

Leader Communications, Inc. and International Association of Machinists, AFL-CIO, Local 171.
Case 17-CA-069008

April 10, 2013

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN
AND BLOCK

On July 5, 2012, Administrative Law Judge Gerald M. Etchingham issued the attached decision. The Respondent filed exceptions and a supporting brief.

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

We agree with the judge that the Respondent violated Section 8(a)(5) and (1) of the Act by bargaining in bad faith when it repudiated, without good cause, the November 29, 2011 tentative agreement with the Union.³ However, we do not rely on the judge's findings that the Respondent bargained in bad faith by other conduct.

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In addition, some of the Respondent's exceptions allege or imply that the judge's rulings, findings, and conclusions demonstrate bias and prejudice. On careful examination of the judge's decision and the entire record, we are satisfied that those contentions are without merit.

² We shall amend the judge's remedy and modify his recommended Order to require the Respondent to reinstate the tentative November 29 agreement. See *Suffield Academy*, 336 NLRB 659, 659 (2001), enf. 322 F.3d 196 (2d Cir. 2003); *TNT Skypack, Inc.*, 328 NLRB 468, 470 (1999), enf. 208 F.3d 362 (2d Cir. 2000). We shall further modify the judge's recommended Order to conform to our findings and to the Board's standard remedial language, and we shall substitute a new notice to conform to the Order as modified.

The Respondent did not except to the judge's recommendation to extend the certification year for 1 year and require a reading of the notice by the Respondent's CEO or its chief negotiator, Insee Bennett, or by a Board agent in their presence. Accordingly, we adopt those remedies.

³ The agreement was not a complete contract but included terms relating to wages, benefits, just cause discharge, and contract duration, among others. Like the judge, we regard that agreement as sufficiently firm that the Respondent's December 1 rejection of it is reasonably characterized as a repudiation. See *Valley Central Emergency Veterinary Hospital*, 349 NLRB 1126 (2007). But whether we characterize the Respondent's conduct as a repudiation or as a bad-faith withdrawal from a tentative agreement (see *Suffield Academy*, supra), the conduct is unlawful and the remedy is the same.

We agree with the judge's rejection of post hoc explanations the Respondent offered at the hearing to justify its conduct, but we express no view as to whether those reasons would have justified the Respondent's conduct if they had been offered to the Union at the time of the events.

Further, we expressly disavow the judge's finding that the Respondent attempted to conceal its negotiator's authority or his agreement with the Union.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below, and orders that the Respondent, Leader Communications, Inc., Oklahoma City, Oklahoma, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith by repudiating, without good cause or in order to frustrate bargaining, tentative agreements reached with the International Association of Machinists, AFL-CIO, Local Union 171 (the Union).

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

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

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

All full-time and regular part-time computer electronics technicians employed by the Employer [Respondent] at Tinker Air Force Base, Oklahoma City, Oklahoma to provide support for the three (3) E-3 Mission Crew Simulators and one (1) Facility for Interoperability Testing device, but EXCLUDING all other employees, office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

(b) Reinstate the tentative agreement previously reached on November 29, 2011, covering contract duration, wages, just cause, and nonwage benefit provisions.

(c) Within 14 days after service by the Region, post at its Oklahoma City, Oklahoma facility, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and

⁴ 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."

maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, as Respondent has stipulated it customarily communicates with its employees by such means. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 1, 2011.

(d) Within 14 days of the date of this Order, Respondent shall hold a meeting or meetings, scheduled to ensure the widest possible attendance, at which the attached notice marked "Appendix" will be publicly read by a responsible corporate executive, either Inslee Bennett or Respondent's chief executive officer, in the presence of a Board agent, or at Respondent's option, by a Board agent in that corporate executive's presence.

(e) Within 21 days after service by the Region, file with the Regional Director for Region 17 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 certification of the Union issued by the Board on August 15, 2011, is extended for a period of 1 year commencing from the date on which the Respondent begins to comply with the terms of this Order.

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 fail and refuse to bargain in good faith by repudiating, without good cause or in order to frustrate bargaining, tentative agreements previously reached with the International Association of Machinists, AFL-CIO, Local Union 171 (the Union), which is the exclusive collective-bargaining representative of the employee unit described below.

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

WE WILL, on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning the terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time computer electronics technicians employed by the Employer [Respondent] at Tinker Air Force Base, Oklahoma City, Oklahoma to provide support for the three (3) E-3 Mission Crew Simulators and one (1) Facility for Interoperability Testing device, but EXCLUDING all other employees, office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

WE WILL reinstate the tentative agreement previously reached on November 29, 2011, covering contract duration, wages, just cause, and nonwage benefit provisions.

LEADER COMMUNICATIONS, INC.

Charles T. Hoskin Jr., Esq., for the General Counsel.
Tony G. Puckett, Esq. (McAfee & Taft), for the Respondent.
Ramon A. Garcia and Tony Bennett, in pro se, for the Charging Party.

DECISION

STATEMENT OF THE CASE

GERALD M. ETCHINGHAM, Administrative Law Judge. This case was tried in Oklahoma City, Oklahoma, on March 13, 2012. The International Association of Machinists, AFL-CIO, Local 171 (the Charging Party or the Union) filed the charge on November 15, 2011¹ and the General Counsel issued the complaint on January 31, 2012, alleging that Leader Communications, Inc. (Respondent) has violated Section 8(a)(1) and (5) of the Act by failing to negotiate the terms and conditions of a collective-bargaining agreement (CBA) in good faith.

Posttrial briefs² were filed on April 17, 2012, by Respondent

¹ All dates are in 2011, unless otherwise indicated.

² For ease of reference, testimonial evidence cited here will be referred to as "Tr." (Transcript) followed by the page number(s); documentary evidence is referred to either as "GC Exh." for a General Counsel exhibit, "R. Exh." for a Respondent exhibit; and reference to

and General Counsel and have been carefully considered. On the entire record,³ including my observation of the demeanor of the witnesses and my evaluation of the reliability of their testimony, for the reasons set forth below, I find that Respondent violated the Act as alleged.

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION

Respondent is a defense-contractor corporation with an office and place of business in Oklahoma City, Oklahoma, where it is engaged in the business of providing information technology and business services to the United States Air Force, the Navy, the Department of Defense, Homeland Security, and the State of Oklahoma. During the calendar year, Respondent in the course and conduct of its business, provided information technology and business services valued in excess of \$1,000,000, and purchased and received at its Oklahoma facility, goods valued in excess of \$50,000 directly from points outside the State of Oklahoma.

I further find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. (Tr. 8.)

It is also admitted, and I so find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. BACKGROUND FACTS

On August 15, the Union was certified as exclusive collective-bargaining representative of Respondent's employees in an appropriate unit consisting of five full-time employees and one part-time employee holding the electronic technician II position. The unit is formally described as:

All full-time and regular part-time computer electronics technicians employed by the Employer [Respondent] at Tinker Air Force Base, Oklahoma City, Oklahoma to provide support for the three (3) E-3 Mission Crew Simulators and one (1) Facility for Interoperability Testing device, but EXCLUDING all other employees, office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

(Tr. 28, 235; GC Exh. 1-E at 2.)

III. THE THREE OCTOBER BARGAINING SESSIONS

On October 11, the Union, by its business representative and organizer, Tony Bennett (Bennett), traveled to a local hotel to begin collective-bargaining meetings with Respondent. (Tr. 22–23, 40.) Bennett credibly opined that the Union's standard practice is to sit down and negotiate for about five sessions to work out a collective-bargaining agreement and that he has negotiated well over a 100 collective-bargaining agreements over the years—the majority of which involved employees like the unit members here who perform work under the Federal Service Contract Act (SCA). (Tr. 22–23, 40, 127.) Jerry McCu-

ne, another union business representative and its local president, also opined that of the 130 to 150 collective-bargaining agreements he has negotiated over the years, about 100 have been SCA contracts and it is typical to achieve a wage increase in the first contract. (Tr. 181–82.) Bennett had never negotiated a contract that took longer than 2 months to be completed before his dealings with the Respondent in this case, with the large majority of negotiations lasting no longer than a week's time. (Tr. 128–129.)

In this case, Respondent is a subcontractor to the prime contractor, Ingenuit E, and any agreement worked out by the Union and Respondent would need to be reviewed and approved by the prime contractor and the U.S. Government at the Air Force Base where the unit employees work. (Tr. 27–28, 105, 235.) Respondent's 5-year subcontract with Ingenuit E is scheduled to expire on September 4, 2012, the same expiration date for Ingenuit E's prime contract with the Government. (Tr. 29–30, 105, 238.) The underlying subcontractor's expiration date with the prime contractor on the service contract is known as the "pass-through" date. (Tr. 182–183, 224.) Mr. McCune credibly testified that the Union commonly tailors the raises or general wage increases of a proposed CBA to the pass-through date of the service contract, which in this case is September 5, so the employer can get full recovery from the Government. *Id.*

As stated above, the first meeting between the Union and Respondent took place on October 11, with Inslee Bennett⁴ (Inslee Bennett), Respondent's in-house general counsel and director of contracts, as Respondent's lone representative.⁵ (Tr. 6, 231, 238–239, 282; GC Exh. 13, R Exh. 1 at 2) This was the first CBA negotiations for Respondent's Inslee Bennett for Respondent and Inslee Bennett admits that he has very limited experience negotiating collective-bargaining agreements. (Tr. 240, 296.) Inslee Bennett and Respondent showed up for the meeting without any CBA proposals at all. (Tr. 297.) While Inslee Bennett testified that Respondent does not have privity of direct contract with the Government nor the ability for a direct pass-through, I find McCune's opinions more credible given his greater experience negotiating CBA's with government subcontractors particularly his opinion that a subcontractor can expect full recovery from the Government. (Tr. 182–183, 224, 235–236.)

The parties discussed oral ground rules for negotiations such as signing off on tentative agreements on various provisions. (Tr. 168, 241.) At no time during this discussion on ground rules did Inslee Bennett ever say that he might need to seek approval from Respondent's CEO before committing to a position at the bargaining table. (Tr. 168–169.)

Bennett explained that Respondent's unit employees who perform work under the SCA enjoy a minimum prevailing wage set by the Department of Labor (DOL) as part of a yearly

⁴ No relationship alleged or proven.

⁵ Inslee Bennett is a retired Air Force Major whose last position before military retirement was director of contracts at Nellis Air Force Base in Las Vegas, Nevada. Tr. 233. Inslee Bennett also admitted that he would represent the Government or military base in his military contract work. Tr. 296. He opined that he is "truly the exclusive negotiator for the corporation [Respondent]. Tr. 238–239.

the General Counsel's posttrial brief shall be "GC Br." for the General Counsel's brief, followed by the applicable page numbers; and the same for Respondent's posttrial brief referenced as "R. Br."

³ The errors in the transcript have been noted and corrected.

survey within a region or area near Respondent's facility referred to as the area wage determination (AWD), which is reviewed annually by the DOL but may or may not be adjusted. For example, the AWD wage rate for the electronic technician II positions in this case was stagnant and unchanged for several years from 2003 thru 2009 before adjusting upward from \$22.61 per hour to \$24.54 per hour in 2010 and 2011. (Tr. 24, 105–106, 164, 173, 248; GC Exh. 15.) Bennett further explained that the same AWD rate also sets minimum fringe benefits or health and welfare benefits under the SCA.⁶ (Tr. 24.) Inslee Bennett admitted that Respondent's typical wage increases average "single digits, like a 3 percent increase." (Tr. 266.) He also believed, however, that a wage increase of 8 percent would not risk the loss of a contractor if a successor was subject to an ongoing CBA. (Tr. 303–304.)

At that meeting, which was attended by Bennett, Inslee Bennett, McCune, and unit member Joe Burton (Burton), the Union presented its initial proposed contract for discussion. (Tr. 30, 184, 241; GC Exh. 2, 16.) The Union's initial proposal, entitled "Union Contract Agreement for Collective Bargaining Agreement between Respondent and Union," included, among other things, *duration* provisions for a 3-year term contract beginning on October 15, and expiring on October 15, 2014; *wages* for unit workers described as E-3 Mission Crew Technicians rising from their current rate of \$24.54 per hour to \$37.99 per hour on September 4, 2012, and increasing further to \$41.79 per hour on September 4, 2013; *seniority* provisions stating that seniority of unit workers are subject to "traditional union just cause" analysis in contrast to a standard of "Federal at-will with Title VII exceptions;" and *nonwage benefits* that include: 10 Federal holidays plus Christmas Eve; vacation leave accruing at 80 hours for a unit employee's first 2 years of work and increasing to 120 hours for years 2–5, 160 hours for years 5–10, and 200 hours for years 10+; sick leave (personal time off (PTO)) of 104 hours per year (Respondent paid); jury duty of 20 days leave with differential; health & welfare benefits increasing at the start date from \$3.59 per hour to \$6 per hour and increasing further to \$7 per hour on September 4, 2013 with an added opt-out right; and a 401(k) plan where Respondent matches employee contributions dollar for dollar up to 5 percent of the employee's pay plus an automatic 1 percent Respondent contribution regardless of employee contribution with the Respondent's contributions not charged to the cash-in-lieu option (CILO). (Tr. 30, 184, 241, 275; GC Exh. 2; GC Exh. 16.) Bennett explained that every CBA of the hundred he has negotiated through successful ratification has contained the just cause provision for seniority that the Union sought as part of its initial contract proposal on October 11 rather than the "at-will" provision sought by the Respondent. (Tr. 112, 166.)

The Union's proposal also contained a completely new position of lead technician with higher accompanying wage rates that increased over the same time period. Convincing testimony shows, however, that the current unit employees are supervised

by personnel at the prime contractor, Ingenuit E, and that the proposed lead position is unnecessary and was offered in error. (Tr. 27, 99–100, 236, 245.)

The same parties held a second negotiating meeting on October 18, during which Respondent provided its counter-proposal contract of the same name with red-lined proposed changes to the Union's initial proposal and markups with an accompanying DVD. (Tr. 249; GC Exhs. 4, 6–7, and 16.) Among other things, this document's *duration* provisions contained no starting or effective date, other than a blank date in 2011, and a termination date of September 4, 2012; unchanged *wages* for unit workers described as E-3 mission crew technicians at their current rate of \$24.54 per hour; provisions stating that *seniority* of unit workers is unchanged and subject to a standard of "Federal at-will with Title VII exceptions;" and unchanged *nonwage benefits* that include: 10 Federal holidays; vacation leave accruing at 80 hours for a unit employees first 2 years of work and increasing to 120 hours for years 3–15, 160 hours for years 16+; sick leave (personal time off (PTO)) of 40 hours per year (employee option/employee paid); jury duty of 5 days leave with differential;⁷ health & welfare benefits remaining unchanged at \$3.59 per hour with no opt-out right for medical, short-term disability, or group life insurance, and a 401(k) plan where Respondent matches 50 percent of employee contributions up to 3 percent of the employee's pay with the Respondent's contributions charged to CILO. Id.

As with the Union's errant lead technician proposal, the Respondent also erred when it first proposed sick leave terms that clearly related to its non-SCA employees. (Tr. 133–134, 289–290; GC Br. 9.) This error was quickly recognized by Burton on October 18 and pointed out to Inslee Bennett, who corrected it by the October 20 session, and restored the original, status quo sick leave position. (Tr. 67–68, 133–134, 187–192, 279–282; GC Exhs. 4, 6, and 7.⁸) While the General Counsel argues that this error should be added to the mix of conduct to prove Respondent's bad-faith negotiations, I find that the error was genuine and very similar to the Union's error in proposing a new lead position technician that was redundant to a nonunit supervisory position that already existed outside Respondent. (See Tr. 99–100.)

On October 20, the parties met again, negotiated various provisions of a proposed CBA, and discussed the personal time off (PTO) and sick leave provisions made in error as part of the Respondent's October 18 red-lined counter-proposal. (Tr. 65–69; GC Exh. 6.) As stated above, Respondent recognized its error and ultimately returned to its initial position, asking to preserve the status quo as to the PTO and sick leave provisions in response to the Union's initial proposed CBA. (Tr. 65–69;

⁷ Inslee Bennett admits that the difference between the two parties' proposals as to the jury duty provision was insignificant and noneconomic as to total cost to the Respondent. Tr. 298.

⁸ McCune denies that the error was discovered in conversation between Burton and Inslee Bennett on October 18, and that Inslee Bennett said he would have to research the provision and get back to the parties at the next session. I reject this testimony as inconsistent with the testimony of Bennett who took notes of the bargaining sessions. Tr. 133–134, 200–202.

⁶ The AWD prevailing minimum wage for E-3 mission crew technicians of \$24+ per hour is the minimum wage that an employer can pay to a worker under an SCA contract in contrast with the Federal minimum wage estimated currently as \$7+ per hour. Tr. 169.

GC Exh. 7.)

Also on October 20, the Union presented a counteroffer contract that included its initial position on wages and nonwage benefits. (Tr. 115–116; R Exh. 2.) Inslee Bennett also convincingly described an incident on October 20: the union representatives told him that he had to come to an agreement with them “or else,” and they pointed over his shoulder where there were approximately 50 strike placards positioned very artistically across the wall. (Tr. 252.)

At this same meeting, the Respondent made a proposal with respect to a 401(k) plan that essentially maintained the status quo. In the proposed provision, the Respondent uses a portion of a unit employee’s minimum \$3.59 per hour health and welfare benefit under the SCA to match or pay the cost of this benefit. Therefore, rather than paying its own funds for this benefit, the Respondent’s “matching” actually deducted from the employee’s remaining unused CILO up to the extent it remains. (Tr. 69–70; GC Exh. 7 at 2.) As a result, the Respondent would not pay any portion of its own money toward a 401(k) plan benefit, and the status quo would effectively remain in place. (Tr. 70.)

In other respects, however, agreement was reached on some noneconomic items such as: management rights; strikes, lockouts, and work stoppages; union shop and checkoff; union representation; and waiver. (Tr. 65, 139–140; GC Exh. 5.) T. Bennett explained that when the parties reached a tentative agreement (TA) as they did on October 20 to the provisions referenced above, they would each sign or initial the TA, date it, and swap copies. (Tr. 64–65, 253–254; GC Exh. 5.)

IV. THE TWO NOVEMBER BARGAINING SESSIONS

The same parties met again on November 15, with a new attendee, Federal Mediator Bobby Thompson (Thompson) of the Federal Mediation and Conciliation Services (FMCS), invited by the Union as its standard practice and assigned to assist with these nonconfidential negotiations.⁹ (Tr. 71–73, 150–151, 208,

⁹ Bennett and McCune convincingly opined that a Federal mediator’s assistance in collective-bargaining negotiations, like Mr. Thompson’s here on November 15 and 29, is commonplace and nonconfidential in contrast to a Federal mediator’s assistance in grievance proceedings which T. Bennett credibly recalled were confidential and required written confidentiality statements signed by the attending parties that provided that neither Thompson nor any of his notes can be subpoenaed. Tr. 72–73, 150–151, 209–210, 221–222, 224. I further find that Inslee Bennett’s contradictory testimony that the November 15 and 29 negotiation sessions and the documents related thereto is not credible. Tr. 287–288, 290–291, 310. I further find that without any written confidentiality statements dated November 15 or 29 and with Bennett’s credible testimony, the November 15 and 29 bargaining sessions with Thompson and documents related thereto were not confidential as to the bargaining and tentative agreements reached both days. In fact, Inslee Bennett subsequently agreed that he understood that Thompson was going to carry Inslee Bennett’s supposals and communicate those to the Union on November 29. Tr. 310. Moreover, at hearing I overruled Respondent’s objection and denied Respondent’s oral petition to revoke the February 29, 2012 subpoena duces tecum from the General Counsel that asks for the production of documents generated at the November 29 bargaining session with Thompson, category 3, on grounds that the requested documents and the November 29 bargaining

287.) This was a productive session with Thompson’s assistance as a tentative agreement was reached on some additional noneconomic items such as: recognition; bulletin boards; hours of work; and a general provision that all employees will share in an annual bonus not greater than \$500 contingent on performance expectations being exceeded, a bonus in addition to that offered by the prime contractor, Ingenuit E.¹⁰ (Tr. 73–74, 145, 260–261, 288; GC Exh. 8.) The parties discussed but came to no agreement with respect to the contract duration, wages, just cause, and nonwage benefits provisions (the stalled items). (Tr. 75.)

The Union filed a charge against the Respondent on November 15 alleging that the Respondent had been refusing to bargain in good faith since October 11 “regarding the bargaining unit employees’ wages, hours and other terms and conditions of employment by Bad Faith Bargaining refusing to bargain legitimate proposals and Regressive Bargaining retracting an accepted offer.” (GC Exh. 1-A.) The alleged “accepted offer” involved the changed PTO/sick leave provision that the Respondent put forward in error on October 18.

The same parties met once more on November 29, again with Thompson’s assistance, and in the morning another tentative agreement was signed and further noneconomic items were agreed to involving provisions 6.6–6.10, under which an arbitrator from Thompson’s organization, the FMCS would be used for grievances in place of the Respondent’s initial preference of an arbitrator from the American Arbitration Association (AAA).¹¹ (Tr. 77, 149, 193, 208, 226; GC Exh. 4 at 8–9; GC Exh. 9.)

The parties had a working lunch on November 29 when the negotiations progressed to the stalled items at Inslee Bennett’s suggestion. (Tr. 78, 193–194.) Inslee Bennett also commented that the Union might have received more agreement, cooperation, or compromise from the Respondent if it had not filed its November 15 charge referenced above. Id.

The Union and the Respondent set up separate caucus meetings with Thompson performing “shuttle diplomacy” between the conference room housing the union representatives and the lobby where Inslee Bennett negotiated with Thompson from time-to-time. (Tr. 78–79, 194–195, 291.) As McCune credibly recalled, Inslee Bennett came up with the idea of the “supposals” and insisted that there be nothing in writing and nothing passed across the table. Instead, Inslee Bennett wanted to see if the parties could reach a verbal agreement using the shuttle diplomacy process for the Stalled Items. (Tr. 194–197, 212.)

session are not confidential. Respondent later waived or withdrew its objection to the production of November 29 documents and belatedly produced Inslee Bennett’s written summary of both sides’ initial positions on the stalled economic provisions and the mutually-agreed concessions on November 29 as GC Exh.16. Tr. 10–14, 31, 72–73, 79, 86–87, 148–151, 220–224, 283–287; GC Exh. 14.

¹⁰ Inslee Bennett admits that the Respondent’s employees would be eligible for bonus with or without the Union as per the Respondent’s contract with Ingenuit E. Tr. 300–301.

¹¹ I reject Inslee Bennett’s opinion as conclusory and unsubstantiated that his agreement for Respondent to concede to the Union’s request to use the services of the Federal mediation process over the AAA for grievances was a major financial concession. See Tr. 259.

For the first time in their negotiations, Thompson came back from a caucus with Inslee Bennett and presented the Union with Inslee Bennett's "supposals," a term Bennett had not heard before, that encompassed Respondent's first counterproposal to the Union's initial CBA regarding the Stalled Item. The counterproposal included an 18-month contract duration term, a 5-percent increase in hourly wages from \$24.54 to \$25.77, non-wage benefits at \$3.80 per hour, and an extra PTO day. (Tr. 79–81, 152, 212–213, 222.) Bennett understood the introduction of the new "supposals" to be Inslee Bennett's response to the filing of charges: it had made Inslee Bennett "gun-shy" so that he wanted to get away from the practice of written tentative agreements in order to limit the risk of additional future charges filed by the Union. (Tr. 153.)

The Union representatives' first response to the Respondent's "supposal" was to accept the offer and discuss it with the union committee representative, Burton, who also accepted the 18-month contract length but countered with a proposal for a 6-percent wage increase to \$26 per hour as of September 4, 2012, insistence on the just-cause provision, and a request for a \$4 per hour nonwage benefits package from the Respondent. (Tr. 81.)

Ultimately, the November 29 bargaining session ended with a verbal agreement between the Respondent and the Union on all of the stalled items (the November 29 agreement) that included an 18-month contract expiring in May 2013, a 6-percent hourly wage rate increase to \$26 as of the September 4, 2012 pass-through date, an extra PTO day, nonwage benefits valued at \$4 per hour, the just cause provisions for seniority, and the status quo for the 401(k) plan but without an opt-out clause for healthcare. (Tr. 81–84, 171–172, 195–197, 212–214, 216, 218, 223, 291–292, 306–308; GC Exh. 16; GC Br. 11, 22.) Also, at the end of this day's negotiations, Inslee Bennett mentioned to the union representatives *for the first time* that he had to discuss the November 29 agreement with an unidentified Respondent CEO or officer for final approval. (Tr. 82–83, 155–156, 196–197, 214, 294.)

The Union, however, did not view the November 29 agreement as a conditional agreement. (Tr. 83.) The union representatives opined and informed Inslee Bennett at the end of the November 29 meeting that the two sides had come to an agreement and worked out all of the stalled items and all that was left was for the union representatives to recommend the agreement to the unit members for their vote. (Tr. 83–84, 308; GC Exh. 16.) There was no written tentative agreement on the Stalled Items at the end of the meetings on November 29, however, except for Inslee Bennett's written summary of the agreed terms, which Respondent reluctantly produced at trial. Moreover, the union representatives did not think it was unusual for the Respondent's representative to consult with upper management regarding the terms of a CBA. (Tr. 154, 156, 214, 294; GC Exh. 16.)

V. REPUDIATION OF THE MUTUAL AGREEMENT FOR THE STALLED ITEMS

Two days later, on December 1, Inslee Bennett sent a mid-afternoon email to Bennett, copied to Thompson, that rejected and withdrew the entire November 29 agreement between Respondent's sole negotiator Inslee Bennett and the Union's rep-

resentatives on the stalled items with no explanation except to say that Inslee Bennett had "exceeded direction provided to [him] by the Company [Respondent]." (Tr. 84–85, 293; GC Exh. 10.)

As a result of Respondent's email, Respondent regressed back to insisting on the status quo in its positions regarding the four stalled items in its bargaining negotiations. *Id.* Both Bennett and McCune believably opined that in their collective past experiences, they have never negotiated a contract where an entire agreement reached between the union representatives and the Respondent representative was "totally reversed" by a company's upper management with no economic improvements at all. (Tr. 165–166, 197.) Inslee Bennett also admitted that Respondent's only concessions from October 11 through December 1 were "minimally important issues, such as union representation with the Union and check-off. . . ." (Tr. 262.) Inslee Bennett further admitted at hearing that throughout the negotiations with the Union, from October through the hearing in March 2012, the Respondent absolutely would not agree to pay any amount above the minimum prevailing wage rate established by the DOL and corresponding nonwage benefits in a CBA under the SCA. (Tr. 298–299.)

On December 7, Inslee Bennett sent an email to the union representatives requesting another bargaining session on December 13. (Tr. 157; R. Exh. 3 at 2.) Due to scheduling conflicts, mostly from the union representatives or Thompson, the next bargaining session did not occur until January 31, 2012. (Tr. 158.)

VI. THE LAST TWO BARGAINING SESSIONS

The parties met again on January 31, 2012, the same date that the unfair labor practice complaint was filed in this action. (Tr. 31–32, 83.) The material economic terms that remained open at that time were the same stalled items—duration of contract, wages, just cause, and nonwage benefits. (Tr. 32–33.) By this date, the Union had made concessions to Respondent by reducing its duration of contract request from 3 years to 18 months, reducing the hourly wages request for the electronic technician II position from a September 4, 2012 increase to \$37.99 per hour to one of \$26 per hour on September 4, 2012, the traditional just cause request remained the same, and the nonwage benefits request decreased to \$4 per hour. The benefits request was also adjusted to incorporate Respondent's position of October 18 as to sick leave, albeit duly corrected as discussed on October 20. However, the Union held to its request for traditional just cause. (Tr. 32–37; GC Exh. 16.)

At the January 31, 2012 bargaining session, there was a discussion about the noneconomic "just cause" provision and Inslee Bennett asked, "What will you trade for it?" (Tr. 89.) McCune responded that the Union does not "trade"; it would negotiate but it is not in the business to sit and trade. *Id.* He further replied that one should negotiate because it either is good for employees, the company, or the union. *Id.* By January 31, 2012, the Union had not achieved anything economically with which to trade had it been so inclined. *Id.*

The last date that the parties met for a bargaining session was February 14, 2012. At the meeting, the Union asked for Respondent's last, best, and final offer. (Tr. 32, 37–38, 263.) Re-

spondent answered on February 14 or 15, 2012. Its proposal contained a single noneconomic concession—acceptance of a just cause analysis to determine seniority of unit workers. Otherwise, the Respondent held to its initial position as to the following economic provisions: *duration* of the contract, *wages*, and *nonwage benefits*. (Tr. 37–38, 160–162, 276, 299–300.)

On March 7, 2012, the Union sent a letter to Inslee Bennett informing the Respondent that the bargaining unit had voted on March 5, 2012 to unanimously reject the Respondent’s February 15 contract offer. However, it also stated that the Union was willing to “[r]eturn to the [bargaining] [t]able” to negotiate “a legitimate Collective Bargaining Agreement” covering the stalled items. (Tr. 264; GC Exh. 12.)

On March 8, 2012, Inslee Bennett responded to the Union’s March 7 letter on behalf of the Respondent. He agreed that the Respondent “was, and is, willing to listen and negotiate upon a reasonable Union counteroffer” and asked the Union to contact him for the scheduling of a near-term bargaining session. (Tr. 231, 295; GC Exh. 13.) McCune never doubted Inslee Bennett’s authority to make agreements for the Respondent and the March 8 letter from him assured McCune that Inslee Bennett maintained authority to negotiate on behalf of the Respondent. (Tr. 198–199.) T. Bennett also opined and Inslee Bennett agreed that Inslee Bennett, as the Respondent’s designated representative at the bargaining table, had the authority to make binding agreements for the Respondent. (Tr. 102, 282.) In fact, Inslee Bennett admitted that he has negotiated binding contracts on behalf of the Respondent prior to his dealings with the Union in this case and that he is one of two individuals with Respondent who are authorized to legally commit it to any contract or agreement. (Tr. 238–239, 282.)

The Union contends that it communicated extensively to Inslee Bennett that if the Respondent enters into a CBA that outlasts the duration of its underlying subcontract, it does not remain liable to the Union under the terms of the CBA and is “off the hook.” (Tr. 166, 189.) If a successor to Respondent takes over its subcontract, any CBA in place that outlasts the Respondent would bind the successor to the wage and benefits agreed to with the Respondent for 1 year or longer depending on whether a new CBA with the successor can be worked out. (Tr. 174–175, 188–189, 224–225, 268–269.) McCune credibly testified that if a negotiated CBA with Respondent were to expire on September 4, 2012, the same time that Respondent’s subcontract with Ingenuit E is set to expire, the CBA would be “worthless” to the Union because wage raises timed to that date would not go into effect and the CBA would not be binding on a successor or future bidder. (Tr. 225.)

Respondent contends that its red-lined counterproposal from October 18, with the revision to sick leave language added on October 20, “offered concrete positions” on each of the stalled items and that Respondent is waiting to receive the Union’s counterproposal on those items before it will resume negotiations. (Tr. 264–265.) The Union responds by asserting that the Respondent simply has maintained the status quo with respect to each of the stalled items, except the just cause provision, which is evidence of bad-faith negotiations as the Union should not be required to negotiate against its own counterproposals, viz., concessions made in regard to stalled items beginning on

November 29. (GC Br. at 13.)

ANALYSIS

A. Credibility

The key aspects of my factual findings above incorporate the credibility determinations I have made after carefully considering the record in its entirety. The testimony concerning the material events in 2011 contains sharp conflicts. Evidence contradicting the findings, particularly testimony from Inslee Bennett, has been considered but has not been credited.

I based my credibility resolutions on consideration of a witness’ opportunity to be familiar with the subjects covered by the testimony given; established or admitted facts; the impact of bias on the witness’ testimony; the quality of the witness’ recollection; testimonial consistency; the presence or absence of corroboration; the strength of rebuttal evidence, if any; the weight of the evidence; and witness demeanor while testifying. More detailed discussions of specific credibility resolutions appear here in those situations that I perceived to be of particular significance.

I found key elements of the testimony given by Respondent’s sole witness, Inslee Bennett, that conflict with the testimony of union-representative witnesses unworthy of belief especially given Respondent’s attempt to cover-up and withhold Inslee Bennett’s notes of the repudiated November 29 agreement only to later waive its objections to their production. (GC Exh. 16.)

Also, I reject Inslee Bennett’s unbelievable testimony that sometime at or before the start of the November 29 afternoon negotiating session, he somehow communicated to the union representatives that the afternoon’s session discussion of the stalled items “far exceeded [the] boundaries of his sole authority and he would need to seek approval authority from Respondent’s CEO, Michael Lyles, on the economic or financial Stalled Items. (See Tr. 292.) Moreover, this testimony is contradicted by Inslee Bennett’s own admission that he had complete authority to negotiate agreements on all provisions including the Stalled Items at all times in his meetings with union representatives in this case. (Tr. 282.) Finally, I reject Inslee Bennett’s testimony and Respondent’s position put forth in its December 1 email as to Inslee Bennett’s authority. (GC Exh. 10.) Both incorrectly characterize the November 29 agreement reached between Inslee Bennett and the union representatives as simply informal positions reached at sidebar discussions, discussions which everyone knew exceeded Inslee Bennett’s authority and which required Respondent’s upper management’s to make their results durable. (See Tr. 293.) In reality, after the negotiating parties had the meeting of the minds that formed the November 29 agreement, Inslee Bennett made a passing remark on his way out of the hotel that he would be discussing the November 29 Agreement with upper management. (Tr. 82–83, 155–156, 196–197, 214, 294.) Finally, in virtually every significant instance, there was no reliable documentary evidence to support the account of Respondent’s sole witness.

B. General Obligation to Bargain in Good Faith

Section 8(d) of the Act defines the obligation of employers to bargain collectively as the “obligation . . . to meet at reasonable times and confer in good faith with respect to wages,

hours, and other terms and conditions of employment.” The obligation to bargain in good faith “does not compel either party to agree to a proposal or require the making of a concession.” A party who enters into negotiations with a predetermined resolve not to budge from an initial position, however, demonstrates “an attitude inconsistent with good-faith bargaining.” *General Electric Co.*, 150 NLRB 192, 196 (1964), enfd. 418 F.2d 7736 (2d Cir. 1969), discussed in *Am. Meat Packing Co.*, 301 NLRB 835 (1991). Nevertheless, the Board considers the context of the employer’s total conduct in deciding “whether the employer is engaging in hard but lawful bargaining to achieve a contract that it considers desirable or is unlawfully endeavoring to frustrate the possibility of arriving at any agreement.” *Public Service Co. of Oklahoma*, 334 NLRB 487 (2001) (quoting *Atlanta Hilton & Tower*, 271 NLRB 1600, 1603 (1984)), enfd. 318 F.3d 1173 (10th Cir. 2003).

In determining whether the employer bargained in good faith, the Board may not “sit in judgment upon the substantive terms of collective bargaining agreements.” *NLRB v. American National Insurance Co.*, 343 U.S. 395, 404 (1952). However, in determining good faith, the Board should examine the totality of the circumstances, including the substantive terms of proposals. *Public Service*, 334 NLRB at 488; see also *Borden, Inc. v. NLRB*, 19 F.3d 502, 512 (10th Cir. 1994) (noting also that “rigid adherence to disadvantageous proposals may provide a basis for inferring bad faith”); *Colorado-Ute Elec. Assn. v. NLRB*, 939 F.2d 1392, 1405 (10th Cir. 1991) (recognizing the same). “Sometimes, especially if the parties are sophisticated, the only indicia of bad faith may be the proposals advanced and adhered to.” *NLRB v. Wright Motors, Inc.*, 603 F.2d 604, 609 (7th Cir. 1979). For example, an employer’s predetermined and inflexible position toward union security and merit increases has helped to support a finding of surface bargaining. *Duro Fittings Co.*, 121 NLRB 377 (1958). In *Irvington Motors*, 147 NLRB 377 (1964), enfd. 343 F.2d 759 (3d Cir. 1965), the employer violated the Act by engaging in surface bargaining where its offer merely reiterated existing practices and its first written counterproposal was not submitted until 3.5 months after it had been requested. See also *MacMillan Ringerfree Oil Co.*, 160 NLRB 877 (1966), enf. denied on other grounds 394 F.2d 26 (9th Cir. 1968).

In *Stevens International*, 337 NLRB 143, 149–150 (2001), the Board found that the respondent did not engage in good-faith effects bargaining. Although the respondent met with the union and invited it to propose terms for a plant closing agreement, the Board found bad-faith bargaining because the respondent summarily rejected the union’s proposal without offering a counterproposal and failed to negotiate further, despite the union’s offer to modify its proposal. See also *Dallas & Mavis Specialized Carrier Co.*, 346 NLRB 253, 257 (2006) (finding no good-faith bargaining where the respondent listened and responded to the union’s proposal regarding the effects of ceasing operations but then summarily rejected all but one of the union’s proposals without providing an explanation or counterproposal, and did not respond when the union requested further bargaining).

In addition, an employer violates Section 8(a)(1) and (5) of the Act by refusing to execute a collective-bargaining agree-

ment incorporating the terms agreed on by the parties during negotiations. *H. J. Heinz Co. v. NLRB*, 311 U.S. 514 (1941). The essential question to be determined is whether the parties reached a meeting of the minds on all material and substantive terms of a collective-bargaining agreement. *Ebon Services*, 298 NLRB 224 (1990).

Also, a withdrawal of a proposal previously agreed on is not necessarily violative of the Act or indicative of bad faith. *Dubuque Packing Co.*, 287 NLRB 499, 539 (1987); *NLRB v. Tomco Communications*, 567 F.2d 871, 883 (9th Cir. 1978). Such a withdrawal, however, will be considered unlawful and designed to frustrate bargaining unless the employer demonstrates that it had good cause for the withdrawal of proposals to which it had previously agreed. *Valley Cent. Emergency Veterinary Hospital*, 349 NLRB 1, 2 (2007) (citing *Suffield Acad.*, 336 NLRB 659 (2001), and *TNT Skypark, Inc.*, 328 NLRB 468 (1999), enfd. 208 F.3d 362 (2d Cir. 2000)); see also *Transit Service Corp.*, 312 NLRB 477, 483 (1993).

The Respondent has failed and refused to bargain collectively and in good faith with the Union in violation of Section 8(a)(1) and (5) of the Act.

The complaint alleges that Respondent violated Sections 8(a)(1) and (5) of the Act at various times from October 11 through November 29 by negotiating with no intent to reach an agreement; failing to offer concrete bargaining proposals to the Union on matters relating to wages, benefits, contract term, and just-cause protections from discipline or discharge; insisting upon proposals that are predictably unacceptable to the Union; withdrawing proposals without justification; and failing to cloak its representative with sufficient authority to enter into a binding agreement. (GC Exh. 1(E) at 2–3.)

More particularly, the General Counsel argues that the negotiating parties had a meeting of the minds at the end of the November 29 bargaining session and came to a full agreement on the stalled items, as evidenced by the union representatives’ persuasive testimony and Inslee Bennett’s own notes at General Counsel’s Exhibit 16. The General Counsel also argues that the written and signed tentative agreements between the two negotiating sides are equivalent to an agreed verbal “supposal” in that the same authorized representatives had the same meeting of the minds on November 29 as they had in earlier sessions in which agreements were reflected in writing.

Respondent argues from the fact that the parties did not produce *written*, tentative agreements on November 29 as they had done in prior sessions and contends that the oral “supposals” required approval from Respondent’s upper management before there could be a binding agreement.

I find that Inslee Bennett, an attorney and admittedly Respondent’s sole negotiator at the bargaining sessions, had complete authority to bind Respondent on November 29 to the terms of the economic stalled items just as he had done in earlier sessions for noneconomic provisions. I further find that the General Counsel has established a meeting of the minds occurred on the subject of the stalled items during the November 29 afternoon negotiating session that resulted in the unconditional November 29 agreement. (Tr. 81–84, 171–172, 195–197, 212–214, 216, 218, 223, 291–292, 306–308; GC Exh. 16.) I further find that the November 29 agreement was not contin-

gent on ratification by Respondent's upper management as Inslee Bennett did not even inform the union representatives that he wanted to consult with Respondent's upper management until the session had ended, *after* both sides had reached an agreement. The Respondent's repudiation of the November 29 agreement on December 1 in an afternoon email was therefore unlawful.¹² Both Board and court precedent have established that "the withdrawal of a proposal by an employer without good cause is evidence of a lack of good-faith bargaining by the employer in violation of Section 8(a)(1) and (5) of the Act where the proposal has been tentatively agreed on." *Veterinary Hosp.*, 349 NLRB at 2 (quoting *Suffield Acad.*, 336 NLRB 659 (2001)). I apply this rule to the November 29 agreement.

I further find that Respondent repudiated the November 29 agreement without good cause as its December 1 email repudiation contained no adequate explanation for rejecting the agreement and substituting regressive proposals. Without substantiation or collaboration, however, Respondent argues that there was good cause for it to repudiate the November 29 agreement. Inslee Bennett opined at hearing that as to the duration item, binding the successor company to an ongoing CBA with the Union would cause the Government to in-source the unit positions and claims that Respondent has lost 74 positions to in-sourcing over the past 3 years. (Tr. 269–270.) He further explained that having a continuing CBA would negatively affect the Respondent's or its successor's ability to bid on a new subcontract as the increased wages would weigh down the bid and make it less competitive for the sub and the prime contractors. (Tr. 270.) Inslee Bennett also believed that the duration of the Union's CBA should coincide with the expiring subcontract with Ingenuit E so that the prime contractor would want to contract with Respondent and not go elsewhere in search of lower wage costs. *Id.* Finally, Inslee Bennett opined that Respondent would not want to bind a successor employer because all contractors are teammates and peers on other contracts and Respondent does not wish to bind their peers. (Tr. 273.) Inslee Bennett also believes that Respondent's proposed duration provision contains language that if the subcontract with Ingenuit E is extended due to the prime contract with the Government being extended then the CBA would automatically extend for the same duration as the extended subcontract. (Tr. 274.)

While such an explanation for repudiating the November 29 Agreement might establish good cause had it been a part of Respondent's December 1 email repudiation, this explanation only occurred at hearing in March 2012—too late to constitute good cause for the December 1 repudiation. The only explanation given by Respondent to justify its December 1 repudiation was that Inslee Bennett had exceeded his authority as Respondent's sole authorized negotiator. I find no merit to this eleventh hour allegation as it contradicts Inslee Bennett's own admission that he has negotiated binding contracts on behalf of the Respondent before his dealings with the Union in this case and that he is one of two individuals at Respondent who are author-

ized to legally commit Respondent to any contract or agreement. (Tr. 238–239, 282.) By and large, Inslee Bennett's authority was sufficient to bind Respondent to the November 29 agreement. His late-developed "cold feet" as the parties packed up on November 29, *after* the parties had finally reached agreement on the Stalled Items, is of no legal significance and further demonstrates Respondent's bad-faith bargaining and willingness to adopt untrue positions. As a result, I further find that Respondent's December 1 explanation for repudiating the November 29 agreement is a pretext and that the real reason for the repudiation was to frustrate the bargaining process.

Respondent bargained in bad faith with the Union when it repudiated the November 29 agreement. This regressive bargaining was designed to frustrate and did frustrate bargaining in this case even though the parties were able to reach agreement on a number of other issues. See *Houston County Elec. Coop.*, 285 NLRB 1213, 1214–1215 (1987). As a result, I find that Respondent has failed to establish good cause for repudiating the November 29 agreement, and I find that Respondent violated Section 8(a)(1) and (5) of the Act when it repudiated its prior agreement on the stalled items for an improper reason.

I also find that Respondent's bad faith was independently demonstrated by the totality of its conduct throughout negotiations with the Union.¹³ Specifically, Respondent negotiated with a predetermined rigid resolve not to budge from an initial position: its only movement away from its status quo ante position on the economic stalled items occurred at the November 29 afternoon bargaining session. After its December 1 repudiation, however, Respondent regressed to its original unchanged position as to the key economic provisions involving duration, wages, and benefits. In these special circumstances, under which the Union typically obtains wage and benefits increases in its first CBA and a length of contract beyond the pass-through date, I find Respondent's rigid positions on duration, wages, and benefits were put forth in bad faith in an attempt to delay or frustrate bargaining. Also, Respondent's inexperienced CBA negotiator, Inslee Bennett, admitted to that Respondent, from the start, had no intention of offering more than the minimum prevailing wage and corresponding nonwage benefits contained in its regressive proposals. This was the case despite the fact that Bennett also admitted that Respondent's typical wage increases average "single digits, like a 3 percent increase" and that a wage increase of 8 percent would not risk the loss of a contractor if a successor was subject to an ongoing CBA. (Tr. 266, 298–299, 303–304.)

In sum, I find that the Respondent's conduct here is inconsistent with the duty to bargain in good faith as applied in the

¹² I conclude that the Respondent's conduct at issue does not constitute withdrawal of an offer, as the General Counsel contends, but is instead a repudiation of the November 29 agreement. See *Valley Cent. Emergency Veterinary Hospital*, 349 NLRB 1, 2 fn. 6 (2007).

¹³ Respondent points to the Union's veiled threats to strike if Respondent did not agree to the Union's proposals on October 20, (Tr. 252), and the Union points to Inslee Bennett's comment at the working lunch session of November 29 that the Union might have received more agreement from the Respondent if it had not filed its November 15 charge (Tr. 78, 193–194), as evidence of bad-faith conduct by both sides. Considering the totality of both parties' conduct in connection with these two unrelated incidents, I find that the bargaining surrounding these two separate incidents was regular and this particular "bluster and banter" by either side is of no significance and no more than extreme hard bargaining.

above precedent. Respondent acted in bad faith by changing positions as to Inslee Bennett's authority to act as Respondent's sole negotiator and by attempting to cover-up the existence of the November 29 agreement reached in Inslee Bennett's documented compromise. (See GC Exh. 16.) Likewise, Respondent acted in bad faith by unlawfully repudiating the November 29 agreement without good cause or a valid explanation. Furthermore, I find that by regressing to its initial status quo ante position on wages, benefits, and contract term and otherwise failing to offer concrete bargaining proposals to the Union on matters related to the stalled items, Respondent attended bargaining sessions from October 11, through February 14, 2012, with no intent to reach an agreement. Finally, I find that Respondent insisted upon proposals that were predictably unacceptable to the Union, designed to frustrate, and ultimately successful in frustrating bargaining in this case.

CONCLUSIONS OF LAW

1. Respondent Leader Communications, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The International Association of Machinists, AFL-CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. At all material times, the Union has been the exclusive collective-bargaining representative of the following appropriate collective-bargaining unit:

All full-time and regular part-time computer electronics technicians employed by the Employer [Respondent] at Tinker Air Force Base, Oklahoma City, Oklahoma to provide support for the three (3) E-3 Mission Crew Simulators and one (1) Facility for Interoperability Testing device, but EXCLUDING all other employees, office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

4. By repudiating a bargaining agreement, maintaining its unchanged status quo ante initial position, and attempting to cover-up its negotiator's authority and his documented agreement with the Union in order to frustrate bargaining and to

prevent the reaching of an agreement, and without good cause, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

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

6. The General Counsel has not established by a preponderance of the evidence that Respondent has otherwise violated the Act as alleged in the complaint.

REMEDY

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

I shall recommend that the Respondent be ordered to meet and bargain collectively in good faith with the Union as the exclusive collective-bargaining representative of the employees in the certified appropriate collective-bargaining unit, set forth above.

I shall also find that a reading of the notice by Respondent's CEO or chief negotiator, Inslee Bennett, or by a Board agent in their presence, is appropriate here. The Respondent's violations of the Act are sufficiently serious and widespread that the reading of the notice is necessary to enable employees of the small unit to exercise their Section 7 rights free of coercion. See *HTH Corp.*, 356 NLRB 1397, 1410 (2011); *Carwash on Sunset*, 355 NLRB 1259, 1263 (2010); *Homer D. Bronson Co.*, 349 NLRB 512, 515-516 (2007), *enfd.* 273 F.Appx. 32 (2d Cir. 2008); *Concrete Form Walls, Inc.*, 346 NLRB 831, 838-840 (2006).

Inasmuch as the Union has not yet enjoyed its certification year, I shall recommend that the initial certification year be extended for a year from the date on which the Respondent begins to comply with the terms of this Order referenced below insofar as it has not expired. *Den-Tal-Ez, Inc.*, 303 NLRB 968 fn. 2 (1991); *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962). In addition, I shall recommend that it be ordered to post a notice, setting forth its obligations here.

[Recommended Order omitted from publication.]