

*United States Government*  
*National Labor Relations Board*  
OFFICE OF THE GENERAL COUNSEL

# Advice Memorandum

DATE: December 6, 2018

TO: Valerie Hardy-Mahoney, Regional Director  
Region 32

FROM: Jayme L. Sophir, Associate General Counsel  
Division of Advice

SUBJECT: Kaiser Permanente, et al.  
Case 32-CA-220268

530-5770-1200-0000  
530-5770-2550-0000  
530-5770-2583-0000  
530-5770-3100-0000  
530-6067-2060-3315  
530-6067-2070-0000

This case was submitted for advice as to whether: (1) the Employer unlawfully refused to continue national, multi-party bargaining with the Coalition, a multi-union group, for a successor contract following the departure of approximately 30% of the Coalition's member-unions; and (2) the Employer unlawfully conditioned further national bargaining on the execution of an updated "Partnership Agreement." We conclude that the Employer did not effectively withdraw from multi-party bargaining because its attempt to withdraw after group bargaining had already begun was untimely, and its purported withdrawal was not unequivocal. Since its withdrawal was ineffective, the Employer unlawfully refused to bargain with the Coalition and unlawfully conditioned further group bargaining upon the Coalition's signing a new Partnership Agreement. Accordingly, absent settlement, the Region should issue complaint alleging that the Employer's conduct violated Sections 8(a)(1) and (5) of the Act.

## FACTS

Approximately ten hospitals affiliated under Kaiser Permanente (collectively "Kaiser" or "the Employer") have been bargaining on a national basis with the Coalition of Kaiser Permanente Unions, AFL-CIO ("the Coalition") since approximately 1996. The Coalition is comprised of various local unions that are the certified representatives of employees at their respective Kaiser hospitals and have designated the Coalition as their bargaining representative for national, multi-party negotiations.

Following the Coalition's founding in 1996, Kaiser and the Coalition negotiated the Labor Management Partnership Founding Agreement, which was later amended and reaffirmed in approximately 2002 ("the Partnership Agreement"). The

Partnership Agreement does not set wages, hours, or any other terms and conditions of employment, nor does it contain any recognition provisions or an expiration date. Instead, the document's sole purpose is to regulate the behavior of Kaiser and the signatory unions by articulating general principles regarding the ways that the parties have agreed to conduct themselves within the partnership. For example, the Partnership Agreement calls for the parties to "[r]ecognize and accept that your partners may have different views than you. Exercise patience and forgiveness. If you do disagree, do so without being disagreeable."

Around 2000, the Coalition and the Employer negotiated and entered into the first of a series of national agreements. The 2015 National Agreement between the Employer and the Coalition was executed on October 1, 2015 with an expiration date of September 30, 2018. The agreement contains, inter alia, provisions on wages and other terms and conditions of employment, including terms on medical and retirement benefits that are governed solely by the national agreement and are not within the scope of local bargaining. The national agreement is attached as an addendum to separately and individually bargained local agreements.<sup>1</sup> Because not all local agreements are negotiated on the same timeline as the national agreement, the execution of the 2015 National Agreement extended the expiration dates of local agreements by three years from their previous expiration dates. This resulted in local agreements' expiration dates ranging from September 18, 2018, to as late as October 1, 2021. The 2015 National Agreement also provided for contingencies in the event it was not renewed or a successor agreement was not reached by the September 30, 2018 expiration date. Specifically, it stated that local agreements that expire on or before September 30, 2018 would open immediately for contract negotiation, and that employees covered by later-expiring local agreements would receive a certain wage increase and the provisions governing benefits would continue until the expiration of the relevant local agreements.

On October 26, 2017, the National Bargaining Coordinating Committee ("NBCC"), which is made up of the bargaining teams for the Coalition and the Employer, held its first meeting to set the stage for national bargaining to begin on a successor to the 2015 National Agreement. The NBCC is tasked with determining

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<sup>1</sup> In a 2011 Board case between an individual Kaiser hospital and a Coalition member-union, the Board determined that, within the parties' national bargaining framework, the "collective-bargaining agreement" is comprised mutually of the national agreement, the individual union's local agreement, and any regional agreement. *Southern California Permanente Medical Group*, 356 NLRB 783, 792 (2011) (finding "that the terms of each agreement as a whole—local, cross-regional, and national—make up the terms and conditions of employment encompassed by the statutory duty to bargain under Section 8(a)(5).").

what will be handled in national versus local bargaining and develops working groups who are assigned various issues for national bargaining. When the parties began discussions for a new national agreement, the Coalition consisted of 34 local unions that represented approximately 125,000 Kaiser employees.

On November 16, 2017, SEIU-UHW, the largest member-union of the Coalition, supported and sponsored a California ballot initiative titled the “Accountability in Managed Health Insurance Act.” This initiative would substantially affect Kaiser entities in California because the initiative sought to prevent Kaiser and other healthcare insurers from raising rates. In response, Kaiser claimed that SEIU-UHW’s sponsorship of the ballot initiative was “egregious non-partnering behavior,” which, under Section 1.M of the National Agreement, allowed Kaiser to “withdraw some or all of [SEIU-UHW’s] Partnership privileges . . . .” Accordingly, on December 12, 2017, Kaiser sent a letter to SEIU-UHW stating that it would no longer permit it to participate in 2018 national bargaining.

Despite the dispute with SEIU-UHW, Kaiser and the Coalition met again on December 15, 2017, and continued planning for 2018 national bargaining, including holding discussions on what topics should be relegated to local bargaining.

On December 22, 2017, SEIU-UHW participated in presenting a revised proposed statewide ballot initiative that specifically and exclusively targeted Kaiser. However, the ballot initiative was withdrawn, with SEIU-UHW’s support, on February 1, 2018.<sup>2</sup>

The NBCC continued to meet, including on February 5, when it discussed a framework for local and national bargaining that included bargaining topics, bargaining structure, and overall process. The parties also designated March 27 as the “kickoff session” for national bargaining when all the parties’ representatives would meet and form the working groups to begin negotiating the details for a successor national agreement.

On February 19, following SEIU-UHW’s withdrawal of the ballot initiative, the Employer and the Coalition, including SEIU-UHW, met to discuss a new code of conduct. The parties reached a tentative agreement on a new code of conduct that, if adopted, would be incorporated into 2018 national bargaining and included a provision stating that the parties “shall not pursue, sponsor or support legislation or ballot initiatives, which are specifically targeted at and the primary purpose of which is to harm a member of the other party.” Because SEIU-UHW tentatively agreed to the new code of conduct, Kaiser rescinded its suspension from national bargaining.

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<sup>2</sup> All dates hereinafter are in 2018 unless otherwise stated.

Kaiser and the Coalition met again on March 5 to plan for national bargaining and the upcoming “kickoff session” on March 27, and discussed pay policies for employees participating in national bargaining and agreed on topics for local and national bargaining.

On March 26, the day before the scheduled “kickoff session,” 21 of the 34 unions in the Coalition, representing approximately 43,000 employees, announced they were leaving the Coalition, effective immediately, and formed the Alliance of Health Care Unions (“the Alliance”). At 10:58 p.m., Kaiser emailed the Coalition that it was “considering what today’s development means [i.e. the withdrawal of the 21 unions],” and that “in the meantime . . . the scheduled kick-off meeting this week cannot proceed.”

The next day, the remaining members of the Coalition attended the kickoff meeting along with some Employer representatives. The only matter discussed was the withdrawal of the Alliance unions. The Employer’s representatives said that they were surprised by the Alliance’s announcement and that they did not feel that they could proceed with national bargaining with the Coalition. They further claimed that they would sort through the situation and come up with a decision on whether Kaiser would bargain with the Coalition. In response, the Coalition stated that bargaining between Kaiser and the Coalition needed to continue and that the Alliance unions’ withdrawal was an internal matter that did not affect Kaiser’s obligation to bargain with the Coalition.

Kaiser proceeded to cancel the previously-scheduled national bargaining dates with the Coalition in April. On May 2, Kaiser sent invitations to all current and former Coalition unions to attend a “Labor Summit” to discuss a labor management partnership relationship for the future. The Employer also notified them that, because of the labor summit, the national bargaining dates scheduled in May were being “postponed.”

On May 7, at the Labor Summit, Kaiser presented its vision for a new partnership. At the end of the presentation, Kaiser distributed copies of a modified Partnership Agreement, which included a code of conduct based on the one tentatively agreed to by the Coalition in February. However, the document contained additional provisions, including assurances that parties “will not call, participate in, or sanction any sympathy strike against the Employer Members of the [Labor Management Partnership],” that “Members of the Partnership agree that they will not engage in conduct that may harm or jeopardize the tax-exempt status of Kaiser Health Plan Hospitals,” and that “Members of the Partnership will not engage in conduct commonly associated with a corporate campaign against another Member of the [Labor Management Partnership] . . .” The Employer then stated that it was only prepared to bargain over the proposed language to the Partnership Agreement and

that it would not move to any other topics until the parties reached agreement on the code of conduct language in the proposed Partnership Agreement. The Employer also stated that it would only consider bargaining with any union that had local agreements expiring in 2019, 2020, or 2021 on a “permissive basis” after those unions signed the new Partnership Agreement.

Shortly after the May summit, the Alliance unions each agreed to the new Partnership Agreement and Kaiser immediately began bargaining with them on a group basis on dates in May that had previously been reserved for national bargaining with the Coalition.

On June 4, Kaiser sent a letter to the SEIU-UHW’s president, stating that Kaiser would only continue negotiations with the Coalition once all its member-unions signed Kaiser’s new Partnership Agreement. The Coalition and Kaiser then met on several occasions in June and July. The Coalition provided a counterproposal to the Employer’s proposed Partnership Agreement and other proposals on national bargaining. The Employer rejected these proposals, stating that no bargaining could move forward until the Coalition unions accepted Kaiser’s new Partnership Agreement.

On July 27, the Employer sent an email message to all its employees in Oregon and Washington that included an update on the status of bargaining. In a section marked “Coalition Partnership Update,” Kaiser stated that its “goal is clear: We are seeking a new, more robust Partnership Agreement,” and stated that the Coalition’s agreeing to the new Partnership Agreement “is a reasonable condition of partnership and all the benefits it provides.”

The Employer and the Coalition have not met since July, and the 2015 National Agreement has since expired. The Employer and the Alliance reached a national agreement in September.

### **ACTION**

We conclude that Kaiser unlawfully refused to continue bargaining with the remaining members of the Coalition, following withdrawal of the Alliance unions, because Kaiser’s attempted “withdrawal” was ineffective, as it was not timely or unequivocal. Kaiser also violated the Act by unlawfully conditioning further bargaining for a national agreement on the remaining Coalition unions signing a new Partnership Agreement. Accordingly, absent settlement, complaint should issue.

**A. Kaiser unlawfully refused to continue group bargaining with the Coalition because any purported withdrawal by Kaiser from group bargaining was not effective.**

In *Retail Associates, Inc.*, the Board established the requirements for withdrawal from group bargaining.<sup>3</sup> A party that wishes to unilaterally withdraw from multi-party bargaining must do so unequivocally, in writing, and before the date set by contract for modification or the agreed upon date to begin multi-party bargaining.<sup>4</sup> The Board's rationale for the withdrawal requirements is to ensure that parties that do not like the way negotiations are going are prevented from opting out and insisting on individual negotiations after they have committed themselves to group bargaining.<sup>5</sup>

A purported withdrawal is not timely if group bargaining for a new contract has already begun. Such bargaining will be considered to have started when parties have engaged in preliminary talks and arrangements for a contract, even if they take place prior to the agreed-upon date for multi-party negotiations to commence.<sup>6</sup> Further,

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<sup>3</sup> 120 NLRB 388, 393–95 (1958).

<sup>4</sup> *Id.* at 394–95. The rules for employer withdrawal from multi-employer bargaining are the same as for union withdrawal from multi-union bargaining. *The Evening News Association, Etc.*, 154 NLRB 1494, 1501 (1965), *enforced sub nom. Detroit Newspaper Publishers Ass'n. v. NLRB*, 372 F.2d 569 (6th Cir. 1967).

<sup>5</sup> *Resort Nursing Home*, 340 NLRB 650, 654 (2003), *enforced*, 389 F.3d 1262 (D.C. Cir. 2004).

<sup>6</sup> *Id.* at 657 (employer failed to timely withdraw from group bargaining when its purported withdrawal was before public date set for negotiations but after parties met and created outline of collective-bargaining agreement); *Elevator Sales & Service*, 278 NLRB 627, 632–33 (1986) (employer's purported withdrawal after beginning of preliminary meetings—including discussions of parties' bargaining demands and proposed contractual changes, such as wage rates and overtime provisions—but before exchange of written proposals, was untimely), *enforced per curiam*, 804 F.2d 1247 (3d Cir. 1986). *See also General Electric Co.*, 173 NLRB 253, 257 & n.27 (1968) (preliminary discussions are a “part of the process of collective bargaining” because parties may be able to “isolate and define the pivotal issues, identify areas of agreement, and narrow areas of disagreement”), *enforced on other grounds*, 412 F.2d 512 (2d Cir. 1969); *Samaritan Medical Center*, 319 NLRB 392, 398 (1995) (preliminary arrangements for bargaining, including setting dates, are mandatory subjects of bargaining (citing *General Electric Co.*, 173 NLRB at 257)).

parties are bound by group bargaining where the duty to bargain for a successor contract under the timing requirements of Section 8(d)—i.e., 60 or 90 days prior to contract expiration—may not have arisen but the parties voluntarily agreed to begin early negotiations for a successor contract.<sup>7</sup>

An untimely unilateral withdrawal may be allowed where “unusual circumstances” are present.<sup>8</sup> This exception depends on a case’s particular facts but has been characterized as applicable only in “extreme” circumstances that, thus far, have been found by the Board in three situations: (1) an employer’s dire economic circumstances;<sup>9</sup> (2) fragmentation of a multi-employer unit such that the unit has been so reduced in size and strength that it would be “unfair and harmful to the collective-bargaining process” to require the entity seeking to withdraw to remain in group bargaining;<sup>10</sup> and (3) where concrete, rather than speculative, evidence shows that one party’s ongoing conduct is so “inimical to group bargaining and substantially weaken[s] and fragment[s] the [multi-party] bargaining” that it has destroyed any viability of continued multi-party bargaining.<sup>11</sup>

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<sup>7</sup> See *Resort Nursing Home*, 340 NLRB at 656 (parties that began bargaining 10 months in advance of contract’s termination date still bound by outcome of group bargaining); *General Electric Co.*, 173 NLRB at 256 (where parties begin bargaining for successor contract early, they are subject to the same good-faith bargaining standards as if the agreement has expressly provided for such early bargaining).

<sup>8</sup> *Retail Associates*, 120 NLRB at 395.

<sup>9</sup> See *Chel LaCort*, 315 NLRB 1036, 1036 (1994) (stating that dire economic circumstances warranting an untimely withdrawal include imminent bankruptcy).

<sup>10</sup> See *Connell Typesetting Co.*, 212 NLRB 918, 919–21 (1974) (unusual circumstances warranted employer’s untimely withdrawal from multi-employer unit where union had consented to several other employers’ untimely withdrawals, which fragmented the unit and so reduced its size and strength that it would be harmful for the Board to require employer to remain in the unit). Cf. *Young’s Market Company*, 265 NLRB 687, 690 (1982) (no unusual circumstances where multi-employer group continued to function in multi-party group bargaining following fragmentation due to some employers’ mutual-consent withdrawals); *Joseph J. Callier*, 243 NLRB 1114, 1117–18 (1979) (no unusual circumstances based on desire of employer’s own employees to end their union representation, because in a multi-employer bargaining setting, the question is whether majority support remains in *entire* unit across all employer-members’ employees), *enforced sub nom. NLRB v. Callier*, 630 F.2d 595 (8th Cir. 1980).

<sup>11</sup> See *Tobey Fine Papers of Kansas City*, 245 NLRB 1393, 1395–96 (1979) (rejecting employer’s argument that union’s execution of individual separate final contracts

Here, Kaiser unlawfully refused to continue group bargaining with the Coalition in late March, following the withdrawal of the Alliance unions, because it did not effectuate a timely withdrawal. The parties' meetings from October 2017 to March dealt with preliminary matters such as identifying bargaining topics for national and local bargaining and setting up the working groups that would discuss the details of proposals, which is considered bargaining within the meaning of the *Retail Associates* line of cases. Thus, the Employer's email to the Coalition at 10:58 p.m. on March 26, following the withdrawal of the Alliance unions,<sup>12</sup> was not timely as bargaining had already begun months prior. It is immaterial that a "kickoff" meeting was set for March 27 because the parties began bargaining for a successor national agreement long before that date.

The untimely purported withdrawal was not privileged by the "unusual circumstances" exception. First, there is no evidence that the Employer is facing a dire economic hardship, such as bankruptcy. Second, although the multi-union bargaining group fragmented, to a degree, after the Alliance unions departed from the Coalition, the Employer is not claiming that it would be unfair or harmful to the bargaining process for it to be required to continue to negotiate with the remaining Coalition unions on a multi-party basis.<sup>13</sup> Indeed, the Employer continued to meet with the Coalition in an attempt to secure a new Partnership Agreement, and was able to reach a new national agreement with the Alliance. Third, the Coalition has not engaged in conduct that has destroyed the viability of continued group bargaining;

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with former employer-members of bargaining association proved union's intent to destroy or fragment multi-employer unit, given union's and multi-employer association's continued bargaining efforts and agreement on contract), *enforced*, 659 F.2d 841 (8th Cir. 1981); *Typographic Service Co.*, 238 NLRB 1565, 1566 (1978) (unusual circumstances warranted employer's untimely withdrawal where union engaged in multi-employer bargaining but also sought individual agreements with various employers in the association, which "effectively fragmented and destroyed the integrity of the [multi-employer] bargaining unit" and evinced a "repudiation of the underlying purpose for the establishment of multi-employer bargaining").

<sup>12</sup> Although the Alliance unions' withdrawal on March 26 was untimely, it was nonetheless effective because the Employer consented to the withdrawal.

<sup>13</sup> Had the Employer made such a claim, the General Counsel would consider expanding the "unusual circumstances" exception (which has previously been applied where the withdrawing employer's own multi-employer group has been significantly fragmented) to a situation like this, i.e., where a multi-union group with which an employer has been negotiating has been significantly fragmented.

neither the Coalition nor any of its member unions has tried to negotiate separate agreements with individual Kaiser entities, and, although the SEIU-UHW's prior actions with the ballot initiative may be viewed as destructive of group bargaining, the ballot initiative was rescinded by February and there is no concrete threat of similar future ballot initiatives.

Additionally, the Employer's purported withdrawal was not unequivocal. To constitute an "unequivocal" withdrawal, the withdrawing party must seek a permanent abandonment of multi-party bargaining and to bargain instead on an individual basis.<sup>14</sup> Critically, the Employer's March 26 email stated only that Kaiser was "considering what today's development means[.]" and that "the scheduled kick-off meetings this week cannot proceed." The email did not state, as required by *Retail Associates*, that Kaiser intended to permanently abandon multi-party bargaining with the Coalition and instead bargain only on an individual basis. Indeed, the Employer's conduct in the ensuing months, where it continued to deal with the Coalition as a group entity in seeking a new Partnership Agreement, demonstrates that Kaiser instead wished to *continue* to bargain with the Coalition unions on a group basis, only on new terms.

Thus, even assuming the Employer's untimely withdrawal was privileged by unusual circumstances, the withdrawal was not effective because it was not unequivocal. There is no "unusual circumstances" exception to the "unequivocal withdrawal" requirement of *Retail Associates*. That exception only applies to a party's failure to timely withdraw.<sup>15</sup> It is not an exception to a failure to unequivocally

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<sup>14</sup> *Retail Associates*, 120 NLRB at 394; *Acme Wire Works, Inc.*, 229 NLRB 333, 336 (1977) ("It is axiomatic that the decision to withdraw from multi[party] bargaining must be made in good faith with the utilization of a different course of bargaining on an individual basis."), *enforced*, 582 F.2d 153 (2d Cir. 1978). See *The Players Restaurant*, 246 NLRB 863, 863 (1979) (employer's purported withdrawal notice was timely but not unequivocal where notice said only that the employer wanted to terminate then-existing agreement when it expired, rendering notice insufficient to convey that the employer no longer wanted to bargain on a multi-employer basis), *enforced per curiam*, 639 F.2d 789 (9th Cir. 1981); *B. Brody Seating Co.*, 167 NLRB 830, 830 (1967) (purported withdrawal ineffective because employer's letter failed to state that employer sought withdrawal on permanent basis and instead letter communicated contrary meaning).

<sup>15</sup> See *NLRB v. Callier*, 630 F.2d 595, 598 (8th Cir. 1980) (employer's withdrawal ineffective under any theory of unusual circumstances exception because employer failed to provide union with unequivocal notice of withdrawal), *enforcing Joseph J. Callier*, 243 NLRB 1114 (1979); *Acme Wire Works*, 229 NLRB at 333 ("It is axiomatic

withdraw, because, timely or untimely, the concept of withdrawal from multi-party bargaining requires complete abandonment of group bargaining and engaging in bargaining on an individual basis.

The Employer claims that it had no obligation under Section 8(d) of the Act to bargain with the Coalition after the Alliance unions departed because none of the remaining Coalition unions had local agreements expiring in 2018. Thus, the Employer argues that the Coalition could not validly demand bargaining in March, following the Alliance unions' withdrawal, and any bargaining the Employer engaged in more than 90 days before the local agreements' expiration was voluntary and non-binding. We reject these arguments. First, the precise date when the 8(d) notice period began is irrelevant because the Employer agreed to begin bargaining for a successor National Agreement early and, indeed, began bargaining as early as October 2017. Thus, it was required, under Section 8(d), to continue to bargain in good faith with the Coalition. Second, the Employer's argument that the Coalition unions have no local agreements expiring in 2018 is immaterial to its obligation to bargain with the Coalition for a new National Agreement; the National Agreement contains core terms and conditions of employment (e.g., health care benefits) that are not found in the local agreements.<sup>16</sup> Third, the Employer's 90-day 8(d) requirement for the National Agreement matured on July 2 (90 days from the contract's September 30 expiration), and, even assuming the Employer was not required to bargain with the Coalition in March, it was required to bargain with the Coalition after July 2, which, as set forth below, it failed to do by placing unlawful conditions on continued group bargaining.

**B. The Employer engaged in bad-faith bargaining by conditioning bargaining on the Coalition's acceptance of a new Partnership Agreement.**

It is a "per se violation of Section 8(a)(5)" for an employer to hold negotiations hostage to unilaterally-imposed preconditions, even with respect to issues properly classified as mandatory subjects of bargaining.<sup>17</sup> For example, an employer's refusal

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that the decision to withdraw from multi-employer bargaining must be made in good faith with the utilization of a different course of bargaining on an individual basis.").

<sup>16</sup> See *Southern California Permanente Medical Group*, 356 NLRB at 792–93 (rejecting employer's attempt to divorce terms from national agreement and claim they were separate and inapplicable to local union, because incompatible with employer's statutory duty to bargain).

<sup>17</sup> *UPS Supply Chain Solutions, Inc.*, 366 NLRB No. 111, slip op. at 2–3 (June 18, 2018) (employer unlawfully preconditioned further bargaining on union submitting all

to bargain on economic issues until non-economic issues are resolved constitutes unlawful bad-faith bargaining.<sup>18</sup>

Here, in addition to refusing to bargain at all in late March, the Employer later refused to bargain with the Coalition unless and until its members signed a new Partnership Agreement that contained the Employer's proposed code of conduct. Indeed, the Employer expressly stated to its employees in a July 27 bargaining update that it was conditioning further bargaining on the Coalition's execution of a new Partnership Agreement. Refusing to discuss terms for a new National Agreement with the Coalition until it accepted the Employer's terms for a new Partnership Agreement constituted unlawful bargaining in violation of Section 8(a)(5).

Accordingly, for the foregoing reasons, the Region should issue complaint, absent settlement, alleging that Kaiser, having failed to effectively withdraw from group bargaining, violated Sections 8(a)(1) and (5) by refusing to bargain with the Coalition and by conditioning further group bargaining upon the Coalition accepting the terms

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proposals in English and translating initial proposal to English, where parties had been conducting bargaining in Spanish); *Caribe Staple Co.*, 313 NLRB 877, 888, 890 (1994) (employer unlawfully conditioned further bargaining on union's acceptance of ground rules that included both mandatory and non-mandatory subjects); *Nansemond Convalescent Center*, 255 NLRB 563, 566–67 (1981) (employer violated 8(a)(5) by attempting to impose its bargaining procedure on the union and refusing to otherwise bargain); *South Shore Hospital*, 245 NLRB 848, 859–60 (1979) (employer violated 8(a)(5) by bargaining in bad faith when it refused to bargain about wages and other economic benefits unless and until union agreed to employer's demands to reduce certain existing employee benefits), *enforced*, 630 F.2d 40 (1st Cir. 1980), *cert. denied*, 450 U.S. 965 (1981).

<sup>18</sup> See, e.g., *John Wanamaker Philadelphia*, 279 NLRB 1034, 1035 (1986) (employer violated 8(a)(5) by refusing to discuss economic issues until all non-economic issues resolved; parties had only agreed to *try* to resolve non-economic issues first and employer's inordinately rigid approach to bargaining was "squarely at odds with the type of bargaining contemplated by the Act"); *K & S Circuits, Inc.*, 255 NLRB 1270, 1298–99 (1981) (employer engaged in bad-faith bargaining by, among other things, refusing to discuss any economic issues until non-economic issues were resolved).

of the new Partnership Agreement.

/s/  
J.L.S.

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