UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

STAR WEST SATELLITE, INC.

and

Cases 19-CA-075668
19-CA-079146
19-CA-081100
19-CA-084574
19-CA-085363
19-CA-087901
19-CA-089342
19-CA-095359
19-CA-096706
19-CA-098734
19-CA-098762
19-CA-101000
19-CA-101028

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 206 affiliated with INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO

Adam D. Morrison, Esq., Spokane, WA, for the Acting General Counsel.
George Basara, Esq., Pittsburgh, PA, for the Respondent.

DECISION

Statement of the Case

Gregory Z. Meyerson, Administrative Law Judge. Pursuant to notice, I heard this case in Boise, Idaho on June 4, in Spokane, Washington on July 23, and in Missoula, Montana on July 25 and July 29, 2013. This case was tried following the issuance of an Order Further Consolidating Cases, Amended Consolidated Complaint and Notice of Hearing (the complaint) by the Regional Director for Region 19 of the National Labor Relations Board (the Board) on April 29, 2013. The complaint was based on a number of original and amended unfair labor practice charges, as captioned above,[1] filed by International Brotherhood of Electrical Workers Local 206 affiliated with International Brotherhood of Electrical Workers, AFL-CIO (the Union or the Charging Party). The complaint alleges that Star West Satellite, Inc. (the Respondent, the Employer, or Star West) violated Sections 8(a)(1), (3), and (5) of the National Labor Relations

[1] The General Counsel's formal documents, G.C. Ex.1, establish the filing and service of the enumerated charges as alleged in the complaint.

Act (the Act). The Respondent filed a timely answer to the complaint denying the commission of the alleged unfair labor practices.[2]

All parties appeared at the hearing, and I provided them with the full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to argue orally and file briefs. Based on the record, my consideration of the briefs filed by counsel for the Acting General Counsel and counsel for the Respondent, and my observation of the demeanor of the witnesses,[3] I now make the following findings of fact and conclusions of law.

FINDINGS OF FACT

I. Jurisdiction

The complaint alleges, the Respondent's answer admits, and I find that at all times material herein, the Respondent has been a Montana corporation with various offices and places of business in the States of Washington, Idaho, and Montana where it has engaged in the business of servicing, installing, and repairing satellite television systems. Further, I find that during the 12-month period ending April 29, 2013, the Respondent, in conducting its business operations just described, derived gross revenues in excess of $500,000; and during the same period of time, performed services valued in excess of $50,000 directly for customers located outside the State of Montana.

Accordingly, I conclude that the Respondent is now, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. Labor Organization

The complaint alleges, the answer admits, and I find that at all times material herein, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. ALLEGED UNFAIR LABOR PRACTICES

A. Background Facts and the Dispute

The Respondent is a regional service sub-contractor for the Dish Network, a nation-wide internet provider, which performs satellite television installation and service work under contract for Dish Network. The Respondent operates 11 offices in the States of Montana, Idaho, and Washington, and at the time of the hearing it employed approximately 180 technicians. The Respondent and the Union have had a short but contentious relationship.

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[2] All pleadings reflect the complaint and answer as those documents were finally amended at the hearing.

[3] The credibility resolutions made in this decision are based on a review of the testimonial record and exhibits with consideration given for reasonable probability and the demeanor of the witnesses. See *NLRB v. Walton Manufacturing Company,* 369 U.S. 404, 408 (1962). Where witnesses have testified in contradiction to the findings herein, I have discredited their testimony, as either being in conflict with credited documentary or testimonial evidence, or because it was inherently incredible and unworthy of belief.

The Union began organizing the Respondent's technicians in March 2010. On November 10, 2010, the Union filed a petition with the Board for an election to represent the Respondent's technicians at all its facilities in Montana, Idaho, and Washington. (G.C. Ex. 6) Subsequently, the Union filed numerous unfair labor practice charges against the Respondent, which charges resulted in the issuance of a complaint by the Regional Director on March 11, 2011. (G.C. Ex. 7) On April 12, 2011, the Union and the Respondent entered into an informal Board settlement agreement, subsequently approved by the Regional Director, which agreement settled the outstanding unfair labor practice charges, requiring the Respondent to take certain affirmative action. That settlement agreement did contain a non-admissions clause. (G.C. Ex. 8)

A representation election among the Respondent's technicians and warehouse employees was conducted by the Board on September 7 and 8, 2011, with the ballots counted on September 14, 2011. As is reflected on the Tally of Ballots dated September 14, 2011, a majority of the Respondent's employees voted to be represented by the Union. (G.C. Ex. 9) Following the election, the Respondent filed objections to the election, which objections were subsequently dismissed by the Board. On December 15, 2011, the Board issued a Certification of Representation certifying the Union as the exclusive collective bargaining agent of the Respondent's technicians and warehouse employees. (G.C. Ex. 10)

According to the unrebutted testimony of Union Organizer William Kniffin, on January 5, 2012, he hand delivered two letters to the Respondent's owner, Pete Sobrepena. One letter requested that the Respondent begin bargaining, and it included a demand that the Respondent refrain from making any unilateral changes to the represented employees' wages, hours, or working conditions. (G.C. Ex.11) In the second letter, the Union requested a list of the names of those employees in the bargaining unit, their office locations, seniority dates, contact information; and also requested copies of all written company personnel policies, practices, and procedures that were in effect as of December 15, 2011, the date of the Union's certification. (G.C. Ex. 12)

Kniffin testified that when he presented the two letters to Sobrepena, he was orally informed by Sobrepena that the Respondent was challenging the certification and would not be bargaining with the Union pending the resolution of this matter. Again, this testimony was unrebutted. Subsequently, the Union filed a refusal to bargain charge with the Region, after which a complaint was issued. The General Counsel filed a motion for summary judgment, which the Board granted on May 23, 2012, ordering the Respondent to recognize and bargain with the Union.[4] (G.C. Ex. 13.)

At the time of the hearing in the case at hand, it was noted that the Respondent had recognized the Union and commenced bargaining. However, it is unclear precisely when that bargaining began and how many sessions were held. Further, Kniffin testified that the requested information was ultimately provided by the Respondent, around October of 2012. To date, no evidence has been offered to establish that the parties have reached agreement on the terms of an initial contract.

It is the position of the General Counsel that during the period from the issuance of the Tally of Ballots to the time the hearing commenced that the Respondent made numerous unlawful unilateral changes in the wages, hours, and working conditions of the represented employees. Allegedly, these actions were taken without notification to and bargaining with the

[4] *Star West Satellite, Inc.,* 358 NLRB No. 44 (2012)

Union, in violation of Section 8(a)(1) and (5) of the Act. Further, the General Counsel contends that the Respondent took certain discriminatory adverse action against certain of its employees because of their union activity and membership, in violation of Section 8(a)(1) and (3) of the Act. The Respondent denies having engaged in any such unlawful action.

B. The Use of Subcontractors

It is undisputed that the Respondent has historically used subcontractors in operating its business. These subcontractors essentially perform the same type of work as the bargaining unit technicians. Derek Bieri, who is employed as the Respondent's Operations Manager, testified that the utilization of subcontractors is part of the Respondent's business model. It is a common practice in this industry. Dish Network (Dish) is aware that the Respondent utilizes subcontractors to provide some technicians, and it accepts that fact as necessary for the operation of the Respondent's business. However, according to Bieri, Dish does require that the Respondent also employs its own work force of technicians. Bieri said that the Respondent uses subcontractors to supplement its work force as needed.

Bieri, and also many of the technicians who appeared at the trial on behalf of the General Counsel, testified that the use of subcontractors varies greatly from location to location among the Respondent's 11 facilities and also varies greatly throughout the course of the year. Bieri testified that there are some of the Respondent's facilities where there have been almost no subcontractors used, such as Bozeman and Helena. According to Bieri, this is because at those locations where ample technicians are available as employees to cover the assigned work, it is not necessary to use subcontractors. Typically, Dish makes assignments from a central location directing which technician is to perform which specific job. Dish determines unilaterally how many work orders to send to the Respondent on any given day, and it is the responsibility of the Respondent to have an adequate number of technicians, whether employees or subcontractors, available to perform this work. The Respondent will only rearrange job assignments after they have been made by Dish when special circumstances require it, such as where Dish has not taken into considerations local weather conditions that may result in highways being closed, especially in mountainous areas in the winter.

It is very important to note that Bieri's unrebutted testimony was that the Respondent is always hiring technicians. According to Bieri, it is very difficult to hire employees with the willingness and aptitude for learning the trade to work as a technician installing telecommunications equipment. It is only because the Respondent cannot hire enough technicians to perform the work assigned by Dish that it is forced to use some subcontractors.

Bieri testified at length regarding the nature of the Respondent's business and its need to have subcontractors available. This testimony was not contradicted by any of the many technicians who testified on behalf of the General Counsel. According to Bieri, subcontractors are a necessary part of the Respondent's business because they fill in the gaps during peaks and valleys in its business. The Respondent has no idea how many jobs will be assigned to it by Dish each and every day. The Respondent simply receives work orders for installation and repair work from Dish on a daily basis, and these orders are distributed by Dish among the available technicians and subcontractors. There is almost no participation by the Respondent into who is assigned which specific job. Of particular significance is the fact that the number of jobs that are distributed each day by Dish varies greatly. These variations can be considerable and are caused by such factors as whether Dish is running a promotional campaign in a particular geographic location, and whether football season is approaching, which typically motivates many consumers to sign up for Dish's service.

Further, Bieri explained that in order for the Respondent to have available subcontractors willing to work when called upon to do so, it was necessary for the Respondent to see that there were sufficient job opportunities for subcontractors to work, even in those periods when work was slow. If subcontractors were utilized exclusively when work was heavy, they would not be available since at other times of the year, with no work available, they would migrate to other, more consistent work. Finally, Bieri testified that over time, there has been some movement back and forth between technicians and subcontractors. Some technicians have left the Respondents employ and returned as subcontractors, while in some cases subcontractors have been hired as technicians. Those technicians with an entrepreneurial spirit may try going into business for themselves, and, so, sometimes become subcontractors used by the Respondent.

Complaint paragraphs 6(a), 6(b), and 9 charge that since early January 2012, the Respondent has increased the amount of unit work subcontracted to other employers because the Respondent's technicians joined and assisted the Union, in violation of Section 8(a)(3) of the Act. Concomitantly, complaint paragraphs 7(a) and 10 allege that in early January 2012, the Respondent unilaterally increased the amount of unit work subcontracted to other employers without notifying and bargaining with the Union, in violation of Section 8(a)(5) of the Act.

In attempting to establish the allegation that since the representation election the Respondent has increased its use of subcontractors, counsel for the General Counsel questioned a number of technicians regarding their perception of whether this was so. While a number of these witnesses testified that the Respondent had increased its use of subcontractors, in every instance this was based simply on anecdotal evidence. They were certainly not privy to any hard, empirical evidence of such an increase. Further, on cross-examination by counsel for the Respondent, many of these technicians testified that the industry has "peaks and valleys" throughout the course of the year, some anticipated and others not. For instance, it was generally predictable that in the months leading up to the start of football season the number of installations would increase. However, it was much harder to predict an increase in orders based upon a promotion that Dish might run.

Most significant, there was no testimony as would establish that in the approximately 19 months between the issuance of the Tally of Ballots in September of 2011 and the issuance of the complaint in April of 2013 that there was any sort of significant reduction in the number of bargaining unit technicians. During the hearing on July 29, 2013, Operations Manager Bieri testified that there were currently 180 technicians employed by the Respondent. The Tally of Ballots shows the approximate number of eligible voters as 198.[5] (G. C. Ex. 9) While this is not an exact figure, it is presumably reasonably accurate, and would show a decline of approximately 10% in technicians during the period in question. In my view, this would certainly not establish a statistically significant reduction in unit technicians during the course of this lengthy period, especially considering the ebb and flow of the business.

Counsel for the General Counsel attempts to establish this violation through means of various graphs and charts, as is reflected in his exhibits 20 through 23. (G.C. Ex. 20-23) The graphs and charts are allegedly based on certain raw data subpoenaed from the Respondent. However, counsel fails to call any expert witness to analyze the underlying raw data and to

[5] This figure would include warehouse employees. While the record is devoid of any reference to the specific number of warehouse employees in the Unit, clearly there are some, which would mean that there were actually less than 198 technicians in the Unit as of the date of the election.

testify about the graphs and charts allegedly supported by that data. Counsel for the General Counsel attempts to serve as his own expert, analyzing the exhibits himself in his post-hearing brief. While I intend no disrespect towards counsel for the General Counsel, he is not an expert witness, nor a witness of any kind, and although he appears to have worked mightily in preparing the graphs and charts, I am uncertain regarding what they really show.

As is reflected in their respective briefs, counsel for the Respondent and counsel for the General Counsel argue that these exhibits, at least in part, support their respective and contrary positions. According to counsel for the Respondent, the graphs and charts show that the increase in the number of subcontractors was actually very small and not statistically significant. Further, counsel points out that finding a pattern of conduct is difficult in this case because the Respondent operates from 11 separate offices, each of which has a different history of subcontracting, from none to significant. Even further complicating the picture is the fact that both technicians and subcontractors are awarded a certain number of "points" by Dish, based in part on the level of complexity of the install or repair job that they are performing. Generally, the more complex the job, the more "points" it is awarded and the more time it takes to complete the assignment.[6] Thus, it is inadequate to compare simply numbers of technicians to numbers of subcontractors, as it is analogous to comparing apples and oranges. Without knowing the type of job being performed and the degree of complexity, it is not possible to get a sense of whether the true ratio of technicians to subcontractors is going up or down.

As I said, both counsel for the General Counsel and counsel for the Respondent argue that certain of the documents support their respective positions. In any event, I find the data, graphs, and charts confusing, contradictory, and far from illuminating, definitive, or dispositive of the issue before me. In this regard, I am reminded of that famous quote by Mark Twain that, "There are lies, damn lies, and statistics."

Rather than rely upon the documents (raw data, graphs, and charts), which, as I have indicated, are confusing and subject to various conflicting interpretations, I have decided to rely on the unrebutted testimony of Operations Manager Derek Bieri, whose testimony I found credible. Bieri testified in a no nonsense manner, displaying a historical knowledge of the Respondent's business operation and model, having been employed by the Respondent since March of 2010. In his current position he oversees all of the Respondent's operations. He gave me the impression of testifying truthfully, without rancor or undue emotion. While as a high ranking manager he is clearly biased in favor of the Respondent, I saw nothing in his testimony as would indicate that he was allowing his prejudice in favor of the Respondent to color his testimony. I find his testimony that the Respondent has not significantly increased its subcontracting of unit work since the Tally of Ballots issued to be credible, probative, and dispositive of the issue before me. Therefore, I find that since the Tally of Ballots issued, there has been no change, unilateral or otherwise, in the Respondent's historical use of subcontractors to supplement its work force of technicians.

Based on the above, I conclude that counsel for the General Counsel has failed to meet his burden of proof and failed to establish by a preponderance of the evidence that since January 2012 the Respondent has increased the amount of unit work subcontracted to other employers.[7] Accordingly, I shall recommend to the Board that complaint paragraphs 6(a), (b), and 7(a), and, to the extent that it relates to them, paragraphs 9 and 10 be dismissed.

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[6] While not entirely clear to the undersigned, it appears that in part the compensation awarded to a technician or subcontractor is based on this "point" system.

[7] As I have found that the General Counsel has failed to establish that the Respondent

Continued

C. Personal Protective Equipment

It is alleged in complaint paragraphs 7(b) and 10 that since early January 2012, the Respondent has implemented a new safety policy concerning the use of personal protective equipment without negotiating with the Union.

It is has been long established by the Board and the courts that once employees choose to be represented by a union, an employer is prohibited from making any changes to their wages, hours, and working conditions without bargaining with the union. *See NLRB v. Katz,* 369 U.S. 736 (1962); *Our Lady of Lourdes Health Center,* 306 NLRB 337 (1992). When the parties are negotiating for a collective bargaining agreement, particularly an initial collective bargaining agreement, an employer has more than just a duty to provide notice to the union and an opportunity to bargain, it must also refrain from implementing any changes, absent impasse on bargaining for the agreement as a whole. *See Bottom Line Enterprises,* 302 NLRB 373, 374 (1991).

In an initial election and certification situation, an employer's duty to bargain in good faith, including its duty to refrain from making unilateral changes, commences as soon as the Tally of Ballots issues and the employer has clear knowledge that the majority of employees have chosen to be represented by the union, regardless of whether objections are filed or when the certification of representation eventually issues. *See Palm Beach Metro Transportation, LLC,* 357 NLRB No. 26 (2011) (absent "compelling economic considerations, an employer acts at its peril by unilaterally changing working conditions during the pendency of election issues and where the final determination has not yet been made. And where the final determination of the objections results in the certification of representative, the Board will find the employer to have violated Section 8(a)(1) and (5) of the Act for having made such unilateral changes"). Therefore, in the case before me, the Respondent's duty to bargain in good faith, including its obligation to refrain from making any unilateral changes, commenced on September 14, 2011, when it received the Tally of Ballots and learned that a majority of its unit employees chose to be represented by the Union. (G.C. Ex. 9)

The unrebutted record evidence established that in January of 2012 the Respondent unilaterally implemented a new safety policy. It is uncontested from the testimony of Union Organizer Kniffin that the Respondent did not seek to bargain over this matter prior to making the change. The testimony of various technicians established that under the new policy, the Respondent began requiring its technicians to wear hard hats and safety glasses when working on a job, and requiring warehouse employees to wear back braces when working. This had never been required in the past.

Contrary to the assertion of counsel for the Respondent in his brief, clearly the wearing of hard hats, safety glasses, and back braces affects the working conditions of the employees. Further, the fact that the Respondent paid for this safety equipment and the assertion that the wearing of such equipment was in the interest of the employees does not alter the fact that the requirement, which was a unilateral change in past practice, was unlawful.

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increased the amount of unit work subcontracted to other employers, it is unnecessary for me to resolve the General Counsel's subordinate contentions that the Respondent failed to negotiate with the Union over the issue of subcontracting or that any such decision was based on union animus.

The Board has held that the use of and a work rule requiring the use of safety and personal protection equipment are mandatory subjects of bargaining. *See AK Steel Corp.,* 324 NLRB 173 (1997) (requiring steel toed boots is a mandatory subject of bargaining) Further, the fact that the requirement may make the work place safer does not relieve the Respondent of the legal requirement to negotiate with the Union prior to making such changes. *Northside Center for Child Development,* 310 NLRB 105, 105 (1993) (prohibiting guards from carrying fire arms is a mandatory subject of bargaining, and it is not relevant whether the change ultimately makes the workplace safer).

Therefore, the Respondent was required to notify and negotiate with the Union representing its employees prior to requiring them to wear safety equipment, which was a change from its past practice. It failed to do so. Accordingly, I find that the Respondent has violated Section 8(a)(1) and (5) of the Act, as alleged in complaint paragraphs 7(b) and10.

D. Pay Dates

Complaint paragraphs 7 (d) and 10 allege that on January 18 and May 4, 2012, the Respondent unilaterally changed its pay dates for bargaining unit employees without negotiating with the Union in violation of Section 8(a)(1) and (5) of the Act.

In a memorandum dated December 29, 2011, the Respondent announced to its employees that it was implementing a new pay cycle starting in 2012. As a result of that new cycle, the employees would be paid for the first pay period on Wednesday January 18, 2012. (G.C. Ex. 15) Technician Levi Billman testified that under the prior pay cycle, the employees would have been paid on the previous Friday, which was January 13, 2012. This testimony was unrebutted. Further, several technicians testified about and the Respondent's answer to the complaint admitted that there was a second pay day change on May 4, 2012. Significantly, Union Organizer William Kniffin testified that the Respondent never negotiated with the Union prior to altering the established pay dates for its represented employees.

In his post-hearing brief, counsel for the Respondent refers to a document entitled "Personnel Policies and Procedures" with the subheading "Pay." This document has a revision date of September 1, 2008, and was allegedly distributed company-wide.[8] (Res. Ex. 3, p. 1) Of course, the policy was approximately three years old at the time of the events in question. The document attempts to define "pay cycles" and "pay practices." According to counsel, the document gives management the unfettered right to unilaterally change the pay day with every new year. For this reason, and also because he contends any monetary loss to employees caused by the change in the pay cycle in 2012 was *de minimus,* counsel argues there was no obligation on the part of the Employer to bargain with the Union prior to making changes in the employee pay date and, thus, no violation of the Act.

I found the document in question confusing. I do not see any specific reference to employees' pay day in the document. Further, I do not see where it references, as claimed by counsel, the Employer's authority to change pay dates from year to year. Accordingly, the probative evidence shows that in 2012 the Respondent unilaterally changed the pay day for its employees at least twice. This action was taken by the Respondent without notification to and bargaining with the Union. The fact that the unit employees may not have sustained any significant monetary loss is not relevant. The Respondent had an obligation to bargain with the

[8] Apparently, the Respondent's "Personnel Policies and Procedures" documents collectively comprise its Employee Handbook.

Union prior to making any unilateral changes affecting the unit employees' wages, hours, and working conditions, which clearly included what specific day employees were paid. Not having done so, I conclude that the Respondent violated Section 8(a)(1) and (5) of the Act, as alleged in complaint paragraphs 7(d) and 10.

E. Remote Technicians' Travel Pay and Reimbursement

It is alleged in complaint paragraphs 7(e) and 10 that in early February 2012, the Respondent unilaterally changed its policies concerning the travel pay and mileage reimbursement awarded to remote technicians without negotiating with the Union in violation of Section 8(a)(1) and (5) of the Act.

The record evidence established that remote technicians are bargaining unit technicians who work from their homes, rather than from one of the Respondent's designated 11 offices. The remaining technicians each work from one of those designated offices. A number of remote technicians testified that they live a considerable distance from the nearest office, in most instances forty miles or more. The remote technicians testified that the Respondent requires them to travel to the nearest office at least once a week to attend mandatory meetings and to replenish their supplies.

The testimony regarding whether the remote technicians were paid for time and mileage from their homes to the nearest office was fairly consistent. Chad Ford, a former employee of the Respondent who had previously worked as a remote technician, testified that on those weekly occasions when he was required to drive to the nearest office from home, he was paid by the Respondent both for his time and mileage. However, in February of 2012, the policy changed. According to Ford, he was required to sign a paper that indicated that remote technicians would not be paid for their time and mileage from their homes to the office and vice versa. (G.C. Ex. 17) Thereafter, he received no compensation or reimbursement for his required trip from home to the office and from the office to his home. A number of other remote technicians testified similarly.

Emmitt McCray, formerly an employee of the Respondent as both a regular and a remote technician, testified that when employed as a remote technician he was initially paid both for his time and mileage reimbursement when he was required on a weekly basis to report to the nearest office. He was compensated in this way by the Respondent from May 2011 until February or March of 2012 when the Respondent ceased the practice. According to McCray, he learned that the Respondent was no longer paying remote technicians for their time and mileage in commuting to and from the office for mandatory attendance when he received his pay stub, which stub reflected the lack of compensation, along with a memorandum that specifically indicated that remote technicians would not be paid for travel time to and from the office. (G.C. Ex. 28) Further, he testified that at about the same time Parker Estes, the manager of the Post Falls, Idaho office to which McCray was assigned, held a meeting for the technicians during which he said essentially the same thing as was reflected in the memorandum, namely that remote technicians would no longer be compensated for trips from home to the office and vice versa.

Similarly, Curtis Ward, a current remote technician, testified that when he was hired and assigned to the Respondent's Kalispell, Montana office he was told by Steve Purkey, the manager of that office, that he would be paid for his time for trips from home to the office and back for mandatory meetings and to pick up equipment. He was not to be paid mileage reimbursement as he was driving a company car. However, in February of 2012, the policy changed and he was no longer compensated for this travel. He was informed of this change by

Ron Powers, the new manager of the Kalispell office. It is interesting to note that according to Ward, as of June 26, 2013, the Respondent has returned to the practice of paying him for his mandatory travels to and from the office.

Rick Baum, a former employee of the Respondent who had previously worked as an Assistant Field Services Manager in the Nampa, Idaho office, testified that he was employed by the Respondent from January 2013 until early May of this year. According to Baum, during the period of his employment the remote technicians were not paid for their mileage or for the time spent driving from home to the office and vice versa for their attendance at mandatory meetings. While counsel for the Respondent in his post-hearing brief makes it seem that this testimony is inconsistent with that given by the remote technicians, this is not correct. All that Baum did was to confirm the testimony of the remote technicians that by the date of his employment the Respondent had discontinued the practice of compensating them for their mandatory travel to and from the office.

In his post-hearing brief, counsel for the Respondent relies heavily upon a document entitled "Personnel Policies and Procedures," where under the subheading "Pay," further subheading '"Technician "Work" Time,"' further subheading "(iii) Travel time," it states: "1. Travel from Home to Work-travel from home to the worksite (either STAR WEST facility or the first customer's home) in the morning, and travel from the worksite to home in the evening **is not** work time." (emphasis as in original) (Res. Ex. 3, p. 28-29) This document contains a revision date of September 1, 2008, and indicates distribution company-wide. Counsel argues that this document shows that as early as 2008 the Respondent had established a policy that remote technicians are not paid for travel to and from the office, and that said policy had been consistently maintained by the Respondent since that date, even if certain remote technicians ignored that policy and were mistakenly paid by their respective managers for that travel. However, I would note that the memorandum referenced by counsel is far from clear, as it mentions "technicians," not "remote technicians."

Operations Manager Derek Bieri testified that the Respondent's policy has always been not to compensate remote technicians for their time and mileage for those trips, mandatory or otherwise, made from home to their assigned office and back. However, he acknowledged that this is a "really difficult [policy] to police," and "it's basically an honor system." Further, he testified that there came a time when "we had discovered that there were some remotes inappropriately using the pay structure, so we wanted to reiterate what the policy was. We released a document basically explaining clearly what the travel and work time policies were so there wasn't any confusion." He identified that document as General Counsel Exhibit number 17. Finally, he acknowledged that, "We may have had some managers that either weren't clear themselves or enforcing [the policy] properly, so we wanted to make sure that the entire Company was on the same page."

The unrebutted testimony of Union Organizer William Kniffin was that at no time did the Respondent notify or bargain with the Union regarding changing the way in which remote technicians had been compensated for travel from their homes to their respective offices and back in order to attend mandatory meetings and/or to pick up necessary supplies. In this regard, it is well established that pay and mileage reimbursement are mandatory subjects of bargaining. *See Borg-Warner Corp.,* 356 U.S. 342, 349 (1958) (wages are mandatory subjects of bargaining); *Shane Steel Processing, Inc.,* 347 NLRB No. 18, at *3 (2006) (mileage reimbursement is a mandatory subject of bargaining.) Therefore, it is a violation of the Act for an employer to make unilateral changes to those two subjects. *See NLRB v. Katz,* 369 U.S. at 737.

A number of remote technicians credibly testified that prior to February of 2012 they were paid for their time and mileage for driving from their respective homes to their respective offices for mandatory meetings and to pick up necessary supplies. They were compensated for these trips with the obvious knowledge and consent of their local managers. Even assuming that the Respondent had an official written policy that was contrary to this practice, the unrebutted testimony of the remote technicians established that the practice went on for an extended period of time.

An employer's actual practice, even if it differs from a written policy, becomes a term and condition of employment that cannot be altered without agreement of the union. *See First Student, Inc.,* 353 NLRB No. 55, *11 (2008); *Sunoco, Inc.,* 349 NLRB 240, 244 (2007); *DMI Distribution of Delaware,* 334 NLRB 409, 411 (2001); *Exxon Shipping Co.,* 291 NLRB 489, 493 (1988); *Granite City Steel Co.,* 167 NLRB 310, 315 (1967). A practice need not be universal to constitute an established term and condition of employment, "as long as it is regular and longstanding." *Sunoco, Inc.,* 349 NLRB at 244. It becomes a term and condition of employment when the past practice occurs with "such regularity and frequency that employees could reasonably expect the practice to continue or reoccur on a regular and consistent basis." *Id, citing Philadelphia Coca-Cola Bottling Co.,* 349, 353-354 (2003); *Eugene Iovine,* 328 NLRB 294, 297 (1999).

In the matter before me, numerous remote technicians testified that they were being paid for their time and reimbursed mileage for mandatory travel to their respective offices and for their return home for extended periods of time prior to February 2012. Each was compensated with the apparent consent of their respective office manager. This conduct on the part of the Respondent clearly established a "regular and longstanding" past practice, which outweighs at best an ambiguous and unenforced written policy to the contrary. (Res. Ex. 3, p. 29) The change in this practice was accomplished without notification to and bargaining with the Union, which represented these remote technicians. Accordingly, I conclude that the Respondent unilaterally changed its past practice concerning remote technicians' travel pay and mileage reimbursement in violation of Section 8(a)(1) and (5) of the Act, as alleged in complaint paragraphs 7(e) and 10.

F. Assignments to Clarkston, Washington Office

Complaint paragraphs 7(f) and 10 allege that in early February 2012, the Respondent changed the nature of certain job assignments to the Respondent's Clarkston, Washington office by making them mandatory rather than voluntary without negotiating with the Union.

According to the initial testimony of technician Levi Billman, at a staff meeting in February 2012, Nampa, Idaho Field Service Manager Sam Quintero, an admitted supervisor, informed the assembled technicians that they would now be required to do a mandatory out-of-town work rotation to the Respondent's Clarkston, Washington office. According to Billman, previously out-of-town assignments of this type had always been voluntary. However, on cross-examination Billman appeared to contradict himself indicating that when he inquired about going to Clarkston he was told by somebody with management that "it wasn't mandatory for me to go on that rotation. They were still asking for volunteers at that point." Further, he admitted that he did not actually know anyone who was forced to go.

Counsel for the General Counsel tries to buttress the testimony of Billman by offering the testimony of two other technicians, Michael Emery and Timothy Seitz. Both men testified that at a group meeting in February 2012 they were told by Sam Quintero that it was now mandatory that they go on work assignments to other offices. They did not mention a specific location,

such as Clarkston, but merely that they were told by Quintero that they were expected to travel for work to other offices. Previously, such out of location travel had been voluntary. However, on cross-examination Emery testified that the technicians were merely given the option of traveling to other offices where more work was available, and they were never threatened with termination for refusing to do so, but would simply have less work available in their home offices where business was slow. Similarly, on cross-examination Seitz testified that he was never required to go work in another office and he was never punished for failing to do so.

In his post-hearing brief, counsel for the General Counsel acknowledges that it is "unclear" whether the Respondent actually forced any technicians to go to the Clarkston office, but argues that an employer's announcement of a unilateral change to wages, hours, and working conditions, by itself, is a violation of the Act, even if that change has never been implemented or enforced. However, counsel for the Respondent argues that the credible evidence shows that there was never any policy change to make out of location travel mandatory, nor any announcement of such.

Counsel for the Respondent points to the testimony of former technician Lehi Steward. According to Steward, out of town work was voluntary, not something the technicians were required to do. Steward volunteered for such work because that enabled him to work more hours and get overtime pay. Further, Operations Manager Bieri testified that the Respondent has never had a policy or practice of mandatory out of location work assignments for technicians. According to Bieri, "at times [out of location work] is available for [technicians] to get additional hours, but it is not mandatory." Further, he testified that no technician has ever been disciplined for refusing to work out of town.

For the reasons that I expressed earlier in this decision, I find Bieri to be a credible witness. On the other hand, the three witnesses (Billman, Emery, and Seitz) called by the General Counsel to establish this alleged violation offered less than convincing testimony. What evidence they offered in support of the complaint allegation evaporated on cross-examination.

I accept the testimony of Bieri that there was no policy change requiring mandatory out of town travel. The evidence offered by the General Counsel was inadequate to establish that Sam Quintero at a general meeting in Nampa in February 2012 announced a policy change requiring mandatory out of town travel. Therefore, counsel for the General Counsel has failed to meet his burden of proof to establish this alleged violation by a preponderance of the evidence. Accordingly, I shall recommend to the Board that complaint paragraph 7(f), and to the extent it supports it, paragraph 10 be dismissed.

G. Overtime Policy Regarding the Clarkston, Washington Office

The General Counsel alleges in complaint paragraphs 7(g) and (10) that in early February 2012, the Respondent unilaterally changed the policies governing overtime opportunities for those unit employees temporarily assigned to its Clarkston, Washington office. However, in footnote 12 of his post-hearing brief, counsel for the General Counsel seeks to expand this allegation, arguing that the evidence at the hearing established that the Respondent unilaterally implemented the same overtime policy for all out-of-town assignments. Having moved at the hearing to conform the pleadings to the evidence, counsel seeks to expand the complaint allegation in question.

It is the General Counsel's contention that prior to February 2012, when technicians temporarily worked out of town at other offices of the Respondent, they were allowed to work as many consecutive days as they wanted with no limit on overtime. Allegedly, beginning in

February 2012 the Respondent unilaterally changed the policy to require technicians to stop working for several days while on the road and/or split their time between two pay periods in order to avoid overtime.

The General Counsel called a number of technicians to testify regarding this overtime issue. Michael Emery testified that he worked out of town at Post Falls, Idaho in 2011 during which time he was able to work as many overtime hours as he desired, and there were no days off. However, when working in Lewiston, Idaho[9] in 2012 his overtime was limited, and he was required to take days off during the detail. Emmitt McCray testified that in the summer of 2009 he worked out of town in the Billings, Montana office where there was no restriction on the amount of overtime he could earn or the number of days that he could work. Curtis Ward testified that formerly when he traveled out of town to work he was permitted to work as many hours as he wanted. However, since February 2012 the Respondent was limiting the number of hours one could work out of town, requiring him to take a day off in the middle of a detail. He claims that in February 2012 he was informed by Kalispell Field Service Manager Ron Powers that for future out of town trips there would be two weeks of travel with one day off in the middle. Finally, Lehi Steward testified that during an out of town trip to Billings, Montana in April of 2013, he earned no overtime pay as he was required to take a day off in the middle of his detail. He compared this to an earlier trip where he was able to work as many days as possible, working for as long as he could each day.

Preliminarily I will note that I found the testimony of these technicians regarding this overtime issue very difficult to follow. Their testimony was disjointed with little substance to it and it seemed as if they were merely guessing at dates, places, and, most significantly, at the specifics regarding this alleged change in the past practice. It is simply not clear from their testimony that the Respondent had any established policy on overtime, what that policy was, and how, if at all, it changed. If a pattern existed that established a change in the Respondent's practice regarding overtime, I am not able to discern it from their testimony. I have no confidence in the accuracy of their testimony, and, in my view, it is inadequate to establish the commission of any unfair labor practice.

Once again, I rely on the testimony of Operations Manager Derek Bieri, who I find credible for the reasons previously stated. He testified that the Respondent does not have any kind of a policy that limits the amount of overtime that an employee can earn. Further, Bieri said, "There is always overtime available." According to Bieri, the Respondent has never changed its overtime policy. Specifically related to the Clarkston, Washington office, he testified that technicians can work overtime in that office, as in any office, and that would include technicians who work a temporary detail to the Clarkston office. Regarding the specific claim that the overtime policy has been changed to limit overtime, Bieri said, "[T]hat's absolutely not true. This month is actually going to be one of the highest overtime payouts I've ever seen, so, not true." He acknowledged that after a certain number of consecutive days working, a technician will be asked to take a day off, but indicated that this was the result of safety concerns, not overtime issues. Bieri reiterated, the Respondent's overtime policy has never been changed.

I conclude that counsel for the General Counsel has failed to meet his burden and establish by a preponderance of the evidence that the Respondent has changed its overtime policy in the Clarkston, Washington office, or for that matter in any of its offices. Therefore, he

[9] Lewiston, Idaho and Clarkston, Washington are twin cities, located just across the river from each other and function as one metropolitan area.

has not established that the Respondent unlawfully failed to negotiate over changing the overtime policy. Accordingly, I shall recommend to the Board that complaint paragraph 7(g), and, to the extent that it relates to it, paragraph 10 be dismissed.

H. New Ten-Hour Workday Rule that Limited Overtime

It is alleged in complaint paragraphs 7(h) and (10) that on April 25, 2012, the Respondent unilaterally changed its scheduling procedures to avoid overtime opportunities for unit employees without negotiating with the Union.

Technicians Levi Billman and Michael Emery testified about a perceived change in the Respondent's overtime policy. According to Billman, prior to April of 2012 technicians were assigned their jobs for the day and were expected to finish those jobs regardless of how many hours that they needed to work. Typically this meant working from 10 to 14 hours a day, four days a week. According to Billman, at a weekly meeting in April 2012, manager Samuel Quintero informed the technicians that starting immediately the Respondent was going to "shoot for ten hours a day, four days a week." This meant that if it looked like a technician would be working more than 10 hours a day to finish his assignments, then some jobs would be rescheduled so that the technician worked no more than 10 hours. Emery's testimony corroborated that of Billman's.

However, on cross-examination their stories changed somewhat. Billman acknowledged that in the Respondent's business the demand for installations ebbs and flows. There is a significant variation in the amount of work available, depending to some extent on the season of the year. Billman admitted that the slow season generally starts around "tax season," March or April, at about the same time that Quintero spoke to the employees about working 10 hour days. Further, he testified that the work generally increases in May and June, with the greatest increase in business around October with the start of the football season. Significantly Billman admitted that with the increase in business the amount of overtime that he worked increased. He acknowledged that since April of 2012 there have been many days when he worked in excess of 10 hours a day. Finally, he was forced to admit that this alleged change in the overtime policy lasted only for "maybe two months," during the slowest part of the year. Since that slow season, overtime has been available much as it had always been.

Regarding Emery, on cross-examination he seemed badly confused regarding dates. Ultimately he testified that when he worked on a detail to Post Falls, Idaho in 2010 there was a lot of overtime work available, but when he worked on a detail to Lewiston, Idaho in 2011 there was less overtime available. He admitted that he did not know whether the difference in overtime was simply based on the variation in the workloads between those two offices. Further, it should be noted that the Lewiston detail apparently took place the year before the alleged unilateral change occurred in April of 2012.

As I have noted before, I have little confidence in the accuracy of the testimony of certain of the technicians, in this case Billman and Emery, regarding scheduling and overtime. They seemed very confused. Certainly Billman's contention that the workload was reduced to no more than 10 hours a day for two months in April and May of 2012 reasonably could be nothing more than the result of the start of the Respondent's slow season when installations are greatly reduced, rather than some intentional unilateral change in past practice.

The realities of the ebbs and flows of the Respondent's business seems to comport with the credible testimony of Operations Manager Bieri who testified that the Respondent does not

limit the amount of overtime that can be worked and that overtime is almost always available, depending upon the specific local market and the time of year.

In my view, counsel for the General Counsel has failed to meet his burden of proof by a preponderance of the evidence, and has failed to establish that in April of 2012 the Respondent changed its past practice to limit the amount of overtime that technicians could work by preventing them from working more than 10 hours a day. Accordingly, I shall recommend to the Board that complaint paragraph 7(h), and, to the extent that it relates to it, paragraph 10 be dismissed.

I. Work Boot Policy

Complaint paragraphs 7(j)[10] and 10 allege that in early June 2012, the Respondent unilaterally changed its work boot policy without notifying and negotiating with the Union.

Preliminarily, it is important to note that the Respondent has maintained a written work boot policy for some time that requires technicians to wear "slip resistant work boots that have a ¾ inch heel." This written policy has been in effect since at least January 15, 2009. (G.C. Ex. 19, p. 18) The memorandum containing this policy shows on its face that it was distributed to the "entire office," and has a revision date of January 15, 2009. Further, it is necessary to note that there is no mention in this memorandum of a ninety degree, defined heel.

A number of technicians testified that during their employment prior to June of 2012, they wore a variety of slip resistant boots with various types of heels, including tapered heel, hiking-style boots. Several technicians had managers inform them that their tapered heel, hiking-style boots were acceptable for work.

In any event, in June 2012, the Respondent announced and implemented a change to its boot policy. It now required technicians to have work boots with a ninety-degree, defined heel in addition to the other requirements set forth in this existing written policy. Technician Timothy Seitz testified that in July 2012 manager Sam Quintero informed the technicians at a morning meeting that immediately they would need to wear work boots with steel toes and a ninety-degree angle. According to Seitz' unrebutted testimony, when he returned to work the following day, wearing the same boots that he had always worn with a tapered heel, he was sent home by Quintero for not wearing a boot with a ninety-degree heel, as a result of which he missed a day's work.

Former technician Emmitt McCray gave unrebutted testimony that while working for the Respondent he had worn a "line boot," which he had been told by a number of managers was acceptable. However, that changed in June 2012 when a manager at the Post Falls, Idaho facility, Ed Walker, read a paper to the technicians informing them that from now on they were required to wear a work boot with a ninety-degree angle. Daniel Anderson, a former technician in Lewiston, Idaho, told a similar story, testifying that in June 2012, during a safety meeting, manager Mike Robeke said that all technicians were now required to wear a work boot not only having a ¾ inch heel, but also a heel with a ninety-degree angle. Anderson continued to wear his old boots, but after about week his boots were observed by Steven Bouke, a safety manager, who informed Anderson that as his boots did not have a ninety-degree heel he needed to leave work until he obtained the proper boots. As a result, Anderson lost one day's work. Finally, technician Roger Higgs testified that while working in the Kalispell office in March

[10] Counsel for the General Counsel withdrew paragraph 7(i) from the complaint.

of 2012, manager Ron Powers instructed the technicians that from now on they would need to wear work boots with heels that not only were ¾ inch in height, but also had a ninety-degree angle. As a result, he had to buy a new pair of boots that cost him between $130 and $150 dollars.

Counsel for the Respondent's argument concerning this issue is rather disingenuous. He contends that the ninety-degree heel rule was always in effect. He argues that while the written rule says nothing about a ninety-degree heel, that was somehow clearly implicit in the requirement that the work boots be "slip resistant" and have a "3/4 inch heel." He says in his post-hearing brief that anyone who does not understand this is "daft." His argument is nonsense.

The written rule says nothing about a ninety-degree heel, nor is it implied. Further, those technicians who openly wore boots without a ninety-degree heel were for years permitted by their supervisors to do so. The Respondent clearly added the ninety-degree heel requirement to its boot policy around June of 2012. The unrebutted testimony of Union Organizer Kniffin was that the Respondent did not notify the Union and offer to negotiate with the Union prior to making this change. The change had an immediate monetary effect on the unit employees with a number of technicians testifying that they either missed work because managers sent them home for not wearing the correct boot, and/or they spent money out of their pockets to pay for new boots with a ninety-degree angle.

Proposed changes to employees' safety equipment, such as work boots, are mandatory subjects of bargaining and require negotiating with the Union. *See AK Steel Corp.,* 324 NLRB 173 (1997). The Respondent's failure to negotiate with the Union over its change in the work boot policy is a violation of the Act. Further, the Respondent violated the Act by disciplining employees for not complying with the new boot requirement, certain of which employees were deprived of employment opportunities until they purchased new conforming boots. Accordingly, I conclude that the Respondent violated Section 8(a)(1) and (5) of the Act, as alleged in complaint paragraphs 7(h) and 10.

J. New Customer Service Policy

The General Counsel alleges in complaint paragraphs 7(k) and 10 that in early June 2012, the Respondent implemented a new customer survey policy for unit employees without first negotiating with the Union.

The Dish Network has historically conducted a program of contacting customers following the installation or service of equipment by technicians to determine the customers' degree of satisfaction. This customer survey, generally in the form of an automated call, is used by Dish in part to determine the level of compensation the service provider, such as the Respondent, will receive. The survey information has also be used historically by the Respondent to in part determine what compensation the individual technician will receive and whether further training or discipline of the technician is necessary.

It is the position of the General Counsel that beginning in June 2012, the Respondent "required" its technicians, before they leave a customer's home after having performed an installation or repair job to place a call to the Respondent's dispatch office for the purpose of putting the customer in contact with the dispatcher. Then, while the technician is still on the property, the dispatcher will give the customer the same survey that they will receive from the Dish Network in subsequent days. The purpose of the Respondent's survey is to get the customer accustomed to the questions asked so that the customer will be able to better answer

the automated questions when they come from Dish, and also to find out if the technician can do anything to satisfy the customer before leaving the property. A number of technicians testified that the calls to the dispatch office are mandatory, and the time it takes until the customer completes the survey can add 5-10 minutes for each job the technician performs during the course of the work day.

Operations Manager Bieri testified that at some point in the past the "CSAT" or customer service scores that the Respondent gets from the Dish Network following the use by Dish of its automated customer survey were falling, meaning that both the Respondent and the individual technicians were receiving less compensation for their work from Dish. In an effort to improve these scores, Bieri "asked" that all technicians call in to the Respondent at the end of the job ("post calls"), and the Respondent's dispatchers would ask its customers the same questions that were going to be asked by Dish. Bieri considers this procedure a "rehearsal" for the subsequent Dish call. He testified that this same procedure had been used in the past, but generally for only those technicians who had their customer satisfaction metric drop below the minimum.

Further, Bieri testified that although he asked all of his technicians to use the post call process, it was not a requirement of the job, and nobody has ever been disciplined for failing to use the post call process. In an effort to confirm this contention, counsel for the Respondent quotes the testimony of technician Daniel Anderson, who said regarding post calls, "However, this has never been until just recently a requirement for all techs. Since this announcement I have been calling in…after most install jobs, but I do not always call in….I'm not aware of anyone who has been disciplined for failing to call in. I have not been disciplined for this."

Counsel for the Respondent argues that the "post call" process is not a term or condition of employment requiring bargaining since it is allegedly voluntary and no discipline has been issued for failing to make the calls. Further, counsel insists that the calls are simply a business tool that aids the technicians in making more money, if they are willing to utilize it.

It is undisputed from the testimony of Union Organizer Kniffin that the Respondent did not notify the Union and offer to negotiate with it prior to implementing the new post call policy in about June 2012. This is a significant departure from former practice and can add a total of 20-50 minutes to the work day of a technician. Clearly it impacts working conditions, even if it is in the best interest of the technician to make the calls.

Most significant, while Bieri testified that the calls are voluntary and no technician has been disciplined for failure to make the calls, nobody in management has apparently ever told the technicians that they need not make the calls. To the contrary, the technicians testified that they were told the post calls were a requirement of their jobs. An instruction such as that certainly becomes a mandatory requirement where the employees are never told the process is voluntary. As far as the technicians knew, the Respondent had changed the process in June of 2012 requiring that they place post calls prior to leaving a customer's property. Just because no technician was disciplined for failure to make the calls does not alter the fact that the technicians were led to believe the calls were a mandatory requirement of their jobs.

Adding additional tasks or job requirements are mandatory subjects of bargaining, and, thus, require agreements with the union before an employer can implement those changes. *See San Antonio Portland Cement Co.,* 277 NLRB 338, 338 (1985). Accordingly, I conclude that the Respondent violated Section 8(a)(1) and (5) of the Act when it implemented a new customer survey policy for unit employees in June of 2012, as alleged in complaint paragraphs 7(k) and 10.

K. Changes in Health Insurance Plan

It is alleged in complaint paragraphs 7(l) and 10 that on August 27, 2012, the Respondent changed its health insurance plan offered to unit employees without negotiating with the Union.

The facts regarding this allegation are not in dispute. The Respondent's answer admits that it changed its health insurance plan on the date mentioned. Further, the unrebutted testimony of Union Organizer Kniffin was that the Respondent did not inform and negotiate with the Union prior to making the changes.

The Respondent's financial manager, Leisl Mooer, testified that the Respondent changed its traditional fee-for-service, preferred provider health insurance plan (G.C. Ex. 33) to a high deductible plan (G.C. Ex. 34). According to Mooer, this change became necessary because the health care provider significantly increased the cost of its health plan, making it impractical to maintain the old plan. Mooer testified that she negotiates with the health care provider, Allegiant, every year when the health insurance contract is due for renewal. For the last renewal, Allegiant indicated that there would be a significant premium rate increase for the same coverage. The unit employees pay a share of the premium cost, and it was Mooer's feeling that the employees would want to keep the premium cost as low as possible. In order to keep the same coverage and a similar premium cost, the Respondent decided to accept a plan with a high deductible.

It is the Respondent's position that the change in the health care plan was out of its control, as the insurance provider intended to significantly increase the premium amount. In an effort to "maintain the status quo," by maintaining the same coverage with the same provider, it was forced to switch to a plan with a higher deductible. Counsel argues that this change had the least negative financial impact on the unit employees, and, therefore, should be seen as attempting to maintain the status quo, rather than a unilateral change in working conditions.

However, as noted by counsel for the General Counsel in his post-hearing brief, the new health care plan implemented by the Respondent without negotiations with the Union has significantly higher deductibles and different out-of-pocket costs. Further, it does appear that there were changes in the premium rates, with some higher and some lower than previously was the case. (G.C. Ex. 33 and 34)

The law is clear. It is an unfair labor practice for an employer to unilaterally change its health care plan without bargaining with the union. *See Larry Geweke Ford,* 344 NLRB 628, 628 (2005). In the case at hand, the fact that the insurance carrier was raising its premium rates for the Respondent's existing policy did not relieve the Respondent of the duty to negotiate any changes in the existing plan with the Union representing the unit employees. The Respondent had no legal authority to decide unilaterally what insurance plan was best for its represented employees. Accordingly, the Respondent violated Section 8(a)(1) and (5) of the Act, as alleged in complaint paragraphs 7(l) and (10).

L. New Morning Procedures at Nampa

The General Counsel alleges in complaint paragraphs 7(m) and 10 that on September 13, 2012, the Respondent unilaterally changed its morning procedures at its Nampa, Idaho

facility by implementing more stringent time schedules without notifying and negotiating with the Union.

Technician Levi Billman, who is assigned to the Nampa, Idaho facility, testified that he reports to work at 6:30 each morning and that there have always been certain tasks that technicians are required to perform prior to driving to their first job of the day. These tasks, depending to some extent upon whether a technician is driving his own truck or a company truck, include checking equipment out, returning equipment, calling customers, etc. According to Billman, in September of 2012, facility manager Sam Quintero informed the technicians of a new morning procedure. Quintero handed out a document entitled "AM PROCESS," which broke down the time period between 6:30 am and 7:15 am for separate groups of technicians who drove their own vehicles (POV) and those technicians who drove a company vehicle (IN HOUSE). The document set out times by which various tasks must be completed including: "6:30 to 6:35, turn in paper work; 6:35 to 6:50, bring in equipment or check trucks; 6:50 to 7:00, check out equipment; and 7:00 to 7:15, status customers." (G.C. Ex. 16)

Billman testified that Quintero informed the technicians that they must adhere to the order and time limits set forth in the document, and if they did not do so, they might lose their route for the day. According to Billman, the tasks listed on the document have always been required of the technicians, but the change in the process was the requirement that the tasks be performed in a certain order and completed in a certain number of minutes.

Corroborating Billman was the testimony of technician Bryan Brown. He testified that at a technicians' meeting, manager Sam Quintero distributed a document entitled "Am PROCESS." (G.C. Ex. 16) Quintero said that the technicians "would need to follow this by the letter, to the time." Further, Brown testified that Quintero threatened that if a technician failed to do so, he "would not be routed for the day, or possibly the next day." According to Brown, these new morning procedures were "loosely the same thing" as the technicians had previously done, "but [previously] it wasn't such a rigid time frame."

It is clear from the unrebutted testimony of William Kniffin that the Respondent implemented these new morning time procedures without any prior notification to the Union and without affording the Union an opportunity to bargain over this procedure. Further, it should be noted that Sam Quintero did not testify, and so the testimony of the technicians is unrebutted.

The only defense offered by counsel for the Respondent is the fact that neither Brown nor Billman testified that any technician was disciplined for a failure to follow the written morning process. Counsel argues in his post-hearing brief that this written document was nothing more than an effort to codify the earlier unwritten process with no changes actually made. He contends that reducing the process to writing was simply helpful, as "everyone would be on the same page."

The record evidence shows that although the Respondent did not add new tasks to the Nampa employees' morning work requirements, it did impose very rigid time restrictions on employees to complete each morning task. Further, the technicians were threatened with not being routed, and, thus, losing work for a failure to follow those rigid time requirements. The fact that there is no evidence of any technician having been so disciplined does not lessen the significance of the threat itself.

Changing job requirements is a mandatory subject of bargaining. *See San Antonio Portland Cement Co.,* 277 NLRB 338, 338 (1985). Further, if an employer indicates a willingness to impose discipline for failing to meet the new job requirements, it is per se a

mandatory subject of bargaining. *See Virginia Mason Hospital,* 357 NLRB No. 53, at *4 (2011); *Praxair Inc.,* 317 NLRB 435, 436 (1995). The Respondent failed to bargain with the Union over the matter of the mandatory morning process. Accordingly, I conclude that the Respondent has violated Sections 8(a)(1) and (5) of the Act, as alleged in complaint paragraphs 7(m) and 10 of the complaint.

M. Changing the Work Schedule of and Discharging Joseph Severson

It is alleged in complaint paragraphs 7(n), (t), and 10 that the Respondent changed the work schedule of and subsequently terminated technician Joseph Severson without negotiating with the Union in violation of Section 8(a)(1) and (5) of the Act.[11]

Joseph Severson was a technician assigned to the Respondent's Helena, Montana facility. He worked for the Respondent during two different periods of time. Severson first worked for the Respondent for approximately 7 months in 2011. He resigned that position in order to attend college and returned to the Respondent's employ in the summer of 2012.

Severson's unrebutted testimony was that upon returning in August of 2012, he had specific conversations with his superiors concerning his work schedule and its limitations. Severson's wife works outside the home and they are raising a number of young children. As a result he made it clear to his superiors that he needed to not work on Tuesdays through Thursdays in order to care for his children while his wife worked. According to Severson's testimony, he obtained approval from both Field Service Manager Muthanna Al Rubaye and Operations Manager Derek Bieri not to have to work from Tuesday through Thursday.

Initially, there was apparently no problem with Severson working, as he requested, only Friday through Monday. However, in about October 2012, Severson's supervisor, Muthanna Al Rubaye, informed Severson that because the Respondent was "shorthanded" they needed him to work on Tuesdays. Severson testified that he agreed to do so, with the stipulation that he be allowed to leave work by no later than 2:00 pm so that he could meet his daughter's school bus. That was acceptable to Al Rubaye, and so Severson's work schedule was extended to Tuesday.

As counsel for the Respondent points out in his post-hearing brief, the technicians who work for the Respondent are aware that the nature of the Respondent's business requires maximum flexibility in scheduling in order to meet the demands of the Dish Network, which varies considerably from day to day. As I have noted earlier in this decision, the Respondent is unaware from day to day just how many orders for installation and repair it will receive from the Dish Network. In order to meet this uncertain demand, the Respondent both employs subcontractors to fill in any gaps in staffing, and also expects its own technicians to exercise maximum flexibility so as to be able to work the varying number of hours necessary to get the job done. This has been the past practice of the Respondent and its work force, and I have seen no credible, probative evidence that this practice has changed with the onset of union representation.

From the testimony of Severson himself, it appears that he agreed to the request of his supervisor that he extend his work schedule to include Tuesday. This seems to me to have been voluntary on his part, which would certainly not require negotiations with the Union.

[11] It is worth noting that the work schedule change and termination of Severson are not alleged as a violation of Section 8(a)(3) of the Act.

Furthermore, even if not entirely voluntary on Severson's part, the necessity of working extra days or hours is nothing more than the continuation of the Respondent's past practice of requiring maximum scheduling flexibility on the part of its employees, in this case Severson.

While Severson began to work the extra day on Tuesday as requested, by November he was having problems with child care. As his work load increased, he found it more and more common to not be able to finish his job tasks by 2:00 pm, meaning that he would have to make alternate arrangements to have a family member meet his daughter's school bus. While this scheduling conflict between Severson's job tasks and his daughter's child care needs was unfortunate, I see nothing in the Respondent's actions as would require that the Respondent sit down and negotiate with the Union. The Respondent's actions regarding Severson's work schedule was no different than its standard past practice for all its technicians. They were expected to work the necessary hours to accomplish their assigned job tasks. There was no evidence of any disparate treatment towards Severson. He was treated similarly to other technicians and was expected to complete his job tasks as assigned, even on Tuesday when that potentially meant working past 2:00 pm.

Based on the record evidence, I am of the view that as there has been no change in the Respondent's past practice regarding work schedule changes, and, as that applies in Severson's case in particular, the Respondent was not legally required to negotiate with the Union over its assignment of work duties that required Severson to work on Tuesdays, and sometimes to even work longer than 2:00 pm on Tuesdays. Accordingly, I shall recommend to the Board that complaint paragraph 7(n), and, as it relates to it, paragraph 10 be dismissed.

Understandably, Severson was not happy with having to work on Tuesdays past 2:00 pm and not be able to meet his daughter's school bus. On January 6, 2013, Severson sent Al Rubaye the following email: "To whom this may concern. I've put a lot of thought into this before getting to this point. I would like to be moved to part time, working only on the weekends. I'm doing this because of my family situation right now. If for some reason this will not work for Star West, then **please consider this my two weeks' notice effect** [sic] **as of 1/ 6/13.** Sorry for any inconvenience this may cause the company, however, my family must come first. I hope you understand." (G.C. Ex. 31, emphasis added by the undersigned)

Al Rubaye was interested in keeping Severson with the Respondent and indicated in a responding email that he "would like to keep you with us for as long as you can perform." Still interested in remaining with the Respondent, as long as he could get the schedule that he wanted, Severson wrote, "I would really like to still work for Star West, so if working weekends would work that would be more than great." (G.C. Ex. 31) In an effort to reach an accommodation with Severson, Al Rubaye met with him several days later at a Burger King in Helena. According to Severson, Al Rubaye indicated that he would still like to keep Severson and he asked to see a copy of Severson's wife's work schedule to see whether the Respondent could "work around it or, come up with something." Later that day, Severson emailed his wife's schedule to Al Rubaye, who then indicated that it would not be possible for the Respondent to create a schedule that would allow Severson to only work on weekends.

Within a few days, Al Rubaye sent Severson a message asking him to come to the office in Bozeman, Montana and bring the company truck and all his equipment. On January 11, 2013, five days after sending his email message giving notice of his intention to quit if the Respondent would not accommodate his desire for a part time weekend schedule, Severson drove to Bozeman to meet with Al Rubaye.

Upon arriving in Bozeman, Severson met with Al Rubaye and Derek Bieri. He was informed that he was being terminated and handed a written termination notice. In relevant part, the notice informed Severson that he was being terminated during his 180 day probationary period as the Employer had decided that he was not "the right fit for this position." (G.C. Ex. 32)

It is the position of the Respondent that Severson had decided to quit, having issued an "ultimatum" on January 6, 2013, giving two weeks' notice to the Respondent that he would end his employment if his demand to work part time on the weekends was not granted. (G.C. Ex. 31) The Respondent subsequently decided that it could not accommodate Severson's request for a schedule change, and then decided not to wait for the two week notice period to run and terminated his employment as of January 11.

Counsel for the General Counsel ignores the fact that Severson had decided to quit his employment and had tendered a two week notice to the Respondent. Instead, counsel argues that Severson was fired for objecting to the Respondent's alleged unlawful change in his schedule. Further, the General Counsel alleges that the termination constituted an unlawful failure to bargain with the Union over the decision to fire Severson.

For the reasons that I have already noted above, I concluded that the Respondent's efforts to have Severson work on Tuesdays did not constitute a change in its past practice of requiring scheduling flexibility on the part of its technicians, and did not obligate the Respondent to negotiate with the Union over any such scheduling change. Further, I am of the view that the Respondent was not legally required to negotiate with the Union over its decision to terminate Severson after he had already given his notice that he was quitting.

Counsel for the General Counsel sites the Board's recent decision in *Alan Ritchey, Inc.,* 359 NLRB No. 40,*1 (2012) for the proposition that where a union represents a unit of employees, even in the absence of an initial collective bargaining agreement, there is a duty on the part of the employer to negotiate with the union over discretionary decisions involving wages, hours, and working conditions, including a discretionary decision to terminate an employee. However, the facts in this case do not fall within the *Alan Ritchey* holding. On January 6, 2013, Severson submitted his decision to quit his employment, giving a two week notice. (G.C. Ex. 31) Such notice is generally considered appropriate and polite, although certainly there is no legal requirement to do so. The fact that Severson indicated his decision would be necessary only if the Respondent did not accommodate his demand to be placed on part time weekend work, did not ultimately alter his decision, as the Respondent was not willing to make the scheduling change that he demanded.

The Respondent was not legally obliged to wait for the full two week period of Severson's notice to expire. He was terminated on January 11, some nine days before his two week notice would run. Why is that unlawful? Perhaps it would have been considerate for the Respondent to have waited the full two weeks, but certainly not legally required. In any event, what was there for the Respondent to have negotiated with the Union? Severson had decided to quit. His two week notice was up on January 20. Maybe the parties could have negotiated over whether Severson could be fired sooner. But, certainly that could not have been what the Board intended in *Alan Ritchey.* The General Counsel's attempt to bring the fact situation involving Severson within the holding of *Alan Ritchey* is, to say the least, a stretch.

In my view, following Severson's decision to quit and his two week notice to the Respondent, there was nothing meaningful remaining over which the parties could have negotiated. Severson's decision to quit and his notice to do so meant that there was no real

discretion remaining on the part of the Respondent. Therefore, I conclude that the Respondent was not required to negotiate with the Union over its decision to terminate Severson nine days prior to the date that he intended to quit. Accordingly, I shall recommend to the Board that complaint paragraph 7(t), and, as it relates to it, paragraph 10 be dismissed.

N. Discontinuation of 401(k) plan

The General Counsel alleges in complaint paragraphs 7(o) and 10 that on October 4, 2012, the Respondent discontinued its 401(k) plan for its employees without first notifying and negotiating with the Union.

As the Respondent's answer admits that on October 4, 2012, it discontinued its 401(k) plan, this issue is not in dispute. The facts surrounding this action are also undisputed. Since at least 2007, the Respondent has maintained a 401(k) retirement plan for its employees. (G.C. Ex. 35) Under the terms of the plan, employees contributed pre-tax dollars to their 401(k) accounts, which accounts were maintained by The Hartford. (G.C. Ex. 36, 37, and 38) The Respondent contributed no matching funds to these accounts.

In July 2012, the Respondent notified its employees by letter that The Hartford was phasing out its retirement plans business and that, in the future, the Respondent would not be able to offer a 401(k) plan through The Hartford. However, this letter did not mention whether the Respondent intended to offer a 401(k) plan through another company once The Hartford's retirement plan was terminated. (G.C. Ex. 36) Then, in October of 2012, the Respondent, without prior notice to the Union and without bargaining with the Union, totally eliminated its 401(k) benefit for employees. (G.C. Ex. 37) To date, the Respondent has not reinstated any 401(k) plan or any other retirement benefit for its employees.

While the Respondent does not dispute any of these facts, counsel argues that its conduct did not violate the Act as, "under the law of contracts, the well-established doctrine of impossibility of performance relieves an obligor of his contractual liability if unforeseen circumstances render performance impossible." *Associated Musicians of Greater New York, Local 802,* 176 NLRB 365, 367 (1969). According to counsel, the Respondent did not "discontinue" the 401(k) plan, but, rather, the plan was actually cancelled by the plan provider. In his post-hearing brief, counsel cites the *Associated Musicians of Greater New York, Local 802* case for the proposition that where a plan is cancelled by the plan provider, "the law of labor relations should provide an employer with some equivalent measure of flexibility [as that found in contract law] in such extreme and unusual circumstances." Counsel reasons that as the action taken by The Hartford made it impossible for the Respondent to continue the same 401(k) plan for its employees, it cannot be held responsible for the actions of a third party, namely The Hartford. Counsel further argues that as the actions of The Hartford were totally out of the Respondent's control, the cancellation of the plan should not be considered a violation of the Act on the part of the Respondent.

Of course, that is really not what the General Counsel is saying. The General Counsel contends that by not negotiating with the Union on a replacement plan, but merely unilaterally informing the unit employees that the old plan was cancelled, with no substitution, that the Respondent was in violation of the Act. I agree with the General Counsel.

Under the terms of the discontinued plan, employees could invest pre-tax dollars into their 401(k) accounts, thus, being provided with a significant tax advantage to fund their retirements. This was clearly a matter that affected the employees' benefits and was a mandatory subject of bargaining over which the Respondent was obligated to negotiate before

making any changes. *See Convergence Communications, Inc.,* 339 NLRB 408, 412 (2003); *Trojan Yacht,* 319 NLRB 741, 747 (1995); *Lexus of Concord, Inc.,* 330 NLRB 1409, 1414 (2000).

As counsel for the General Counsel notes in his brief, the Respondent not only changed its employees' 401(k) plan, it eliminated the plan entirely without bargaining with the Union. Beyond doubt there are other 401(k) plans administered by other companies available to employers in the public market place. Yet the Respondent never bothered to negotiate with the Union about possibly arranging for one of these other entities to administer a 401(k) plan for the unit employees, nor did it attempt to discuss any other financial replacement for The Hartford plan. No, the Respondent simply eliminated the former 401(k) plan without any prior notice to the Union and without bargaining with the Union. The Respondent's action constituted a violation of Section 8(a)(1) and (5) of the Act, as alleged in complaint paragraphs 7(o) and 10, and I so find.

O. Implementation of a Trouble Call Policy, and Issuing Discipline Pursuant to that Policy

It is alleged in complaint paragraphs 7(p) and 10 that in early November 2012, the Respondent unilaterally changed its trouble call policy by stating its intention to suspend its employees who had five trouble calls in a 30-day period. Further, it is alleged in paragraph 7(q) that in an effort to enforce that policy that the Respondent suspended its employee Christopher Roberts; as alleged in paragraph 7(r) that the Respondent suspended its employee Walter Sitar; and as alleged in paragraphs 7(s) and 7(c)[12] that the Respondent suspended its employee Wayne Dixon. All said conduct is alleged to have been engaged in without negotiating with the Union in violation of Section 8(a)(1) and (5) of the Act.

Operations Manager Derek Bieri testified that a "trouble call" refers to anytime a customer calls Dish Network with a problem after work has been performed and the Respondent has to return to the customer's house to fix the problem. The term "TC-12" refers to any trouble call that occurs within the first 12 days of the work being performed by the Respondent. The Respondent does not get paid by Dish Network if there are TC-12s. Similarly, having too many trouble calls also affects the Respondent's ability to receive incentive bonuses from Dish Network.

According to Bieri's testimony, at some point, the Respondent began to experience a problem with certain technicians receiving too many TC-12s. This adversely affected the Respondent's incentive bonuses from Dish. In an effort to remedy this problem, Bieri created and implemented a new "Trouble Call Eradication Plan" and a "TC-12 Corrective Action Plan." It appears from certain "Incident Records" issued under the corrective action plan that the plan was implemented in the September, October to November 2012 time period. (G.C. Ex. 26 and 27) Under that plan, technicians who have two TC-12s in a rolling 30-day period have to begin taking pictures of each job performed, called "self-QC." Further, if a technician has three TC-12s in a rolling 30-day period, the Respondent issues the technician a documented verbal warning. Finally, under the new plan, whenever a technician has five TC-12s in a rolling 30-day period, he is suspended for up to 7 days. (G.C. Ex. 26, and 27, and specifically the "TC-12 Corrective Action Plan.") While the written "TC-12 Corrective Action Plan" bears a date of

[12] It should be noted that during the hearing, counsel for the General Counsel amended the complaint to withdraw the original paragraph 7(c) and replace it with a different paragraph 7(c). (G.C. Ex. 2)

January 9, 2013, the exhibits in evidence include "Incident Records" issued as early as September, October, and November of 2012. (G.C. Ex. 27) Therefore, I conclude that the corrective action plan was implemented as early as the fall of 2012. It is undisputed that these plans were implemented without notifying and negotiating with the Union.

The record evidence shows that the discipline under the new Trouble Call Eradication Plan was first issued in the fall of 2012. There is no evidence that similar discipline was issued prior to the Union's certification as the collective bargaining representative. Further, between September 2012 and February 2013, the Respondent issued 71 warnings for employees having three TC-12s in a 30-day period, and between October 2012 and May 2013 issued 10 suspensions pursuant to the new TC-12 Corrective Action Plan. (G.C. Ex. 27)

Technician Christopher Roberts testified that in early November of 2012 he was suspended for seven days for having excessive trouble calls, specifically five. Technician Walter Sitar testified that on November 6, 2012 he was suspended for having too many trouble calls. The incident report on Sitar indicates that he was suspended for seven days for having 5 TC-12s in a 30 day period. (G.C. Ex. 30) Finally, former technician Wayne Dixon testified that in January 2013 he was suspended for seven days for "high TC-12s," and was also suspended a second time in May of 2013 for excessive TC-12s and also poor customer service reviews. At the time of this second suspension, Dixon was informed by Operations Manager Bieri that his suspension was for ten days, and when he returned he would be under review for possible termination. [13] The testimony of Roberts, Sitar, and Dixon was unrebutted and accepted by the undersigned as credible.

Counsel for the Respondent argues in his brief that there was no change in the Respondent's past practice as its employee handbook sets forth its authority to "use a variety of disciplinary actions, including verbal or written warnings, placing an employee on probation or suspension, immediate termination of employment without warning, or otherwise. Star West Satellite reserves the right to implement any of these disciplinary actions within the discretion and as allowed by law. This policy shall not be construed as limiting Star West Satellite's right to take any disciplinary action, including but not limited to termination, against any employee as allowed by law." (Res. Ex. 3, p.36, "Discipline")

However, in my view, this argument is specious. The clause in question gives the Respondent unlimited and unfettered authority to discipline its employees in any way it deems appropriate, as long as it is not illegal. Such unlimited, total discretion constitutes the very authority that the Board has concluded an employer must not exercise in disciplining an employee without first consulting and negotiating with the union that represents that employee. Alan Ritchey, Inc., 359 NLRB No. 40 (2012). This, the Respondent failed to do.[14]

Contrary to the arguments of counsel for the Respondent in his post-hearing brief, it is clear from the record evidence that the Respondent instituted and implemented a new trouble call policy complete with discipline in the fall of 2012. This policy was implemented without consultation and negotiation with the Union. The new policy resulted in the suspensions of

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[13] Dixon did not serve out the suspension as he found another job and quit his employment with the Respondent.

[14] Despite counsel's contention, the Respondent's internal company grievance procedure is obviously not the sort of "interim grievance procedure" contemplated by the Board as constituting a "safe harbor" of which the disciplined employees would be required to avail themselves. *Alan Ritchey, supra.*

Roberts, Sitar and Dixon. It is well established that the implementation of a new discipline procedure affects employees' working conditions and is, thus, a mandatory subject of bargaining. *See Virginia Mason Hospital,* 357 NLRB No. 53 at *4 (2011); *Praxair, Inc.,* 317 NLRB 435, 436 (1995). Further, any discipline issued pursuant to unlawfully and unilaterally implemented procedures is also, *ipso facto,* a violation of the Act. *See Verizon North, Inc.,* 352 NLRB 1022, 1029 (2008).

Accordingly, I find that the Respondent violated Section 8(a)(1) and (5) of the Act by unilaterally implementing the new Trouble Call Eradication Pan and by issuing discipline pursuant to that new plan, as alleged in complaint paragraphs 7(p), (c), (q), (r), (s), and 10.

P. Mandatory On-Call Policy in Kalispell

It is alleged in complaint paragraphs 7(u) and 10 that the Respondent violated the Act when on February 6, 2013, at its Kalispell, Montana facility it implemented a new on-call policy without negotiating with the Union.

It is undisputed that the past practice at the Respondent's Kalispell, Montana facility was, when necessary to staff a job, to sometimes call technicians on their day off and ask them if they would volunteer to come to work. Technicians were at liberty to accept the assignment or not, and no adverse action was threatened or taken against them if they declined. However, around February of 2013 the policy changed.

Remote technician Kelsey Buckingham testified that approximately six to eight months before the hearing date (July 25, 2013), the Kalispell facility manager, Dave Elmore, at a meeting with the technicians "handed out a list and said that we were now going to be on-call on one of our days off during the week." The handout was "a standard spreadsheet with the list of the techs on the left hand side, and then it had marked all of the days we worked and then the days we had off. It indicated on which day off we were going to be on-call." According to Buckingham, the policy went into effect and within the first week or two he was called in to work on his day off. He reported for work as requested. Buckingham further testified that subsequently he was called in a second time, but was unable to make arrangements to work that day. As a result, he received a verbal reprimand from Dave Elmore.

Technician Roger Higgs testified that around March or April of 2013 Dave Elmore told the technicians that the policy of voluntary on-call was changing and that from now on "each tech would have a day of on-call that would regularly be our day off to cover if anybody called in sick." According to Higgs, the on-call was now mandatory, and the technician must report for work if called.

Former technician Lehi Steward similarly testified. Steward placed the change in policy in February of 2013. According to Steward, Elmore told the technicians that there was a new policy in effect immediately, and that "everybody in the office would have one designated day that would be their on-call policy day. And, you would sit around the phone from 6:00 to 9:00 on that day waiting for a phone call from your Field Service Manager." Further, Steward testified that Elmore indicated that if called, it was mandatory for the technician to report for work.

In an attempt to rebut the testimony of Buckingham, Higgs, and Steward, the Respondent's Operations Manager, Derek Bieri, testified that the on-call policy at Kalispell, and company-wide, has always been voluntary. He denied any attempt to establish a mandatory on-call policy in Kalispell and characterized what had been done by the manager at that facility as merely an effort to have the technicians designate the day off that they were most likely to

voluntarily agree to come into work if called. But, he insisted that even if requested to come in to work on that day, the technician was free to decline to do so, with no adverse consequences. However, on cross-examination Bieri was required to identify a string of internal management emails regarding the Kalispell facility, on some of which he had been copied, including one dated February 6, 2013, which stated in part, "The object of this on call tech will be to cover any route that may need covering on that specific day. **The tech will be aware that if he is called in he is required to come in to work."** (G.C. Ex. 42, emphasis added by the undersigned)

From the record evidence it seems that only one such "mandatory" on-call schedule was ever prepared for Kalispell, and counsel for the Respondent argues in his post-hearing brief that this was nothing more than one local manager's failed attempt to manage one facility, not a company policy. However, while it does appear that this policy was limited to the Kalispell facility and was short lived, it is also very clear that the manager of this facility informed numerous technicians about this new "mandatory" policy, distributed the mandatory on-call schedule, called technicians on their days off and ordered them to report for work, and disciplined at least one employee, Kelsey Buckingham, with a verbal reprimand for his refusal to report for work when called. Therefore, I certainly cannot find that the policy change was insignificant.

It is an unfair labor practice for an employer to unilaterally implement a new on-call policy without first bargaining with the union. *See Gasland, Inc.,* 230 NLRB 1132, 1136 (1977) (employer violated the Act by unilaterally adding an on-call day to the employees' existing four-day workweek, even though the collective bargaining agreement already called for a five-day workweek). Further, when discipline is imposed for failing to meet the new job requirement, it is a *per se* mandatory subject of bargaining. *See Virginia Mason Hospital,* 357 NLRB No. 53 at *4 (2011); *Praxair, Inc.,* 317 NLRB 435, 436 (1995).

Accordingly, I conclude that the Respondent violated Section 8(a)(1) and (5) of the Act by implementing a new mandatory on-call policy at Kalispell and by disciplining technicians for failing to abide by that policy, without first notifying and bargaining with the Union regarding this policy change, as alleged in complaint paragraphs 7(u) and 10.

Q. Mandatory Three-Day Work Week for Nampa Facility

The General Counsel alleges in complaint paragraphs 7(v) and 10 that the Respondent violated the Act by unilaterally implementing a mandatory three-day work week at its Nampa, Idaho facility in March 2013 without first negotiating with the Union.

Technician Levi Billman testified that prior to March of 2013, the Nampa based technicians generally worked a four-day work week, depending upon the volume of their work. If slow, they might only work three days, and, if busy, they might work a fifth day. According to Billman, in March the technicians were informed by manager James Davis that they would now all be working a three-day week. However, Billman acknowledged that traditionally the workload at the Nampa facility fluctuated "quite a bit." He testified that in the past when the work slowed down, management would reduce overtime opportunities, but that this time they simply placed all the technicians on a three-day work week. In any event, he acknowledged that even with a three-day week, the technicians might work 10, 12, or even 14 hours a day.

On cross-examination, Billman testified that while the three-day work week began in March 2013, it ended towards the end of May. He admitted that in the past during the "slow season," he was given three days of work, and that once the slow season ended he went back to the regular four-day work week.

Rick Baum, the former Field Services Manager in Nampa, testified similarly to Billman, and indicated that in March of 2013 the work week for the technicians was reduced from four days to three. However, on cross-examination he admitted that Operations Manager Derek Bieri had told him that if the Nampa technicians were looking for more work, there were details available for them to other offices where there was more work.

Bieri testified that he was familiar with the period in the Nampa office when the technicians worked a three-day week. He recalled this "lull" in the Nampa office and placed this period of "inactivity" at about three weeks. According to Bieri, during this period the Employer made work available at other offices for the Nampa technicians if they chose to go on a detail. After this slow period, the Nampa technicians returned to their usual four-day work week. Further, he testified that the Employer has had to make this sort of work week reduction in the past at other offices when business slowed down. He indicated that this is the nature of the Respondent's business, with employee work schedules varying from five to three days a week depending on the volume of business. Bieri said, "I was trying to even out the work for the employees [so] that [they] are gonna [sic] stay."

As I have noted on several earlier occasions, I find Bieri to be a credible witness. He testified in a no nonsense, straight forward way. He is highly knowledgeable regarding the Respondent's business. Although as Operations Manager he clearly had a bias in favor of the Respondent, I do not believe that it resulted in his exaggerating or embellishing his testimony. However, I have less faith in the testimony of the technicians who testified on behalf of the General Counsel. They had only a myopic view of their personal situation in the particular facility in which they worked, without benefit of the knowledge of the Respondent's overall operation. Further, they seemed willing to color their testimony on behalf of the General Counsel.

In any event, the record clearly established the fluctuating nature of the Respondent's business. It is undisputed that there are slow and busy seasons, differing to some extent depending on the office location. Numerous technicians testified that around tax season, March and April, the Respondent's installation business falls off, and that it begins to increase as the summer progresses, generally reaching its high point just before the start of football season in the fall. Further, when the Dish Network runs a promotion in a particular location, that will generally increase business.

The reduction in the work week in Nampa from four days to three days starting in March of 2013 is certainly in line with the normal ebb and flow of the Respondent's business. Whether the reduction in work days in Nampa lasted for three weeks or two months, it is clear that by May, the traditional time for installations to begin to increase, the business had improved to the point where the technicians were once again working a four-day week.

Based on the credible, probative evidence, I am of the view that the reduction in the work week in Nampa from four days to three was generally in line with the Respondent's past business practice. It did not constitute a change in past practice that required the Respondent to consult and negotiate with the Union. Accordingly, I shall recommend to the Board that complaint paragraph 7(v) and, as it related to it, paragraph 10 be dismissed.

R. Ladder Straps and Locks

The General Counsel alleges in complaint paragraphs 7(w) and 10 that in March of 2013 the Respondent violated the Act by announcing that it would now be requiring employees to

purchase their own ladder straps and ladder locks without first consulting and negotiating with the Union.

Walter Sitar, a technician in the Respondent's Post Falls, Idaho facility, testified that technicians regularly use ladders in the performance of their jobs and they carry these ladders on their trucks. The Respondent requires its technicians to strap down and lock the ladders to the truck when the ladder is not in use. These ladders, ladder locks, and ladder straps are provided by the Respondent.

According to Sitar, at a mandatory staff meeting in early March 2013, Post Falls, Idaho Field Service Manager Parker Estes[15] informed the employees that "he was sick of replacing the ladder locks and straps, and that we were going to have to start providing them ourselves." Estes indicated that this new policy would start the following Monday. However, Sitar testified that to his knowledge, the announced policy change never went into effect. Further, Sitar indicated that despite being told that they would have to purchase their own ladder locks and straps, he has never had to do so, and he knows of no other technician who has actually done so. William Kniffin, Union Organizer, testified that prior to the announcement, the Respondent had never raised this issue with the Union or indicated an interest in negotiating over the matter.

Operations Manager Derek Bieri testified that the Respondent does not have a company-wide policy requiring employees to pay for ladder locks and straps. He said that such a policy would be illegal. In response to being told what Parker Estes was alleged to have said, Bieri testified, "I could see a manager getting frustrated and maybe saying [that employees were going to have to pay for locks and straps], but it's definitely not a policy. No technician has ever been required to pay a penny for a lock or strap." It is counsel for the Respondent's position that as no technician has ever been required to pay for a strap or lock, and as the Respondent has no such company-wide policy that, regardless of what Estes may have said to the technicians in Post Falls, as there is no such policy, the Respondent has not refused to bargain over it. However, I disagree.

It is undisputed that Estes announced a policy in Post Falls requiring technicians to purchase replacement ladder locks and straps. Requiring employees to begin purchasing their own work equipment is a mandatory subject of bargaining. *See Flambeau Airmold Corp.,* 334 NLRB 165, 172 (2001) (violation for employer to unilaterally begin requiring employees to purchase safety equipment). Even though it appears that the policy was never enforced, no evidence was offered by the Respondent to show that Estes' words were ever retracted. In any event, an employer's mere announcement of a unilateral change to wages, hours, and working conditions, by itself, is a violation of the Act, even if that change has never been implemented or enforced. *Santa Barbara News-Press,* 358 NLRB No. 141 at *102-03 (2012) (mere announcement of a unilateral change violates the Act because it undercuts the role of the union as the employees' exclusive bargaining agent). Accordingly, I conclude that the Respondent violated Section 8(a)(1) and (5) of the Act when Parker Estes announced in March 2013, without consultation and negotiation with the Union, that employees would now be required to purchase their own ladder straps and ladder locks, as alleged in complaint paragraphs 7(w) and 10.

[15] The General Counsel and the Respondent stipulated to the supervisory and agency status of 12 individuals, along with their official titles and the time periods during which they held those positions. Parker Estes is one such individual. (G.C. Ex. 3)

S. Delay in Furnishing Requested Information

It is alleged in complaint paragraphs 8(a), (b), (c) and 10 that the Respondent violated the Act by unreasonably delaying its furnishing to the Union of requested information necessary and relevant to the Union's performance of its duties as the exclusive collective bargaining representative of the Unit.

The Respondent's answer admits paragraph 8(a) of the complaint, namely that since January 5, 2012, the Union has requested, in writing, that the Respondent furnish the Union with the following information: a list of all bargaining unit employees, the office in which they work, their seniority date, and all contact information, and all personnel policies in effect as of December 15, 2011. However, the Respondent's answer denied complaint paragraph 8(b), that the requested information was necessary for, and relevant to, the Union's performance of its duties as the exclusive collective bargaining representative of the Unit. The answer also denied complaint paragraph 8(c) that from about January 5 to about mid-October 2012 the Respondent unreasonably delayed in furnishing the Union with the information requested.

In his post-hearing brief, counsel for the Respondent admits that the Respondent did not provide the requested information until October 2012. In its defense, counsel argues that the Respondent's delay was not unlawful, as it was waiting for the final disposition of the unfair labor practices charges it filed against the Union. However, I conclude that this defense is without merit.

Union Organizer William Kniffin testified regarding his presentation on January 5, 2012, to the Respondent's President, Pete Sobrepena, of the letter requesting the list of bargaining unit employees, their office assignments, seniority dates, contact information, and all personnel policies in effect as of the date of the Union's certification as bargaining representative, December 15, 2011. (G.C. Ex. 12) According to Kniffin's unrebutted testimony, the Respondent refused to provide the information, offering no further explanation other than to say it planned on challenging the Union's certification in federal court.[16] Further, Kniffin testified that more than 9 months later, in October of 2012, the Respondent finally furnished the requested information, without explanation for the delay.

As counsel for the General Counsel articulates in his post-hearing brief, long and well established Board and court law holds that an employer has an obligation to timely furnish a union, upon request, with information that is relevant and necessary to its role as the exclusive representative of bargaining unit employees. *Detroit Edison Co. v. NLRB* 440 U.S. 301, 303 (1979); *NLRB v. Acme Industrial Co.,* 385 U.S. 432, 435-36 (1967); *NLRB v. Truitt Mfg. Co.,* 351 U.S. 149, 153 (1956). It is axiomatic that information requests for such things as the names and contact information of bargaining unit employees, as well as the employer's policies applicable to those employees, are considered relevant and necessary to the union's role in representing those employees. *See Great Southern Fire Protection, Inc.,* 325 NLRB 9, 14 (1997) (names and addresses of employees are presumptively relevant); *Excell Fire Protection Co.,* 308 NLRB 241, 247 (1992) (names and contact information of unit employees is presumptively relevant); *Canton-Potsdam Hospital,* 262 NLRB 709, 710 (1982) (employee handbooks and other employment rules and policies of the employer are presumptively relevant).

[16] While counsel for the Respondent claims in his post-hearing brief that the refusal was premised on the filing of unfair labor practice charges against the Union, Kniffin was apparently never told any such thing. Further, the record is devoid of any evidence that the Respondent ever challenged the Union's certification in federal court.

The Union's "necessity" for the information is a question of relevance, and the Board applies a "liberal discovery-type standard" in determining relevancy. *Quality Building Contractors, Inc.,* 342 NLRB 429, 431 (2004). Information pertaining to employees within the bargaining unit is presumptively relevant and no additional showing of relevance is necessary. Id; *Shoppers Food Warehouse Corp.,* 315 NLRB 258, 259 (1994). Clearly this would apply to all the information requested by the Union on January 5, 2012.

Additionally, an employer must timely respond to a union's information request. *Amersig Graphics, Inc.,* 334 NLRB 880, 885 (2001). "An unreasonable delay in furnishing such information is as much a violation of Section 8(a)(5) of the Act as the refusal to furnish the information at all." *Id,* citing *Valley Inventory Service,* 295 NLRB 1163, 1166 (1989). Even if an employer does have a justification for not providing the information, an employer still violates the Act by not responding in a timely manner, even if it is only to tell the union that the information is not relevant. *Iron Tiger Logistics, Inc.,* 359 NLRB No. 13, at *2 (2012).

As noted above, the requested information in this case is presumptively relevant as it pertains to bargaining unit employees. *See Shoppers Food Warehouse Corp., supra.* Never the less, the Respondent delayed furnishing the Union with this relevant information for in excess of nine months. Clearly, such a long delay under these circumstances was excessive and unlawful. While the Respondent does not argue that its delay was somehow reasonable, counsel does contend in his brief that as the requested information has now been provided and bargaining has apparently ensued, that "the issue is now moot." But, that is hardly the case.

The Board has indicated that what constitutes reasonable promptness in furnishing information to a bargaining representative must be determined under the totality of the circumstances in each case. There is no "per se" rule, rather what is required is a reasonable good faith effort to respond to the request as promptly as circumstances allow. *Allegheny Power,* 339 NLRB 585, 587 (2003). Under the circumstances of this case, a delay of over nine months was beyond any doubt not reasonable. None of the information sought by the Union was complex, and it was certainly all readily available and accessible through the Respondent's computer system. See *Samaritan Medical Center,* 319 NLRB 392, 398 (1995). Such access to the information by the Respondent should have been possible within days, if not hours, and certainly should not have required a nine month delay. *See Regency Service, Carts, Inc.,* 345 NLRB 671 (2005) (three month delay in circumstances unlawful); *Peyton Packing Co.,* 129 NLRB 1358 (1961) (three month delay too long, even when data are incomplete and necessary persons absent from work due to a strike).

If respondents are able to remedy a failure to furnish information violation of the Act, simply by ultimately furnishing the information, in the case at hand nine months late, then the Act's requirement that the parties bargain in good faith would be meaningless, at least so far as the requirement that relevant requested information be furnished. In my view, counsel is wrong when he contends that any such violation of the Act is now moot, simply because after nine months the Respondent has suddenly decided to comply with its bargaining obligations under the Act.

I conclude that the Respondent violated Section 8(a)(1) and (5) of the Act, when it failed and refused for over nine months to furnish the Union with relevant requested information, as alleged in complaint paragraphs 8(a), (b), (c), and 10.

T. Summary of Findings

As set forth above in this decision, I have found that the Respondent violated Section 8(a)(1) and (5) of the Act, as alleged in complaint paragraphs: 7(b), (c), (d), (e), (j), (k), (l), (m), (o), (p), (q), (r), (s), (u), (w), 8(a), (b), and (c). Further, I have recommended that the Board dismiss complaint paragraphs: 6(a), (b), 7(a), (f), (g), (h), (n), (t), and (v).

Conclusions of Law

1. The Respondent, Star West Satellite, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, International Brotherhood of Electrical Workers Local 206 affiliated with International Brotherhood of Electrical Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union is the exclusive collective bargaining representative of all the employees in the following unit: All full-time and regular part-time technicians, including quality control technicians, lead technicians, installation technicians, training technicians, and warehouse employees employed by the Employer; excluding all other employees, office clerical employees, dispatch employees, route assigners, confidential employees, and guards and supervisors as defined by the Act, which unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times since at least December 15, 2011, the Union, based on Section 9(a) of the Act, has been the exclusive collective bargaining representative of the unit employees.

5. By the following acts and conduct the Respondent has violated Section 8(a)(1) and (5) of the Act:

(a) Implementing a new safety policy concerning the use of personal equipment without notifying and bargaining with the Union;

(b) Changing the pay dates for its unit employees without notifying and bargaining with the Union;

(c) Changing its policies concerning remote technicians' travel pay and mileage reimbursement without notifying and bargaining with the Union;

(d) Changing its work boot policy without notifying and bargaining with the Union;

(e) Implementing a new customer survey policy for unit employees without notifying and bargaining with the Union;

(f) Changing its health insurance plan offered to unit employees without notifying and bargaining with the Union;

(g) Changing its morning procedures at its Nampa, Idaho facility by implementing more stringent time schedules without notifying and bargaining with the Union;

(h) Discontinuing its 401(k) plan available to unit employees without notifying and bargaining with the Union;

(i) Changing its trouble call policy by suspending its employees who have five trouble calls in a 30 day period without notifying and bargaining with the Union;

(j) Suspending its employees Christopher Roberts, Walter Sitar, and Wayne Dixon for having five trouble calls in a 30 day period without notifying and barraging with the Union;

(k) Implementing a new mandatory on-call policy at its Kalispell, Montana facility without notifying and bargaining with the Union;

(l) Announcing at its Post Falls, Idaho facility that it would now be requiring unit employees to purchase their own ladder locks and ladder straps without notifying and bargaining with the Union; and

(m) Failing to timely furnish to the Union requested information necessary and relevant to the Union's performance of its duties as the exclusive collective bargaining representative of the Unit, specifically: a list of all bargaining unit employees, the offices in which they work, their seniority dates, and all contact information, and all personnel policies in effect as of December 15, 2011.

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

7. The Respondent has not violated the Act except as set forth above.

Remedy

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

The evidence established that the Respondent suspended its employees Christopher Roberts, Walter Sitar, and Wayne Dixon for violating its unlawfully imposed trouble call policy. My recommended order requires the Respondent to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. My recommended order further requires that backpay shall be computed in accordance with *F.W. Woolworth Co.,* 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987), plus daily compound interest as prescribed in *Kentucky River Medical Center,* 356 NLRB No. 8 (2010). Further, my recommended order requires the Respondent to reimburse these employees for any excess federal and state income taxes they may owe from receiving a lump-sum backpay award, and to submit the appropriate documentation to the Social Security Administration ("SSA") so that when backpay is paid it will be allocated to the appropriate calendar quarters, as required in *Latino Express, Inc.* 359 NLRB No. 44 (2012).

The recommended order also requires that the Respondent shall expunge from its files and records any and all references to the unlawful suspensions issued to the above named employees, and to notify them in writing that this has been done and that the unlawful discrimination will not be used against them in any way. *Sterling Sugars, Inc.,* 261 NLRB 472 (1982). Further, the Respondent must not make any reference to the expunged material in response to any inquiry from any employer, employment agency, unemployment insurance office, or reference seeker, or use the expunged material against them in any other way.

My recommended order also requires the Respondent to reimburse its employees for any out-of-pocket expenses they incurred as a result of any of the unilateral changes in wages, hours, and working conditions that the Respondent unlawfully implemented without notifying and bargaining with the Union. Such changes would include, but are not limited to, the change to a different health insurance plan, including any increased costs of health insurance premiums, increased deductibles and co-pays, and other expenses incurred as a result of the change in the insurance plans, with interest.

Also, as I have found that the Respondent made certain unlawful unilateral changes in the terms and conditions of employment of the unit employees, I shall recommend that the Respondent be ordered to, at the request of the Union, rescind any and all of those changes.

Further, because of the numerous and pervasive nature of the unfair labor practices committed by the Respondent, and the destructive impact that such actions had on the collective bargaining process, my recommended order shall require that the Respondent bargain in good faith with the Union, on request, for a period of at least one year beginning from the time that the Respondent has remedied these unfair labor practices. *See Mar-Jac Poultry,* 136 NLRB 785 (1962).

The Respondent shall be required to post a notice at each of its 11 facilities located in the states of Washington, Idaho, and Montana that assures its employees that it will respect their rights under the Act. In addition to physically posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.[17]

In the complaint, the General Counsel requests that as part of any remedy that the Respondent be required to have a representative approved by the Regional Director read the notice to the unit employees in approved locations on work time. However, in the circumstances of this case, I do not believe that is necessary in order to effectuate the purposes of the Act. In counsel for the General Counsel's brief he does not indicate why such an extraordinary remedy is necessary in this case. Of course, I am aware that there were earlier unfair labor practice charges filed against this Respondent, which charges resulted in the issuance of a complaint, and ultimately were resolved through an informal Board settlement agreement. Still, I do not believe that the history of this Employer's relationship with the Union is so egregious as to conclude that the Respondent is a recidivist violator of the Act, as would warrant the extraordinary remedy of requiring that the notice be read to assembled employees. In my view, notice posting at each of its 11 facilities, and electronic posting if warranted, is sufficient to advise the employees as to their rights under the Act, and to assure them that the Respondent will respect those rights.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[18]

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[17] *J. Picini Flooring,* 356 NLRB No 9 (Oct. 22, 2010).

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

ORDER

The Respondent, Star West Satellite, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Failing and refusing to bargain in good faith with the Union as the exclusive representative of its employees in the following unit (the "Unit"): All full-time and regular part-time technicians, including quality control technicians, lead technicians, installation technicians, training technicians, and warehouse employees employed by the Employer; excluding all other employees, office clerical employees, dispatch employees, route assigners, confidential employees, and guards and supervisors as defined by the Act.

(b) Implementing a new safety policy concerning the use of personal protective equipment without notifying and bargaining with the Union;

(c) Changing the pay dates for its unit employees without notifying and bargaining with the Union;

(d) Changing its policies concerning remote technicians' travel pay and mileage reimbursement without notifying and bargaining with the Union;

(e) Changing its work boot policy without notifying and bargaining with the Union;

(f) Implementing a new customer survey policy for unit employees without notifying and bargaining with the Union;

(g) Changing its health insurance plan offered to unit employees without notifying and bargaining with the Union;

(h) Changing its morning procedures at its Nampa, Idaho facility by implementing more stringent time schedules without notifying and bargaining with the Union;

(i) Discontinuing its 401(k) plan for unit employees without notifying and bargaining with the Union;

(j) Changing its trouble call policy by suspending its employees who have five trouble calls in a 30-day period without notifying and bargaining with the Union;

(k) Implementing a new mandatory on-call policy at its Kalispell, Montana facility without notifying and bargaining with the Union;

(l) Announcing at its Post Falls, Idaho facility that it would now be requiring employees to purchase their own ladder straps and ladder locks, without notifying and bargaining with the Union;

(m) Failing to timely furnish to the Union requested information necessary and relevant to the Union's performance of its duties as the exclusive collective bargaining representative of the unit employees, specifically a list of all bargaining unit employees, the offices in which they work, their seniority dates, and all contact information, and all personnel policies in effect that involve the unit employees; and

(n) In any like or related manner, refusing to bargain collectively and in good faith with the Union representing the unit employees, and interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.

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

(a) On request of the Union, bargain in good faith with the Union as the exclusive collective bargaining representative of the Unit for a period of at least one year beginning from the time that the Respondent has remedied these unfair labor practices;

(b) On request of the Union, restore to its bargaining unit employees all terms and conditions of employment in existence prior to the changes unlawfully implemented after September 14, 2011, including, but not limited to, unilateral changes in safety equipment requirements, pay dates, pay and mileage reimbursement policies, work boot policies, health insurance, retirement plans, discipline procedures related to trouble calls, on-call policies, customer survey policies, time schedules, and requiring employees to purchase their own equipment;

(c) Furnish to the Union in a timely manner requested information necessary and relevant to the Union's performance of its duties as the exclusive collective bargaining representative of the unit employees;

(d) Make the bargaining unit employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful unilateral changes made to the pay and mileage policies for remote technicians, work boot policies, discipline procedures related to trouble calls, on-call policies, pay dates, health insurance (including out of pocket medical expenses), retirement plans, customer survey policies, and requiring employees to purchase their own equipment, with interest;

(e) Make employees Christopher Roberts, Walter Sitar, and Wayne Dixon whole for any loss of earnings and other benefits suffered as a result of their unlawful suspensions, in the manner set forth in the remedy section of this decision;

(f) Within 14 days of the Board's Order, remove from its files any references to the unlawful suspensions of Christopher Roberts, Walter Sitar, and Wayne Dixon, and inform them in writing that this has been done, and that the Respondent's unlawful discrimination against them will not be used against them as the basis of any future personnel actions, or referred to in response to any inquiry from any employer, employment agency, unemployment office, reference seeker, or otherwise used against them;

(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 and other earrings and benefits due under the terms of this Order;

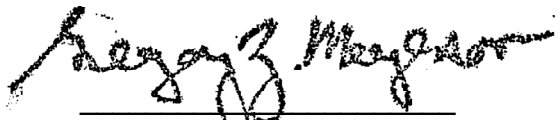
(h) File a special report with the Social Security Administration allocating backpay to the appropriate calendar quarters for any employee being paid backpay as a result of this Order; and to also reimburse said employees for any adverse income tax consequences of receiving their backpay in one lump sum;

(i) Within 14 days after service by the Region, post at its each of its 11 facilities located in the States of Washington, Idaho, and Montana, copies of the attached notice marked "Appendix."[19] Copies of the notice, on forms provided by the Regional Director for Region 19 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed any of the 11 facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 14, 2011; and

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

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

Dated at Washington, D.C. November 4, 2013



Gregory Z. Meyerson
Administrative Law Judge

[19] 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."

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 that interferes with these rights. Specifically:

WE WILL NOT refuse to recognize and bargain collectively with International Brotherhood of Electrical Workers Local 206 affiliated with International Brotherhood of Electrical Workers, AFL-CIO (the Union), as the exclusive collective bargaining representative of our technicians and warehouse employees, including by making unilateral changes in your wages, hours, and working conditions without notifying and bargaining with the Union.

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

WE WILL NOT refuse to meet and discuss in good faith with your Union any proposed changes in wages, hours, and working conditions before putting such changes into effect. More specifically:

WE WILL NOT implement new safety policies that require you to use personal protective equipment (hard hats, safety glasses, and back braces for warehouse employees) without first notifying and bargaining with your Union.

WE WILL NOT change your pay dates without first notifying and bargaining with your Union.

WE WILL NOT change the remote technicians' travel pay and mileage reimbursement without first notifying and bargaining with your Union.

WE WILL NOT change our work boot policy without first notifying and bargaining with your Union.

WE WILL NOT implement a new customer survey policy (post-calls) without first notifying and bargaining with your Union.

WE WILL NOT make changes to our health insurance plan for employees without first notifying and bargaining with your Union.

WE WILL NOT implement new morning procedures for you at our Nampa, Idaho facility without first notifying and bargaining with your Union.

WE WILL NOT eliminate our 401(k) retirement plan without first notifying and bargaining with your Union.

WE WILL NOT implement a new Trouble Call Eradication Plan without first negotiating and bargaining with your Union.

WE WILL NOT issue you discipline under the new Trouble Call Eradication Plan without first negotiating and bargaining with your Union.

WE WILL NOT implement a new on-call policy at our Kalispell, Montana facility without first negotiating and bargaining with your Union.

WE WILL NOT announce a policy change at our Post Falls, Idaho facility requiring you to purchase ladder straps and ladder locks without first notifying and bargaining with your Union.

WE WILL NOT in any like or related manner interfere with your rights under Federal labor law.

WE WILL, if requested by your Union, rescind any or all changes to your terms and conditions of employment that we made without first notifying and bargaining with your Union.

WE WILL, if requested by your Union, rescind the safety policies we unilaterally implemented concerning the required use of personal protective equipment (hard hats, safety glasses, and back braces for warehouse employees).

WE WILL reimburse you for any out-of-pocket losses that you incurred as a result of our unilateral changes made to your pay dates.

WE WILL reimburse our remote technicians for any travel pay and mileage reimbursements, with interest, that they lost as a result of the unilateral changes that we made to remote technicians' travel pay and mileage reimbursements.

WE WILL, if requested by the Union, rescind our work boot policy that required you to wear boots that have a ninety-degree, defined heel, which policy we unilaterally implemented.

WE WILL reimburse you if you had to purchase new boots as a result of the unilateral change in boot policy that we implemented.

WE WILL, if requested by the Union, rescind our customer survey (post-calls) policy that we unilaterally implemented, and will no longer require you to make such calls.

WE WILL, if requested by the Union, rescind the changes that we made unilaterally to your health insurance plan, and restore the health insurance plan that we previously furnished to you under the terms of the 2011-2012 plan year.

WE WILL reimburse you for any out-of-pocket losses and expenses that you incurred as a result of our unilateral change to a different health insurance plan on about August 2012, including any increased cost of the health insurance premiums, greater deductibles and co-pays, and other expenses incurred as a result of the change in the insurance plans, with interest.

WE WILL rescind the morning procedures that we unilaterally implemented in our Napa, Idaho facility around September 2012.

WE WILL reinstate our 401(k) plan, or if it is no longer available, replace it with one as similar as possible.

WE WILL reimburse you for any out-of-pocket losses that you incurred as a result of our unilateral discontinuation of our 410(k) plan.

WE WILL rescind our unilaterally implemented Trouble Call Eradication Plan providing for our verbal/written discipline of you for having 2 TC-12s in a rolling 30-day period and our suspending you for having 5 TC-12s in a rolling 30-day period.

WE WILL pay Christopher Roberts, Walter Sitar, and Wayne Dixon any wages or other benefits that they lost because we suspended them under the unilaterally implemented Trouble Call Eradication Plan.

WE WILL, within 14 days of the date of the Board's Order, remove from our files any reference to the unlawful suspensions issued to Christopher Roberts, Walter Sitar, and Wayne Dixon pursuant to the unilaterally implemented Trouble Call Eradication Plan, and within 3 days thereafter, notify the three suspended employees in writing that this has been done and that the suspensions will not be used against them in any way.

WE WILL rescind our on-call policy that we unilaterally implemented in our Kalispell, Montana facility around February 2013.

WE WILL rescind our unilateral policy announced in our Post Falls, Idaho facility beginning around March 2013 requiring you to purchase your own ladder straps and ladder locks, and **WE WILL** return to our previous policy of providing you with ladder straps and ladder locks at our expense.

WE HAVE provided the Union with the information that it requested on January 5, 2012.

Star West Satellite, Inc.
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

915 2nd Avenue, Federal Building, Room 2948
Seattle, Washington 98174-1078
Hours: 8:15 a.m. to 4:45 p.m.
206-220-6300.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 206-220-6284.