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ADT, LLC, a wholly owned subsidiary of ADT Corporation d/b/a ADT Security Services and Office and Professional Employees International Union, Local 2, AFL-CIO. Case 05-CA-127502

November 5, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA
AND HIROZAWA

On November 12, 2014, Administrative Law Judge Arthur J. Amchan issued the attached decision. The General Counsel and the Union each filed exceptions and a supporting brief, the Respondent filed answering briefs, and the General Counsel filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions¹ only to the extent consistent with this Decision and Order.²

Contrary to the judge, we find that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to provide the Union with requested information about the Respondent's "business justification" for transferring union-represented installers from its High Volume Commissioned Installer ("HVCI") program to an hourly pay structure.

Facts

The Respondent sells, installs, services, and monitors commercial and residential alarm systems. The Union represents the Respondent's installers, service technicians, and clerical employees in three separate bargaining units: (1) a unit in Gaithersburg, Maryland; (2) a unit in Columbia, Maryland; and (3) a unit consisting of employees based in Springfield, Virginia, and Lanham, Maryland. About half of the employees in these units are "installers," who install the security equipment at the customer's location. Before April 16, 2014,³ the Respondent paid most of the installers in the three units according to HVCI, a commission-based program under which an installer receives compensation equal to a per-

centage of the cost of each job the installer performs; the Respondent paid the remaining installers a fixed amount for each hour worked.

Each of the units is governed by a different collective-bargaining agreement between the Respondent and the Union. The agreement covering the Gaithersburg unit expired in October 2012, but the parties executed a "Summary of Agreement" in February 2014 that, along with the expired agreement, governed the Gaithersburg unit. The agreement covering the Columbia unit expired in November 2014, and the agreement covering the Springfield/Lanham unit expired in September 2015.

The following provision ("HVCI provision") appeared in all three collective-bargaining agreements and the Gaithersburg "summary of agreement":

The [Respondent] reserves the right to eliminate and re-instate the High Volume Commissioned Installer program at any time and/or transfer employees between HVCI and hourly installation as business needs dictate.

The HVCI provision predated the most recent collective-bargaining agreements. There is no evidence that the Respondent and the Union bargained over the language of the HVCI provision during the negotiations that produced the most recent collective-bargaining agreements or the Gaithersburg "summary of agreement."

The parties, however, did bargain over schedule C, which appears in all three agreements and sets out the compensation structure and rates that installers would receive under the HVCI program. The Gaithersburg unit rejected the Respondent's initial proposal for schedule C in 2013, and the parties went back to the bargaining table before coming to an agreement in February 2014.

In late March or early April 2014, the Respondent informed the Union that it intended to transfer all installers in the three units paid under the HVCI program to an hourly pay structure. By email sent April 7, the Union informed the Respondent that it "[would] be contesting the [HVCI] changeover."

One or 2 days later, Union Staff Representative George Kapanoske spoke about the change to the Respondent's director of labor relations, James Nixdorf. Nixdorf told Kapanoske that language in the contract gave the Respondent the right to make the change. Kapanoske replied:

I'm not disputing that the language is there, but we do need to bargain the impact on the employees that are affected, and we need to negotiate a substitute wage scale that if they're going to eliminate the classification and the commission system, that they should be—that we should negotiate a wage scale for them.

¹ The judge failed to include in his decision a "Conclusions of Law" section setting out the specific violations of Sec. 8(a)(5) he found in this case. We shall correct this inadvertent omission.

² We shall modify the judge's remedy and recommended Order and substitute a new notice to conform to the violations found.

³ All dates are in 2014, unless otherwise indicated.

Kapanoske concluded by telling Nixdorf that he would be sending Nixdorf a bargaining demand.

In an April 11 letter to the Respondent, the Union followed up on that conversation by requesting that the Respondent bargain over the decision to “discontinue” the HVCI program and its effects. The Union also requested three pieces of information: (1) “[t]he business justification for the change”; (2) “[t]he payroll records for all HVCI installers for the last 3 years”; and (3) “[t]he location and dates of other offices where this change is being implemented and whether or not each is a Union or non-union shop.”⁴

The Respondent implemented the change on April 16.

On April 18, the Respondent sent the Union an email, which stated in relevant part:

As previously discussed, the Company maintains that the contract language is clear and the union has ceded its ability to bargain over this issue. In addition, since no right to bargain exists the union is not entitled to demand information for such bargaining. As a matter of courtesy, I believe the following will suffice as a response to your request for information:

As of 4/17/2014, ADT currently has 2483 installers in the US. Of that number, 1516 are hourly. There are 184 locations in the US of which 35 (28 union) are exclusively hourly only.

This was the final communication between the parties regarding the information request.

Discussion

The judge found that by agreeing to the HVCI provision, the Union had waived its right to obtain information pertaining to the Respondent’s “business justification” for transferring represented installers in the three units from the HVCI program to an hourly pay structure. We disagree.

An employer, on request, must provide a union with information relevant to the performance of the union’s statutory responsibilities as the employees’ exclusive bargaining representative, such as information regarding contract negotiations and the administration of contracts. *Shoppers Food Warehouse Corp.*, 315 NLRB 258, 259 (1994) (citations omitted). With respect to contract administration in particular, an employer must provide information requested by the union for the purpose of handling grievances, including the determination of whether

to proceed with a grievance in the first place. *Postal Service*, 337 NLRB 820, 822 (2002) (citations omitted); *Beth Abraham Health Services*, 332 NLRB 1234, 1234 (2000), citing *Bell Telephone Laboratories*, 317 NLRB 802, 803 (1995) (“potential or probable relevance to the filing and processing of grievances is sufficient to give rise to an employer’s obligation to provide information”), *enfd. mem.* 107 F.3d 862 (3d Cir. 1997).

A union is entitled to requested information even when it has waived its right to bargain over the particular subject so long as the information is relevant and necessary for another reason. *Galaxy Towers Condominium Assn.*, 361 NLRB No. 36, slip op. at 1 fn. 4 (2014) (union entitled to requested information about subcontracting even though it had waived its right to bargain over the decision to subcontract, because the information was also relevant and necessary to the union’s duty to bargain over the terms of a new agreement). An employer is obligated to provide the requested information “where the circumstances surrounding the request are reasonably calculated to put the employer on notice of a relevant purpose which the union has not specifically spelled out.” *Brazos Electric Power Cooperative, Inc.*, 241 NLRB 1016, 1018 (1979) (footnote omitted), *enfd.* 615 F.2d 1100 (5th Cir. 1980).

We assume, without finding, that the Union had waived its right to bargain over the Respondent’s decision to transfer unit installers out of the HVCI program and the effects of that decision.⁵ We find, however, that the requested information about the Respondent’s “business justification” for the decision was relevant and necessary to the Union’s statutory responsibilities for two other reasons.

First, the Respondent’s “business justification” was relevant and necessary to the Union’s duty to negotiate successor collective-bargaining agreements for the three units. As of the date of the Union’s request, the agreement covering the Gaithersburg unit had already expired, the agreement covering the Columbia unit was set to expire later that year, and the agreement covering the Springfield-Lanham unit was set to expire within 18 months. Knowing the Respondent’s business reason for transferring the represented installers out of the HVCI program would have assisted the Union in determining whether, and how, to address the matter in its negotiations for successor agreements. The Respondent had constructive notice of this purpose because the Union asked for information relevant to negotiating successor

⁴ The judge found that the Respondent violated Sec. 8(a)(5) and (1) by failing to provide items (2) and (3), and there are no exceptions to those findings.

⁵ Accordingly, we do not pass on the judge’s waiver finding, nor do we pass on his statement that “the waiver language in the collective-bargaining agreements is so broad that it gives Respondent a *carte blanche* to eliminate the HVCI program.”

agreements at a time when negotiations for the Columbia and Springfield-Lanham units were fast approaching. See *id.* at 1018–1019.

Our dissenting colleague contends that the Respondent had “every reason to believe that the Union had no intention of revisiting its bargaining waiver regarding changes to the HVCI program” because the Gaithersburg “summary of agreement,” which the Union entered into 2 months before making the information request at issue here, included the same HVCI provision. But that provision had appeared in numerous prior collective-bargaining agreements covering the three bargaining units, and there is no evidence that the Respondent and the Union bargained over the language in the HVCI provision during the negotiations that produced the contracts in place at the time of the information request, including the Gaithersburg “summary of agreement.” As recently as February 2014, however, the parties had vigorously negotiated schedule C of the collective-bargaining agreement, which sets out the compensation structure and rates that installers would receive under the HVCI program. In these circumstances, we reject our colleague’s assertion that, by agreeing to the Gaithersburg “summary of agreement,” the Union had “reaffirmed” the Respondent’s right to transfer employees out of the HVCI program for any reason. Rather, the evidence shows that the Union had every reason to believe that the Respondent would continue the HVCI program by applying the recently negotiated rates set forth in schedule C.⁶

Moreover, as mentioned above, the Respondent did not except to the judge’s finding that the Respondent violated Section 8(a)(5) by failing to provide the Union with other information it requested on April 11, including “[t]he location and dates of other offices where this change is being implemented and whether or not each is a Union or non-union shop.” The judge found that the Union was not entitled to that information for the purpose of bargaining the change or its effects, but that it *was* entitled to the information for the alternative purpose of preparing to negotiate successor agreements. With information about the other locations where this change occurred and their union status, the judge reasoned, the Union could infer the “business interests” driving the changes and craft proposals accordingly. The judge concluded that the Respondent could reasonably anticipate the relevance of this information to the Union in formulating contract proposals in advance of bargaining, in light of the upcoming expiration of the Columbia and

Lanham/Springfield contracts. We agree with judge on this point, but his reasoning applies even more directly to the Union’s request for the “business justification” for the change. If knowing the other locations where the Respondent transferred employees out of the HVCI program and their union status would help the Union to discern the Respondent’s business interests for making the change, and therefore help it prepare for future negotiations, then surely asking about those interests directly—which is what the Union did by requesting the “business justification”—serves that same purpose even more effectively. And if, as the judge found, the Respondent had notice that the Union wanted information on the other locations for the purpose of future bargaining, it must have been even clearer to the Respondent that the Union was requesting the “business justification” for that same reason.

Second, the Respondent’s “business justification” was relevant and necessary to the Union’s duty to assess whether to bring a grievance for breach of contract. The HVCI provision reserves to the Respondent the right to discontinue—or transfer employees out of—the HVCI program “as business needs dictate.” Although the Respondent interprets this provision to mean that it may eliminate the HVCI program or transfer employees out of the program for essentially any reason it chooses, the Union and the General Counsel interpret the HVCI provision as permitting the Respondent to make such changes only if warranted by financial circumstances.⁷ Knowing the Respondent’s “business justification” for making the change would plainly inform the Union’s decision whether to test its contract interpretation in arbitration. In addition, the Respondent had either actual or constructive notice of this purpose for the request. On April 7, shortly after the Respondent notified the Union that it planned to transfer unit employees out of the HVCI program, the Union informed the Respondent that it planned to contest the change. Four days later, the Union’s request for the Respondent’s “business justification for the change” used noticeably similar language to that found in the HVCI provision (“as business needs dictate”). The Respondent, therefore, would have understood that the Union interpreted the contract as permitting changes to the HVCI program only when business needs so dictated, and that the Union was requesting the information to ascertain whether they did.

Our dissenting colleague would find that the Respondent did not have actual or constructive notice that the

⁶ Given the intense negotiations over Schedule C and the timing of the expiration of the collective-bargaining agreements, our colleague’s emphasis on the fact that collective bargaining was not yet underway at the time of the request is not entitled too much weight.

⁷ The parties’ disagreement over contract interpretation is irrelevant here, however, as it is not the province of the Board to resolve such disputes in information request cases. See *Dodger Theatricals Holdings*, 347 NLRB 953, 970 (2006).

Union wanted the information to assess whether to bring a grievance for breach of contract. He contends that Kapanoske's statement to Nixdorf about "the impact [of the decision] on the employees" proves that the Union was concerned with matters other than the HVCI decision itself, and that Nixdorf would have understood that the Union "knew" that the contract foreclosed any possible grievance, because Kapanoske did not respond to Nixdorf's April 18 email stating that "the contract language is clear and the Union has ceded its ability to bargain over this issue."

We disagree. Given the language of the Union's request—the "business justification for the change"—the Respondent would not have reasonably believed that the Union interpreted the contract as allowing the Respondent to transfer employees out of the HVCI program for any reason at all. The Union's language is similar to that found in the HVCI provision itself ("business needs"). In these circumstances, the Respondent had constructive notice, at least, that the Union was seeking the information, among other reasons, to assess whether to bring a grievance for breach of contract.

For all of the above reasons, we find that the Respondent violated Section 8(a)(5) and (1) by failing to provide the Union with requested information about the Respondent's "business justification" for transferring represented installers in the three units from the HVCI program to an hourly pay structure.

CONCLUSION OF LAW

By failing and refusing to provide the Union with relevant information as requested in the Union's April 11, 2014 letter, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

AMENDED REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

In addition to the remedies recommended by the judge, we shall require the Respondent to provide the Union with the following information it requested on April 11, 2014: the business justification for the decision to transfer represented installers at its facilities in Columbia, Maryland; Gaithersburg, Maryland; Springfield, Virginia; and Lanham, Maryland, from the HVCI program to an hourly pay structure.

ORDER

The Respondent, ADT, LLC, Boca Raton, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with Office and Professional Employees International Union, Local 2, AFL–CIO, as the exclusive bargaining representative of employees in its Columbia, Maryland; Gaithersburg, Maryland; and Springfield, Virginia, and Lanham, Maryland, bargaining units, by refusing to furnish the Union with requested information that is relevant and necessary to its role as the exclusive bargaining representative of unit employees.

(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) Furnish the Union with the following information it requested on April 11, 2014: (1) the business justification for the decision to transfer represented installers at the four locations from the HVCI program to an hourly pay structure; (2) the payroll records for all unit installers who were compensated via the HVCI program at any time since April 11, 2011; and (3) the locations where the Respondent has transferred or plans to transfer installers from the HVCI program to an hourly pay structure, the date on which the transfer occurred or is expected to occur, and whether the installers at each such location are represented by a union.

(b) Within 14 days after service by the Region, post at its facilities in Columbia, Maryland, Gaithersburg, Maryland, Springfield, Virginia, and Lanham, Maryland, copies of the attached notice marked "Appendix."⁸ Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed a facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice

⁸ 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."

to all current employees and former employees employed by the Respondent at any time since April 11, 2014.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 5 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 5, 2015

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER MISCIMARRA, dissenting.

This case deals with whether ADT violated the Act by failing to give the Union information (about ADT's discontinuation of a particular commission arrangement) in response to a union request. Although this issue might appear to be minor, I believe the majority decision constitutes an unwarranted and unfortunate departure from existing precedent, with an impact on rights and obligations in other cases dealing with union and employer information requests. Accordingly, for the reasons explained more fully below, I respectfully dissent from my colleagues' finding that ADT's failure to provide the requested information violated Section 8(a)(5) of the Act.

The principles that govern the disposition of this case are well settled. In a unionized work setting, Section 8(a)(5) and 8(b)(3) make it unlawful for the employer or union, respectively, to refuse to "bargain collectively." Section 8(d) of the Act defines the phrase "bargain collectively" as "the mutual obligation of the employer and the representative of the employees . . . to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment." It has long been established that, when there is an obligation to "bargain collectively" about a particular subject, this also includes a duty to furnish, upon request, information that is relevant and necessary to negotiations regarding the subject in question. See, e.g., *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 433 (1967). When a union has *waived* its right to bargain over a particular issue (which can result, for example, from the labor contract specifically dealing with the issue), the union is *not* entitled to requested information even

though it might otherwise be relevant to bargaining absent the waiver. See, e.g., *Emery Industries*, 268 NLRB 824, 824–825 (1984). Yet, in such a case, the union may be entitled to the same requested information for a *different* purpose, but only if the union "adequately informed the [employer] of another legitimate basis for requesting the information." *Id.* at 825. Adequately informing the employer of an another legitimate purpose usually requires explicit notice from the union, but the Board may find the employer had constructive notice—triggering a duty to respond to the information request—if "the circumstances surrounding the [information] request are reasonably calculated to put the employer on notice of a relevant purpose which the union has not specifically spelled out." *Brazos Electric Power Cooperative, Inc.*, 241 NLRB 1016, 1018 (1979), *enfd.* 615 F.2d 1100 (5th Cir. 1980).

In the instant case, the Union represents ADT employees in three bargaining units that include alarm-system installers, most of whom were paid by commission prior to April 2014. In April 2014, the Respondent decided to discontinue the commission system, which was called the High Volume Commissioned Installer (HVCI) program. The Union demanded to bargain over that decision and its effects, and the Union requested information for that purpose. ADT believed (correctly) that the Union had waived any right to bargain over the discontinuation of the commission program—and therefore ADT refused to bargain and declined to furnish the requested information—based on collective-bargaining agreement language giving ADT the right to "eliminate . . . the [HVCI] program at any time."

In his brief, the General Counsel concedes that the Union waived its right to bargain over the decision to eliminate the HVCI program¹ and that ADT had no duty to

¹ Counsel for the General Counsel does not expressly concede that ADT also had no duty to bargain over the *effects* of its decision to eliminate the HVCI program, but he does not claim that it did—nor can he. As the judge explains, the Union's unfair labor practice charge alleged that ADT unlawfully refused to bargain over the *decision* to eliminate HVCI. Region 5 of the NLRB refused to issue complaint on that allegation, the Union appealed, and the Office of Appeals—which is under the General Counsel's authority—denied the appeal. In doing so, the Office of Appeals, on behalf of the General Counsel, added that ADT was not obligated to bargain over the *effects* of the decision, either. The Board has no authority to review decisions made by the General Counsel whether or not to issue complaint. See NLRA Sec. 3(d) (stating that the General Counsel "shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints"); *NLRB v. Food & Commercial Workers Local 23*, 484 U.S. 112, 126 (1987) (referring to the General Counsel's "unreviewable discretion to file a complaint"). Accordingly, the General Counsel has determined that the Union waived its right to bargain over ADT's decision to discontinue the HVCI program and the effects of that decision, and those determinations are not subject to Board review.

furnish the requested information for this purpose. The sole issue presented here is whether ADT nonetheless violated the Act by failing to furnish the information because it was on constructive notice of another purpose or other purposes the Union did not spell out. My colleagues find that ADT *was* on constructive notice of two other purposes and violated the Act when it refused to furnish the requested information. For the reasons explained below, I respectfully dissent.

Facts

ADT sells, installs, services, and monitors alarm systems. The Union represents installers, service technicians, and clerical employees employed by ADT in three bargaining units located, respectively, in Columbia, Maryland; Gaithersburg, Maryland; and Springfield, Virginia / Lanham, Maryland. Each bargaining unit is covered by a separate collective-bargaining agreement. The relevant events occurred in April 2014. The Columbia agreement expired in November 2014; the Springfield / Lanham agreement expired in September 2015. The Gaithersburg agreement expired in October 2012, but the parties reached a “summary of agreement” in February 2014. The Columbia and Springfield / Lanham agreements and the Gaithersburg summary of agreement all contain the following provision:

The Employer reserves the right to eliminate and restate the High Volume Commissioned Installer program at any time and/or transfer employees between HVCI and hourly installation as business needs dictate.

By the beginning of 2014, ADT had been experiencing problems administering the HVCI program for several years. ADT Director of Labor Relations James Nixdorf and Union Staff Representative George Kapanoske² had been discussing issues with the HVCI program since 2008. Nixdorf testified that the main problem was that some installers on the HVCI program inflated their commissions by claiming they had performed more work than they actually had. The program was revised in 2011 in an effort to address the overcharge problem, but without success. In fact, Nixdorf testified, the changes “created additional problems” (Tr. 51) and the situation became “unmanageable” (Tr. 52).³ In early 2014,⁴ Nixdorf

² Kapanoske testified that a staff representative for the Union “is the same as a business agent” (Tr. 18).

³ Nixdorf testified that Kapanoske “told me on numerous occasions when we were having these discussions that . . . it [the HVCI program] was creating problems for him also” (Tr. 52).

⁴ All further dates are in 2014 unless otherwise stated.

told Kapanoske that he did not think the HVCI program was going to survive much longer.⁵

Union agent Kapanoske testified that in late March “or maybe as late as April 1st,” ADT’s Nixdorf called him and said “there were plans to end the commission system” (Tr. 29). On April 2, Nixdorf sent Kapanoske an email stating:

As we discussed preliminarily, the Company is moving all of our Commission Only technicians to the hourly schedule pursuant to the High Volume language for Columbia, Gaithersburg, Springfield and Lanham. The effective date will be 4/16/2014.

(GC Exh. 6.) On April 7, Kapanoske replied: “We will be contesting the HVI [sic] changeover. I will call you tomorrow morning” (GC Exh. 7). A day or two later, Nixdorf and Kapanoske spoke over the telephone. According to Kapanoske’s undisputed testimony, Nixdorf asked why the Union was contesting the change, and Kapanoske answered that ADT “just couldn’t unilaterally . . . make that change” (Tr. 33). Nixdorf said the contract had language giving ADT the right to do it. Kapanoske replied:

I’m not disputing that the language is there, but we do need to bargain the impact on the employees that are affected, and we need to negotiate a substitute wage scale that if they’re going to eliminate the . . . commission system, that they should be—that we should negotiate a wage scale for them. And . . . that I was going to be sending him a bargaining demand as such.

(Tr. 33–34.)

On April 11, Kapanoske sent Nixdorf an email attaching “our Bargaining Demand” (GC Exh. 8). In the attached letter, the Union “demand[ed] to bargain the decision and effects of the decision to discontinue the [HVCI] program” and stated that “the discontinuance of the HVCI program should be put on hold until we have come to an agreement” (id.). Kapanoske then requested three items of information, including “the business justification of the change.” Kapanoske closed by stating: “Please let me know when I can expect to receive this information and your availability to meet” (id.). By email on April 18, Nixdorf replied:

⁵ After finding that the waiver language in the parties’ three contracts gave ADT “carte blanche to eliminate the HVCI program,” the judge stated that ADT “was not obligated to give the Union any *further* information as to the business justification for the change” (emphasis added). By referring to “further” information, the judge made clear that he credited Nixdorf’s testimony that Nixdorf had already explained to Kapanoske why ADT was discontinuing the HVCI program.

I have reviewed your request for bargaining and information. As previously discussed, the Company maintains the contract language is clear and the union has ceded its ability to bargain over this issue. In addition, since no right to bargain exists the union is not entitled to demand information for such bargaining.

(GC Exh. 9.) Asked by counsel for the General Counsel whether he had “any conversation with Mr. Nixdorf or anybody at ADT about the information request” after Nixdorf’s April 18 email, Kapanoske answered, “No” (Tr. 41–42).

The judge found that ADT violated the Act by refusing to furnish two of the three requested items, and ADT does not except to those findings.⁶ However, the judge found that ADT did not violate the Act by refusing to furnish “the business justification of the change.” This finding, my colleagues reverse.

Discussion

As the foregoing facts make perfectly clear, the Union requested information for the sole purpose of bargaining over ADT’s decision to discontinue the HVCI program and the effects of that decision. The information request was set forth in an April 11 letter to ADT’s agent, Nixdorf, in which union agent Kapanoske “demand[ed] to bargain the decision and effects of the decision to discontinue the [HVCI] program.” Kapanoske stated no other purpose for the information request, either in the April 11 letter or in previous communications with Nixdorf. To the contrary, previous communications *confirm* that bargaining over the discontinuance of the HVCI program and its effects was the Union’s *only* purpose for requesting information. After learning that HVCI was ending, Kapanoske told Nixdorf: “We will be contesting the HVI changeover.” When they next spoke, Nixdorf asked why the Union was contesting the change, and Kapanoske replied that ADT “just couldn’t unilaterally . . . make that change”—in other words, ADT could not discontinue HVCI without giving the Union an opportunity to bargain about it.

When Nixdorf responded that contract language gave ADT the right to make the change, Kapanoske said that he did not dispute “that the language is there,” but that “we do need to bargain the impact on the employees . . . , and we need to negotiate a substitute wage scale.”

⁶ The judge based his finding that ADT violated the Act in April 2014 with respect to these two items on the fact that the Columbia and Lanham/Springfield agreements were expiring in November 2014 and September 2015, respectively, and ADT was “obligated to provide this information for purposes of bargaining . . . new contract[s].” The Respondent has not excepted to these findings, and therefore I do not reach them. As will be apparent from the following discussion, however, I disagree with the judge’s reasoning.

Kapanoske then announced he would be sending Nixdorf a “bargaining demand,” and the next communication was his April 11 letter demanding bargaining and requesting information. On April 18, Nixdorf replied that the Union had waived bargaining on this issue, and added that “since no right to bargain exists the [U]nion is not entitled to demand information for such bargaining.” Kapanoske did not reply, and he testified that after April 18 he had no conversation with Nixdorf or anybody at ADT about the information request.

In short, *every* communication between the Union and ADT confirms the Union’s one and only purpose for requesting information—to bargain over the decision to discontinue the HVCI program, or the effects of that decision, or both. The General Counsel has unreviewably decided that ADT had no duty to bargain over either the decision or its effects, and where there is no duty to bargain, there is no duty to furnish information requested for the purpose of bargaining. *Emery Industries*, 268 NLRB at 824–825. Accordingly, ADT did not violate Section 8(a)(5) of the Act by refusing to furnish the Union information it requested on April 11.

My colleagues find to the contrary, based on their belief that ADT was on constructive notice of two unstated purposes for the Union’s request for the “business justification of the change”: to decide whether to file a grievance for breach of contract, and to negotiate successor collective-bargaining agreements. These findings are unsupported by the record and at odds with applicable precedent.

In finding that ADT would have understood the Union wanted the information to decide whether to file a grievance for breach of contract, my colleagues selectively point to three pieces of evidence: (i) Kapanoske’s statement that he planned to “contest” HVCI’s discontinuance; (ii) four days later, his request for ADT’s “business justification for the change”; and (iii) language in the parties’ contracts stating “[t]he Employer reserves the right to eliminate and reinstate the High Volume Commissioned Installer program at any time and/or transfer employees between HVCI and hourly installation *as business needs dictate*” (emphasis added). From these facts, my colleagues conclude that ADT “would have understood that the Union interpreted the contract as permitting changes to the HVCI program only when business needs so dictated, and that the Union was requesting the information to ascertain whether they did.” But if one looks at the whole picture in context, it is apparent that ADT could not reasonably have understood any such thing.

First, there is no record evidence that either Kapanoske or any other agent of the Union ever so much as hinted to

Nixdorf or any other agent of ADT that the Union was considering filing a breach-of-contract grievance over the discontinuance of the HVCI program. The way to give a party notice of the purpose of an information request is to state it. There is no evidence that the Union ever told ADT that the purpose of its request was to decide whether to file a grievance. The Union told ADT that the purpose was to *bargain* over the decision to end the HVCI program and the effects of the decision.

Second, Kapanoske already knew the business needs driving ADT's decision, and Nixdorf knew Kapanoske knew. The two of them had been discussing ADT's problems with the HVCI program for years, particularly wage theft. It is unreasonable to believe that Nixdorf would have thought Kapanoske was requesting information to "ascertain" whether "business needs" were behind ADT's decision to discontinue the HVCI program, when both of them knew perfectly well what those business needs were.

Third, my colleagues' analysis skips from Kapanoske's April 7 email, which states the Union "will be contesting" the change, to his April 11 bargaining demand and request for information—ignoring that between these two communications, Kapanoske said something to Nixdorf that showed Kapanoske *knew* ADT was not breaching the contract. After Kapanoske told Nixdorf that the Union "will be contesting the HVI changeover," he and Nixdorf spoke by telephone. According to Kapanoske's own testimony, Nixdorf began by asking why the Union was contesting the change. Kapanoske answered that ADT could not make the change unilaterally. Nixdorf said that contract language gave ADT the right to do so—and Kapanoske's reply was one that any reasonable person would have understood as *conceding that Nixdorf was correct*:

I'm not disputing that the language is there, but we do need to bargain the impact on the employees that are affected, and we need to negotiate a substitute wage scale that if they're going to eliminate the . . . commission system, that they should be—that we should negotiate a wage scale for them. And . . . that I was going to be sending him a bargaining demand as such.

Kapanoske acknowledged the contract language to which Nixdorf referred and limited his bargaining request to matters *other* than the HVCI decision itself: "the impact [of the decision] on the employees" and a potential "substitute wage scale" for employees no longer paid by commission. When Kapanoske subsequently demanded bargaining over the decision to end the HVCI program as well as its effects, Nixdorf gave him an opportunity to explain why, contrary to his prior concession, he now professed to believe that the

contract did *not* give ADT the right to discontinue HVCI unilaterally. Nixdorf reminded Kapanoske that "the contract language is clear and the union has ceded its ability to bargain over this issue"—and tellingly, Kapanoske did not reply. In light of all this, Nixdorf would have understood that the Union *knew* the contract, which reserved to ADT the right to "eliminate" the HVCI program "at any time," foreclosed any possible grievance over ADT's elimination of the HVCI program. At least that is what Nixdorf would have understood if the possibility of a grievance crossed his mind in the first place—but since nobody from the Union ever said anything about a possible grievance, it would not have. Thus, I believe it is unreasonable to conclude, as my colleagues do, that Nixdorf would have understood the Union was requesting information to investigate a possible grievance.

I also disagree with my colleagues' finding that ADT was on notice that the Union wanted the "business justification" for the change for the purpose of negotiating successor collective-bargaining agreements. Once again, I believe the record fails to support such a finding. There is no evidence the Union ever communicated this purpose to ADT. Nor would ADT have gleaned such a purpose from the surrounding circumstances. There is no evidence that in April 2014, when the Union made its information request, collective bargaining was underway in any of the three bargaining units. The Columbia and Springfield / Lanham agreements would not expire until November 2014 and September 2015, respectively. The Gaithersburg agreement had expired, but the parties entered into a "summary of agreement" covering that unit in February 2014, and there is no evidence that in April 2014 they were negotiating a successor agreement or had plans to do so.

Moreover, the Union had just given ADT every reason to believe that the Union had no intention of revisiting its bargaining waiver regarding changes to the HVCI program. The majority reasons that having ADT's "business justification" for eliminating the HVCI program "would have assisted the Union in determining whether, and how, to address the matter in its negotiations for successor agreements." My colleagues' reasoning disregards, however, that the Gaithersburg "summary of agreement," which the Union entered into just *2 months* before making the information request at issue here, included the *identical language* contained in the other two contracts, reserving to ADT "the right to eliminate and reinstate the High Volume Commissioned Installer program at any time" (GC Exh. 5, p. 1). Considering that the Union has just reaffirmed ADT's exclusive right to eliminate the HVCI program at any time, it is all the more unreasonable to conclude that ADT would have

thought the Union's purpose, when it made its information request 2 months later, was to prepare to renegotiate that language.⁷

Relevant precedent is also adverse to the majority's decision. In *Emery Industries*, the employer announced a new "absentee control" policy. 268 NLRB at 824. The union demanded bargaining and requested information "in order to bargain intelligently over the matter." *Id.* The employer refused to bargain and denied the information request. The administrative law judge found that the union had contractually waived bargaining over the absentee policy. *Id.* at 828. Nonetheless, the judge found the employer was obligated to furnish the requested information on the basis that the information "may be of use in future collective bargaining," *id.*, even though the parties' existing agreement would not expire for another year. The Board reversed, stating: "We find nothing in the record to indicate that the [r]espondent was on constructive notice that the [u]nion desired this information for any reason other than bargaining over the new absentee policy." *Id.* at 825. So also here: nothing in the record indicates that ADT was on notice, actually or constructively, that the Union desired the information it requested for any reason other than bargaining over the elimination of the HVCI program, the effects of that decision, or both.

Galaxy Towers Condominium Assn., cited by my colleagues, is distinguishable. 361 NLRB No. 36 (2014). There, the union requested information relevant to a subcontracting decision. Although the union had waived bargaining over subcontracting, the request was made while the parties "were engaged in ongoing negotiations over the effects of the subcontracting decision and still had a duty to bargain over the terms of a new agreement" for certain employees, and the Board found that the union's bargaining position regarding those yet-to-be-negotiated terms might have been affected by "know[ing]

⁷ I disagree that the parties' negotiations, during bargaining for the February 2014 Gaithersburg summary of agreement, of a compensation structure for installers under the HVCI program would have caused the Union to believe that the program was safe, given the retention of language granting ADT the right to eliminate the program "at any time" along with union agent Kapanoske's longstanding awareness of ADT's concerns about that program. But the issue here has nothing to do with the HVCI program's prospects for survival. The question is whether ADT had reason to think the Union wanted to renegotiate its waiver of bargaining rights over any decision by ADT to eliminate the program. That waiver had just been carried over into a new agreement, and my colleagues observe that (i) the waiver "had appeared in numerous prior collective-bargaining agreements," and (ii) the parties carried it over into the Gaithersburg summary of agreement without discussion. All the more reason why ADT would not have thought the Union's information request had anything to do with potential renegotiation of its bargaining waiver.

the source of the savings from the subcontracting." *Id.*, slip op. at 1 fn. 4. On these facts, the Board found that the employer was constructively on notice of a purpose for the information request other than bargaining over the subcontracting decision itself. *Id.*⁸ Here, by contrast, no negotiations were ongoing at the time of the information request, and the Union had just reaffirmed ADT's right to eliminate the HVCI program at any time—yet my colleagues apparently believe ADT would have "understood" the Union was considering renegotiating this bargaining waiver. Neither logic, precedent, nor the record evidence supports the majority's unfair labor practice finding.

For these reasons, I respectfully dissent.

Dated, Washington, D.C. November 5, 2015

Philip A. Miscimarra, Member

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 fail and refuse to bargain collectively with Office and Professional Employees International Union, Local 2, AFL-CIO, as the exclusive bargaining representative of employees in the Columbia, Maryland; Gaithersburg, Maryland; and Springfield, Virginia, and Lanham, Maryland, bargaining units, by refusing to furnish the Union with requested information that is rele-

⁸ I was recused from *Galaxy Towers Condominium Assn.* and took no part in the consideration of that case. 361 NLRB No. 36, slip op. at 1 fn. 1. However, I agree with Member Johnson's dissent from the majority's "constructive notice" finding. *Id.*, slip op. at 1-2 fn. 4.

vant and necessary to its role as the exclusive bargaining representative of unit employees.

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 furnish the Union with the following information it requested on April 11, 2014: (1) the business justification for the decision to transfer represented installers at the four locations from the HVCI program to an hourly pay structure; (2) the payroll records for all unit installers who were compensated via the HVCI program at any time since April 11, 2011; and (3) the locations where we have transferred or plan to transfer installers from the HVCI program to an hourly pay structure, the date on which the transfer occurred or is expected to occur, and whether the installers at each such location are represented by a union.

ADT, LLC, A WHOLLY OWNED SUBSIDIARY OF
ADT CORPORATION D/B/A ADT SECURITY
SERVICES

The Board's decision can be found at www.nlr.gov/case/05-CA-127502 or by using QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



Clark Brinker and Sean R. Marshall, Esqs., for the General Counsel.

Bernard P. Jeweler, Esq. (Ogletree, Deakins, Nash, Smoak & Stewart, P.C.), of Washington, D.C., for the Respondent.

James F. Wallington, Esq. (Baptiste & Wilder, P. C.), for the Charging Party.

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Washington, D.C., on October 2, 2014. The Office and Professional Employees International Union, Local 2 filed the charge on April 24, 2014. The General Counsel issued the complaint on July 31, 2014.

The General Counsel alleges that Respondent ADT violated

Section 8(a)(5) and (1) of the Act by failing and refusing to provide the Union information that the Union requested relating to Respondent's discontinuance of its commission compensation program for employees represented by the Union in three different bargaining units. Respondent contends that it is not required to provide this information because the Union waived its bargaining rights over this issue.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, ADT, a corporation, sells, installs, services, and monitors commercial and residential alarm systems. It operates nationwide and maintains an office in Boca Raton, Florida. Respondent annually derives gross revenues in excess of \$500,000 and performs services in excess of \$5000 outside of the State of Florida. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, Office and Professional Employees International Union, Local 2, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Respondent employed 2,483 installers in the United States as of April 17, 2014. As of that date, 1516 were paid an hourly rate and many others were paid via commission. The program under which commissions are paid is called the High Volume Commissioned Installation (HVCI) program.

The Charging Party Union represents installers, service technicians, and clerical employees in three bargaining units: (1) Columbia, Maryland (about 60 unit members); (2) Springfield, Virginia, and Lanham, Maryland (about 130 members in the 2 locations), and (3) Gaithersburg, Maryland (about 40 members). There are three different collective-bargaining agreements for these units. About half the employees in each unit are installers.

The agreement covering Columbia expires November 23, 2014; the agreement covering Springfield and Lanham expires in September 2015 and the agreement covering Gaithersburg expired on October 31, 2012. In Gaithersburg, the parties are governed by a summary of agreement reached in February 2014, as well as by the expired collective-bargaining agreement.

The Columbia, Springfield/Lanham agreements and the 2014 summary of agreements for Gaithersburg contain the following language regarding the HVCI program:

The Employer reserves the right to eliminate and reinstate the High Volume Commissioned Installer program at any time and/or transfer employees between HVCI and hourly installation as business needs dictate.

(GC Exh. 2 p. 13; GC Exh. 3 p. 16; GC Exh. 5, p. 1.)

In late March or early April 2014, Respondent's labor relations director, James Nixdorf, informed Union Business Representative George Kapanoske that Respondent was discontinuing the HVCI program in the Columbia, Springfield/Lanham

and Gaithersburg bargaining units. This became effective April 16, 2014.

On April 11, 2014, Kapanoske sent Nixdorf a letter (GC Exh. 8), in which the Union demanded bargaining on the decision and effects of the decision to discontinue the HVCI program in these three bargaining units. He also asked Respondent to provide the following information:

The business justification for the change.

The payroll records for all HVCI installers for the past three years; and

The locations and dates of other offices where this change is being implemented and whether or not each is a Union or non-union shop.

Nixdorf responded on April 18. He stated that Respondent:

maintains that the contract language is clear and the Union has ceded its ability to bargain over this issue. In addition since no right to bargain exists the union is not entitled to demand information for such bargaining. As a matter of courtesy, I believe the following will suffice as a response to your request for information:

As of 4/17/2014, ADT currently has 2483 installers in the US. Of that number 1516 are hourly. There are 184 locations in the US of which 35 (28 union) are exclusively hourly.

(GC Exh. 9.)

The figures provided in Nixdorf's April 18 letter included the St. Louis, Missouri unionized location where the HVCI had been recently discontinued. These figures did not include other unionized locations where the discontinuation of the program was "in the works."

The Regional Director of the National Labor Relations Board for Region 5 refused to issue a complaint based on the Union's charge that Respondent refused to bargain over the discontinuance of the HVCI compensation program. The Union filed an appeal, which was denied by the General Counsel's Office of Appeals on September 26, 2014. The Office of Appeals also stated that Respondent was not obligated to bargain over the effects of its decision since the only effect was to apply the terms and conditions of the hourly installers. The Appeals Office further noted that the Union had not made an 8(a)(3) discrimination allegation in its charge. Thus the issue in this matter is solely whether Respondent was obligated to provide the Union with the information it requested in its April 11 letter.

Analysis

Ordinarily, information concerning unit employees' terms and conditions of employment is presumptively relevant and must be provided. However, when a union waives its right to bargain over a change to a term or condition of employment, it is no longer entitled to information requested for that purpose, *American Stores Packing Co.*, 277 NLRB 1656, 1658-1659 (1986); *Emery Industries*, 268 NLRB 824, 824-825 (1984).

The Union is entitled to such information only if it gives the employer actual or constructive notice of another legitimate basis for requesting the information. In this case, I find that the waiver language in the collective-bargaining agreements is so

broad that it gives Respondent a carte blanche to eliminate the HVCI program. Thus, I find that Respondent was not obligated to give the Union any further information as to the business justification for the change.

The situation with regard to the other information requested is a bit different. Respondent admits that the Union is entitled to the payroll records of HVCI installers represented by the Union, but apparently did not provide this information. While the union request is not limited to HVCI installers represented by the Union, Respondent violated the Act in not providing those records. If Respondent did not understand that this was all the Union was seeking, it was required to either seek a clarification or comply with the request by providing the payroll records of unit installers, *Superior Protection, Inc.*, 341 NLRB 267, 269 (2004), *enfd.* 401 F. 3d 282 (5th Cir. 2005).

Due to the Union's waiver, it is not entitled to the information regarding other locations where HVCI is being eliminated for purposes of bargaining a change in the existing contracts. However, given the fact that the collective-bargaining agreement in the Columbia bargaining unit expires in November 2014 and for Lanham/Springfield in 2015, I conclude Respondent is obligated to provide this information for purposes of bargaining a new contract. The fact that Respondent has a duty to bargain about a new contract distinguishes this case from *American Stores Packing*, in which the employer had no such duty. The Union might use this information to bargain for restoration of the HVCI program in Columbia and Lanham/Springfield, or a higher hourly wage for unit installers.

The Union did not specify future bargaining as its purpose for requesting the information. However, where the circumstances surrounding the request are reasonably calculated to put the employer on notice of a relevant purpose which the union has not specifically spelled out, the employer is obligated to divulge the requested information, *Brazos Electric Power Cooperative, Inc.*, 241 NLRB 1016, 1018 (1979), *enfd.* 615 F.2d 1100 (5th Cir. 1980).

In light of the upcoming expiration of the Columbia and Lanham/Springfield contracts, I find that Respondent could reasonably anticipate the relevance of this information to the Union in formulating contract proposals in advance of bargaining. At a minimum, the information would be useful, in conjunction with additional information requests, in determining why the business interests of Respondent necessitated cessation of the HVCI program at some locations, but not at others. Conceivably the Union could then formulate bargaining proposals that would make restoration of the HVCI program in its three bargaining units more attractive to Respondent.

In conclusion, I find Respondent was on notice that one of the Union's reasons for requesting the information was in order to formulate bargaining proposals. Accordingly, I find that Respondent's refusal to divulge this information was a refusal to bargain in violation of Section 8(a)(5) and (1).

REMEDY

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

Respondent is hereby ordered to bargain with the Union as the exclusive collective-bargaining representative of the installers, technicians and administrative employees at its facilities in Lanham, Maryland, Springfield, Virginia, Columbia, Maryland, and Gaithersburg, Maryland, by providing the Union with the following information requested by the Union on April 11, 2014: the payroll records for all unit installers who were compensated via the HVCI program at any time since April 11, 2011, since that date; the locations and dates of other offices where the HVCI program has been discontinued and whether or not each of these locations is a union or nonunion facility.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹

ORDER

The Respondent, ADT, LLC, Boca Raton, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Office and Professional Employees International Union, Local 2, AFL-CIO, as the exclusive bargaining representative of the employees in its Lanham, Maryland, Springfield, Virginia, Columbia, Maryland, and Gaithersburg, Maryland, bargaining units and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of unit employees;

(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) Furnish the Union with the following information it requested on April 11, 2014: the payroll records for all unit installers who were compensated via the HVCI program at any time since April 11, 2011, since that date; the locations and dates of other offices where the HVCI program has been discontinued and whether or not each of these locations is a union or nonunion facility.

(b) Within 14 days after service by the Region, post at its facilities in Lanham, Maryland, Springfield, Virginia, Columbia, Maryland, and Gaithersburg, Maryland, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 5 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electroni-

cally, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, 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 April 11, 2014.

(c) 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.

Dated, Washington, D.C. November 12, 2014

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 refuse to bargain with Office and Professional Employees International Union, Local 2, AFL-CIO, as the exclusive bargaining representative of the employees in our Lanham, Maryland, Springfield, Virginia, Columbia, Maryland, and Gaithersburg, Maryland, bargaining units and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union with the following information it requested on April 11, 2014: the payroll records for all unit installers who were compensated via the HVCI program at any time since April 11, 2011, since that date; and the locations and dates of other offices where the HVCI program has been discontinued and whether or not each of these locations is a union or nonunion facility.

ADT, LLC, A WHOLLY-OWNED SUBSIDIARY OF ADT CORPORATION D/B/A ADT SECURITY SERVICES

¹ 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.

² 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."