*NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**YP Advertising & Publishing LLC *and* International Brotherhood of Electrical Workers, Local 1269.** Cases 20–CA–147219, 20–CA–167875, 20–CA–176151, 20–CA–177029, 20–CA–181140, 20–CA–181554, and 20–CA–181851

May 16, 2018

DECISION AND ORDER

BY MEMBERS PEARCE, MCFERRAN, AND KAPLAN

On June 29, 2017, Administrative Law Judge Amita Baman Tracy issued the attached decision. The Respondent filed exceptions, a supporting brief, and a reply brief. The General Counsel filed an answering brief to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.[1]

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,[2] findings, and conclusions only to the extent consistent with this Decision and Order, and to adopt the recommended Order as modified.[3]

We agree with the judge, for the reasons set forth in her opinion, that the Respondent violated Section 8(a)(5) and (1) of the Act by dealing directly with unit employees in permitting two clerical employees to work at home and in seeking agreement from unit employees to accept a reduced compensation rate for its ypDirect product sales. Further, for the reasons stated in her decision, we adopt the judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by unreasonably delaying in furnishing relevant information that the Union requested on October 5, 2015, and January 14, 2016.[4] We find it unnecessary to pass on the judge's findings that the Respondent also unlawfully delayed furnishing information requested on February 2, 2015, and March 23, as the additional findings would not affect the remedy.[5]

For the reasons explained below, we reverse the judge's conclusion that the Respondent unilaterally changed unit employees' terms and conditions of employment by announcing a new, reduced compensation plan for its ypDirect product without giving the Union notice or an opportunity to bargain.

YpDirect is Respondent's direct mail product. Sales representatives in the bargaining unit earn commissions for sales of ypDirect based on terms established in the collective-bargaining agreement. The parties stipulated that on about July 15, when the parties were bargaining for a successor contract, the Respondent presented its unit sales representatives with a written summary of a new ypDirect compensation plan. The plan significantly reduced the contractual sales commission rates and capped compensation amounts. In the summary, the Respondent indicated that the Union had not agreed to the new plan, that sales representatives must agree to the reduced commission rate, and that they had to obtain the Union's approval by submitting "exception agreements," which the Respondent provided. The Respondent admits that it presented the new compensation plan without first giving the Union notice or an opportunity to bargain.

The Union learned of the new compensation plan from its members and raised the issue with the Respondent during a bargaining session on July 20. The Respondent assured the Union that it would not implement the proposed plan without the Union's approval. The same day, the Respondent emailed a revised summary of the plan directly to the sales employees, informing them that no changes could be made to the compensation plan without the Union's agreement, and stating, "we want to make clear that the Company cannot and will not deal directly with our [bargaining unit] employees regarding compensation or other terms of employment." The parties subsequently bargained for a new plan but were unable to reach agreement, at which time the Respondent suspended all new sales of its ypDirect product and rescinded the July 15 and 20 announcements. Although some supervisors asked employees to sign exception agreements after the Respondent's July 20 communication, there is no evidence that employees were ever paid rates lower than those established in the collective-bargaining agreement.

In addition to her finding of unlawful direct dealing, which we adopt, the judge found that the Respondent's announcement of the new compensation plan constituted an unlawful unilateral change of the unit employees' terms and conditions of employment, despite a lack of evidence that the plan was implemented. In support of her finding, the judge relied on *ABC Automotive Products Corp.*, 307 NLRB 248 (1992), enfd. 986 F.2d 500 (2d Cir. 1992), in which the respondent announced to striking employees that it was changing the employees' health and welfare plan at a time when the parties were

[1] Member Emanuel took no part in the consideration of this case.

[2] We affirm the judge's rejection of R. Exh. 2 for the reasons stated in her decision.

[3] We amend the judge's Conclusions of Law and recommended Order and substitute a new notice to conform to our findings.

[4] All dates are in 2016 unless otherwise indicated.

[5] Member Pearce would additionally affirm the judge's finding that the Respondent unlawfully delayed in responding to the Union's March 23 request. Member Kaplan finds it unnecessary to pass on the October 5, 2015 request.

bargaining for a new contract. Although the respondent never implemented the change, the Board nevertheless found that striking employees would reasonably believe that they "could only return to work under this new condition of employment" and that the respondent's conduct '"emphasiz[ed] to the employees that there is no necessity for a collective bargaining agent.'" 307 NLRB at 250 (quotation omitted).

The instant case, however, is distinguishable from the caselaw cited by the judge. The Respondent did not present the new compensation plan as a fait accompli. Cf. *Centinela Hospital Medical Center*, 363 NLRB No. 44, slip op. at 3 fn. 9 (2015) (respondent's announcement of new healthcare plans constituted unlawful unilateral change when, although plans were not implemented, the respondent presented the change as a fait accompli, signaling to employees that it no longer intended to deal with the union). Rather, the Respondent expressly informed employees, in its July 15 and 20 communications, that the new plan required Union approval before it could go into effect, and it emphasized that it would "not deal directly" with unit employees about their employment terms. The Respondent then negotiated the proposed changes with the Union and, when no agreement was reached, suspended sales of the product.

Under these circumstances, where there was no actual unilateral change in employment terms and no indication to employees that such change would occur without the Union's consent, we reverse the judge's finding that the Respondent's announcement unilaterally changed unit employees' terms and conditions of employment in violation of Section 8(a)(5) and (1) of the Act.

## AMENDED CONCLUSIONS OF LAW

1. Delete the judge's Conclusion of Law 5 and renumber the remaining paragraphs of the Conclusions of Law accordingly.

2. Amend newly numbered Conclusion of Law 5 to state:

"5. By delaying the furnishing of certain information requested by the Union on October 5, 2015 and January 14, 2016, Respondent violated Section 8(a)(5) and (1) of the Act."

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, YP Advertising & Publishing LLC, San Francisco, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a), delete paragraphs 1(b) and 1(c), and reletter subsequent paragraphs.

"(a) Bypassing the Union and dealing directly with its bargaining-unit employees concerning changes to their wages, hours, and other terms and conditions of their employment."

2. Delete paragraphs 2(a), 2(b), and 2(c) and reletter subsequent paragraphs.

3. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. May 16, 2018

Mark Gaston Pearce, Member

Lauren McFerran, Member

Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

## APPENDIX

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

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 bypass your Union and deal directly with you concerning changes in your wages, hours, and other terms and conditions of your employment.

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

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights under Section 7 of the National Labor Relations Act.

YP ADVERTISING & PUBLISHING LLC

The Board's decision can be found at www.nlrb.gov/case/20-CA-147219 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

*Jason Wong, Esq.,* for the General Counsel.
*John M. Skonberg, Esq., Alexandra Hemenway, Esq.,* for the Respondent.

## DECISION

### STATEMENT OF THE CASE

AMITA BAMAN TRACY, Administrative Law Judge. This case was tried in San Francisco, California, from April 18 to 19, 2017. The International Brotherhood of Electrical Workers, Local 1269 (Union or Charging Party) filed multiple charges in this matter which are as follows: Case 20–CA–147219 on February 26, 2015; Case 20–CA–167875 on January 15, 2016;[1] and first amended charge on February 18; Case 20–CA–176151 on May 12; Case 20–CA–177029 on May 24; Case 20–CA–181140 on July 27 and first amended charge on January 13, 2017; Case 20–CA–181554 on August 3; and Case 20–CA–181851 on August 9. After several orders, all charges were consolidated into one complaint and notice of hearing which was issued on March 23, 2017. An amended consolidated complaint was issued on April 7, 2017, and the General Counsel amended the complaint an additional time at the hearing. YP Advertising & Publishing LLC (Respondent) filed timely answers to the complaints in this matter, and did not oppose the General Counsel's motion to amend the complaint at the hearing.

The complaint alleges that Respondent violated numerous sections of the National Labor Relations Act (the Act) by bypassing the Union, making a unilateral change, and failing and refusing or unreasonably delaying responding to union information requests. On the entire record,[2] including my observation of the demeanor of the witnesses,[3] and after considering the briefs filed by the General Counsel and Respondent,[4] I make the following

### FINDINGS OF FACT AND ANALYSIS

#### I. JURISDICTION AND LABOR ORGANIZATION INVOLVED

Respondent is a limited liability company with an office and place of business in San Francisco, California, where it is engaged in the retail sale of electronic and print advertising. In conducting its operations during the 12-month period ending December 31, Respondent derived gross revenues in excess of $500,000, and purchased and received at its San Francisco, California facility goods valued in excess of $5000 directly from points outside the State of California. Thus, at all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Furthermore, at all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

#### II. RESPONDENT'S ORGANIZATION

Respondent sells electronic and print advertisements for the "yellow page" directories to businesses (Tr. 235). Electronic advertisements may be sold at any time but print advertisements must be sold according to a determined schedule (Tr. 183–184). The time period for the selling of print advertisements is known as a campaign (Tr. 183–184). Campaigns occur all year long with various beginning and ending times. Respondent employs advertising sales representatives (also known as premise sales representatives or sales force employees), who sell Respondent's advertising products, and clerical employees (also known as customer associates or supervisory assistants), who support the sales functions (Tr. 31, 58, 76, 131). Over the past few years, Respondent has been virtualizing its sales offices where centralized physical office spaces have been abolished and advertising sales representatives work where they choose such as from home (Tr. 185).

Respondent admits that the following individuals are Section

[1] All dates are 2016 unless otherwise noted.

[2] The transcripts in this case are generally accurate, but I make the following corrections to the record: Transcript (Tr. 63), Line (L. 23): "California Vitales" should be "Ralph Vitales"; Tr. 212, L. 13: "Pat" should be "Part"; Tr. 252, L. 6: "plant" should be "plan"; Tr. 321, L. 15: "see" should be "she."

[3] Although I have included citations to the record to highlight particular testimony or exhibits, my findings and conclusions are not based solely on those specific record citations, but rather on my review and consideration of the entire record for this case. I further note that my findings of fact encompass the credible testimony and evidence presented at trial, as well as logical inferences drawn therefrom. Very few credibility disputes exist in this matter as the witnesses testified generally consistently with one another and the documentary evidence. However, regarding a few relevant topics, Respondent failed to question its witnesses on such topics and as a result the General Counsel requested I take several adverse inferences. Accordingly, as appropriate, I will take such adverse inferences.

[4] Other abbreviations used in this decision are as follows: "GC Exh." for General Counsel's exhibit; "R. Exh." for Respondent's exhibit; "Jt. Exh." for Joint Exhibit; "GC Br." for the General Counsel's brief; and "R. Br." for Respondent's brief.

2(11) supervisors and/or Section 2(13) agents as defined by the Act: Matt Crowley (Crowley), senior vice president, sales-west region; Matt Condensa (Condensa), executive market manager; Richard Kliment (Kliment), executive market manager; Todd Bartell (Bartell), area sales manager; Steve Hall (Hall), area sales manager; Melissa Irelan (Irelan), area sales manager; Scott Macdonald (Macdonald), area sales manager; William Poulin (Poulin), area sales manager; Raymond Salais (Salais), area sales manager; James Smith (Smith), area sales manager; Gabriel Lopez (Lopez), general manager; Diane Francis (Francis), manager, TLM, systems reporting and controls; Ralph Vitales (Vitales), senior manager of labor relations; and Debi Kristiansen (Kristiansen), senior manager field human resources.

## III. THE UNION AND THE COLLECTIVE-BARGAINING AGREEMENT

The Union represents a bargaining unit at Respondent which consists of:

> All sales force employees of Respondent in the Northern California Region and all clerical employees of Respondent in the Northern California Region having the title classifications listed below, excluding all other employees and all supervisors as defined in the National Labor Relations Act, as amended.
>
> Sales and Clerical employees: Account Executive New Media, Advertising Sales Representative, Customer Associate, Directory Representative, Directory Sales Representative, Field Sales Collector, Key Account Executive, Office Assistant, Supervisor's Assistant, Telephone Sales Representative, Universal Support Associate.

The unit consists of approximately 130 advertising sales representatives, and 21 clerical employees (Tr. 44). The employees work in Northern California, Oregon, and Nevada. Respondent and the Union have been bound to successive collective-bargaining agreements (CBA), the most recent of which was in effect from February 7, 2014, to August 6, 2016, with a 1-year extension agreement (Jt. Exh. 17; Tr. 43).

Stefen Guthrie (Guthrie) is the union president and assistant business manager (Tr. 42). Gerardo "Harry" Esquivel (Esquivel) is vice president of the Union's executive board and its director of operations (Tr. 45, 113). Karen Gowdy (Gowdy) is the Union's business manager (Tr. 50). Mike Waltz (Waltz) is a business representative for the Union as well as an advertising sales representative for Respondent (Tr. 161–162). Joyce Salvador (Salvador) is the union office manager (Tr. 171–172).

## IV. BYPASS AND UNILATERAL CHANGE ALLEGATIONS

### *A. In May and July 2016, Respondent Permitted Two Clerical Assistants to Work Virtually*

The complaint, at paragraphs 9(a) and (b), and 11, alleges that Respondent violated Section 8(a)(5) and (1) of the Act when in or about May 2016 and July 2016 Respondent bypassed the Union and dealt directly with its employees in the bargaining unit by permitting two clerical assistants to work virtually, or at home, after Respondent rejected the Union's proposal to let all clerical assistants affected by the closure of physical sales offices to work at home. Respondent argues that the General Counsel failed to prove it intentionally bypassed the Union.

In December 2015, Respondent notified Guthrie that it planned to close its Pleasanton, California sales office, effective February 29, 2016, and eliminate all positions (Tr. 58; GC Exh. 4). Thereafter, on February 8, Respondent notified Guthrie and Gowdy that it planned to close some of its sales offices, including its Concord, California and Redding, California sales offices, in 2016 and employees would work virtually (Tr. 59; GC Exh. 5). On February 17, the Union and Respondent bargained the impact of the Pleasanton, California sales office closure (Tr. 59, 131). During this bargaining session, the parties discussed the future of the clerical employees (Tr. 61). The Union proposed that the Pleasanton clerical employees work virtually (Tr. 132; GC Exh. 6). Keith Halpern (Halpern), Respondent's vice president of labor and employee relations, counsel and chief negotiator, rejected the Union's proposal that clerical employees work virtually (Tr. 62–63, 133). Respondent indicated that these employees would relocate to the San Francisco or San Jose sales offices (GC Exh. 4). On April 18, the Union resubmitted its proposal to Respondent that all clerical employees work virtually (Tr. 133–134; GC Exh. 14). Respondent did not reply to the Union's proposal (Tr. 134).

On May 4, the Union and Respondent discussed Respondent's virtualization plan (Tr. 64). The Union proposed again that clerical employees work at home, but this proposal was rejected by Halpern as Respondent was not interested in having clerical employees work virtually (Tr. 64, 134–135).

However, in May 2016, Executive Market Manager Condensa permitted Clerical Supervisory Assistant Jessica Durante (Durante) to work at home following the closure of the Concord, California sales office (Tr. 65; Jt. Exh. 1).[5] The Union learned of this decision from Concord clerical employees who were not permitted to work virtually but were instead reassigned to the San Francisco sales office (Tr. 65–66, 136, 225). Respondent never gave notice to the Union and an opportunity to bargain regarding Durante working virtually (Tr. 66, 136–137, 245). As soon as Guthrie learned that Durante worked virtually, he contacted Respondent via telephone (Tr. 66). Guthrie told Vitales and Kristiansen that the Union had proposed that clerical employees work virtually but Respondent had rejected the proposal, and many clerical employees were upset with the Union that Durante was permitted to work virtually (Tr. 66–67). Kristiansen testified that human resources spoke to Durante's manager, informing him that Durante could not work at home but needed to work from the San Francisco office (Tr. 227, 243–244; R. Exh. 8). Respondent never ex-

[5] The parties stipulated that Condensa was a Section 2(11) supervisor but Respondent would not stipulate as to his agency status because at the hearing Respondent's counsel stated that Condensa acted contrary to Respondent's directives (Tr. 248–249). To the extent Respondent argues that Condensa acted contrary to his authority, I reject Respondent's argument. Condensa had the authority to change employees' terms and conditions of employment as evidenced by Durante's ability to work at home, even if he acted without approval from human resources and labor relations.

plained why Durante, alone, was permitted to work at home (Tr. 69). No other clerical employee who worked in the Concord office was permitted to work at home (Tr. 69).

Also, in June 2016, Respondent permitted clerical employee Carolyn Petersen (Petersen) to work at home following the closure of the Redding, California sales office (Jt. Exh. 1); Petersen was the only Redding clerical employee (Tr. 67, 77). Executive Market Manager Kliment, who supervised Petersen, advocated on her behalf to human resources to permit her to work at home since "she was a very good employee" (Tr. 77–78). A couple weeks prior to the closing of the Redding sales office, Kristiansen ultimately decided that Petersen could work from home temporarily "while discussions were taking place" (Tr. 78–79, 225–226). As with Durante, the Union learned of the decision to permit Petersen to work at home from other employees (Tr. 67). Respondent, according to Kristiansen, never gave the Union notice and an opportunity to bargain because the Union "supported" clerical employees working at home (Tr. 67–69, 138, 168, 241–242). Guthrie spoke to Vitales and Halpern during a pre-scheduled bargaining meeting on the successor CBA about Respondent's permission to allow Petersen to work at home (Tr. 68). Again, Guthrie reminded Respondent that the Union had proposed several times that employees work from home but Respondent rejected those proposals (Tr. 68). Petersen continued to work at home as of the date of this hearing, and Respondent has never bargained with the Union (Tr. 77; Jt. Exh. 1).

Legal Standard and Analysis

An employer violates Section 8(a)(5) and (1) of the Act when it engages in direct dealing with employees concerning working conditions such as the ability to work at home. *Permanente Medical Group*, 332 NLRB 1143, 1144–1145 (2000); *Southern California Gas Co.*, 316 NLRB 979, 982 (1995). Direct dealing is established when an employer communicates with employees, who are represented by a union, directly for the purpose of establishing working conditions or making changes regarding mandatory subjects of bargaining. To establish such an unlawful dealing has occurred, the following must be proven: (1) the employer was communicating directly with union-represented employees; (2) the discussion was for the purpose of establishing or changing wages, hours, and terms and conditions of employment or undercutting the union's role in bargaining; and (3) such communication was made to the exclusion of the union. *El Paso Electric Co.*, 355 NLRB 544, 545 (2010); *Permanente Medical Group*, supra at 1144.

Here, with regard to Durante, who is represented by the Union, Condensa permitted Durante to work at home rather than report to the San Francisco sales office, which clearly affected and changed her working conditions. By communicating directly with Durante, Respondent undercut the Union's role in bargaining this term and condition of employment. The Union only became aware of Respondent's actions after other clerical employees complained as they also wanted to be able to work at home. Thus, Respondent clearly bypassed the Union when permitting Durante to work at home.

With regard to Petersen, who is also represented by the Union, Kliment worked with human resources to permit Petersen to work at home after the office closed. Respondent indicated that this permission was temporary, but 10 months later, Petersen continued to work at home. Again, Respondent's action undercut the Union's role in bargaining, and the Union only became aware of Petersen's ability to work from home from other employees. Thus, Respondent bypassed the Union when permitting Petersen to work at home. Respondent does not deny that it permitted Petersen to work at home.

Respondent argues that it did not violate the Act by permitting Durante and Petersen to work at home, because this was consistent with the Union's bargaining proposal (R. Br. at 27–28). I disagree. The Union proposed that *all* employees be permitted to work at home. By rejecting this proposal and then handpicking only two employees for work-at-home privileges, Respondent flouted its duty to bargain and thereby directly undermined the Union's representational role.

Furthermore, Respondent argues that intent is required to prove a bypass allegation citing *Renal Care of Buffalo, Inc.*, 347 NLRB 1284, 1292 (2006) (citing *Emhart Industries*, 297 NLRB 215, 225 (1987)) among other decisions. Respondent misapprehends the elements of direct dealing, as I have outlined them above. Moreover, the case law cited by Respondent does not support its claim. In *Renal Care of Buffalo*, the employer's agent met with employees, who voluntarily attended the meeting without the presence and knowledge of the union, and the agent effected no changes to the employees' terms and conditions of employment. Thus, no direct dealing was found. In *Emhart Industries*, the Board found that the employer did not engage in direct dealing despite mandatory meetings with employees, without notice to the union, because the employer discussed topics which were the subject of negotiation with the union and the employer did not promise any benefits in the meetings to the exclusion of the union. Here, Respondent clearly communicated with Durante and Petersen directly, to the exclusion of the Union, to change their working conditions. Both employees faced closures of their respective offices, and rather than negotiate with the Union, Respondent's managers permitted these two employees the ability to work at home rather than lose their job or need to commute to a location likely farther from their current location.

Accordingly, I conclude that Respondent violated Section 8(a)(5) and (1) of the Act by engaging in direct dealing with Durante and Petersen.

*B. In July 2016, Respondent Changed Certain Commission Sales Rates and Directly Dealt with Advertising Sales Representatives by Obtaining Exception Agreements*

The complaint, at paragraphs 10(a), (b) and (c), and 11, alleges that on July 15, Respondent announced and implemented new sales commission rates for a certain product without notice and opportunity to bargain with the Union in violation of Section 8(a)(5) and (1) of the Act. The complaint, at paragraphs 9(c) and (d), and 11, also alleges that on July 26, Bartell, Poulin and Kliment bypassed the Union and dealt directly with its employees in the bargaining unit by seeking and obtaining advertising sales representatives' agreement to waive the sales commission rates set forth in the CBA thereby violating Section 8(a)(5) and (1) of the Act. Respondent argues that the General

Counsel provided no evidence of a unilateral change and again that the General Counsel failed to prove it intentionally bypassed the Union, instead it worked with the Union to clear up any miscommunication.

Respondent sells a product known as ypDirect which is a direct mail product (Tr. 23, 33, 80, 102, 256). Prior to July 2016, Respondent based its calculation of ypDirect sales commissions on the terms agreed in the parties' CBA (Tr. 24, 36–37). However, on or about July 15, Respondent informed advertising sales representatives that there was a new reduced compensation plan for ypDirect sales (Tr. 24–25, 33, 256–257; Jt. Exh. 2). The reduced compensation plan contains a monthly cap on ypDirect product commissions unlike the CBA provision (Tr. 57; Jt. Exh. 2, 17). Guthrie testified that commissions for sales of ypDirect products would be significantly reduced if the reduced compensation plan was used for calculation of commissions (Tr. 56). Respondent also presented individual sales representatives with a written agreement, known as the exception agreement, whereby each representative agreed to accept the reduced compensation plan (Jt. Exh. 2). This reduced compensation plan was also discussed during a meeting of employees (Tr. 28–29, 257, 267). The reduced compensation plan document also indicates that there was no agreement with the Union on the reduced compensation plan, and that if an advertising sales representative wanted to sell the ypDirect product, he or she must agree to the reduced commission rate and receive approval from others including the Union (Jt. Exh. 2). Vitales testified that Respondent's labor relations department had not reviewed this document (Tr. 257).

The Union learned of Respondent's ypDirect product reduced commission rates, along with the exception agreement, from its members via email (Jt. Exh. 2; GC Exh. 2, 3). Respondent never notified the Union about the reduced compensation plan nor did Respondent bargain with the Union (Tr. 49, 139, 267–268).[6] Soon thereafter, on July 20, the Union met with Respondent to bargain a successor CBA. During this bargaining session, the Union raised the issue of the new reduced compensation plan for ypDirect product sales (Tr. 50–51). The Union informed Respondent that it was dealing directly with employees by having employees sign the exception agreement for the reduced compensation plan (Tr. 50–51). Halpern told the Union that they had not intended to bypass the Union (Tr. 51, 140). Halpern explained that Respondent was not changing the compensation plan but also that the Union needed to approve the reduction in ypDirect product sales commissions (Tr. 258). No agreement on the ypDirect product reduced compensation plan was reached at this meeting.

A revised ypDirect compensation plan was sent to managers on July 20 (Jt. Exh. 3). The only change to the revised version emphasized that the Union needed to sign the exception agreement to approve the reduced compensation rate (Jt. Exh. 3). On July 21 and 26, Salais and Kliment, respectively, sent emails to advertising sales representatives regarding the reduced commission rates for ypDirect product sales, including the exception agreement (Tr. 27, 91; Jt. Exh. 1, 3, 12 and 13; GC Exh. 2). In this email, Kliment acknowledged that the Union and Respondent had not reached an agreement on the reduced compensation plan so the advertising sales representative must agree to the reduced compensation rate (Tr. 92).

On July 27, the parties met again to bargain the successor CBA (Tr. 51–52, 140, 260–261). During this bargaining session, Halpern explained that Respondent needed to reduce the compensation amounts for ypDirect product sales because the product was not profitable (Tr. 260–261). The Union informed Respondent that it was bypassing the Union with regard to the new reduced compensation plan for ypDirect product sales, and that Respondent's compensation proposal during CBA negotiations did not contain this new reduced compensation plan (Tr. 52, 54). Halpern told the Union that Respondent would suspend the new reduced compensation plan and would "fix it" (Tr. 52, 140, 260–261).

The following day the parties met again for bargaining (Tr. 53, 260–261). During this meeting, Halpern told the Union that Respondent was suspending ypDirect product sales (Tr. 53, 260–262) and the sales rate for any sales of ypDirect products already in the "pipeline" should follow the commission rate set forth in the CBA (Tr. 54, 262–263; Jt. Exh. 17). On August 4, Respondent suspended new sales of the ypDirect product (Tr. 93–94, 263; Jt. Exh. 4).

However, after the July 15 reduced compensation plan was announced but prior to its suspension, two advertising sales representatives made sales of ypDirect product, and Respondent requested these employees sign the exception agreement (Tr. 84, 94, 268). Specifically, on July 26, advertising sales representatives Leilani Kinzler (Kinzler) and Nick Gilbert (Gilbert) received the exception agreement for a sale of ypDirect product after July 15 (Tr. 85–86; GC Exh. 7; Jt. Exh. 1 and 13, 14). They both signed an exception agreement for a split commission sale, and forwarded the exception agreements to Jeff Butler (Butler) who was union shop steward (GC Exh. 7; Jt. Exh. 14). Butler forwarded the exception agreements to the union office (GC Exh. 7).

Even after Respondent's August 4 suspension of ypDirect product sales, Kliment testified that at the end of 2016 or the beginning of 2017, one new ypDirect sale took place (Tr. 97; Jt. Exh. 1 and 15). In addition, Poulin emailed advertising sales representative Joevanie Domantay (Domantay) an exception agreement in April 2017 since he had made a ypDirect product sale (Tr. 104–105, 270; Jt. Exh. 1 and 16). Vitales is unaware if Domantay's sale was completed (Tr. 280). Vitales testified that no advertising sales representative has been paid commission rates lower than agreed in the CBA; Vitales based his testimony on his conversation with Compensation Manager Wan-

[6] At the hearing Vitales testified:

Q: […] Before presenting Joint Exhibit 2 to employees, isn't it true that the employer never bargained with the Union about Joint Exhibit 2?

A: Yeah, we didn't bargain with the Union because we weren't changing the commission plan for the current YP Direct.

Q: Uh-huh. Well, you state that you weren't changing it, but according to Joint Exhibit 2, doesn't it state that there's going to be a change?

A: Only if [sic] Union approved it.

(Tr. 267–268).

da Chu (Chu) (Tr. 264, 270).[7] According to Respondent, the suspension of ypDirect product remains in effect (Tr. 264).

Legal Standard and Analysis

An employer must bargain with the union over the effects of a management decision, regardless of whether the decision itself was a mandatory subject of bargaining, unless the decision has no material or substantial impact on the unit employees. See *Toledo Blade Co.*, 343 NLRB 385, 387 (2004); *Fresno Bee*, 339 NLRB 1214 (2003). A mandatory subject of bargaining is wages, which would include sales commissions. See *NLRB v. Katz*, 369 U.S. 736, 738 (1962). An employer may not make a substantive change in terms and conditions of employment without providing the union prior notice and an opportunity to bargain.

Similarly, when an employer deals directly with employees bypassing the labor organization, the employer also violates the Act. An employer violates Section 8(a)(5) and (1) of the Act when it engages in direct dealing with employees concerning working conditions such as the ability to work at home. *Permanente Medical Group*, supra; *Southern California Gas Co.*, supra.

Here, it is clear that wages, in the form of a sales commission, is considered a mandatory subject of bargaining. See *NLRB v. Katz*, supra. When Respondent announced the new compensation plan for ypDirect products in July 2016, Respondent did not first notify the Union and give the Union an opportunity to bargain. Respondent's new compensation plan reduced the amount of commission advertising sales representatives could earn from selling the ypDirect product; the parties' CBA already covered the commission that advertising sales representatives could earn from sales of ypDirect. As explained by Guthrie, under the new reduced compensation plan, advertising sales representatives' commissions would be dramatically reduced. Thus, the reduced compensation plan created a "material, substantial, and significant" change. *Flambeau Airmold Corp.*, 334 NLRB 165 (2001), quoting *Alamo Cement Co.*, 281 NLRB 737, 738 (1986), modified on other grounds 337 NLRB 1025 (2002).

In fact, when confronted by the Union during bargaining for the successor CBA, Respondent admitted that it had not notified the Union of the change and would make clear to employees that the Union had not agreed to this change. Respondent thereafter announced that the Union needed to approve any changes to an employee's commission rate and to do so, the Union and employee must sign the exception agreement. This announcement did not ameliorate Respondent's unlawful actions as they seem to suggest, but instead violated the Act again by dealing directly with employees via the exception agreement. Respondent instructed employees, who are represented by the Union, to obtain the Union's signature on the exception agreement so their compensation rate could be changed from the agreement in the CBA. The Union did not agree to such an agreement by the employees, and the action directly undermines the Union's role as the sole bargaining representatives for the employees. Essentially, Respondent expected the employees to individually seek approval from the Union for modifications to the CBA. *Gene's Bus Co.*, 357 NLRB 1009, 1013 (2011); *Rangaire Co.*, 309 NLRB 1043, 1053 (1992).

Respondent argues that despite employees' signing the exception agreement, no advertising sales representatives were paid a reduced rate and all sales of ypDirect products were halted within approximately 2 weeks of the announced change in compensation. The record does not support Respondent's argument. Even after the announced suspension by Respondent, several employees signed the exception agreement, based on instructions from their immediate supervisors.[8] Furthermore, Respondent failed to prove, other than Vitales' hearsay testimony regarding his conversation with Chu that the advertising sales representatives who signed the exception agreement were paid at the rate established in the CBA rather than the reduced compensation plan. Moreover, even if no advertising sales representatives were paid at the reduced compensation rate, Respondent's mere announcement of the reduced compensation plan created an impression that this plan was in effect. See *ABC Automotive Products Corp.*, 307 NLRB 248, 249 (1992). Thus, any reasonable employee from the time of the announcement would understand that any sales of ypDirect would be at a greatly reduced compensation rate. Also as the Board stated in *ABC Automotive Products*, "the damage to the bargaining relationship has been accomplished simply by the message to the employees that the Respondent was taking it on itself to set this important term and condition of employment, thereby 'emphasizing to the employees that there is no necessity for a collective bargaining agent.'" Id. (citing *May Department Stores Co. v. NLRB*, 326 U.S. 376, 384–386 (1945)).

In addition, Respondent argues that the General Counsel failed to prove it intentionally directly dealt with the employees. Intent, however, is not an element of proof in a direct dealing allegation. In support of its claim, Respondent cites *Boehringer Ingleheim VetMedica, Inc.*, 350 NLRB 678, 680 (2007). In that case, in the context of a lawful employer lockout, the Board held that the employer did not directly deal with employees when presenting the employees with no-strike forms if they wished to return to work. The Board found that the employer had not dealt directly with the employees because, in this context, the employer presented the union with two options as its intentions to proceed and when the union refused to offer no-strike assurances, the employer permitted the employees to provide individual assurances, as referenced in its second option to the union. Id. The Board further determined that the employees did not verbally initiate conversation with the employer, but did so non-verbally by returning to work as opposed to the employer reaching out to the employees. Id. Also, the employer did not offer different wages or benefits to return to

[7] The record is devoid of any evidence of Chu's status as a statutory supervisor under the Act.

[8] Respondent argues that these managers "mistakenly" asked employees to sign the exception agreement (R. Br. at 19). Again, all managers who forwarded the exception agreements are statutory supervisors and agents under the Act. Respondent bears the responsibility for the actions of these managers. Respondent failed to show that they acted outside the scope of their duties.

work. Id. Under those circumstances, the Board found no direct dealing by the employer. Id. Again, the situation created here by Respondent is completely different. Clearly, Respondent acted, during the course of bargaining a successor agreement, to change the compensation amounts for advertising sales representatives when selling ypDirect products. When faced with opposition by the Union, Respondent decided it would be lawful to approach the employees to waive their compensation structure as set forth by the CBA. Thus, even assuming intent is an element in proving direct dealing, Respondent's actions prove that Respondent intended to circumvent the Union to achieve its goals.

In sum, I find that Respondent unilaterally changed working conditions by announcing a new reduced compensation plan for ypDirect sales, and by dealing directly with employees by asking employees to sign exception agreements for reduced compensation for ypDirect sales thereby violating Section 8(a)(5) and (1) of the Act.

## V. INFORMATION REQUESTS

The complaint alleges that Respondent violated Section 8(a)(5) and (1) of the Act on five occasions by failing and refusing or unreasonably delaying in providing information requested by the Union. Furthermore, the complaint alleges that the information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the bargaining unit. Respondent, in its answer, admitted that all requests for information at issue here were relevant and necessary. Respondent generally argues that it acted in good faith when responding to the Union's information requests and provided various reasons for why the requests were not responded to sooner, including claims that the Union sent too many requests for information to Respondent, the Union did not consult with Respondent before setting the deadline for the response, the Union did not send the request to the proper official, and the Union did not remind Respondent of its request. Ultimately, I find that Respondent violated the law as alleged, except in one instance. Respondent failed to communicate with the Union regarding the information requests to the Union, to their detriment.

### Legal Standard

Section 8(a)(5) requires an employer to furnish the union representing its employees with information that is relevant to the union in the performance of its collective-bargaining duties including representing employees in potential disciplinary actions and its grievance-processing duties. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956). The required showing is subject to a liberal, "discovery-type standard" and is not an exceptionally heavy one. The union need only show a probability that the desired information was relevant, and would only be used by the union to carry out its statutory duties and responsibilities such as in connection with grievances. Here, Respondent admitted in its answer that all information requests at issue were necessary and relevant.

Generally, an employer has to either provide the information or explain its reasons for noncompliance. *Columbia University*, 298 NLRB 941, 945 (1990), citing *Ellsworth Sheet Metal, Inc.*, 232 NLRB 109 (1977). If an employer has a legitimate claim that a request for information is unduly burdensome or overbroad, it must articulate those concerns to the union and make a timely offer to cooperate with the union to reach a mutually acceptable accommodation. *Mission Foods*, 345 NLRB 788, 789 (2005). "[A]n unreasonable delay in furnishing such information is as much of a violation of Section 8(a)(5) of the Act as a refusal to furnish the information at all." *Monmouth Care Center*, 354 NLRB 11, 41 (2009) (citations omitted), reaffirmed and incorporated by reference, 356 NLRB 152 (2010), enfd. 672 F.3d 1085 (D.C. Cir. 2012). "[I]t is well established that the duty to furnish requested information cannot be defined in terms of a per se rule. What is required is a reasonable good faith effort to respond to the request as promptly as circumstances allow." *Good Life Beverage Co.*, 312 NLRB 1060, 1062 fn. 9 (1993). "In evaluating the promptness of the employer's response, the Board will consider the complexity and extent of information sought, its availability, and the difficulty in retrieving the information." *West Penn Power Co.*, 339 NLRB 585, 587 (2003) (quoting *Samaritan Medical Center*, 319 NLRB 392, 398 (1995)), enfd. in relevant part 394 F.3d 233 (4th Cir. 2005); see *Pan American Grain*, 343 NLRB 318 (2004) (3-month delay); *Bundy Corp.*, 292 NLRB 671 (1989) (2.5-month delay); *Woodland Clinic*, 331 NLRB 735, 736 (2000) (7-week delay). In addition, when an employer does not have the requested information or needs additional time to gather the information, the employer must convey that it does not have the requested information or needs more time to gather the information, and an unreasonable delay in doing so violates the Act. See *Postal Service*, 332 NLRB 635, 638–639 (2000); *Endo Painting Service, Inc.*, 360 NLRB 485, 486 (2014). Finally, a delay in providing information or responding to a request for information will not be excused merely because the request was sent to the wrong individual or because the individual who received the request is busy with other matters. See *Postal Service*, 363 NLRB No. 11 (2015).

### Complaint paragraphs 7(a) and (b), and 8: Facts and Legal Analysis

On February 2, 2015, Esquivel sent an information request via email to Lopez concerning the performance plans for San Francisco sales office employees; this request for information was referred to as the SPA request for information (Tr. 114, 201; Jt. Exh. 5). This request sought information which related to the discipline of employee Daniel Magno (Magno) (Tr. 115–116; R. Exh. 3). The Union requested the following:

- Copies of all documents presented to all sales representative from the San Francisco district office and office(s) for formal and informal, satisfactory and unsatisfactory SPA coverage's for each of the historical 24 months.
- Copies of coaching notes for sales reps in the San Francisco district office including satellite office(s) with respect to improving standing in SPA's for all representatives covering the last 24 months.
- A copy of plan to "coach, counsel, support" and "recognize" sales representatives from the San Francisco

sales branch and its satellite offices including but not limited to what was used to "identify" "encourage" "evaluate" "improve" and "reward" employee performance.

- A copy of the structured timeline for improvement for each sales representative not meeting expectation as prescribed for in the SPE pgs. 7 and 8.
- A copy of all "unsatisfactory rating coverages" signed off by the 15th of each that was forwarded to Labor Relations from April 1, 2013 to present as agreed in the SPA pg. 27.
- A copy of all New Hire(s) ranking (SPE Reports), using the SPE where "Bag Size" is not measured for a full cycle pg. 36.
- A list of all New Hires who have completed a full cycle in the last 24 months.
- Copy of the Monthly SPA evaluations for "New Hires" including quartile standing pg. 36.

The Union requested the information by February 12, 2015 (Jt. Exh. 5). After hearing from Lopez that he was working on providing the information as of the deadline date and had forwarded the request to human resources, Esquivel replied on February 19, 2015, copying Kristiansen and Vitales, that the Union needed this information immediately as it was needed for representing an employee in a disciplinary matter (GC Exh. 8; R. Exh. 3).[9] Kristiansen replied that same day asking for another copy of the request for information (R. Exh. 3).

Kristiansen also asked Esquivel to copy her on all requests for any office so that she "may be able to support this process" as it was difficult for her to know the information requests Respondent must respond (Tr. 207; R. Exh. 3). Vitales and Kristiansen are responsible for responding to information requests on behalf of Respondent (Tr. 237–238, 249). The parties' collective-bargaining agreement is silent as to whom and where information requests should be sent. Both Vitales and Kristiansen have numerous other employee and labor relations responsibilities on behalf of Respondent.

Upon receiving the request, Kristiansen spoke to Lopez because his office would maintain a majority of the information sought (Tr. 203–204). On February 20, 2015, Kristiansen sent two of the items requested (Tr. 208; GC Exh. 9). On March 5, 2015, Kristiansen explained the difficulty with finding some of the information requested by the Union (due to the turnover in managers they were having trouble finding coaching records), but also provided some of the information requested—approximately 90 days of information to "illustrate" the activity requested (Tr. 118, 203–204; GC Exh. 8; R. Exh. 4). At this point, Respondent failed to provide additional months of documentation requested, including the coaching management journals, the sales performance agreement, and other items (Tr. 118–119).

On March 9, 2015, Guthrie and Esquivel participated in a conference call with Vitales and Kristiansen to discuss the February 2, 2015 information request regarding Magno (Tr. 45, 119–120). The Union sought information on whether Respondent met with an employee to discuss a failing objective or performance standard (Tr. 45–46). Respondent believed it had provided all the requested information, and the Union disputed this position; Respondent did not indicate that there was no further information to provide (Tr. 45, 120).[10] Thereafter, Esquivel sent an email on May 26, 2015 to Kristiansen and Vitales and others regarding the unfulfilled February 2, 2015 information request (Tr. 121; GC Exh. 10 and 21). On May 28, 2015, Kristiansen replied, reminding Esquivel of the challenge in finding the responsive documents (Jt. Exh. 6).[11] Kristiansen committed to searching for these additional documents, and offered to discuss any other documents requested by the Union in connection with this information request. Only 2 days later, May 28, 2015, Respondent fulfilled the information requested relating to the February 2, 2015 request (Jt. Exh. 1).

Here, Respondent initially explained to the Union the difficulty with finding some of the information requested especially the coaching records. Respondent provided some of the information sought only 1 week after the request, and continued to communicate with the Union about the problems they were having in locating the documents. However, after a discussion with the Union in March 2015, Respondent failed to provide the remaining information. The Union clearly expected more information as expressed during the March 9, 2015 phone call. Cf. *Whitesell Corp.*, 355 NLRB 635 (2010) (employer fulfilled its duty when it provided the information it possessed, and the union did not renew its request or inform employer that the request remained unfulfilled). Only after being reminded by the Union did Respondent commit to again searching for this information which it provided only 2 days later which undermines any claims that difficulty remained in finding the information not yet provided to the Union. I disagree with Respondent's assertion that the Union failed to convey that the information request remained unfulfilled—the Union did so on March 9, 2015.

Respondent also argues that it was responding to 5 other information requests between March and May 2015 (R. Br at 23, citing R. Exh. 1). While that may be, Respondent failed to convey to the Union at that time that the delay in completely responding to its February 2, 2015 information request was due to the other information requests posed by the Union. Board law clearly requires an employer to timely convey to the union

[9] It appears the potential disciplinary action did not occur at that time but became an issue again in May 2015 which prompted the Union to reiterate its request for information.

[10] Kristiansen and Vitales were not questioned about this March 9, 2015 meeting. I grant General Counsel's request and draw an adverse inference that if questioned, Vitales and Kristiansen's testimonies would corroborate Guthrie and Esquivel's version of events. Essentially, Kristiansen and Vitales would confirm that the Union informed Respondent on this phone call that the information received did not fulfill their February 2, 2015 information request.

[11] Kristiansen commented in this email that the Union, up until a few days prior, never mentioned to Respondent that the Union still sought information from the February 2, 2015 request. As indicated above, Kristiansen, who testified, could have been questioned regarding this discrepancy but was not. Again, I take an adverse inference that had Kristiansen been questioned, she would have corroborated the testimony of Guthrie and Esquivel.

the reason for any delay in responding to an information request. *Postal Service*, 332 NLRB at 638–639; *Endo Painting Service*, supra. Doing so now is untimely. Moreover, Respondent's argument contradicts its other position that it thought it had completely responded to the request by early March 2015, and that the Union failed to raise the issue with Respondent.

Also, to support Respondent's defense that it was busy responding to the Union's numerous information requests, Kristiansen and Vitales testified that they began tracking the Union's requests for information in February 2016 from March 23, 2015 to 2017 due to the number of requests they were receiving (Tr. 188–189, 200, 246; R. Exh. 1). Kristiansen testified that Vitales and she were prompted to create a list because they did not feel that they had a good handle on the number of requests and became unsure if they were responding in a timely manner (Tr. 247). Along with tracking these requests, Kristiansen and Vitales met weekly to discuss the requests for information (Tr. 211). Kristiansen testified that the Union made approximately 107 requests for information from March 2015 to March 2017; these requests contained multiple sub-parts as well (Tr. 200).[12] I reject any general defense by Respondent that the Union's requests were so numerous as to prevent it from timely replying to the information requests at issue in this complaint. Respondent never communicated with the Union that any delay in responding to specific requests was due to the other information requests posed by the Union. Respondent certainly could have bargained with the Union on a mutually acceptable accommodation.

Therefore, Respondent unreasonably delayed in responding to the Union's February 2, 2015 information request thereby violating Section 8(a)(5) and (1).

Complaint paragraphs 7(c) and (d), and 8:

On October 5, 2015, Esquivel sent an information request late that evening via email to Halpern (Tr. 122–123; Jt. Exh. 7). The information requested concerned Respondent's performance plan known as "STARS" as Respondent proposed, on September 11, 2015, revising the performance plans for advertising sales representatives (Tr. 123; R. Exh. 11). The Union requested the information no later than the close of business, Wednesday, October 7, 2015 (Tr. 142; Jt. Exh. 7). The requested information included:

- Define the term "Activity" as used in bullet point No. 1 on p. 2.
- Does the Company intend "Activity" to have a different definition than that found at p. 13 of the current Sales Performance agreement. If so, why?
- Define the specific components to be included in a "Developmental Discussion/Counseling".
- Define the specific components to be included in a "Developmental Warning".
- What does the Company mean by "(i.e., letter in lieu of suspension)" (p. 3)?
- Define the specific components to be included in a "Counseling" for "Probationary Reps".
- Define the term "objective" as used on p. 4. Does the Company intend "objective" to have a different definition than that found at p. 14 of the current Sales Performance agreement. If so, why?
- Define "peer group" as used on p. 4. Please specify all parameters that define the group that will be used for measuring "Quartile Ranking."
- What if any relevance does the reference in bullet point No. 5 on p. 4 to "Southern CA and TX region levels" have to sales reps employed within Local 1269's jurisdiction?
- Explain the relationship, if any, between a sales rep meeting, or failing to meet, the targets (95% of objective or better on 3 month view or 98% or better on the 12 month view), the placement or a rep within a "Quartile Ranking" and the administration of discipline for Total Revenue.
- What factors did the Company rely on to determine 95% as the target for a satisfactory 3 month view (p. 4)?
- What factors did the Company rely on to determine 98% as the target for a satisfactory 12 month view (p. 4)?
- What factors will the Company consider in determining whether to make an "exception" per the last bullet point on p. 4?
- What factors did the Company rely on to determine 2 sales per month as the target for satisfactory new business sold (p. 6)?
- Explain the relationship between bullet points No. 6 and No. 7 on p. 6. In other words, when is 75% of the New Business Sold revenue objective necessary to avoid discipline, and when is (95% of objective or better on 3 month view or 98% or better on the 12 month view necessary to avoid discipline?
- Define "true-new" as used on p. 7.
- What is relationship between "Proposed 2015 PR/KE New $ Plan - 18,246,218" and "Total Annual $ 22,809,600" (p. 7)?
- Please identify each sales rep represented by Local 1269 that, between the date of ratification of the current In Region collective bargaining agreement and

[12] Respondent sought to introduce more than 100 information requests by the Union and its responses, not alleged as violations of the Act (Tr. 192–198; R. Exh. 2). After hearing arguments set forth by Respondent and the General Counsel, I rejected this exhibit as not relevant to the proceeding. As I explained, the specifics of each request would not be relevant, however, testimony regarding the circumstances as to how these other requests affected Respondent's ability to respond to the requests for information at issue in this proceeding would be permitted, to which Respondent's witnesses testified. See *West Penn Power Co.*, 339 NLRB 585, 587 (2003), enfd. in pertinent part 394 F.3d 233 (4th Cir. 2005) ("totality of circumstances" to be considered when assessing the promptness of a response to a request for information). In addition, Respondent's exhibit 1 is a list of the requests for information it received from March 2015 to the hearing date; this exhibit provides context to Respondent's argument that it was overwhelmed by the Union's requests for information. In sum, I stand by my decision to reject that exhibit on grounds of relevance (Tr. 196–198).

September 11, 2015, who, in the Company's opinion, was a poor performer who was allowed under the current Sales Performance plan to "hang on too long."

- Is the Company prepared to continue the "Reward for TOP Sales Performance" (p. 7 of current plan)? If not, why not?
- Is the Company prepared to continue the "Win/Win (Known Losses)" (p. 16 of current plan)? If not, why not?
- Is the Company prepared to continue utilizing "Advertiser Base Growth % (ABG)" and/or "Bag Size/Retired Revenue as criteria for Performance review" (p. 23 of current plan)? If not, why not?
- Is the Company prepared to continue distributing performance reports on a monthly basis, per p. 24 of current plan? If not, why not?
- Is the Company prepared to continue the "Review Bowe" (p. 24 of current plan)? If not, why not?
- Is the Company prepared to continue the "cover every rep by the 15th of each month" per p. 24 of current plan? If not, why not?
- Is the Company prepared to continue the "Upgrades/Transfers/Retreats" per p. 31 of current plan? If not, why not?
- Provide the Union with the "cost of a Sale for Key, Premise and Telephone Channels, including but not limited to revenue generated, commissions paid and any and all metrics used by the company to make a determination barring sales under $300/mo."
- Provide the Union a copy of the guidelines in writing to be used by the Vice President of Sales approving exceptions.
- Provide for the Union a clear and unambiguous definition of "developmental discussion" referenced in the STARS proposal.
- Provide the Union the following information with respect to ranking: List of All offices and metrics currently used to establish sales ranking for Premise, Key and telephone sales, additionally what role Market Managers play in establishing sales representative rankings etc.; List of All offices and metric that will be used to establish sales ranking for Premise, Key and telephone sales, additionally what role Market Managers will play in establishing sales representative rankings etc. in the new proposed sales performance plan; A definition of quartile ranking metrics and process. Provide examples: provide the Union a list of all the sales representatives who have been out for a period of 10 days or more in a given quarter for the last 24 months.

(Jt. Exh. 7).

After not hearing back from Respondent, Esquivel sent a follow-up email on October 9, 2015 (Tr. 123; GC Exh. 11). Halpern responded, informing Esquivel that due to the number of items requested in this information request, Respondent would send the relevant information as soon as it is complete (GC Exh. 11). Esquivel replied and told Halpern that the information requested was relevant and necessary to negotiate the performance plan for advertising sales representatives (GC Exh. 11). Respondent did not respond to this request for information (Tr. 124).

On January 14, upon learning that Respondent sought to implement the new performance plan, Gowdy sent Halpern an email to remind him that Respondent never provided the information to the Union (Tr. 125, 272; GC Exh. 12). Thereafter, on January 20, only 6 days after its reminder, the Union received Respondent's information as requested (R. Exh. 13). From October 5, 2015 to January 20, Respondent failed to explain to the Union why it had not provided the October 5, 2015 requested information nor did Respondent ever request to bargain for an accommodation in providing this information (Tr. 126).

Vitales testified that despite speaking to Guthrie many times in the fall of 2015 regarding the proposed performance plan, Guthrie never mentioned to Vitales that the Union still had not received the October 5, 2015 requested information, and Vitales thought the information request was not a priority or not needed by the Union (Tr. 254–255, 274–275). Vitales also explained that Respondent did not respond to the October 5, 2015 information request because they were busy with responding to other information requests, bargaining and dealing with grievances (Tr. 255).

Here, Respondent delayed providing the requested information to the Union. Only after the Union reminded Respondent that it still needed the requested information (after Respondent proposed and intended to implement a new performance plan) did Respondent provide the information in only 6 days. Respondent delayed providing the information by 3 months when the Union could have received this information earlier for bargaining rather than in response to Respondent's notice of implementation of the new performance plan. Such a delay impeded the Union's ability to prepare for negotiations concerning the performance plans. See *Bundy Corp.*, 292 NLRB 671 (1989) (two-and-a-half month delay unreasonable when union needed information for negotiations). Respondent claims that it did not know that the Union still needed the information as the Union did not mention such a need during conversations between October 2015 and early January 2016 (R. Br. at 23). However, it is Respondent's obligation to clarify with the Union whether it still needed this information, not the Union's responsibility to remind Respondent of the outstanding request. See *Kellogg Co.*, 362 NLRB No. 86 (2015) (an employer unlawfully refuses to provide relevant information, even if the employer believes the union no longer wants the information as it is the employer's obligation to comply or seek clarification from the union); *National Steel Corp.*, 335 NLRB 747, 748 (2001); *Keauhou Beach Hotel*, 298 NLRB 702 (1990).

Again, Respondent asserts that between October 5, 2015 and January 20, it was working on responding to 14 other information requests from the Union (R. Br. at 23). As stated previously, Respondent carried the burden of promptly informing the Union of any delay in producing the requested material. *Postal Service*, 332 NLRB at 638–639; *Endo Painting Service*, supra.

Therefore, I find that Respondent violated Section 8(a)(5) and (1) of the Act when it unreasonably delayed providing the

Union the information requested in its October 5, 2015 information request.

Complaint paragraphs 7(e), (f), and (g), and 8:

On January 14, the Union sent Poulin a request for information via email concerning the potential disciplinary action against John Mimiaga (Mimiaga) (Tr. 127; Jt. Exh. 8). The Union sent the request to Poulin, who was Mimiaga's supervisor (Tr. 127). The Union requested the information before the review board meeting with sufficient time for the information to be reviewed and any potential mitigating factors submitted to be considered (Jt. Exh. 8). The Union requested the following pertaining to Mimiaga:

- OLSM Report for the coverage period of a minimum of 24 months or the time period used for the formal January 2016 SPE whichever is the greater of the two.
- Copy of all SPE coverages in the last 24 months or the time used for the January 2016 SPE whichever is the greater of the two.
- Copy of Mr. Mimiaga's calendar for the evaluation period of the January 2016 SPE
- A listing of all of Mr. Mimiaga's TGR appeals approved, denied and the reason for denial.

(Jt. Exh. 8). The following day, Poulin provided some of the requested information by providing the calendars for Mimiaga and another employee, but not the remainder of the information requested (Tr. 128; GC Exh. 13).

Thereafter, on July 18, the Union sent a related information request to Respondent concerning another potential Mimiaga disciplinary action (Tr. 128–129, 231; GC Exh. 13; Jt. Exh. 9).[13] Poulin forwarded the second request to Kristiansen and/or Vitales (Tr. 231–232). The second request consisted of similar items:

- OLSM report for John Mimiaga covering the last 24 months.(Please email a copy directly to John Mimiaga and the Union)
- All records of SPE's for the last 24 months
- Record of coverage of STARS Performance Management plan
- Copies of Management Journal notes, Discussions/Counseling, Developmental Warnings Etc.
- Clear and unambiguous answer to the question on what metrics are being used to calculate the results
- A copy of all MGL leads broken down by: Total number of leads; Leads per Sales representative
- Mr. Mimiaga's calendars for the last 24 months.

(Jt. Exh. 9).

[13] Kristiansen testified that prior to July 2016, Mimiaga was not in danger of being suspended or terminated (Tr. 234). The record is unclear as to what happened to the proposed discipline for Mimiaga in January 2016 which prompted the Union's information request.

By August 18, the Union received all the information requested in its January 14 and July 18 request (Tr. 129; R. Exh. 9 and 10). Again, Respondent never explained why there was a delay in providing the information between January and August 2016 and never offered to bargain (Tr. 129–130, 232). However, Kristiansen testified that if she had received the January 14 request, she would have ensured that Respondent responded (Tr. 233).

Again, Respondent unreasonably delayed providing the requested information. The Union initially sent the information request to the first-line supervisor of the employee as he would most likely maintain information concerning his employee. The supervisor quickly responded with some but not all the information. The Union, upon receiving some of the information, reasonably expected the remainder of the information from Respondent. It is incumbent upon Respondent to communicate to its managers how it will internally handle information requests.

Respondent argues that the Union did not send the information request to Kristiansen or Vitales which caused the delay in responding, and that they promptly responded when they received the July 2016 information request (R. Br. at 23–24). As the Union did not send the request to either Kristiansen or Vitales, Respondent argues the time to calculate the information request should be July 18. Generally, Board law states that a delay in providing information or responding to a request for information will not be excused merely because the request was sent to the wrong individual or because the individual who received the request is busy with other matters. See *Postal Service*, 363 NLRB No. 11. Respondent, though, supports its position by citing *Redway Carriers, Inc.*, 274 NLRB 1359, 1398 (1985). However, the facts in *Redway Carriers* are distinguishable from those presented here. In *Redway Carriers*, a union official asked the safety director for information on why employees had been terminated, but the safety director responded that he had been instructed not to talk to the union. Rather the union was informed that all "paperwork" should be forwarded to the company attorney. Thereafter, the union failed to follow up on this matter. The Board adopted the administrative law judge's finding that since the union failed to follow-up on its request, even after the safety director's declination to respond, the employer did not violate the Act as alleged. Here, although Kristiansen requested the Union to copy her on information requests, the Union was under no obligation to do so. Furthermore, under these circumstances, the Union reasonably expected Poulin, who was supervisor of the employee involved in the information request, to provide all the information as he responded to a portion of the request which indicates that he was not precluded from responding to the information request; unlike the safety officer, Poulin did not inform the Union that he would not or could not respond to the information request.

Respondent also argues that it was handling 75 other information requests from the Union between January 14 and August 18 along with bargaining a successor CBA and the virtualization plan which demonstrates that it acted in good faith to respond to the Union's information requests timely (R. Br. at 24). Among the information requests included the February 18

request concerning an employee's daily sales average and the March 23 request concerning a potential employee discipline (both discussed below). Again, Respondent's defense contradicts its other defense that the Union failed to send the information request to Kristiansen or Vitales so they were not even aware the request existed until July 2016. Thus, what other matters Respondent needed to tend to from January 14 to July 2016 is not relevant. Moreover, as in every other information request at issue in this complaint, Respondent failed to timely raise any of these issues with the Union after its January 14 request. Respondent certainly should have communicated that it would be delayed in responding due to these other matters and offered to reach a mutually acceptable accommodation.

Thus, I find that Respondent violated Section 8(a)(5) and (1) of the Act by unreasonably delaying in providing the information requested in the Union's January 14 request.

Complaint paragraphs 7(h), (i), (j), and (k) and 8:

On February 18, Salvador sent an information request via email to Respondent's Payroll Systems Manager Diane Francis (Francis) regarding a question about daily sales average (DSA) posed by Premise Sales Representative Carolyn Cook (Cook) (Tr. 170–173; GC Exh. 17; Jt Exh. 10). Salvador requested an answer to the following question: "What is calculated in DSA when employee is on leave?" (Jt. Ex. 10). Francis testified that she did not typically receive requests for information directly from the Union, and because she did not view Salvador's requests as a "formal request" since no one else was carbon copied on the email, she did not respond (Tr. 287).[14]

Salvador did not receive a response to her information request, and sent a follow up email to Francis and Kristiansen on March 2 (GC Exh. 17; R. Exh. 14). On March 21, Salvador again sent an email to Kristiansen and Francis regarding Cook's question (GC Exh. 16; R. Exh. 15). On March 21, Salvador sent another request for information with a couple of additional questions regarding Cook's questions via email to Respondent (Tr. 176; GC Exh. 16). The questions included: "Was my DSA supposed to freeze when I left on my worker's comp leave? Should it be figured from Feb 1, 2016, when I finished training? Or from January 5, when I returned to work and began training? The company obviously is not answering you, so what do I do about his [sic]? How do I escalate the question/issue? Who will help me address this issue? What do I do?" (GC Exh. 16). Cook was on leave from February 20, 2015 to January 4.

Francis then responded to Salvador's email, on March 21, letting her know that she would provide the information as soon as possible and explained that she was on leave the week prior (GC Exh. 16; R. Exh. 16). On March 29, prompted by another email from Salvador, Francis responded that she needed to manually recalculate the employee's dues and needed to consult with another source to make the calculations (GC Exh. 16; R. Exh. 16). According to Francis, the calculations took quite some time. On April 5, Salvador sent another email asking for the status of the requested information (GC Exh. 16; R. Exh. 17). On May 6, Salvador asked Francis again about the status of the requested information (R. Exh. 17). Meanwhile, Cook continued to send emails to Salvador inquiring about the response to her February 18 question (GC Exh. 16).

On May 2 and May 16, Salvador forwarded her request to Esquivel because she had not received a response (Tr. 175; GC Exh. 16). On May 17, Kristiansen sent an email to Francis, noting that the Union was "getting impatient" (R. Exh. 17). Francis indicated on May 18 that she had spoken to Salvador the week prior, and hoped to get to this request "as soon as I can" (Tr. 317; R. Exh. 17).[15]

Salvador testified that she had previously requested information regarding DSA from Respondent on other employees, and the requested information only took 2 to 3 days to provide by Respondent (Tr. 176). Finally, on June 23 Kristiansen responded to this request for information, dated February 18 and March 21 (Tr. 178; Jt. Exh. 1; R. Exh. 18). Kristiansen noted that Cook's compensation calculations were incorrect and that Respondent was manually calculating the amounts and would reimburse her the week of July 8 (R. Exh. 18, 19). Respondent did not offer to bargain over accommodations to provide the requested information (Tr. 178).

This information request is bit amorphous. Rather than requesting documentation, Salvador initially asked Francis how a calculation is to be performed. Then, after almost 3 weeks passed from the initial request and after Salvador sent Cook information from the CBA, Salvador sent additional questions essentially asking Francis to re-calculate the DSA for Cook. From late March to mid-June 2016, Francis re-calculated the DSA for Cook who had been absent from work for approximately 10 months. Francis' results revealed that Cook's DSA was incorrect, and that she needed to be paid additional monies. Considering the totality of the circumstances, I find, contrary to the General Counsel's position, Respondent communicated with the Union throughout this period about the problems in calculating the DSA and the need to perform manual calculations. In late March 2016, Francis informed Salvador that she needed to manually recalculate the employee's DSA which she needed to coordinate with another official. I agree with the General Counsel that Francis' claim that she did not view Salvador's initial request as "formal" is not a valid defense but thereafter, Francis communicated with Salvador about what she needed to do to calculate the DSA which was not the original request but rather a result of additional questions posed by Cook. Under these circumstances, I do not find that Respondent unreasonably delayed responding to the Union's request for information on February 18. Thus, I dismiss this complaint allegation.

[14] Francis also testified that she informed Salvador years prior that she should submit her request to labor relations (Tr. 288, 313–315).

[15] Salvador testified that she did not speak to Francis on the phone regarding the DSA information request, and that she was never informed of the reason for the delay (Tr. 323–324). Documentary evidence contradicts Salvador's testimony. Email communications between Salvador and Francis indicate that they had spoken the week prior when Francis explained the delay. In addition, Francis clearly explained to Salvador why the requested information was taking time (R. Exh. 16 and 17). Thus, I credit Francis' testimony, and not Salvador's testimony.

Complaint paragraph 7(l), (m), and (n), and 8:

On March 23, Waltz sent an information request via email to Kristiansen (Tr. 164; Jt. Exh. 11). The request for information concerned a grievance number N-0056-15 the Union filed on behalf of a Concord, California advertising sales representative Kathy Charles (Charles) and proposed discipline against her (Tr. 164–165). The request included:

- SPE Premise Rep ranking reports for the Concord office from 1/1/2012 - 3/1/2016
- List of all accounts reassigned as "extra market Win/Loss" that were available to sales reps in the Concord office from 1/1/2012 - 3/20/2016
- List of all of my (Kathy Charles) accounts that were reassigned to other reps as Win/Loss as a result of my FMLA/Disability leave(s) that occurred between 2012-2016
- List of Key Account openings in Concord, San Jose and San Francisco from 12/1/2013- 3/112016 [sic]
- Total earnings for each sales rep that upgraded to the above open Key Account positions, including Joe Padrid in the Concord office

(Jt. Exh. 11). Waltz sent several follow-up reminders to Kristiansen asking for the information for a step 3 grievance meeting scheduled for on or about April 19 (GC Exh. 15; R. Exh. 5). On May 2, Kristiansen informed Waltz that Vitales and she were working on gathering the information and should be able to get the information to Waltz by the end of the week (R. Exh. 5). On May 12, Kristiansen emailed Waltz again, informing him that gathering some of the information was challenging because some of the requested information went back 4 years (Tr. 166–167; GC Exh. 15; R. Exh. 5). Respondent did not offer to bargain with the Union over production of the information (Tr. 167). On June 14, Kristiansen provided some of the requested information to Waltz, and hoped to send the outstanding items "in the near future" (Tr. 166; GC Exh. 15; R. Exh. 6; Jt. Exh. 1). Thereafter, Vitales provided the remainder of the requested information on June 14 and June 23 (Tr. 166; GC Exh. 15; R. Exh. 7; Jt. Exh. 1).

Here, I find again that Respondent unreasonably delayed providing the information to the Union. Kristiansen informed Waltz that she was working on gathering the information, and only 6 weeks after the request, she explained that gathering some of the information was challenging. As previously stated, Respondent must timely provide a reason for why it cannot provide the information requested. See *Postal Service*, 332 NLRB at 638–639; *Endo Painting Service,* supra. I find that waiting 6 weeks to explain the difficulty with finding some of the information was insufficient. Moreover, the information requested concerned a grievance and proposed discipline against an employee; thus time was of the essence. Respondent certainly could have bargained with the Union on an accommodation but Respondent failed to do so.

Respondent also argues that the Union set "unilateral response deadlines," and Respondent needed to work on 27 other information requests from the Union between March 23, 2016 and June 23. I again reject Respondent's argument concerning the other information requests. Respondent failed to communicate this reason with the Union as to why there would be a delay in providing this information. Furthermore, Respondent carried the burden of communicating with the Union on why the information requested would take longer than the deadline and work with the Union on any accommodation. See *Postal Service*, 332 NLRB at 638–639; *Endo Painting Service*, supra.

Therefore, Respondent violated Section 8(a)(5) and (1) of the Act by unreasonably delaying in providing a response to the Union's March 23 information request.

## Conclusions of Law

1. Respondent, YP Advertising & Publishing LLC, has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, International Brotherhood of Electrical Workers, Local 1269, is a labor organization within the meaning of Section 2(5) of the Act that serves as the exclusive collective-bargaining representative of the following appropriate unit of employees within the meaning of Section 9(a) of the Act:

> All sales force employees of Respondent in the Northern California Region and all clerical employees of Respondent in the Northern California Region having the title classifications listed below, excluding all other employees and all supervisors as defined in the National Labor Relations Act, as amended.
>
> Sales and Clerical employees: Account Executive New Media, Advertising Sales Representative, Customer Associate, Directory Representative, Directory Sales Representative, Field Sales Collector, Key Account Executive, Office Assistant, Supervisor's Assistant, Telephone Sales Representative, Universal Support Associate.

3. By bypassing the Union and dealing directly with employees in the bargaining unit in May and June 2016 when permitting two employees to work at home, Respondent violated Section 8(a)(5) and (1) of the Act.

4. By bypassing the Union and dealing directly with employees in the bargaining unit in July 2016 and thereafter when having employees sign exception agreements to accept a reduced compensation rate for ypDirect product sales, Respondent violated Section 8(a)(5) and (1) of the Act.

5. By unilaterally changing the compensation rates in July 2016 for ypDirect product sales, Respondent violated Section 8(a)(5) and (1) of the Act.

6. By delaying the furnishing of certain information, set forth in the decision herein, requested by the Union, Respondent violated Section 8(a)(5) and (1) of the Act.

7. Respondent did not engage in any other of the unfair labor practices alleged in this proceeding.

## Remedy

Having found that Respondent has engaged in certain unfair labor practices, I recommend that Respondent cease and desist

therefrom and take certain affirmative action designed to effectuate the policies of the Act. Having found that Respondent unilaterally changed working conditions, I shall order Respondent to rescind the ypDirect reduced compensation plan, along with the exception agreement, upon request of the Union, and meet and bargain in good faith with the Union over the terms and conditions of employment of its employees in the bargaining unit described herein. Furthermore, Respondent shall make its affected bargaining unit employees whole for any losses they suffered as a result of Respondent's failure to give notice or bargain with the Union regarding the change in compensation rate for sales of ypDirect products.

I will order that Respondent post a notice in the usual manner, including electronically to the extent mandated in *J. Picini Flooring*, 356 NLRB 11, 15–16 (2010). Accordance to *J. Picini Flooring*, the question as to whether an electronic notice is appropriate should be resolved at the compliance phase. Id., at 13. However, the parties stipulated at the hearing that Respondent regularly communicates with its employees electronically via email (Tr. 20–21).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[16]

ORDER

Respondent, YP Advertising & Publishing, LLC, San Francisco, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Bypassing the Union and dealing directly with employees in the bargaining unit when permitting two employees to work at home.

(b) Bypassing the Union and dealing directly with employees in the bargaining unit when having employees sign exception agreements to accept a reduced compensation rate for ypDirect product sales.

(c) Unilaterally changing the compensation rates for ypDirect product sales.

(d) Delaying the furnishing of certain information requested by the Union.

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

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

(a) Rescind, upon request of the Union, the July 2016 ypDirect reduced compensation plan, including the exception agreement. On request, meet and bargain in good faith with the union over the terms and conditions of employment of employees in the following unit appropriate for purposes of collective bargaining:

> All sales force employees of Respondent in the Northern California Region and all clerical employees of Respondent in the Northern California Region having the title classifications listed below, excluding all other employees and all supervisors as defined in the National Labor Relations Act, as amended.
>
> Sales and Clerical employees: Account Executive New Media, Advertising Sales Representative, Customer Associate, Directory Representative, Directory Sales Representative, Field Sales Collector, Key Account Executive, Office Assistant, Supervisor's Assistant, Telephone Sales Representative, Universal Support Associate.

(b) Make its affected bargaining unit employees whole for any losses they suffered as a result of Respondent's failure to give notice or bargain with the Union regarding the change in compensation rate for sales of ypDirect products.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in San Francisco, California, the attached notice marked "Appendix"[17] on forms provided by the Regional Director for Region 20, 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. 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 February 2, 2015.

(e) 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. June 29, 2017

[16] 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.

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

## APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain in good faith with the International Brotherhood of Electrical Workers, Local 1269 (Union) as the exclusive collective-bargaining representative of our employees in the following appropriate unit (Unit):

All sales force employees of Respondent in the Northern California Region and all clerical employees of Respondent in the Northern California Region having the title classifications listed below, excluding all other employees and all supervisors as defined in the National Labor Relations Act, as amended.

Sales and Clerical employees: Account Executive New Media, Advertising Sales Representative, Customer Associate, Directory Representative, Directory Sales Representative, Field Sales Collector, Key Account Executive, Office Assistant, Supervisor's Assistant, Telephone Sales Representative, Universal Support Associate.

WE WILL NOT bypass your Union and deal directly with you concerning changes in your wages, hours, and working conditions.

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

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

WE WILL NOT fail to offer to bargain over mutually acceptable accommodations concerning circumstances under which requested information could be provided.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights under Section 7 of the National Labor Relations Act.

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

WE WILL pay you for the wages and other benefits lost, if any, because of the changes to terms and conditions of employment that we made without bargaining with the Union.

WE HAVE provided the Union with the information it requested on February 2 and October 5, 2015; and January 14 and March 23, 2016.

YP ADVERTISING & PUBLISHING, LLC

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/20-CA-147219 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.