that he was resigning effective immediately. Rodriguez was then picked up in Respondent’s parking lot by his new (JCI) supervisor. He began working for JCI that same day.

The only reason Rodriguez gave for why he was “on the fence” about resigning after he accepted JCI’s offer was because he would be “giving up all his vacation.” He testified that when Respondent “dissolved the Union” he “realized he had made the right decision.” (Tr. 244.)²¹

Analysis

Failure to deduct and remit dues

Respondent violated Section 8(a)(5) and (1) of the Act when it failed to continue in effect the terms of the CBA when it ceased deducting and remitting dues to the Union for unit employees who authorized dues checkoff. Sections 8(a)(5) and 8(d) of the Act prohibit an employer from modifying the terms and conditions of the parties’ collective-bargaining agreement during its effective dates without the union’s consent. See, e.g., *Knollwood Country Club*, 365 NLRB No. 22, slip op. at 2 (2017); *Oak Cliff-Golman Baking Co.*, 207 NLRB 1063, 1063–1064 (1973), enf. mem. 505 F.2d 1302 (5th Cir. 1974), cert. denied U.S. 826 (1975). Section 8(a)(5) also prohibits an employer from making a material change regarding a mandatory subject of bargaining without first providing the union with notice and an opportunity to bargain about the change. *NLRB v. Katz*, 369 U.S. 736, 747 (1962); *Litton Financial Printing Division v. NLRB*, 501 U.S. 190, 198 (1991); *Alamo Cement Co.*, 281 NLRB 737, 738 (1986). A violation does not require a finding the employer acted in bad faith. *Katz*, supra at 747.

Under Board law, dues checkoff is a mandatory subject of bargaining. *Valley Hospital Med. Ctr.*, 371 NLRB No. 160 (2022). An employer’s failure or refusal to deduct and remit dues under a valid dues-checkoff authorization constitutes a unilateral

The chats were not introduced and no one with personal knowledge corroborated Frazier discussed these topics in them.

²⁰ A TE, Anthony Cox, testified he received a copy of the decertification petition and Tony Preston gave it to him, which Cox then signed. (Tr. 551.) Cox was not questioned about the conversation, if any, he had with Preston.

²¹ Based on his testimony and the surrounding circumstances, I conclude Rodriguez decided to resign from Respondent when he accepted JCI’s offer with a November 15 start date, which was on or before October 29.

change, in violation of Section 8(a)(5). *Merryweather Optical Co.*, 240 NLRB 1213, 1215 (1979); *Western Block Co.*, 229 NLRB 482 (1977); and *Cavalier Spring Co.*, 193 NLRB 829 (1971). It also violates Section 8(a)(5) for an employer to cease deducting dues in derogation of the parties' collective-bargaining agreement. *Hearst Corp. Capital Newspaper Div.*, 343 NLRB 689, 693 (2004); and *Shen-Mar Food Products, Inc.*, 221 NLRB 1329, 1333 (1976), *enfd.* in relevant part 557 F.2d 396 (4th Cir. 1977). Following expiration of the agreement, the employer must maintain the status quo on all mandatory subjects until the parties reach a new agreement or a good-faith impasse. *Richfield Hospitality, Inc.*, 368 NLRB No. 44, slip op. at 2 (2019). Recently, in *Valley Hospital*, supra slip op. at 2, the Board, in a 3–2 decision, reinstated that an employer's obligation to maintain the status quo includes continuing to deduct and remit dues for employees who have authorized dues checkoff. The Board's decision applies retroactively to all pending cases, including these cases. *Id.*

From May 11 to October 14, Respondent failed to consistently deduct and remit dues for unit employees who had authorized dues checkoff, and following expiration of the CBA, Respondent discontinued all dues deductions. Respondent claims any errors or omissions that occurred prior to expiration of the CBA were likely caused by an outage suffered by its payroll service provider. The General Counsel argues, and I agree, that the seemingly random nature of when Respondent chose to withhold dues, and on behalf of whom, prior to expiration defies any lawful or logical explanation and strongly mitigates against finding the failure was a simple mistake. It also was unlikely the result of a system outage, which presumably would have affected all employees. The General Counsel contends Respondent likely acted intentionally in its (mis)handling of dues to undermine the Union. As stated, Respondent's motive is immaterial. Respondent had an obligation, both during the term of the CBA and after, to deduct and remit dues for all those who authorized checkoff. Its failure to do so violates Section 8(a)(5) and (1).

Failure to provide and unreasonable delay in providing requested information

Respondent also violated Section 8(a)(5) and (1) of the Act when it failed to provide, or unreasonably delayed in providing, the Union with information requested in its August 25 letter. Section 8(a)(5) imposes on an employer the duty to provide the union with requested information that is relevant to and necessary for its representational duties, including preparing for and engaging in contract negotiations. *NLRB v. Acme Indus. Co.*, 385 U.S. 432, 435–436 (1967); *Care Manor of Farmington, Inc.*, 318 NLRB 330, 334 (1995). Generally, information relating to unit employees' terms and conditions of employment is presumptively relevant and must be provided. *Southern California Gas Co.*, 344 NLRB 231, 235 (2005); *Bacardi Corp.*, 296 NLRB 1220, 1223 (1989). Information relating to nonunit employees is not presumptively relevant, and the union has the burden of

establishing relevance unless relevance is apparent from the circumstances. *Disneyland Park*, 350 NLRB 1256, 1257 (2007); *Shoppers Food Warehouse*, 315 NLRB 258, 259 (1994). To satisfy this burden, the union needs to show a reasonable belief, supported by objective evidence, that the information has potential relevance and would be of use to the union in fulfilling its representational duties. *A-1 Door & Bldg. Sols.*, 356 NLRB 499, 500 (2011); *Postal Service*, 310 NLRB 391, 391 (1993). Once a showing of relevance is made, an employer has a burden of establishing a reason(s) as to why it cannot, in good faith, supply such information. *ATV/Vancom of Nevada Ltd. Partnership*, 326 NLRB 1432, 1434 (1998).

The General Counsel specifically alleges Respondent unlawfully failed to provide any information in response to Requests 2 (total number of unit employees on 12/31/2018, 12/31/2019, and 12/31/2020), 9 (number of unit employees enrolled in each medical, prescription drug, and dental insurance plan showing the number of employees enrolled as single, single and one and family, etc. and the cost for individuals per plan), 10 (actual cost per month of each medical, prescription drug, dental and vision plans for the years 2018, 2019, and 2020), and 13 (copy of all company rules and/or policies applicable to unit employees). It also failed to provide portions of information sought in Request 1 (the birthdates of unit employees), 3 (the total number of regular hours actually worked by unit employees in 2018 and 2019), 4 (the total number of overtime hours worked by unit employees broken down by classification for years 2018 and 2019); and 14 (the total number of man hours and total cost of each job for work subcontracted out in 2018, 2019, and 2020). The Requests at issue are presumptively relevant because they each relate directly to unit employees' terms and conditions of employment. See *GAS Secure Solutions*, 369 NLRB No. 7, slip op. at 1. (2018).²² They also were requested for the purpose of preparing for and engaging in negotiations over a successor collective-bargaining agreement. See *Queen of the Valley Med. Ctr.*, 368 NLRB No. 116, slip op. at 26–27 (2019) (names, genders, addresses, job classifications, rates of pay, dates of birth, dates of hiring, benefit plans, incentive plans, premium pay, vacation entitlements, insurance information (including types of plans and premiums), job descriptions, work schedules, overtime policies, disciplinary records, employee handbooks and personnel manuals are presumptively relevant); *Care Manor of Farmington, Inc.*, supra at 334 (cases cited therein) (same). See also *Kolkka*, 335 NLRB 844, 872 (2001) (subcontracting).

Respondent, in its defense, does not challenge the relevance of any of the Requests. It instead asserts that any failure to provide the information was “inadvertent.” Respondent also points out that rather than alerting it to the missing information, the Union opted to “sit silent” and engage in a “game of gotcha” by waiting and then filing the charges, which evinces a lack of good faith on its part. It is well-established that a union is not required to repeat its requests for relevant information, particularly where,

²² As discussed, the request stated all information sought was for the purposes of preparing for negotiations. Devine testified he asked for the subcontracting information because while he knew Respondent had the contractual right to subcontract, he wanted to determine how much (in terms of hours and dollars) was occurring to determine whether the

Union should attempt to negotiate for hiring additional unit employees. (Tr. 46–47.) Although I conclude the relevance of this information was apparent as of the August 25 request, Devine made its relevance clear at the hearing.

as here, the information sought is clear and appears to be readily available. See *Bundy Corp.*, 292 NLRB 671, 672 (1989). Nonetheless, the record shows Devine repeated the Requests in writing on September 21, orally during the September 29 negotiation session, and again in writing on October 7. Respondent has failed to offer or establish a valid defense for its failure to provide the information at issue.

The duty to provide information requires it be provided in a timely fashion. See *Woodland Clinic*, 331 NLRB 735, 736-737 (2000); *Coca-Cola Bottling Co.*, 311 NLRB 424, 425 (1993). To determine whether information has been provided in a timely manner, the Board considers a variety of factors, including the nature of the information sought, the difficulty in obtaining it, the amount of time the employer takes to provide it, the reasons for the delay, and whether the party contemporaneously communicates these reasons to the requesting party. *TDY Industries, LLC*, 369 NLRB No. 128, slip op. at 2 (2020), citing *Safeway, Inc.*, 369 NLRB No. 30, slip op. at 7 (2020). The burden is on the employer to provide an adequate explanation for its failure to timely provide the information. *Woodland Clinic*, supra.

The General Counsel alleges Respondent unreasonably delayed in providing the Union with information in response to Requests 5 (copy of current benefit plans and summary plan descriptions (health, prescription drug, vision, dental, life, short/long term disability) for active and retiree unit employees), 6 (copy of current 401K plan), 7 (number of unit employees voluntarily participating in 401K plan), 8 (list of unit employees showing the percentage each employee is currently voluntarily contributing to 401K plan), 11 (total number of OSHA recordables for 2018, 2019, and 2020), and 12 (number of lost time accidents and total number of lost time days in 2018, 2019, and 2020). It also delayed in partially responding to Requests 1 (the list of all unit employees that shows hire dates, job classification and rates of pay for each employee), 3 (total number of regular hours actually worked by unit employees in 2020), 4 (total number of overtime hours worked by unit employees broken down by classification for the year 2020), and 14 (list of work contracted out in 2018, 2019, and 2020 with start dates and completion dates). The above information was requested on August 25 and not provided until between October 8 and 12.

Again, Respondent does not challenge the relevance of these Requests. Rather, it contends its delay of “just over a month” was not unreasonable, and the General Counsel’s argument to the contrary is “utterly divorced from the realities of corporate activity and labor relations.” Respondent does not identify what “realities” it is referring to or how they prevented it from providing the information sooner. Nor does Respondent assert the information was difficult or required additional time to obtain, compile, or produce.

As for communication, Respondent argues it “repeatedly and consistently communicated with the Union with respect to each and every information request.” Nixdorf emailed Devine on August 31 that he was working on a response to the Union’s request, and he later emailed Devine on October 6 that he will continue to provide information regarding Request 1 “as it comes in.” (GC Exh. 21.) There is no other communication updating the Union regarding the Requests, the reason(s) for the delay, or a timeline for when the information would be provided.

The Board has held delays of comparable length (nearly 6 weeks) and under similar circumstances to be unreasonable. See e.g., *Linwood Care Center*, 367 NLRB No. 14 slip op. at 4-5 (2018) (6-week delay held unreasonable where information was not difficult to retrieve and employer provided no justification for the delay); *Woodland Clinic*, supra at 737 (7-week delay in providing information a violation when employer presented no evidence justifying its delay); and *Postal Service*, 308 NLRB 547, 551 (1992) (4-week delay held unreasonable where information shown not to be complex or difficult to retrieve).

Based on the foregoing, I conclude Respondent violated Section 8(a)(5) and (1) when it failed to provide, and/or unreasonably delayed in providing, the information at issue.

Solicitations, inducements, and assistance in the decertification effort

Respondent’s managers Eric Sanders and Tony Preston violated Section 8(a)(1) and (5) of the Act by promising unit employees they would receive better wages, more vacation time, and performance bonuses if they got rid of the Union; telling unit employees the company would implement the TFE incentive program and other benefits if they got rid of the Union; providing copies of a decertification petition for unit employees to sign and to solicit others to sign; and notifying unit employees of others who wanted to sign the decertification petition.

An employer violates Section 8(a)(1) by promising or suggesting to employees their terms and conditions of employment would improve if they decertified their union. See *Desert Springs Hospital Medical Center*, 369 NLRB No. 16 (2020); *Equipment Trucking Co.*, 336 NLRB 277, 282-283, 287 (2001). See also *Hancock Fabrics*, 294 NLRB 189, 192 (1989), enfd. mem. 902 F.2d 28 (4th Cir. 1990). The test is whether the employer engaged in conduct, regardless of intent or effect, that reasonably tends to interfere with the free exercise of employee rights under the Act. *Webasto Sunroofs, Inc.*, 342 NLRB 1222, 1223 (2004).

An employer violates Section 8(a)(1) and (5) by actively soliciting, encouraging, promoting, or aiding in the initiation, circulation, signing, or filing of a decertification petition. See *Armored Transportation, Inc.*, 339 NLRB 374, 377 (2003); *Wire Products Mfg. Co.*, 326 NLRB 625, 640 (1998), enfd. sub nom. mem. *NLRB v R.T. Blankenship & Associates, Inc.*, 210 F.3d 375 (7th Cir. 2000). See also *Haymarket Bookbinders, Inc.*, 183 NLRB 121, 121 (1970) and *Alle Arcibo Corp.*, 264 NLRB 1267, 1267 fn. 1, 1274 (1982). The employer may provide ministerial aid in response to employees’ unsolicited inquiries, but beyond that it has no legitimate role in the decertification process. The critical inquiry is whether the conduct at issue constitutes more than (permissible) ministerial aid. *Times-Herald*, 253 NLRB 524 (1980). For example, an employer may provide an inquiring employee with general information, such as the wording for the petition, the unit description, and/or the number of signatures needed, see *Eastern States Optical Co.*, 275 NLRB 371, 372 (1985) and *Ernst Home Center, Inc.*, 308 NLRB 848 fn. 1 (1992), but it may not instigate or circulate a petition, encourage employees to sign, or allow circulation of the petition during work time. See *Armored Transport, Inc.* supra; *General Die Casters, Inc.*, 359 NLRB 89, 135 (2012); *Sociedad Espanola*

de Auxilio Mutuo Y Beneficencia de P.R., 342 NLRB 458, 459, 471 (2004), and *Harding Glass Co.*, 316 NLRB 985 (1995). The Board determines if the preparation, circulation, and signing of the petition constituted the free and uncoerced act of the employees. *KONO-TV-Mission Telecasting Corp.*, 163 NLRB 1005, 1006 (1967).

Here, Respondent rendered far more than ministerial aid: it instigated, directed and supported the entire decertification effort. There was no evidence of employee disaffection or interest in removing the Union before Preston and Sanders began meeting individually with unit employees, like Michael Covert, Zar Nenadovic, and Stephen Meade, and assured them they would receive higher wages, more vacation time, and performance bonuses under the TFE incentive program, if they got rid of the Union.²³ There was no ambiguity in these communications. See *NLRB v. Proler International Corp.*, 635 F.2d 351, 354–355 (5th Cir. 1981) (unlawful for employer to instigate and promote decertification, particularly when it was strengthened by promises of benefits.).

To facilitate decertification, Sanders and Preston then began providing copies of blank petitions for employees to sign and to circulate for others to sign. Sanders met with Covert for this purpose even though Covert never inquired about or expressed interest in getting rid of the Union. See *Purple Communs., Inc.*, 370 NLRB No. 26 fin. 16 (2020) (provision of unsolicited information and direction regarding decertification petition violates the Act). After providing Covert with guidance on how to promote the incentive program and circulate the decertification petition, he told Covert to return any signed petitions back to him. An employer exceeds ministerial aid when it provides the petition language, provides guidance on gathering signatures, and requires that the signed petitions be returned to management. See *Narricot Industries*, 353 NLRB 775, 776 (2009); *Craftool Mfg. Co.*, 229 NLRB 634, 637 (1977). Sanders then monitored Covert's progress, asking him about employees' reactions to the incentive program and the petition. He persisted in making these inquiries even after Covert told him he no longer wanted to discuss the matter. It is a violation for an employer to monitor an employee's decertification activity. See *id.* See also *Weisser Optical Co.*, 274 NLRB 961, 961–962 (1985), *enfd. mem.* 787 F.2d 596 (7th Cir. 1986); and *Texaco, Inc.*, 264 NLRB 1132, 1132–1133 (1982).

When Meade expressed interest in signing the petition, Sanders arranged for Hutchinson to travel and meet with Meade, in part, for the purpose of giving him a copy of the petition to sign. The Board has held it is a violation for a supervisor to arrange for an employee to meet with coworker to sign a decertification petition because it conveys to employees the petition was supported and promoted by management. *Davies Medical Center*,

303 NLRB 195, 200–201 (1991), *enfd. NLRB v. Davies Medical Center*, 991 F.2d 803 (9th Cir. 1993) (table). See also *Erickson's Sentry of Bend*, 273 NLRB 63, 64 (1984).

When Nenadovic expressed interest in the TFE incentive program and asked how it could be made available to the unit employees, Preston told him he and other employees would need to sign some papers, which were the decertification petitions. Preston told Nenadovic the papers that needed to be signed would be left on the dispatcher's desk for him to retrieve. The Board has held it is a violation for the employer to leave decertification petitions out for employees to take or sign again because it conveys to employees the petition was supported and promoted by management. See *Corrections Corp. of America*, 347 NLRB 632, 664 (2006); and *Placke Toyota, Inc.*, 215 NLRB 395 (1974).

Based on the foregoing, I conclude Preston and Sanders made their promises, solicited employee support, and assisted in the decertification effort by the conduct described. This conduct is a breach of its obligation to bargain in good faith is a violation of Section 8(a)(5) and (1), and it reasonably tends to interfere with the free exercise of employee rights under the Act, in violation of Section 8(a)(1).

Direct dealing

Respondent, through Preston, Sanders, and Garcia, violated Section 8(a)(5) and (1) when they bypassed the Union and dealt directly with unit employees by distributing the TFE incentive program and other benefit information and soliciting them to agree to them without the Union's involvement. The criteria for finding unlawful direct dealing are that: (1) the employer was communicating directly with union-represented employees; (2) the discussion was for the purpose of establishing or changing wages, hours, and terms and conditions of employment or undercutting the union's role in bargaining; and (3) such communication was made to the exclusion of the union. *El Paso Electric Co.*, 355 NLRB 544, 545 (2010).

As discussed, Preston and Sanders, as well as Garcia, each initiated individual conversations with unit employees to present or discuss the TFE incentive program, and to promote how it would result in higher wages, more vacation time, and performance bonuses for unit employees. Preston and Sanders began having these conversations in early October, and Sanders emailed Covert a copy of the program document on October 5, before the TFE incentive program had been presented or discussed with the Union. Later, if an employee voiced concerns about the incentive program, supervisors would talk to them directly and attempt to assuage their concerns, including providing data about those working under the program at Respondent's other facilities, with the goal of getting the employees to agree they wanted the program. However, Respondent's aim was not

²³ In the consolidated complaint, the General Counsel alleges Nenadovic was a Sec. 2(13) agent of Respondent, and that on about October 18, Preston solicited the decertification of the Union by preparing a petition and providing it to Nenadovic to sign and to solicit other employees to sign. Respondent denies both. The General Counsel has the burden of establishing an agency relationship regarding the specific conduct alleged to be unlawful. *Pan-Oston Co.*, 336 NLRB 305 (2001). The Board applies common-law principles in determining whether an employee is acting with "apparent authority" on behalf of an employer. *Id.* The

determination is whether employees would reasonably believe the alleged agent was acting on behalf of management regarding the specific conduct at issue. Agency also can be established when the employer holds an employee out as a conduit for transmitting information on its behalf. *D&F Industries*, 339 NLRB 618, 619 (2003); *Hausner Hard-Chrome of KY, Inc.*, 326 NLRB 426, 428 (1998). In reviewing the evidence, the General Counsel has failed to establish Respondent held Nenadovic out as a conduit or that employees reasonably viewed him as acting with apparent authority in circulating the petition.

to have the employees attempt to convince the Union to agree to the program (particularly when it was not aware), but rather to get the employees to support decertification.

Later, when Covert reported to Sanders that employees were concerned they were going to lose money, Garcia began calling Covert. When the two spoke, Garcia tried to calm Covert's concerns and the stated concerns of others. Respondent points out Garcia's statement, as well as the statements by other supervisors, that employees had to decide for themselves what they wanted to do, was evidence Respondent was not attempting to engage in "horse trading" with employees. These statements, however, were perfunctory and outweighed by the other statements of supervisors, as well as the context of those statements, clearly promoting the program and its benefits, all without the Union.

Respondent, in its defense, contends it was permitted to discuss the TFE incentive program with unit employees because it had "a proposal on the table." I reject this contention. First, the proposal Respondent had on the table was adding language to Article 15 of the CBA giving it discretion to "offer alternate systems of compensation" with assurances these "systems" would pay employees at or above their base hourly wage rate under Schedule A. Respondent had not presented or described any specific "system(s)." It was not until after the October 7 Union meeting where Devine first learned from unit employees that Respondent was distributing an incentive program to them that he demanded Nixdorf provide him with a copy. Nixdorf provided multiple incentive programs, but he did not identify which Respondent wanted to implement. Respondent also did not provide the Union with the information Sanders showed or described to Covert regarding what employees earned under the program at Respondent's nonunion facilities. As a result, Respondent provided unit employees with more information about the TFE incentive program and how it worked, than it provided to the Union.²⁴

Second, Respondent's communications with employees were never informing them of proposals it had on the table. In fact, Respondent never mentioned negotiations with the Union when speaking with employees, likely because the TFE incentive program was the keystone toward convincing the employees to decertify the Union, and statements promoting the TFE incentive program were often in tandem with statements about decertification.

Accordingly, I conclude Respondent, through Preston, Sanders, and Garcia, violated Section 8(a)(5) and (1) when they bypassed the Union and dealt directly with employees about their terms and conditions of employment to gain their support and agreement to implement the incentive program.

²⁴ Although the General Counsel failed to establish Nenadovic to be an agent, his October 9 email to employees providing them with more information about the TFE incentive program indicates employees could not have the program and the Union. He tells employees that if they wanted to present the information to the Union for it to try to negotiate over the program, they should. This is consistent with the evidence establishing that Respondent had not presented the information or bargained with the Union over the program.

²⁵ The General Counsel asserts *it is likely* Respondent knew of Frazier's loyalty to the Union well in advance of his May 29 appointment

Discharge of Mark Frazier

Respondent did not violate Section 8(a)(3) and (1) when it discharged Frazier on November 3. When assessing the lawfulness of an adverse employment action that turns on employer motivation, the Board applies the analytical framework set forth in *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399–403 (1983) To sustain a finding of discrimination, the General Counsel must show that the employee's protected activity was a motivating factor in the employer's decision. The elements that must be established are that: (1) the employee engaged in protected activity, (2) the employer knew of that activity, and (3) the employer had animus against the protected activity, which must be proven with evidence sufficient to establish a causal relationship between the protected activity and the adverse action. *Tschiggfrie Properties, Ltd.*, 368 NLRB No. 120, slip op. at 6, 8 (2019). See also *Mondelez Global, LLC*, 369 NLRB No. 46, slip op. at 1–2 (2020). Proof of discriminatory motivation (animus) can be based on direct or circumstantial evidence, including evidence the employer's stated reasons for the adverse action are pretext. This may include suspicious timing, false or shifting reasons given in defense, failure to adequately investigate alleged misconduct, departures from past practices, tolerance of behavior for which the employee was allegedly fired, and disparate treatment of the discharged employee. See *Shamrock Foods Co.*, 366 NLRB No. 117 (2018); *Lucky Cab Co.*, 360 NLRB 271, 274–275 (2014); *Medic One, Inc.*, 331 NLRB 464, 475 (2000).

If the General Counsel establishes these factors, the burden shifts to the employer to show it would have taken the same action in the absence of the employee's protected activity. *Wright Line*, 251 NLRB at 1089. An employer cannot simply present a legitimate reason for its action; rather, it must persuade by a preponderance of the evidence that the same action would have taken place in the absence of the protected conduct. See *Bruce Packing Co.*, 357 NLRB 1084, 1086–1087 (2011), enfd. in pertinent part 795 F.3d 18 (D.C. Cir. 2015). The General Counsel may also offer proof that the employer's reasons for the decision were false or pretextual. If the proffered justification(s) is found pretextual, it must be determined whether the surrounding facts tend to reinforce that inference of unlawful motivation. *Electrolux Home Products*, 368 NLRB No. 34, slip op. at 3 (2019).

In applying the *Wright Line* framework, I conclude the General Counsel has established a prima facie case of discrimination. Respondent discharged Frazier 4 days after learning he had been appointed union steward for the Lexington facility.²⁵ At first

because Sanders who recently transferred from the unit into management remained part of a group chat wherein Frazier discussed his interest in becoming a steward. Also, the General Counsel points to Frazier's testimony that he used his work phone to send Sanders a text in early to mid-October that he would soon be appointed steward. For the reasons stated, I have discredited this testimony. The General Counsel also asserts James Hutchinson, who gathered signatures for the decertification petition, was present on the Zoom meeting that Frazier set up on October 7 with Devine. There is no evidence or basis to conclude that Hutchinson relayed that information to management. I, therefore, decline to infer

blush, this timing suggests discriminatory motivation. That inference is bolstered by the unfair labor practices committed at around this time aimed at undermining support for the Union—albeit none directly involving Frazier.

In its defense, Respondent asserts Frazier’s discharge had nothing to do with his new role as steward and everything to do with his attendance, and it would have discharged him because of his attendance issues regardless of his role as steward. Email exchanges between supervisors—all predating Frazier’s appointment as steward—confirm the wheels were in motion to discharge Frazier, and the delay was because Respondent needed to await Matrix’s determination on whether he qualified for leave under the FMLA or the ADA. On November 1, Matrix denied/closed Frazier’s leave requests because he failed to meet the eligibility requirements and failed to provide requested medical certification despite repeated reminders.²⁶ A day later, Respondent discharged Frazier because of his excessive absenteeism.

The General Counsel argues Respondent’s reliance on Frazier’s attendance issues is pretext, noting it waited months after the bulk of Frazier’s absences occurred in early 2021 before taking any disciplinary action, and the first discipline Respondent issued to Frazier, on September 15, covered 45 absences from work, but it issued him a final warning for a single absence on October 26. The General Counsel argues Respondent was “startling[ly] . . . tolerant” of Frazier’s absences up until his involvement with the Union became apparent and then “jumped to termination thereafter.”

Respondent was never “tolerant” of Frazier’s absences. On April 2 and again on June 8, Supervisor Greg Turner texted Frazier, admonishing him for missing too much work and telling him that it needed to stop. When Frazier responded to the June 8 text that most of his absences were covered under Respondent’s COVID policy, Turner replied by providing copies of Respondent’s attendance and paid leave policies and telling Frazier he was “way over” with his absences. Up to that point, about 12 of Frazier’s absences appear unrelated to COVID (i.e., shoulder pain, van issues, and snow). In September, when Sanders became Frazier’s supervisor, he issued Frazier a written warning for his absences up to that point in the year. Between Turner’s June 8 text and the September 15 warning, Frazier was absent 5-6 additional days, and at least 3 of those absences were unrelated to COVID (i.e., pinched nerve).²⁷

Regardless, even if Respondent had been tolerant of Frazier’s absences prior to September 15, an employer is not required to tolerate inappropriate behavior indefinitely. See *Stephens Media Group-Watertown, LLC*, 371 NLRB No. 11, slip op. at 5 (2021);

from the credible evidence that Respondent knew or suspected Frazier was assisting the Union or engaging in protected activity prior to Devine’s October 29 letter announcing him as steward.

²⁶ In early October, when Frazier told Sanders he had a potentially serious medical condition, Sanders directed him to contact Matrix to apply for a leave of absence. Initially, after Frazier applied for leave, Matrix sent him contradictory messages about whether it had received his medical certification, but all of Matrix’s communications after mid-October made clear it had not received his certification, and it was necessary to evaluate his request(s). The record does not establish Frazier or his doctors ever provided Matrix with the requested medical certification. I

David Saxe Productions, LLC, 369 NLRB No. 138, slip op. at 4 (2020). Despite repeated warnings, Frazier continued to miss work and he continued to accrue unexcused absences. The September 15 warning stated any future violation of any policy may result in further disciplinary action, up to and including termination. As stated, Respondent elected not to take any further disciplinary action at that time because he had applied for a leave of absence under the FMLA and the ADA, and management was awaiting Matrix’s determinations on those leave requests.

The General Counsel also argues disparate treatment based on Respondent’s failure to follow its progressive disciplinary scheme outlined in Schedule C of the CBA. The only consistency about Respondent’s application of this disciplinary scheme is its inconsistency. Like Frazier, Respondent issued a written warning to an employee after 30 individual absences and 1 tardy, when the scheme would have called for his termination. Conversely, Respondent issued a final warning to another employee after 10.5 absences, and it later suspended and placed the employee on a last-chance agreement. Moreover, Frazier is in a category all by himself with nearly 50 absences in a 10-month period, despite repeated warnings, official and unofficial, that he needed to address and correct his attendance issues.

In reviewing the evidence, I conclude Respondent has met its burden of establishing it would have discharged Frazier regardless of his protected activity. The email exchanges indicate Respondent was prepared to take further disciplinary action against Frazier, including termination, in early to mid-October based on his attendance, and was awaiting Matrix’s determination on his leave requests before taking further and final action. That determination did not occur until November 1, which was a few days after Respondent learned Frazier had been appointed steward. I find the timing of that determination was the reason Respondent discharge him when it did. Accordingly, I dismiss this allegation.

Withdrawing recognition, refusing to bargain, and unilaterally changes

Respondent violated Section 8(a)(5) and (1) of the Act when it withdrew recognition of the Union on November 9, and, thereafter, when it ceased bargaining and unilaterally changed the unit employees’ wages, hours, and other terms and conditions of employment. An incumbent union enjoys a continuing presumption of majority status, even after the expiration of a collective-bargaining agreement, and an employer is privileged to withdraw recognition only upon a showing with objective evidence that the union has in fact lost the support of a majority of the unit employees. *Levitz*, 333 NLRB 717 (2001).²⁸

make no findings as to Frazier’s eligibility or need for leave under the FMLA or the ADA.

²⁷ The General Counsel argues Respondent’s October 19 discipline of Frazier for his inventory count issues further suggests discriminatory motive because it was a nearly unheard-of reason for discipline up to that point. Whether unheard-of or not, the discipline cannot be evidence of a discriminatory motive because the warning was issued 10 days before Respondent first learned of Frazier’s appointment as steward.

²⁸ Respondent’s reliance on *Johnson Controls*, 368 NLRB No. 20 (2019), which dealt with an anticipatory withdrawal of recognition, is

In *Hearst Corp.*, 281 NLRB 764 (1986), enfd. mem. 837 F.2d 1088 (5th Cir. 1988), the Board held an employer may not rely on a tainted decertification petition to withdraw recognition. A petition is tainted when an employer engages in unfair labor practices directly related to the decertification effort, such as actively soliciting, encouraging, promoting, or assisting in the initiation, signing, or filing of a decertification petition. See also *Kauai Veterans Express Co.*, 369 NLRB No. 59, slip op. at 1–2 (2020); *AIM Aerospace Sumner*, 367 NLRB No. 148, slip op. at 1 fn. 2 (2019); and *SFO Good-Nite Inn, LLC*, 357 NLRB 79, 80 (2011), enfd. 700 F.3d 1, 403 U.S. App. D.C. 75 (D.C. Cir. 2012). This creates a conclusive presumption that an employer's commission of unfair labor practices directly advancing a decertification effort taints a resulting petition. *SFO Good-Nite Inn*, supra at 81 (“presumption is based on the predictable result of an employer's unlawful, direct participation in an employee decertification effort—a petition plagued with uncertainty because of the very nature of the employer's unfair labor practices, which is *per se* insufficient to rebut the presumption of continuing majority status”). In other words, an employer may not unlawfully instigate or propel a decertification campaign, and then invoke the results of that campaign to justify its unilateral withdrawal of recognition.

As outlined, Respondent unlawfully instigated and propelled the decertification effort, and then relied upon the resulting petition to justify its withdrawal of recognition. Supervisors planted the decertification seed and cultivated its growth by unlawful promises, solicitations, and direct dealing, all tied to the removal of the Union. The supervisors prepared the petition, provided it to employees to sign and circulate for others to sign, notified employees of others who wanted to sign the petition, monitored employee support, and instructed signature gatherers to turn in their signed petitions to management.²⁹

Respondent denies it offered anything more than ministerial aid. It claims the Union's loss of support was due to its change in bargaining position. It asserts that employee disaffection peaked once they learned the Union was no longer proposing or willing to accept an incentive program. The flaw with this argument is the change occurred during the October 26 negotiation

misplaced. *Levit* applies because the withdrawal occurred post-expiration of the CBA.

²⁹ In *Master Slack Corp.*, 271 NLRB 78 (1984), the Board held a petition also is tainted where there is a causal connection between the decertification efforts and other unfair labor practices distinct from any unlawful assistance by the employer in the actual petition. To determine whether such a causal connection exists under *Master Slack*, the Board considers: (1) the length of time between the unfair labor practices and the withdrawal of recognition; (2) the nature of the illegal acts, including the possibility of their detrimental or lasting effect on employees; (3) any possible tendency of the unfair labor practices to cause employee disaffection from the union; and (4) the effect of the unlawful conduct on employee morale, organizational activities, and union membership. *Master Slack* applies where “there is no straight line between the employer's unfair labor practices and the decertification campaign, and the *Master Slack* test must be used to draw one, if it exists.” *SFO Good-Nite Inn, LLC*, 357 NLRB 79, 80 (2011). See also *AIM Aero Sumner, Inc.*, 367 NLRB No. 148 fn. 2 (2019), enfd. 822 Fed. Appx. 585 (9th Cir. 2020). My finding that there is a straight line between Respondent's unlawful conduct and resulting petition obviates the need to apply the *Master*

session. The decertification petitions shows that 13 of the 19 employees who signed did so 5–8 days *before* this session

Based on the totality of the evidence, I conclude Respondent violated Section 8(a)(5) and (1) when it withdrew recognition based on the tainted decertification petition.³⁰ Since the withdrawal of recognition was unlawful, Respondent's subsequent refusal to bargain and unilateral changes to the mandatory subjects of bargaining at issue also violated Section 8(a)(5) and (1). See *Hospital Mononita de Guayama Inc.*, 371 NLRB No. 108 (2022); *St. George Warehouse, Inc.*, 341 NLRB 904 (2004), enfd. 420 F.3d 294 (3d Cir. 2005); *Josten Concrete Prods. Co.*, 303 NLRB. 74 (1991).

Resignation of Marcus Rodriguez

Respondent did not violate Section 8(a)(3) and (1) by causing the discharge of Rodriguez. The General Counsel's theory is Rodriguez was constructively discharged because his resignation was in response to Respondent's withdrawal of recognition and the subsequent unilateral changes to the unit employees' terms and conditions of employment. In *Goodless Electric Co.*, 321 NLRB. 64, 67–68 (1996), enfd. denied on other grounds, 124 F.3d 322 (1st Cir. 2002), the Board held:

Employees who quit work as a consequence of an employer's unlawful withdrawal of recognition from their collective-bargaining representative and unilateral implementation of changes in their terms and conditions of employment have been constructively discharged in violation of Section 8(a)(3) and (1) The theory of this violation is that employees have the statutory right to union representation as well as the contractual benefits negotiated by their representative. They may not be forced to make the Hobson's choice of leaving their jobs or forfeiting their statutory rights in order to remain employed under the working conditions unlawfully set by their employer.

The issue is not whether Rodriguez resigned after Respondent's unlawful withdrawal of recognition and unilateral changes but rather whether he resigned “as a consequence” of that conduct. Rodriguez received an offer from JCI on October 7, which

Slack factors. However, if those factors were applied, the result would be the same because of the serious nature of the violations, including the promises of benefits, unlawful assistance, and direct dealing, a few weeks prior the employees signing the petition. See *Bridgestone/Firestone, Inc.*, 332 NLRB 575, 576 (2000), enfd. in relevant part unpublished 47 Fed. Appx. 449 (9th Cir. 2002) (applying *Master Slack* Board found solicitation of decertification, direct dealing, promise of benefits likely to undermine support for union).

³⁰ The General Counsel also argues the petition was invalid because it relied on (and would fail without) the signatures of the 7 TEs. Respondent contends the parties agreed during negotiations that TEs should be part of the unit, and the evidence indicates the Union solicited certain TEs for membership, invited TEs to its bargaining-related meetings, treated TEs as unit employees, and, most importantly, took bargaining positions on behalf of the TEs. The Union's position was the TEs should have been placed in the unit and subjected to the terms of the CBA at the time of the merger. Respondent was proposing to include them in the unit but for them remain under the TE program. Because I find the petition was directly tainted by Respondent's unfair labor practices, I need not decide this issue.

he later accepted. He testified the “last straw” in his decision to leave Respondent to go work for JCI was Respondent’s direct dealing on or before October 26. That is consistent with JCI’s October 29 letter to Rodriguez confirming his acceptance of its offer and his start date of November 15. As stated, I find that Rodriguez’s decision to resign was made at least as of the date he accepted JCI’s offer, which was *at least a week before* Respondent’s withdrawal of recognition and unilateral changes. Accordingly, I dismiss this allegation.

CONCLUSIONS OF LAW

1. ADT, LLC (Respondent) is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act from its Louisville and Lexington, Kentucky facilities.

2. The International Brotherhood of Electrical Workers, Local Union No. 369, AFL–CIO (Union) is a labor organization within the meaning of Section 2(5) of the Act and the exclusive bargaining representative within the meaning of Section 9(a) of the Act of the following unit of employees:

All full-time and regular part-time employees originally described in the certification dated on January 25, 1971 (Case Number 9-RC-8733) classified by the Employer as residential and small business installers, residential and small business high volume commissioned installers, residential and small business service technicians, employed by the Employer at its facilities in Louisville and Lexington, Kentucky; but excluding all alarm service investigators, relief supervisors, all office clerical employees and professional employees, guards and supervisors as defined in the Act; and excluding all commercial installers and commercial service technicians unless the employees are employed by the Employer and are located at, or are directly supervised by the Employer’s supervisors located at, its Louisville and Lexington, Kentucky facilities.

3. Respondent violated Section 8(a)(5) and (1) of the Act when it failed and refused to bargain collectively and in good faith with the Union when it failed to continue in effect all the terms and conditions of the parties’ collective-bargaining agreement, and thereafter when it failed to maintain the status quo, by failing to deduct and remit dues to the Union for those employees who authorized dues checkoff.

4. Respondent violated 8(a)(5) and (1) of the Act by failing and refusing to bargain collectively and in good faith with the Union

(a) Since about August 25, 2021, by failing and refusing to furnish the Union with the following requested information that is relevant to its’ role as bargaining representative:

- (i) items 2, 9, 10 and 13;
- (ii) the birthdates of bargaining unit employees as set forth in item 1;
- (iii) total number of regular hours actually worked by bargaining unit employees in 2018 and 2019 as set forth in item 3;
- (iv) total number of overtime hours worked by bargaining unit employees broken down by classification for years 2018 and 2019 as set forth in item 4;
- (v) total number of man hours and total cost of each job for work subcontracted out in 2018, 2019, and 2020 as set forth in

item 14.

(b) From about August 25 to about October 8, 2021, Respondent by unreasonably delaying in furnishing the Union with the following information requested by it:

- (i) items 5, 6, 7, 8, 11 and 12;
- (ii) list of all bargaining unit employees that shows hire dates, job classification and rates of pay for each employee as set forth in item 1;
- (iii) total number of regular hours actually worked by bargaining unit employees in 2020 as set forth in item 3;
- (iv) total number of overtime hours worked by bargaining unit employees broken down by classification for the year 2020 as set forth in item 4;
- (v) list of work contracted out in 2018, 2019, and 2020 with start dates and completion dates as set forth in item 14.

5. Respondent violated Section 8(a)(1) and (5) of the Act when, through its supervisors Tony Preston and Eric Sanders, it:

- (a) promised its employees increased benefits and improved terms and conditions of employment if they got rid of the Union;
- (b) solicited the decertification of the Union by telling employees that they would receive the TFE Incentive Program and other benefits if they got rid of the Union;
- (c) promised its employees that it would implement the TFE Incentive Program and other benefits, such as better wages, more vacation time, and performance bonuses, if they got rid of the Union;
- (d) solicited the decertification of the Union by preparing a decertification petition and providing it to employees to sign and to solicit other employees to sign; and
- (e) assisted in the anti-union activities of unit employees by notifying employees of others who wanted to sign the decertification petition.

6. Respondent violated 8(a)(5) and (1) of the Act by failing and refusing to bargain collectively and in good faith when it, through supervisors Tony Preston, Eric Sanders, and Michael Garcia, bypassed the Union and dealt directly with its employees in the Unit by soliciting them to agree to the TFE Incentive Program without the Union’s involvement.

7. Respondent violated 8(a)(5) and (1) of the Act by failing and refusing to bargain collectively and in good faith when it withdrew its recognition of the Union and thereafter failed and refused to bargain with the Union.

8. Respondent has failed and refused to recognize and bargain with the Union before it unilaterally changed the wages for the unit employees, changed how overtime is earned for unit employees, changed the job titles of the unit employees, changed the pay period for unit employees from weekly to biweekly, changed the manner in which the unit employees accrue and use paid time off and vacation, changed the attendance policy for the unit employees; and applied the TFE incentive program to the unit employees.

9. These unfair labor practice affect comer within the meaning of Section 2(6) and (7) of the Act.

10. I dismiss the remaining allegations concerning Mark Frazier and Marcus Rodriguez

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. The Respondent shall be ordered to: (1) immediately recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the bargaining unit; (2) at the Union's discretion and upon its request, rescind any or all of the unilateral changes in terms and conditions of employment made since the withdrawal of recognition; (3) upon request of the Union, restore the status quo as it existed as of the expiration of the parties' collective-bargaining agreement; (4) provide the Union with the outstanding requested information described herein, (5) deduct and remit dues to the Union for those who authorized dues checkoff, and (6) make bargaining unit employees whole for any losses that occurred as the result of the Respondent's imposition of the unilateral changes.

Moreover, Respondent shall make employees and the Union whole for any losses sustained as a result of its unlawful unilateral changes in the manner prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), as well as all direct or foreseeable pecuniary harms employees suffered as a result of those changes as prescribed in *Thryv, Inc.*, 372 NLRB No. 22 (2022), plus interest as set forth in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In addition, we shall order the Respondent to compensate employees for any adverse tax consequences of receiving lump-sum backpay awards, and to file with the Regional Director for Region 9, 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 as required by *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016). We shall also order the Respondent to file with the Regional Director for Region 9 a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award as required under *Cascades Containerboard Packaging—Niagara*, 370 NLRB No. 76 (2021), as modified in 371 NLRB No. 25 (2021).

The General Counsel seeks additional remedies, including a broad cease-and-desist order, a bargaining order, and a notice reading. The Board has held a broad cease-and-desist order is appropriate where 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 ... fundamental statutory rights." *Hickmott Foods*, 242 NLRB 1357 (1979). As outlined, Respondent has a history of committing similar violations of the Act in derogation of its bargaining obligation. The Board recently issued a broad cease-and-desist order against Respondent involving similar allegations. *ADT, LLC*, 371 NLRB No. 67 (2022), enf. 2022 U.S. App. LEXIS 33453, ___ F.4th ___ (7th Cir. 2022). Based on Respondent's extensive history of violations like those at issue in this case, I conclude

³¹ If no exceptions are filed, as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be waived for all purposes.

such an order is warranted. See *Apex Linen Service, Inc.*, 370 NLRB No. 75 (2021).

Additionally, based on the nature of violations and Respondent's history, I shall order Respondent to bargain with the Union over a successor collective-bargaining agreement for a period of not less than 1 year. If an understanding is reached, Respondent must sign an agreement concerning the terms and conditions of employment. A bargaining order serves the policies of the Act by fostering meaningful collective bargaining and industrial peace. It removes the Respondent's incentives to delay bargaining in the hope of further discouraging support for the Union. It also ensures the Union will not be pressured by the possibility of a decertification petition or by the prospect of imminent withdrawal of recognition to achieve immediate results at the bargaining table following the Board's resolution of its unfair labor practice charges. Additionally, allowing another challenge to the Union's majority status without a reasonable period for bargaining would be unjust because the Union needs to re-establish its relationship with unit employees, who have already been without the benefits of union representation for over a year. These circumstances outweigh the temporary impact the affirmative bargaining order will have on the rights of unit employees who continue to oppose union representation.

Lastly, for the reasons stated above, the Respondent shall be ordered to have a representative read the attached remedial notice to the employees in English during worktime, at a meeting, or meetings, scheduled to ensure the widest possible attendance, in the presence of a Board agent. See, e.g., *Apex Linen Service, Inc.*, supra slip op. at 3, 48 (imposing notice-reading remedy based in part on respondent's recidivism); *Richfield Hospitality, Inc.*, 369 NLRB No. 111, slip op. at 5 (2020) (same); *Sprain Brook Manor Rehab, LLC*, 365 NLRB No. 45, slip op. at 4, 60 (2017) (same).

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended. ³¹

ORDER³²

Respondent, their officers, agents, and representatives, shall:

1. Cease and desist from

(a) (Refusing to recognize and bargain in good faith with the Union in the following unit of employees:

All full-time and regular part-time employees originally described in the certification dated on January 25, 1971 (Case Number 9-RC-8733), classified by the Employer as residential and small business installers, residential and small business high volume commissioned installers, residential and small business service technicians, employed by the Employer at its facilities in Louisville and Lexington, Kentucky; but excluding all alarm service investigators, relief supervisors, all office clerical employees and professional employees, guards and supervisors as defined in the Act; and excluding all commercial

³² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

installers and commercial service technicians unless the employees are employed by the Employer and are located at, or are directly supervised by the Employer's supervisors located at its Louisville and Lexington, Kentucky facilities. If during the terms of this Agreement the Employer relocates the covered employees from Louisville or Lexington, Kentucky office to another, this provision shall apply to the new office.

(b) Refusing to provide or delaying in timely providing requested information to the Union that is necessary and relevant to its role as collective-bargaining representative of the unit employees.

(c) Promising employees increased benefits and improved terms and conditions of employment if they got rid of the Union.

(d) Soliciting the decertification of the Union by telling employees that they would receive the TFE Incentive Program and other benefits if they got rid of the Union.

(e) Promising employees that it would implement the TFE Incentive Program and other benefits, such as better wages, more vacation time, and performance bonuses, if they got rid of the Union.

(d) Soliciting the decertification of the Union by preparing a decertification petition and providing it to employees to sign and to solicit other employees to sign.

(e) Assisting in the anti-union activities of unit employees by preparing and providing a decertification petition for employees to sign and circulate for others to sign and notifying employees of others who wanted to sign the decertification petition.

(f) Bypassing the Union as the exclusive collective-bargaining representative of unit employees and dealing directly with them regarding their wages and other terms and conditions of employment.

(g) Making changes to the terms and conditions of employment of the unit employees without first bargaining with the Union until either a collective-bargaining agreement or a good faith overall impasse is reached.

(h) Failing to continue in effect all the terms and conditions of any collective-bargaining agreement in effect with the Union.

(i) In any other manner interfering with, restraining or coercing employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the Union or any other labor organization, 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, or to refrain from any and all such activities.

2. Take the Following Affirmative Action Necessary to Effectuate the Policy of the Act.

(a) Recognize and, on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees concerning terms and conditions of employment.

(b) Bargain collectively and in good faith with the Union for

a new collective bargaining

agreement for a period of time comprising no less than a year and reduce any agreement reached to writing.

(c) Provide the Union with the outstanding information it requested on August 25, 2021.

(d) On request by the Union, rescind any changes in the unit employees' terms and conditions of employment that were unilaterally implemented on and after November 9, 2021.

(e) Make unit employees whole, with interest, for any loss of earnings or other benefits they may have suffered, including any direct or foreseeable pecuniary harms suffered, as a result of Respondent's unilateral changes in terms and conditions of employment.

(f) Compensate affected employees for the adverse tax consequence, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 9, within 21 days of the date the amount of backpay is fixed, a report allocating the backpay awards to the appropriate calendar years for each employee.

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

(h) File with the Regional Director for Region 9, within 21 days of the date the amount of backpay is fixed or such additional time as the Regional Director may allow for good cause shown, a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.

(i) Make the Union whole for any dues it failed to deduct and transmit under the terms of the 2018-2021 CBA, as well as failing to maintain the status quo regarding dues after the CBA expired.

(j) Within 14 days of service by the Region: Post at its 2115 Stanley Gault Parkway, Louisville, Kentucky 40223 and 2456 Fortune Drive, Lexington, Kentucky 40509 locations a copy of the attached Notice to Employees³³ on forms provided by Region 9, after being signed by Respondent's authorized representative, for a period of sixty (60) days in conspicuous places, including in all places where Respondent normally posts notices to its employees. Respondent will take reasonable steps to ensure that the notices are not altered, defaced or covered by any other material. In addition to the physical posting of paper notices, Respondent shall distribute the notices by email and by mail, at its own expense, to all employees employed by Respondent in Louisville and Lexington, Kentucky.

(k) Within 21 days after service by the Region, Respondent shall submit one signed and Sworn Certification of Compliance, Part 1 form certifying that it has completed with this Order by

within 14 days after the facilities reopen and a substantial complement of employees have returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic

³³ If the facilities involved in these proceedings are open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facilities involved in these proceedings are closed or not staffed by a substantial complement of employees due to the COVID-19 pandemic, the notice must be posted

providing the dates and specific locations (i.e., break room bulletin board) where Respondent posted the notice at its Louisville and Lexington locations and the dates Respondent emailed and mailed the notice to its employees employed at its Louisville and Lexington locations at any time since August 25, 2021.

(l) Respondent shall hold a meeting or meetings, scheduled to ensure the widest possible attendance on each shift, at which a responsible management official of the Respondent will read the Notice in English and in additional languages if the Regional Director decides that it is appropriate to do so, in the presence of a Board agent and a representative of the Union. The reading will take place at a time when Respondent would customarily hold meetings and must be completed between the beginning of the posting period and prior to the completion of the 60-day Notice posting period. The date(s) and time(s) of the reading must be approved by the Regional Director. The announcement of the meeting will be in the same manner that Respondent normally announces meetings and must be approved by the Regional Director. The Notice will be read in English.

Dated, Washington, D.C., December 23, 2022.

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT do anything to interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL NOT fail or refuse to bargain with the International Brotherhood of Electrical Workers, AFL-CIO (IBEW), Local Union 369 (Union), which is the exclusive collective-bargaining representative of our employees in the following appropriate unit (unit employees):

All full-time and regular part-time employees originally described in the certification dated on January 25, 1971 (Case Number 9-RC-8733), classified by the Employer as residential and small business installers, residential and small business high volume commissioned installers, residential and small business service technicians, employed by the Employer at its facilities in Louisville and Lexington, KY; but excluding all alarm service investigators, relief supervisors, all office clerical employees and professional employees, guards and supervisors as defined in the Act; and excluding all commercial installers and commercial service technicians unless the employees are

employed by the Employer and are located at, or are directly supervised by the Employer's supervisors located at, Its Louisville and Lexington, Kentucky facilities. If during the terms of this Agreement the Employer relocates the covered employees from Louisville or Lexington, Kentucky office to another, this provision shall apply to the new office.

WE WILL NOT tell you that you need to get rid of the Union if you want to get the wages, benefits and other terms that we provide to employees at our nonunion facilities.

WE WILL NOT promise to give you increased wages, better benefits such as vacation time and other improved terms if you get rid of the Union.

WE WILL NOT promise to place you under the TFE incentive program and give you other benefits if you get rid of the Union.

WE WILL NOT prepare or provide you with a decertification petition to get rid of the Union.

WE WILL NOT ask you to sign a petition to get rid of the Union or to gather signatures from other employees get rid of the Union.

WE WILL NOT assist you with gathering signatures on a decertification petition.

WE WILL NOT refuse to provide or unreasonably delay in providing the Union with information that is relevant and necessary to its role as your bargaining representative.

WE WILL NOT stop recognizing the Union as the exclusive collective-bargaining representative of our unit employees without proof that an actual majority of those employees no longer support the Union.

WE WILL NOT rely on a decertification petition that we asked employees to sign and circulate as proof that a majority of unit employees no longer support the Union.

WE WILL NOT refuse to meet and bargain in good faith with the Union.

WE WILL NOT make any changes to your wages, hours, benefits, and other terms and working conditions without first bargaining to an agreement with the Union or reaching an overall good-faith impasse.

WE WILL NOT fail or refuse to deduct and remit authorized dues in accordance with any effective collective-bargaining agreement in place between us and the Union, including following the expiration of such agreement.

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

WE WILL recognize the Union as the exclusive collective-bargaining representative of the Unit and WE WILL bargain collectively and in good faith with the Union for a new collective-bargaining agreement for a period of time comprising no less than a year and reduce any agreement reached to writing.

WE WILL compensate in full the Union for any dues that we failed to deduct and transmit as required by our 2018-2021 collective-bargaining agreement with it, including dues that were payable after the expiration date of the collective-bargaining agreement.

WE WILL provide the Union with the outstanding information it requested on August 25, 2021.

WE WILL, if requested by the Union, rescind any changes that

we implemented after we withdrew recognition from the Union, including the changes to compensation, overtime, paid time off, vacation, job titles, pay periods, and the attendance policy that were unilaterally implemented on and after November 9, 2021.

WE WILL, if requested by the Union, rescind any specific changes to your terms and conditions of employment that we unilaterally implemented. If the Union so requests, we will rescind certain portions of the incentive programs that we unilaterally implemented for employees in the Unit, while retaining other aspects.

WE WILL make you whole for the wages and for the benefits that were lost or decreased, including for all direct or foreseeable pecuniary harms suffered, because of the changes in terms and conditions of employment that we made without bargaining with the Union.

WE WILL file with the Regional Director for Region 9 a copy of each backpay recipient's corresponding W-2 form(s) reflecting his or her backpay award.

WE WILL compensate affected employees for any adverse tax consequences of receiving lump-sum backpay awards, and WE

WILL file with the Regional Director for Region 9 within 21 days of the date the amount of backpay is fixed, a report allocating the backpay awards to the appropriate calendar year for each employee.

ADT, LLC

The Administrative Law Judge's decision can be found at <https://www.nlr.gov/case/09-CA-286231> 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.

