

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

**HEARST COMMUNICATIONS, INC.
D/B/A THE SAN FRANCISCO CHRONICLE
and**

Case 20-CA-212720

PACIFIC MEDIA WORKERS GUILD, LOCAL 39521, TNG-CWA

Jason P. Wong, Esq., for the General Counsel.

Mark W. Batten, Esq. (Proskauer Rose, LLP),
for the Respondent,

Susan K. Garea, Esq. (Beeson, Tayer & Bodine, APC),
for the Charging Party.

DECISION

STATEMENT OF THE CASE

GERALD M. ETCHINGHAM, Administrative Law Judge. This case was tried on July 30, 2018, in San Francisco, California. Thereafter, the parties filed briefs on September 4, 2018.¹

This controversy concerns whether Respondent Hearst Communications, Inc., d/b/a the San Francisco Chronicle (Respondent) violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) when on or about December 21, 2017,² by letter, it enacted a more restrictive policy governing the Union’s bargaining representatives’ access to Respondent’s facility and bargaining unit employees (the “December 2017 Limited Access Policy”) who are

¹ The transcript in this case (Tr.) is mostly accurate, but at p. 127, line 2: “Yep” should be “No” as pointed out in the General Counsel’s August 23, 2018 Motion to Correct Transcript, joined by the Charging Party Union and not opposed by Respondent, which is granted as part of this decision. Other abbreviations used in this decision are as follows: “GC Exh.” for the General Counsel’s exhibits; “R. Exh.” for the Respondent’s exhibits; “GC Br.” for the General Counsel’s posthearing brief; and “CP Br.” for the Charging Party’s posthearing brief. Respondent elected not to file a closing brief. Although I have included numerous citations to the record to highlight particular testimony or exhibits, my findings and conclusions are based not solely on the evidence specifically cited, but rather on my review and consideration of the entire record.

² All dates are 2017, unless otherwise indicated.

represented by the Charging Party Pacific Media Workers Guild, Local 39521, TNG-CWA (Charging Party or Union) without providing the Union prior notice or an opportunity to bargain. The General Counsel also argues that Respondent has violated Section 8(a)(1) of the Act by discriminatorily implementing its December 2017 Limited Access Policy in response to employees' visits with nonemployee union representatives in the newsroom and increased union activity in the second half of 2017 during collective-bargaining contract negotiations. Respondent defends its action by denying that it enacted the December 2017 Limited Access Policy without notice to the Union and an opportunity to bargain with respect to this conduct and the effects of this conduct. As discussed below, I find that Respondent violated the Act as alleged.

The General Counsel alleges, in his April 30, 2018 complaint, based on a charge filed by the Charging Party on January 5, 2018, that Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide the Union with notice and an opportunity to bargain over its decision to enact the December 2017 Limited Access Policy. As stated above, the General Counsel further alleges that Respondent's new December 2017 Limited Access Policy also violates Section 8(a)(1) of the Act because it is enforced discriminatorily against only nonemployee union representatives in response to increased Union activity in 2017 and not all nonemployee visitors. (Tr. 61-64; GC Br. at 28-30.) Respondent filed an amended answer on July 30, 2018, denying that it enacted the December 2017 Limited Access Policy or that it violated the Act in any way.

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

FINDINGS OF FACT

I. JURISDICTION

I find that at all material times, the Respondent, a Delaware corporation with an office and place of business in a building located at the corner of 5th and Mission Streets, in San Francisco, California, has been engaged as a media organization and, among other things, in the publication, distribution, and sale of *The San Francisco Chronicle* newspaper and at all material times has held membership in or subscribed to interstate news services. Respondent admits and I further find that during the 12-month period ending December 21, 2017, the Respondent, in conducting its San Francisco facility operations, has generated gross revenues in excess of \$200,000, and during this same time period Respondent, in conducting its business operations, purchased and received at its San Francisco facility goods valued in excess of \$5000 directly from points outside the State of California. Respondent further admits and I further find that Renee Peterson (Peterson) is and has been Respondent's vice president of Human Resources, Stephen Kurysh (Kurysh) is a supervisor and agent as defined under the Act, that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

Based on the above, I find that these allegations affect commerce and that the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

**II. BACKGROUND: THE UNION AND ITS LONGSTANDING COLLECTIVE BARGAINING
RELATIONSHIP WITH RESPONDENT**

5 The Respondent also admits, and I further find, that the following employees of Respondent constitute a unit (Unit) appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

10 All employees covered by the terms of the collective-bargaining agreement between Respondent and the Charging Party in effect from July 1, 2012 through June 30, 2017 (the “CBA”).

15 There is no dispute that since about 1936, and at all material times, Respondent has recognized the Union as the exclusive collective-bargaining representative of the Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is the CBA also known as the agreement effective from July 1, 2012, to June 30, 2017, which has been extended orally by the parties through the duration of negotiations that began in the last half of 2017 between the parties for a successor collective-bargaining agreement.

20 I further find that at all times since about 1936, the Union has been the exclusive collective bargaining representative of the Unit employees under Section 9(a) of the Act.

25 Respondent admits and I find that the December 2017 Limited Access Policy is a subject that relates to wages, hours, and other terms and conditions of employment of the Unit and is a mandatory subject for the purposes of collective bargaining. (GC Exh. 1(d) at 3; GC Exh. 1(g) at 2.) As discussed below, in December 2017, Respondent failed to provide the Union with notice and an opportunity to bargain over its decision to enact its December 2017 Limited Access Policy. In addition, this policy was discriminatorily enacted and enforced against the Union.

30 **III. RESPONDENT’S OPERATIONS**

35 Respondent is and has been one of the Bay Area’s largest media organizations providing, among other things, a daily newspaper in newsprint and daily online media services known as the San Francisco Chronicle and SF Gate, respectively, for some years. Respondent employs approximately 400 employees of which approximately 200 are Unit employees. (Tr. 25, 109–110, 150.)

40 Respondent occupies a portion of the first floor and approximately 70 percent to 80 percent of the third floor where Respondent’s describes its work newsroom is located. (Tr. 27–28, 103, 115–116, 153, 187.) The layout of the newsroom on Respondent’s third floor facility is described as being one big room with between 100–150 employees each with desks in the center of the room including approximately 24–30 supervisors/managers sitting in it with their own desks. Of the employees, approximately 50–75 are Unit employees having their desks located in the middle of the newsroom. There are also approximately a dozen managers who also
45 have glass walled offices overlooking the newsroom, but, by and large, reporters and journalists sit in one big newsroom within hailing distance of one another.

Unit employee reporter and Union Shop Steward Steve Rubenstein (Rubenstein) has worked for over 40 years in Respondent's newsroom on the third floor of its building as a Unit employee reporter or journalist at Respondent in its downtown San Francisco facility. A reporter's work hours vary but he usually works Monday through Friday, 9 to 5, and occasionally some weekends and some evenings. Also a reporter's primary work tasks are to "try to find things out." (Tr. 186–187.) More specifically, Unit employee reporters ask a lot of questions, and they write down what people tell them, what they see, and what they hear as compellingly as they can. Id.

Rubenstein believably describes what he likes best about being a reporter is the variety of work assignments and that in being a newspaper reporter—"every day is different and there really is no set place of work, schedule, where you are, in the field, out in the office, nights, weekends, out of town, it's—every day is a little different." (Tr. 186.)

Unit employee reporters do not punch in or punch out to mark their worktime at Respondent. Rubenstein further explains that for reporters like him, there is no regularly scheduled work break, you get one in when you can, when there's a little lull in the action. (Tr. 187.) Hall, a former Respondent reporter, confirmed that breaks are taken on the run when time allows, waiting for a phone call perhaps, in between deadline additions, or after a report has been filed. Many reporters eat at their desks. Hall also opined that it is impractical for newspaper reporters or online breaking news reporters to schedule meetings with anybody around a break because the reporter's work is so unpredictable and pretty intense. (Tr. 138, 167–172.)

IV. NEWSROOM ACCESS FOR NONEMPLOYEES BEFORE DECEMBER 21, 2017

Before December 2017, to gain access to the third floor, visiting nonemployees only needed to prove their identity (ID) to security guards at the security desk in the Respondent's first floor lobby, and they came upstairs into the third floor newsroom where the majority of employees work. (Tr. 48, 121; GC Exh. 4.) The security desk is located near Respondent's front door at the 901 Mission Street entrance on the first floor of its building.

In September 2014, to improve building security, Respondent deactivated the Union's access badges to its facility and informed the Union, in writing, of the steps needed to take when accessing the facility. After receiving Respondent's written instructions, the Union generally adhered to them without ever receiving instructions different from what the Respondent outlined in 2014. The new security check in applied to all nonemployee visitors who were required to check in at the building's security desk to get a security badge and be escorted up to the third floor newsroom or wherever the visitor planned to meet.

Nonemployee visitors were not escorted at all times, only past the security desk to their first appointment. Respondent's Vice President of Human Resources Peterson sent the Union confirming emails in September 8 and October 1, 2014, which emphasized that all union representatives needed to do to have its longstanding free access to Respondent's working newsroom and other locations in the building was "to sign in at the security desk, receive a visitor's badge and have a [Respondent] employee bring him/her **into** the building [facility]." (Tr. 38-52, 120-121; GC Exhs. 4 and 5.) (Emphasis added.)

Also, after receiving Peterson two emails, nonemployee union representatives, Executive Officer Carl Hall³ (Hall) spoke to Respondent's former legal counsel Peter Rahbar (Rahbar) at the end of 2014 to discuss the Union's access to Respondent's facility after the deactivation of access cards. (Tr. 124-126.) Hall told Rahbar that before the deactivation, union representatives freely came and went as they pleased at Respondent. (Tr. 125.) Rahbar responded to Hall saying the security desk sign-in was an insignificant change and that he too had to receive a visitor's badge to go into the newsroom. Id. Rahbar continued telling Hall that all he needed for continued free access after entry into the building was to call a union shop steward to escort him from the security desk and Hall could go talk to whoever he needed to without anyone having to know. (Tr. 126.) In sum, Rahbar's description of Respondent's access policy at the end of 2014, like Peterson's, had no restrictions on the Union regarding which or how many employees a representative could speak with, where they could speak to Unit employees, or any need to have an escort at any time once they gained access into the building.⁴ Id.

After initial access into the building, however, there were no additional access limitations imposed on any nonemployee visitor until late 2017, as discussed below, when Respondent unilaterally enacted and enforced the new December 2017 Limited Access Policy against only nonemployee visiting union representatives. All nonemployee visitor groups other than the union representatives have had uninterrupted open access once past the security desk and into Respondent's facility including free access and interaction with reporters and others in Respondent's working newsroom.

Once beyond the security desk and into Respondent's facility such as upstairs on the third floor and in the newsroom, there were no access limitations for any nonemployee visitor who knew their way around the newsroom—there were no access or roaming restrictions and they went and saw who they came to see besides the employee who invited them upstairs. For example, if the visiting nonemployee needed to use the restroom, they went to the restroom unaccompanied by anyone else, if they had to go to the copy machine, they went to the copy machine, if they wanted to go to the union bulletin board to read a posting or change it, they went to the bulletin board, and if they wanted to chat with somebody, they chatted with somebody.

In sum, prior to December 2017, visiting nonemployees were not required to be escorted at all times in the building, they were not tied to the newsroom or kept away from it, and they might use an empty desk for hours at a time which is where some children of employees would be seated until an employee was finished working their shift or needed to leave the building.

Also, before December 2017, approximately once a month, Rubenstein recalled seeing Respondent's managers bring visitor nonemployees into the newsroom while the Unit employees

³ Hall is a former journalist and employee of Respondent before his time as nonemployee union representative.

⁴ The General Counsel requests that I draw a negative inference from Respondent's failure to call Rahbar as a witness in defense of its case. GC Brief at 19 fn. 17. I decline to do so because I find Hall's testimony about his interactions with Rahbar in 2014 very reliable and undisputed. The burden is on Respondent to bring Rahbar to testify if it disputes Hall's compelling testimony and Respondent elected not to do this.

were working such as their own family members. (Tr. 195–196, 214.) For example, Respondent’s editor-in-chief, Audrey Cooper (Cooper), brought in her young son several times. In addition, prior to December 2017, managers’ visitors would speak to employees in the newsroom while the employees were working. Rubenstein did not recall any restrictions put on
5 managers by Respondent to limit visitors’ access to employee work areas. Id.

Also many times, prior to December 2017, Rubenstein brought his own nonemployee visitors into the newsroom in the presence of managers and these included many family, friends, and students while employees were working in the newsroom. (Tr. 196–200.)
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Specifically, before December 2017, Rubenstein taught a journalism class at San Francisco State University and he typically would have his students come in on the last class of the semester and Rubenstein conducted the class at Respondent’s newsroom while other employees were working in the presence of various managers and he would also give them a tour
15 of the Respondent’s building. Rubenstein would also introduce his students to his work colleagues and he would conduct a classroom session in one of the conference rooms after the students had gotten a feel for the newsroom and seen what various employees did. (Tr. 196–198.)

On these occasions, the nonemployee students spoke to other employees in the newsroom and Respondent never told Rubenstein that his students could not be in work areas. (Tr. 197.)
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Also before December 2017, Rubenstein also brought his nonemployee friends into the newsroom many times on average of monthly or more often such as several times per month. When Rubenstein brought his nonemployee friends into the newsroom, they visited while employees were working and in the presence of management. While visiting in the working newsroom, Rubenstein’s nonemployee friends would talk to various people, try and observe what folks like him do for a living and Rubenstein would encourage his nonemployee visitors to go around the newsroom and listen to other reporters on the telephone and their different
25 interviewing styles.
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Rubenstein, in particular, would also encourage his students to do that. He would say “go over and listen to [Phil] Matier talking to somebody, go over and listen to somebody else talk to somebody. . . Listen to how they pose a question, and how they—and what they’re writing down, and what the other interviewers are doing.” (Tr. 198.) Rubenstein would very frequently turn his students loose to observe his colleagues in the newsroom.
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Rubenstein recalled that many times prior to December 2017, his visitor friends would speak to employees in the newsroom and Respondent’s management did not ever tell Rubenstein that his friends could not be in the work areas at Respondent, that his friends could only speak to employees who were on break, or that Rubenstein’s friends had to be escorted at all times.
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Prior to December 2017, Rubenstein would also bring in his nonemployee family members into the newsroom on average of monthly or more frequently than that and when he brought them into the newsroom, he did so in the presence of managers. His family members would watch Rubenstein or watch his colleagues at work, they would talk to folks or if they got tired of watching Rubenstein they might watch TV. Rubenstein does not recall that Respondent
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ever told him that his visiting family members could not be in work areas, that they could only speak to employees who were on break, or that his family members had to be escorted at all times.

5 Similar to his students, friends, and family members visiting the newsroom with Rubenstein prior to December 2017, Rubenstein recalls that former employees, and other employees' guests had the same open access rules for moving around and talking to other working employees in the newsroom in the presence of managers without being told these visitors needed escorts around Respondent's building. Rubenstein further described that some of 10 the other employees' guests included their own family members, friends, and parents on many occasions. Moreover, Rubenstein specifically recalled that the younger employees frequently brought their parents into the newsroom with these same open access rules prior to December 2017.

15 Prior to December 2017, Rubenstein also recalled seeing guests of employees or children of employees in the newsroom to sell products such as girl scout cookies. When this occurred, Rubenstein further noted that it was in the presence of managers, Respondent never told these girl scouts or their parents that they could not sell cookies in the newsroom, or that they could not speak to employees who were working.

20 Also prior to December 2017, Rubenstein has also seen 15–20 members of the general public as new subscribers tour Respondent's building including the working newsroom and being led around by managers which Rubenstein described as a nice new tradition created by Cooper. Rubenstein also described seeing approximately 36 members of the University of 25 California school band also touring Respondent's building during the big game week and playing Cal fight songs in the middle of the newsroom every November prior to December 2017.

Finally, Rubenstein recalled that Hall and nonemployee union administrative officer and local Union Representative Karen (Kat) Anderson (Anderson), also visited the working 30 newsroom to conduct union business a couple times a month or less prior to December 2017 with the same open access rules in the presence of managers as described above for nonemployee friends, family, former employees, general public subscribers, Cal band members, and students. Many times prior to December 2017, Hall or Anderson would speak to employees in the newsroom and elsewhere in Respondent's facility to talk about the Union, monitor the union 35 bulletin board, and distribute union literature and Respondent's management did not ever tell these union representatives that they could not be in the work areas at Respondent, that they could only speak to employees who were on break, or that Hall or Anderson had to be escorted at all times. Hall, in particular, as a former employee, knew many Unit employees and also knew his way around the building and newsroom and did not need any escort help.

40 In June 2017, the Union and the Respondent began negotiations for a successor CBA and by December 2017, the parties had yet not reached a new agreement.

45 Before December 2017, Rubenstein recalls signing in Hall and Anderson as union representatives at the security desk and after he signed them in, they came up to the newsroom with Rubenstein because he was going to the newsroom and they were going to the newsroom. They knew who they wanted to see, and they conducted their business without Rubenstein's

help. Hall and Anderson described increased union activity occurring in the last half of 2017 that caused them to visit Respondent and Unit employees more frequently than usual due to successor CBA negotiations and grievance review of employee personnel files.

5 Consequently, prior to late 2017, there were no access restrictions regarding any group of
 10 visitor nonemployees being in work areas at Respondent including its newsroom. Moreover,
 Respondent's long-standing past practice of free Union access in the workplace without an escort
 goes back decades. However, the Respondent's conduct with respect to Union access changed in
 late November and early December 2017.

15 On November 29, 2017, Respondent told the Union representatives Hall and Anderson to
 leave its facility while they were there to review personnel files pursuant to an unrelated settled
 NLRB matter. Both Hall and Anderson walked into the newsroom to speak to a couple of Unit
 employees after reviewing employee personnel files for 2 hours. Respondent manager Muriel
 20 Tabarez (Tabarez) approached Hall and told him he had to leave the premises. Hall responded
 telling Tabarez that he was not ready to leave and Tabarez walked away. Hall returned to his
 conversation with reporter Karen de Sa (de Sa) and Hall opined that de Sa witnessed Tabarez
 asking Hall to leave and that this appeared to make de Sa uncomfortable thinking she was in
 trouble with Respondent so Hall walked out of the newsroom. (Tr. 127–129.)

25 Again on December 6, 2017, Respondent tried to limit the Union's access to
 Respondent's facility and Unit employees when Respondent's supervisor and agent Kurysh
 escorted Union Representatives Hall and Anderson away from Unit employees when they were
 present simply to meet at Respondent and review approximately 25 Unit employee personnel
 30 files again. The two union representatives were escorted to a glass "fish-bowl" conference room
 which was already being used when Supervisor Kurysh again prevented Hall and Anderson from
 meeting privately to discuss union matters and he insisted that he must remain in their presence
 to keep an eye on them. Hall and Anderson next returned to the newsroom to meet with Unit
 employees and at that time, Supervisor Kurysh demanded that the union representatives leave the
 newsroom. (Tr. 129–134.)

35 Unit employees Nanette Asimov (Asimov), Mike Cabanatuan (Cabanatuan), Caroline
 Grannan (Grannan), and Rubenstein immediately came up and they questioned Supervisor
 Kurysh about what he was doing, they said it was unfair, and pointed out to him that only Hall's
 and Anderson's access as union representatives was being limited by Respondent in the
 newsroom when all other nonemployee visitors to the newsroom come in all the time with open
 access privileges. (Tr. 163–164.)

40 **V. RESPONDENT'S UNILATERAL CHANGE THROUGH ITS DECEMBER 2017 LIMITED ACCESS
 POLICY**

45 On or about December 21, 2017, Respondent enacted the December 2017 Limited Access
 Policy without any advance notice to the Union or an opportunity to bargain over this unilateral
 change that was enforced against only nonemployee union representatives' access to
 Respondent's newsroom and other locations in Respondent's building. (Tr. 49–50, 207–212.)

On December 21, 2017, Respondent's attorney, Mark W. Batten, Esq. (Batten), sent a letter to Union bargaining representative and president Hall which created Respondent's December 2017 Limited Access Policy and provides in relevant part:

5 I understand that there has been some disagreement recently about your and Kat's [Anderson's] access to the [Respondent's] Chronicle offices to meet with your members. This letter seeks to clarify the Chronicle's access policy and the governing law.

10 We acknowledge that the Guild [Union] has a right to meet with its members to discuss matters relevant to the Guild's representation, and are willing to permit access to the Chronicle's property for that purpose. But we will not tolerate nonemployee union representatives who appear at the workplace and disrupt the working environment by talking with employees who are on company time,
15 performing their duties. [citations omitted]. As the Chronicle has said before, we do not restrict you from communicating with Guild employees while they are on break or in non-work settings. But the Guild has not respected this distinction.

20 These same restrictions apply to all visitors. After management deactivated access badges in 2014, and the Board sustained the Company's action, the policy requires all visitors to sign in with security and be escorted by a member of Human Resources or by an employee to a designated non-work area. Non-work areas include: cafeterias, break rooms, common areas, and lobbies.

25 While in the Chronicle building, Guild representatives must abide by all of the same rules and regulations applicable to other building visitors, including not interfering with the work being performed in the building or the use of the building by other visitors. All visitors must remain in the designated non-work areas. If the Guild persists in wandering about the building and initiating
30 conversations with employees who are working, we will ask building security to escort those representatives out of the building, as we would do with any visitor who disrupted the work environment in that way. [citations omitted].

35 If you have any questions about this policy or how to apply it, please contact Renee Peterson, or feel free to contact me directly.

(GC Exh. 3.) (Emphasis in original.)

40 In all, the new December 2017 Limited Access Policy provided: (1) an all-out ban on union representatives' access to Respondent's newsroom and other work areas; (2) Unit employees had to be "clocked-out" and on break while speaking to a union representative; and (3) union representatives had to be escorted throughout Respondent's facility at all times despite none of these restrictions applying to or enforced against any other nonemployee visiting group
45 of people other than union representatives.

Respondent's December 2017 Limited Access Policy left Unit employees and nonemployee union representatives confused because they did not know that they were now

supposed to escort visiting nonemployees only to nonwork areas such as the cafeteria, which does not exist as there have been no cafeteria since the late 1970's,⁵ or breakrooms, which also do not exist at Respondent.⁶ (Tr. 136–138, 191–192.)

5 In addition, Unit employees and nonemployee union representatives are also confused by
the new December 2017 Limited Access Policy because it made reference to common areas
being available meeting locations but Respondent's common areas are also Unit employee work
areas. For example, there are areas with sofas in them, but work is typically done in this sofa
10 common area/work area so the average Unit employee reading the new December 2017 Limited
Access Policy letter would be uncertain what this "non-work" area means because, in reality, it
frequently remains just another work area. (Tr. 136–138, 192.)

15 Overall, the new December 2017 Limited Access Policy completely did away with the
Union representatives' past virtually unfettered free access policy once access into Respondent's
building was obtained for them to meet with Unit employees in the newsroom and elsewhere in
Respondent's facility through impromptu, informal interactions which are necessary due to the
hectic nature of the employees' work, for union representatives to change the union bulletin
board and distribute union literature, and to discuss collective bargaining and other
20 representational matters with Unit employees. Moreover, this lost open access policy prevents
Unit employees from regularly seeing their union representatives who historically had a large
presence at Respondent's facility and greatly reduced the union representative's ability to
receive, investigate, and follow-up with members regarding grievances, to post and distribute
information, to give bargaining updates, and to process benefits, changes, and other paperwork.

25 Rubenstein also convincingly opined that it has always been impractical for employees to
only speak to union representatives while on their break because Respondent does not have any
designated nonwork areas and Unit employees do not clock in or clock out of work because
reporters have unpredictable work schedules.⁷ In addition, Unit employees do not know when

⁵ Respondent provided its employees a cafeteria in the 1970's but Respondent had closed this cafeteria 4 decades ago in approximately 1978.

⁶ Respondent provided no evidence that it had a functioning cafeteria or a designated nonwork area where no work is performed by its employees as of December 21, 2017.

⁷ Longtime journalist Rubenstein testified in a calm and very believable manner throughout the hearing as he appeared to be a very seasoned reporter with more than 40 years of experience working and with first-hand observations of Respondent's newsroom and facility. He was by far the more credible current employee witness. A credibility determination may rely on a variety of factors, including the context of the witness' testimony; the witness' demeanor; and the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Daikichi Sushi*, above at 622. I have also considered the longstanding principle that "the testimony of current employees that contradicts statements of their supervisors is likely to be particularly reliable because these witnesses are testifying adversely to their pecuniary interests." *Flexsteel Industries*, 316 NLRB 745, 745 (1995), enfd. 83 F.3d 419 (5th Cir. 1996), citing *Gold Standard Enterprises*, 234 NLRB 618, 619 (1978), enfd. denied for other reasons, 607 F.2d 1208 (7th Cir. 1979), and *Georgia Rug Mill*, 131 NLRB 1304, 1304 fn. 2 (1961); see also *Federal Stainless Sink Division of Unarco*, 197 NLRB

their break will be because the entire newsroom is a work area and Rubenstein would not know where to take Hall or Anderson to talk to them if Respondent says that employees must take a union representative to the cafeteria or a break room. (Tr. 193, 207–208.) There is only a tiny little room way in the back that has got a microwave in it, but no employees use it. Id.

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Hall and Anderson also opined that the new December 2017 Limited Access Policy has had significant impact only to union representatives' access to Unit employees. The Union has had a tradition that goes back to the 1930's of talking to Unit employees when they work and when they want to talk to the representatives. This tradition also allows union representatives to show their face to Unit employees at Respondent, show the employees that the Union is a person and not just a name on a piece of paper, and given the manner in which these Unit employees work with their working deadlines, it is not possible for union representatives to maintain this same relationship with Unit employees if there is a scheduled meeting-limited access policy such as the December 2017 Limited Access Policy at Respondent that was created on December 21, 2017. (Tr. 138–139, 167–172.) Hall and Anderson believe that such a policy is completely unworkable at Respondent. Id.

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I further find that the December 2017 Limited Access Policy also impacts Unit employees' communications with the Union. For example, by making communications more difficult if a Unit employee tries to comply with the new vague and confusing December 2017 Limited Access Policy, they also do not know how to comply with them which chills a Unit employee's ability to talk with a union representative. In addition, Rubenstein no longer knows how to take a guest or Hall or a subscriber member or the trombone player from the Cal band to a nonexistent cafeteria or break room that does not exist or to take them on his break which is never preplanned and cannot be set to occur and some specific time of day for a specific time frame. (Tr. 193, 208.)

489, 491 (1972). As a result, I credit the testimony of current Unit employee Rubenstein, an employee at Respondent for over 40 years since 1976 over the testimony of Respondent's Human Relations Managers, Peterson and Loomis, for this reason to the extent they contradict the testimony of Rubenstein. Also, Rubenstein, Hall, and Anderson confidently agreed in their testimonies about the enactment without notice or an opportunity to bargain by Respondent of the discriminatory December 2017 Limited Access Policy and the unfettered open access at Respondent once a visitor gained access into Respondent's building beyond the security desk both before and after December 2017 for all nonemployee visitors other than union representatives such as Hall and Anderson in retaliation for the Union's increased activity at Respondent the last half of 2017. (Tr. 31–39, 54–55, 61–64, 96, 102.) Moreover, I reject the testimony of former Respondent HR Business Partner Loomis where it conflicts with Union Representatives Hall and Anderson or employee reporter Rubenstein regarding the December 2017 Limited Access Policy and enforcement of it. Loomis falsely stated that Respondent's access policy is found in the employee handbook which she claimed to read every day. (Tr. 102.) In fact, Loomis' former supervisor, Peterson, admitted that the access policy is not found in any employee handbook which is consistent with other testimony and documentary evidence. (Tr. 35.) I also reject as untrue Manager Peterson's attempt at hearing to change her earlier Board affidavit. Peterson changed her affidavit testimony at hearing by testifying she did not recall seeing Hall going from employee to employee in the newsroom when she earlier stated: "Hall generally follows the policy of checking in and then being escorted up, although he tends to go from person to person once he's in the newsroom. Hall going from person to person within the newsroom violates our policy two [sic]." (Tr. 40, 42.)

Prior to December 2017, Rubenstein recalls that since 1976 the Union has been allowed to speak to the Unit employees in the newsroom without restrictions and for the same number of years, the Union has been allowed to speak to employees who were not on break.

5 The new December 2017 Limited Access Policy letter also caused concern and
uncertainty to the Unit Employees and the Union because wandering around Respondent’s
building and initiating conversations, as described by Rubenstein, had occurred prior to
December 2017 with the no access or open access rules. This practice of wandering around the
10 building and initiating conversation is further explained to be basically the job description of a
journalist. Prior to December 2017, there never has been any restriction on when a Unit
employee brought a guest into the office. The former free access policy, especially in the
newsroom, is something that Rubenstein explained is “something that the [Respondent’s SF]
Chronicle is proud of... We're all proud of the place.” (Tr. 192.)

15 Rubenstein, a Unit employee reporter with more than 40 years of newspaper reporting
experience at Respondent, persuasively explained that “[t]he Company is, the people who work
there, we like showing it [Respondent’s newsroom] off... We like having the community
involved in it... There's no attempt to hide what is going on there or to try and restrict it. There's
20 frequently tours going through the building at any day and night... I've led some of them
myself.” (Tr. 192–193.)

Prior to December 2017, neither Respondent’s handbook nor the CBA has any language
referring to a visitor’s access policy. (Tr. 194–195; GC Exh. 2.) Rubenstein pointed out that
before December 2017, “[i]t's always been a sort of an informal arrangement in which you
25 brought folks in... As I said—the break times, I don't know when the break times are. They're
different every day. They're sort of floating, so [if] you can only talk to somebody on your break
time or designated break time, that leaves me puzzled.” (Tr. 194–195.) No evidence was
presented showing that Union Representatives Hall or Anderson or anyone else disrupted
Respondent’s working newsroom in any way prior to Respondent’s unilateral enactment of the
30 December 2017 Limited Access Policy or interfered with Respondent’s production of its news
stories.

Before issuing Batten's December 21 letter, Respondent did not inform Unit employees
or the Union of its new December 2017 Limited Access Policy.

35 Respondent continued to enforce its December 2017 Limited Access Policy against only
union representatives in late 2017 and 2018. For example, once Respondent had implemented its
December 2017 Limited Access Policy, Unit employee Rubenstein continued to bring visiting
nonemployee family members and friends to Respondent’s working newsroom many times. (Tr.
40 210–212.) Rubenstein has left his visitors unattended and he has not escorted them throughout
the working newsroom while they speak and visit with other employees working in the
newsroom. Not one time has Respondent’s management advised Rubenstein that his practice of
having family and friends visit the working newsroom and speaking to other working employees
violated Respondent’s access policy.⁸

⁸ Respondent also provided no evidence that any nonemployee visitors other than nonemployee
union representatives were required to remain and remained in designated nonwork areas at Respondent’s

Also, at no time since the December 2017 Limited Access Policy was enacted has Respondent retracted it. (Tr. 55–56, 58-59.) Moreover, it is not unusual for other nonemployee visitor groups to be inside Respondent’s newsroom at any given time of day. Friends, family, former employees, students, members of the general public along with Union representatives have historically had open access to Respondent’s facility. Only since December 21, 2017, has the Respondent singled out the union representatives to limit their open access for the first time in over 80 years. Also, while the December 2017 Limited Access Policy letter purported to restrict all nonemployee visitors’ access, the Respondent did not distribute the letter policy to its employees – only to the Union, and Respondent has not enforced it against employees or any visitors who are not nonemployee union representatives.

ANALYSIS

I. RESPONDENT VIOLATED SECTIONS 8(A)(5) AND (1) OF THE ACT BY UNILATERALLY ENACTING THE DECEMBER 2017 LIMITED ACCESS POLICY, WITHOUT PRIOR NOTICE TO THE UNION AND OPPORTUNITY TO BARGAIN

Complaint paragraphs 9–13 allege that on or about December 21, 2017, Respondent set forth a more restrictive access policy governing the Charging Party Union’s access to Respondent’s facility and bargaining unit employees without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct and the effects of the conduct. The complaint further alleges that by this conduct, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act. The amended complaint further alleges that Respondent is in violation of Section 8(a)(1) of the Act because it enacted and enforced its discriminatory December 2017 Limited Access Policy against union representatives alone and not against other nonemployee visitor groups to Respondent’s newsroom and other locations in Respondent’s building in retaliation for the Union’s increased activity with Unit members in the last half of 2017 when a successor CBA was being negotiated for the first time in 5 years.⁹ (Tr. 31–39, 54–55, 61–64, 96, 102.)

It is well established that an employer violates Sections 8(a)(5) and (1) of the Act when it makes substantial and material unilateral changes during the course of a collective bargaining

facility at all times after Respondent’s December 2017 Limited Access Policy was enacted.

⁹ Manager Peterson testified for Respondent that the December 2017 Limited Access Policy letter did not accurately reflect Respondent’s nonemployee access policy that applied to everyone. (Tr. 32-33, 55.) Peterson specifically said that in contrast to the December 21, 2017 letter, nonemployee visitors could be present in work areas and they could speak to employees who were not on break. That is contrary to what the December 2017 Limited Access Policy letter actually says. Peterson further admits that the December 2017 Limited Access Policy letter was enacted and enforced because of Union Representatives Hall’s and Anderson’s presence as nonemployee union representatives in Respondent’s facility. Tr. 31–35, 54–55, 61–64, 96, 102; GC Exh. 3. In sum, Peterson admitted that Respondent’s December 2017 Limited Access Policy imposed false and discriminatorily harsh access restrictions on only the Union contrary to its longstanding policy of continuous free access regarding other visitors once they gain access into Respondent’s building. *Id.*

relationship absent impasse on matters that are mandatory subjects of bargaining. *NLRB v. Katz*, 369 U.S. 736 (1962). “The Board has held that where an employer unilaterally denies or reduces the union’s ability to access unit employees for purposes of representation, the unilateral action or change is material in nature. [citations omitted.]” *North Memorial Health Care*, 364 NLRB No. 61, slip op. at 24, (2016). Here, Respondent admits and I find that its December 2017 Limited Access Policy relates to wages, hours, and other terms and conditions of employment of the Unit and is a mandatory subject for the purposes of collective bargaining. (GC Exh. 1(d) at 3; GC Exh. 1(g) at 2.) Even when an employer accuses a union agent of misconduct, the employer is required to give the union notice and an opportunity to bargain before changing rules regarding the agent’s access so that the parties can work together to arrive at a solution to the problem. *Frontier Hotel & Casino*, 323 NLRB 815, 817 (1997), *enfd.* in pertinent part 118 F.3d 795 (D.C. Cir. 1997).

I further find that the December 2017 Limited Access Policy changed the Union representatives’ access to Respondent’s newsroom in a material and substantial way from where it stood prior to December 2017, as union representatives alone faced increased access restrictions when compared to other visiting nonemployee groups and they no longer had free access to all Unit employees in the newsroom after gaining entrance into Respondent’s facility soon after a time of increased union activity in the last half of 2017.

Prior to December 2017; however, the Respondent had an established practice regarding nonemployee representatives of the Union using Respondent’s working newsroom and other locations in Respondent’s building for union activities and Respondent routinely allowed union representatives unrestricted access to its third floor newsroom and facility once gaining access or escort beyond the first floor security desk and elsewhere into Respondent’s building to conduct union business. Nonemployee Union Representatives Hall and Anderson regularly visited Unit employees in the working newsroom and elsewhere in Respondent’s facility to talk about the Union, monitor the union bulletin board, and distribute union literature. Nonemployee Hall and Anderson testified that, on those occasions, various managers and supervisors saw them, but neither the managers, supervisors nor any other agent of the Respondent ever told them that they could not enter or remain at those locations. The evidence shows that prior to December 2017, the Respondent had treated the activities of nonemployee union representatives visiting the newsroom and other locations in Respondent’s building in the same manner as it treated the activities of other nonemployee visitors who likewise had free unescorted access to the newsroom and other locations in Respondent’s building after they came into the building past the security desk.

In June 2017, the Union and the Respondent began negotiations for a successor CBA and by December 2017, the parties had yet not reached a new agreement.

Meanwhile, the Respondent’s conduct with respect to union access changed. Sometime in late 2017, on November 29, 2017, Respondent told the Union Representatives Hall and Anderson to leave its facility while they were there to review personnel files pursuant to a settled NLRB matter in an unrelated matter. Again on December 6, 2017, Respondent tried to limit the Union’s access to Respondent’s facility and Unit employees when Respondent’s supervisor and agent Kurysh forcefully escorted Union Representatives Hall and Anderson away from Unit employees when they were present simply to meet and review personnel files again.

The two union representatives were escorted to a glass “fish-bowl” conference room which was already being used where Supervisor Kurysh again prevented Hall and Anderson from meeting privately to discuss union matters and he insisted that he must remain in their presence to keep an eye on them. Hall and Anderson next returned to the newsroom to meet with Unit employees and at that time, Supervisor Kurysh demanded that the union representatives leave the newsroom. These two incidents were then followed by Respondent’s December Limited Access Policy without prior notice to the Union or any opportunity to bargain this new limited access policy.

I find that the enforcement of the December 2017 Limited Access Policy against only nonemployee union representatives was an unlawful attempt to retaliate against employees’ stepped-up union activity leading up to and following the increased union activity from successor CBA negotiations. I further find that the December 2017 Limited Access Policy was applied by Respondent only against union representatives and Respondent did not limit access to its facility to any other nonemployee group including member of the general public, former employees, students, employee friends or family or the University of California marching band members. The Board has long held that an otherwise valid employer rule violates the Act when it is promulgated to interfere with the employees’ right to self-organization. See, e.g., *Lutheran Heritage Village-Livonia*, 343 NLRB 646, 647 (2004) (an employer violates Sec. 8(a)(1) by promulgating a rule in response to union activity); *Harry M. Stevens Services*, 277 NLRB 276 (1985) (employer’s implementation of a rule in response to union activity unlawful). It is similarly unlawful for an employer to re-promulgate a rule that was not previously enforced in retaliation for employees’ union or other protected Section 7 activity. See, e.g., *Jordan Marsh Stores Corp.*, 317 NLRB 460, 462 (1995); *Montgomery Ward & Co.*, 198 NLRB 52, 62 (1972).¹⁰

In addition, I further find that by restricting only the nonemployee Union representatives’ access to Respondent’s newsroom and other locations in Respondent’s building where Unit employees were present and confining the Union representatives to a non-existent cafeteria and vague non-work closet when the evidence shows that reporters work while they eat lunch and while present on sofas and other areas that appear to be non-work areas, the Respondent made a material, substantial, and significant change in the ability of Union representatives and the Unit employees they represented to access one another at Respondent’s facility. See *North Memorial Health Care*, 364 NLRB No. 61, slip op. at 24 (2016) (Same); see also *Turtle Bay Resorts*, 355 NLRB 1272, 1272–1273 (2010) (Same).

Thus, I find that more than a *de minimis* change to Respondent’s access policy occurred in late 2017. At this time, only union representatives were prevented from open access to Respondent’s newsroom and other locations in its building once a visiting union representative was escorted into the building past the security desk on the first floor. No other visiting nonemployee group were subjected to the same restricted access policy once they gained access into Respondent’s building and at all times maintained free access to Respondent’s working newsroom and other locations in Respondent’s building.

¹⁰ The Board’s analysis whether an employer rule violates Section 8(a)(1) of the Act was recently revised in *The Boeing Company*, 365 NLRB No. 154 (2017). However, the *Boeing* case did not overrule the two additional means of demonstrating an unlawful rule referenced above.

The December 2017 Limited Access Policy also caused only union representatives to lose their unlimited access to Unit employees at Respondent's newsroom and other parts of Respondent's facility at the same time that the Union was trying to negotiate its successor CBA. In addition, I find that Respondent discriminated against the union representative group as its
 5 December 2017 Limited Access Policy was not enforced against any other nonemployee visitor group other than the union representatives. Moreover, I further find that the vague and confusing new limited access policy also chilled Unit employees' ability to have free access to their union representatives at a critical time when increased union activity was expected as a result of union representatives increased work handling active grievances and negotiation a successor CBA.

10 I further find that the Respondent has not sustained its burden to prove that on December 21, 2017, it did *not* set forth a more restrictive policy governing the nonemployee union representatives' access into Respondent's facility and the bargaining Unit employees.¹¹ No evidence was presented showing that Union Representatives Hall or Anderson or anyone else
 15 disrupted Respondent's working newsroom in any way prior to enactment of the December 2017 Limited Access Policy. Also, I further find that Respondent has not proven that it had any substantial business justification or was privileged to limit access to just nonemployee union representatives and not any other visiting nonemployee groups to Respondent's newsroom and other locations in Respondent's building. In addition, I further find that Respondent failed to
 20 provide the Union with notice and an opportunity to bargain over its unilateral decision to implement the December 2017 Limited Access Policy.

25 Since December 2017, the Respondent has maintained its December 2017 Limited Access Policy forbidding access to union representatives alone while maintaining its historical open access to a variety of other nonemployee groups such as friends, family, former employees, celebrities, and students of Respondent's employees, the general public subscribers, and the University of California marching band members. In particular, while in the Respondent's building, only union representatives must abide by the new vague and confusing rules and regulations including not interfering with the work being performed in the building or the use of
 30 the building. All union representatives are required to remain in the nonexistent cafeteria and in uncertain and nondesignated nonwork areas. If the union representatives persist in moving unescorted about the building and initiating conversations with employees who are working, Respondent, under its new policy, will ask building security to escort those representatives out of

¹¹ (GC Exh. 1(d) at 3; GC Exh. 1(g) at 2.) One 2015 email (R Exh. 1) and a handful of 2016 text messages (R. Exh. 4) in the record indicate that the Respondent in 2015 allowed the Union to once use Respondent's small conference room in the first floor lobby to discuss a proposed long term disability plan and on another occasion in 2016 questioned why nonemployee Union Representative Anderson was present in the newsroom. However, the Respondent does not rely on this evidence as its amended answer contains no affirmative defenses and on October 19, 2018, the Respondent's counsel confirmed that it has elected not to file a posthearing closing brief to present its arguments and proposed factual findings for my consideration. I find that, instead, the Respondent has chosen to rest on its amended answer denials to the alleged facts in the complaint which I further find have been proven to be true by a preponderance of the evidence. Since the Respondent does not rely on the 2015 email or the 2016 text messages, neither do I. See *Dura-Line Corp.*, 366 NLRB No. 126 at 3, fn. 15 (“[T]he General Counsel does not rely on this [email messages] evidence but instead has chosen to rest on the conclusory assertion . . . that the Agreement was ‘promulgated in part to prevent foreseeable union activity regarding [the Respondent’s] relocation.’”)

the building which has not been done with any other nonemployee visitor group. Once again, there are no nonwork areas in the newsroom nor are there any Respondent designated cafeterias or break rooms and work has traditionally been performed in what may appear to be a nonwork area.

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I find that the record here warrants a finding that Respondent's enactment and enforcement of its December 2017 Limited Access Policy against only union representatives violated the Act. As shown, starting in late 2017, the Respondent more strictly enforced its access policy and imposed several new but vague requirements for the Union to obtain access. Although the record indicates that two instances of enforcement of the policy may have occurred in late November and early December 2017, the Respondent did not begin to consistently enforce the policy until Respondent lawyer Batten issued his December 2017 Limited Access Policy letter. In short, the Respondent's increased enforcement efforts coincided with the negotiations of a new successor CBA between the Union and Respondent. The Respondent has failed to provide a legitimate business reason for the change in building access and enforcement against only nonemployee union representatives, instead simply denying that any change occurred. See *Tri-County Medical Center*, 222 NLRB 1089 (1976) (A rule restricting access to employees' activity protected by Section 7 of the Act is invalid unless justified by legitimate business reasons.) Accordingly, I find that the Respondent's promulgation and enforcement of the December 2017 Limited Access Policy constituted unlawful discrimination and was in retaliation to union representatives' increased union activity the last half of 2017 with Unit employees and discriminated against the Union because the same limited access was not promulgated or enforced against the various other nonemployee visitor groups including employee friends, family, former employees, students, the general public subscribers, or the University of California band members and therefore violated Sections 8(a)(1) of the Act.

I further find that Respondent's unilateral implementation of its December 2017 Limited Access Policy is a material change about which the Respondent was obligated to bargain. Moreover, I further find that Respondent failed to provide notice and an opportunity to bargain to the Union when it implemented its December 2017 Limited Access Policy, thereby, violating Section 8(a)(5) and (1) of the Act.

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CONCLUSIONS OF LAW

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1. Respondent is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act representing described as the Pacific Media Workers Guild, Local 39521, TNG-CWA (Union) as the exclusive collective-bargaining representative of our employees in the following appropriate unit (Unit):

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All employees covered by the terms of the collective-bargaining agreement between Respondent and the Charging Party in effect from July 1, 2012 through June 30, 2017

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3. Respondent violated Section 8(a)(5) and (1) of the Act by, on or about December 21, 2017, promulgating and enforcing against Union representatives the December 2017 Limited

Access Policy without providing the Union with notice and the opportunity to bargain.

4. Respondent also violated Section 8(a) (1) of the Act by, on or about December 21, 2017, promulgating and enforcing the discriminatory December 2017 Limited Access Policy and retaliating against only nonemployee union representatives and not any other group of nonemployee visitors in response to Unit employees' visits with the union representatives in the newsroom and other locations at Respondent's facility and the Union's increased representation of employees in the second half of 2017 during successor CBA negotiations.

5. The above unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent Hearst Communications, Inc. d/b/a The San Francisco Chronicle has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent, having unlawfully changed the terms and conditions of employment, shall rescind the discriminatory December 2017 Limited Access Policy that was unilaterally enacted and enforced about December 21, 2017, and return nonemployee union representatives access to Respondent's facility including its newsroom to the status quo ante that existed prior to December 21, 2017, for all nonemployee visitors into Respondent's facility.

Respondent shall post an appropriate informational notice, as described in the attached appendix. This notice shall be posted in the Employer's San Francisco facility or wherever the notices to employees are regularly posted for 60 days without anything covering it up or defacing its contents. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 21, 2017. When the notice is issued to the Employer, it shall sign it or otherwise notify Region 20 of the Board what action it will take with respect to this decision.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹²

¹² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

5 Respondent, Hearst Communications, Inc. d/b/a The San Francisco Chronicle, San
 Francisco, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- 10 a. Changing the terms and conditions of employment of its Unit employees without
 first notifying the Union and giving it an opportunity to bargain over Union
 representatives' access to Respondent's facility. (Emphasis added.)
- 15 b. Discriminatorily enacting and enforcing its December 2017 Limited Access
 Policy only against nonemployee Union representatives.
- c. 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.

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

- 25 a. Rescind the change in the terms and conditions of employment for its Unit
 employees that was unilaterally implemented on or about December 21, 2017 as a
 discriminatory limited access policy against only union representatives and
 restore the status quo ante as to union representatives' free access to Respondent's
 newsroom and other locations in Respondent's building as existed before the
 unlawful December 2017 Limited Access Policy.
- 30 b. Within 14 days after service by the Region, post at its facilities in San Francisco,
 California, copies of the attached notice marked "Appendix."¹³ The attached
 remedial notice shall be read aloud to the Respondent's employees including
 employees at Respondent's San Francisco facility during work time by
 Respondent's management representative in the presence of a Board agent.
 35 Copies of the notice, on forms provided by the Regional Director for Region 20,
 after being signed by Respondent's authorized representative, shall be posted by
 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
 40 electronically, such as by email, posting on an intranet or an internet site, and/or
 other electronic means, if Respondent customarily communicates with its
 employees by such means. Reasonable steps shall be taken by Respondent to
 ensure that the notices are not altered, defaced, or covered by any other material.

¹³ 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."

In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since December 21, 2017.

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

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Dated: Washington, D.C. December 13, 2018

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Gerald Michael Etchingam
Administrative Law Judge

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APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT refuse to bargain in good faith with Pacific Media Workers Guild, Local 39521, TNG-CWA (Union) as the exclusive collective-bargaining representative of our employees in the following appropriate unit (Unit):

All employees covered by the terms of the collective-bargaining agreement between Respondent and the Charging Party in effect from July 1, 2012 through June 30, 2017

WE WILL NOT make any changes to your wages, hours, and working conditions, including any changes to our policy and practice of allowing you to meet with your union representatives at our facility, without first giving the union notice and an opportunity to bargain before putting such changes into effect.

WE WILL NOT institute more restrictive access policies that prevent your union representatives from meeting with you at your workspace without an escort in retaliation for the Union's increased visits to the facility.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

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

WE WILL rescind our retaliatory restrictions on union access that prevent your Union representatives from meeting with you at your workstation without an escort.

