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Michigan Bell Telephone Company and AT&T Services, Inc., Joint Employers *and* Local 4034, Communications Workers of America (CWA), AFL–CIO. Cases 07–CA–161545, 07–CA–165384, 07–CA–166130, 07–CA–170664, 07–CA–176618, 07–CA–177201, 07–CA–182490, 07–CA–184669, and 07–CA–190631

July 17, 2020

DECISION, ORDER, AND ORDER REMANDING

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

On June 21, 2018, Administrative Law Judge Ira Sandron issued the attached decision. The Respondent[1] filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board[2] has considered the decision and the record in light of the exceptions[3] and briefs and has decided to affirm the judge's rulings, findings,[4] and conclusions only to the extent consistent with this Decision, Order, and Order Remanding.[5]

For the reasons stated by the judge, we agree that the Respondent violated Section 8(a)(3) and (1) of the National Labor Relations Act by requiring employee Brian Hooker, a full-time union officer, to resume performing work as a technician (i.e., to resume working "in the load") and by requiring Hooker to fill out union activity logs.[6] We further agree with the judge that the Respondent violated Section 8(a)(5) and (1) by failing to provide the Union with relevant and necessary information regarding Hooker's grievance over his return to working in the load and the requirement that he submit union activity logs.[7]

For the reasons stated below, we additionally agree with the judge's conclusion that the Respondent violated Section 8(a)(5) and (1) by unilaterally making the decisions to place Hooker back in the load and to require him to fill out union activity logs. However, we disagree with the judge's conclusion that the Respondent's confidentiality rule violates Section 8(a)(1). We also remand in part to the judge the complaint allegation that the Respondent violated Section 8(a)(3) and (1) by disciplining and discharging Hooker.

I. PLACEMENT IN THE LOAD AND UNION ACTIVITY LOGS

The Respondent is a telecommunications company providing telephone, internet, and television services to customers in Michigan. Under article 10 of the Union's collective-bargaining agreement with the Respondent,

[1] Because Respondents Michigan Bell Telephone Company and AT&T Services, Inc. have admitted that they are joint employers, they were generally treated, and referred to, as a single Respondent throughout the underlying proceeding. We continue that practice here.

[2] Member Emanuel, who is recused, is a member of the panel for quorum purposes only. He did not participate in the consideration of the merits of this case.

In *New Process Steel v. NLRB*, 560 U.S. 674 (2010), the Supreme Court left undisturbed the Board's practice of deciding cases with a two-member quorum when one of the panel members has recused himself. Under the Court's reading of the Act, "the group quorum provision [of Sec. 3(b)] still operates to allow any panel to issue a decision by only two members if one member is disqualified." *New Process Steel*, 560 U.S. at 688. See, e.g., *D. R. Horton, Inc.*, 357 NLRB 2277, 2277 fn. 1 (2012), enfd. in relevant part 737 F.3d 344 (5th Cir. 2013); *NLRB v. New Vista Nursing & Rehabilitation*, 870 F.3d 113, 127–128 (3d Cir. 2017); *1621 Route 22 West Operating Co.*, 357 NLRB 1866, 1866 fn. 1 (2011), enfd. 725 Fed.Appx. 129 (3d Cir. 2018).

[3] On April 7 and May 26, 2016, the Union requested information concerning its "truck swap" grievance. The judge dismissed the allegation concerning the former but found that the Respondent violated Sec. 8(a)(5) and (1) by failing to respond to most of the specific requests contained in the latter. There are no exceptions to the judge's findings regarding the April and May information requests.

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

[5] We shall modify the judge's recommended Order to conform to our findings and our standard remedial language, and in accordance with our recent decision in *Danbury Ambulance Service, Inc.*, 369 NLRB No. 68 (2020). We shall also substitute a new notice to conform to the Order as modified. Any remedy for the complaint allegation that the Respondent violated Sec. 8(a)(3) and (1) by disciplining and discharging employee Brian Hooker, other than for the August 12, 2016 verbal written warning, will be determined upon remand. Given the remand, we shall also amend the judge's remedy to order the Respondent to rescind the unlawful unilateral changes made to the terms and conditions of the employee serving as the Union's administrative assistant generally, rather than of Hooker specifically.

[6] We observe that the judge implicitly found that the Respondent was aware of Hooker's participation in an October 6, 2015 NLRB hearing at the time that it made the decision to put him back on the technician work schedule.

[7] For items 2, 3, and 6, the judge found, and we agree, that the Respondent did not rebut the presumptive relevance of the requested information. In adopting the judge's finding, we do not rely on the judge's suggestion that certain relevance objections would have been meritorious had the Respondent raised them.

With respect to item 7 of the information request, the Respondent's contention that the judge erroneously found that it failed to provide information in response to requests not alleged in the complaint is without merit. Complaint par. 17 summarizes most of the information requested in item 7 but does not make specific reference to how the union activity logs would be stored or who would have access to them. However, the Respondent's failure to respond to these specific inquiries was clearly presented to and litigated before the judge, along with its failure to respond to the other requests for information under item 7.

authorized union representatives may be excused from regular worktime to conduct union business under two categories of leave: company-paid time (MXUP) and union-paid time (MXUU). Specifically, article 10 provides, in relevant part, as follows:

> *Payment for Joint Meeting Time*
>
> 10.05 For purposes of processing grievances, the Company agrees for authorized Union representatives to confer with representatives of the Company without loss of pay during such employees' regularly scheduled working hours. In addition, such employees shall suffer no loss in pay for time spent during such regularly scheduled working hours in traveling for grievance meetings. All time so paid will be at the basic hourly wage rate plus applicable differentials or premium rate, however, such will not be paid at an overtime rate.
>
> 10.06 When the Company meets with a Union representative(s) during such employee's regularly scheduled working hours for purposes other than the processing of grievances and further agrees to pay for the time involved, all time so paid will be at the basic hourly wage rate plus applicable differentials or premium rate, however, such will not be paid at an overtime rate.
>
> 10.07 Employees who are excused in accordance with the provisions of this Section and Article 8 (Collective Bargaining Procedures), shall give their immediate Supervisor reasonable advance notice of the intended absence and of the probable duration of the absence.
>
> *Absence for Union Business*
>
> 10.08 The Company, insofar as work schedules permit, agrees to grant to any employee who is an Officer or properly designated representative of the Union reasonable time off of up to one thousand and eighty (1,080) hours during a calendar year, unless mutually agreed otherwise, without pay, to transact business of the Union, provided that the Company is given reasonable advance notice of such absence.
>
> *Leave of Absence For Union Business*
>
> 10.10 Subject to service requirements, an authorized Union representative who requires time off of more than one thousand and eighty (1,080) working hours during a calendar year for Union business, may be granted a leave of absence of not more than one (1) year upon request of the Union provided, however, that the maximum number of employees who may be granted a leave of absence shall not exceed forty (40) in a calendar year, unless otherwise mutually agreed to. Requests for a leave of absence for Union business shall be made as far in advance as possible. Such requests shall be submitted to the Vice-President-Labor Relations or other designated Labor Relations representative to arrange for approval, and such requests shall be granted provided all eligibility requirements are met. At the request of the Union and following similar procedures, such a leave of absence may be renewed on an annual basis. The total combined period of all such leaves of absence will not exceed twenty-four (24) years.

Since at least 2003, the Union has had several elected officers and at least one appointed officer (the administrative assistant or "AA"). Between at least 2003 and the events of this case, there was an oral agreement between the Respondent and the Union that employees serving as union officers, including as AAs, would not work in the load, meaning that their working hours were devoted entirely to the performance of union-related duties (i.e., MXUP and MXUU time) rather than technician work. In addition, the Respondent did not require these union officers to provide advance notice for their MXUP or MXUU time.

Between 2010 and the date of his discharge, Brian Hooker served as the Union's AA. Pursuant to the parties' oral agreement, upon his appointment as AA, Hooker became a full-time union officer and stopped working in the load.

In October 2015, the Respondent told the Union that it would place Hooker back in the load and would also require him to fill out a union activity log. The Union objected, stating that such changes would both violate its longstanding oral agreement with management and adversely affect the Union's ability to represent bargaining unit employees. The Union requested bargaining over these changes, but the Respondent refused.

In concluding that the Respondent violated Section 8(a)(5) and (1) by unilaterally placing Hooker back in the load and by requiring him to fill out union activity logs, the judge found, among other things, that the Union did not waive its right to bargain over these changes. After the issuance of the judge's decision, however, the Board issued its decision in *MV Transportation, Inc*., 368 NLRB No. 66 (2019), overruling *Provena St. Joseph Medical Center*, 350 NLRB 808 (2007), and holding that in determining whether an employer's unilateral action is permitted by a collective-bargaining agreement, the Board should apply a "contract coverage" analysis.

Under the "contract coverage" standard adopted in *MV Transportation*, the Board first examines the plain language of a collective-bargaining agreement to determine whether the action undertaken by the employer is encompassed within the provisions of the contract. More

specifically, the question is whether the employer's action fell within the compass or scope of contractual language granting the employer the right to take such action unilaterally.[8] However, if the agreement does not cover the employer's disputed action and that action materially, substantially, and significantly changed a term or condition of employment, the employer will have violated Section 8(a)(5) and (1), unless it shows that the union clearly and unmistakably waived its right to bargain over the change.[9] The Board found it appropriate to apply the contract coverage test retroactively. Id., slip op. at 12.

Here, the Respondent argues that article 10 granted it the discretion to implement the unilateral changes at issue. Applying *MV Transportation*, we find that the Respondent's argument is without merit. Although article 10 plainly covers how employees should record their union time (and whether the Respondent or the Union is responsible for compensating employees for that time), as well as the employees' right to take leaves of absence, it does not cover an employee's status as either a worker in the load or a full-time union official.[10] Rather, this status is specifically controlled by the oral agreement between the parties, an extra-contractual past practice that the Respondent cannot change without giving the Union notice and an opportunity to bargain. Furthermore, there is nothing in these provisions that speaks in any way to recording the details of MXUP or MXUU time in a log form, and the Respondent has never before required its employees to complete such a log. We therefore conclude that the Respondent's decision to return Hooker to the load and to fill out union activity logs is not covered by the terms of article 10.[11]

Because we find that the agreement does not cover the disputed unilateral changes, we next consider whether the Union waived its right to bargain over these material changes to terms and conditions of employment. We find, in agreement with the judge, that the Union did not waive its right to bargain over these changes. The record establishes that the Union continuously objected to these changes and that the Respondent repeatedly ignored the Union's objections.

We therefore find that the Respondent violated Section 8(a)(5) and (1) by unilaterally placing Hooker back in the load and requiring him to fill out union activity logs.[12]

II. CONFIDENTIALITY RULE

Since at least March 22, 2016, the Respondent has maintained a confidentiality policy entitled, "Reporting Privacy Related Incidents." The policy states in relevant part:

Purpose	AT&T possesses sensitive, detailed information about our employees and customers who rely on us to safeguard that information. Laws and regulations tell us how to treat such data. Preserving our employees' and customers' trust by safeguarding their private data is essential to our reputation. This policy outlines AT&T's process for reporting any potential misuse or improper disclosure of personal or confidential information.
Definitions	**CPNI** (*Customer Proprietary Network Information*)—Information about existing services and service usage billed to the customer. (e.g. account balance, minutes used/unused, call details, rate plan information, features) **PI/PII** (*Personal Information/Personally Identifiable Information*)—Information that

[8] In undertaking this analysis, the Board will not require that the agreement specifically mention, refer to, or address the employer decision at issue. *MV Transportation,* 368 NLRB No. 66, slip. op. at 11.

[9] This analytical framework only applies to "cases in which an employer defends against an 8(a)(5) unilateral-change allegation by asserting that contractual language privileged it to make the disputed change without further bargaining." Id., slip op. at 11.

[10] The discretionary language contained in art. 10 with respect to MXUP and MXUU appears to cover the one-off situation where an employee receives additional MXUP or MXUU for a particular meeting.

[11] The Respondent also argues that art. 17 covers the changes made here. We again disagree. Among other things, this article permits employees to select their work schedules by seniority whenever practical, subject to the service requirements and business conditions established by the Respondent. This article covers the selection of employees' schedules, not their status as workers in the load or as full-time union officials. Nor does it cover the manner in which employees report the details of their union time.

[12] As the judge found, the written verbal warning issued to Hooker on August 12, 2016, was the direct result of Hooker's failure to submit activity logs. Given that we find the Respondent's unilateral decision to require the submission of activity logs violated Sec. 8(a)(5) and (1), we will order the Respondent to expunge this discipline from its files and to notify Hooker that this has been done and that the discipline will not be used against him in any way.

The complaint alleges that the August 12, 2016 discipline of Hooker violated Sec. 8(a)(3). Assuming we were to find the violation as alleged, the affirmative remedy would be the same as we are ordering here: expungement. Because an 8(a)(3) finding for the August 12 discipline would not materially affect the remedy, we find it unnecessary to pass on the allegation and exclude it from the scope of the remand.

directly identifies or reasonably can be used to figure out the identity of a customer or user, such as your name, address, phone number and e-mail address. PI/PII does not include published listing information.

SPI (*Sensitive Personal Information*)—Information that identifies or can link to the customer, which, if compromised, could lead to identity theft. (e.g. social security number, driver license number, bank account number, credit card number, PINs, passwords, passcodes, authentication hints) SPI is a subset of PI/PII that requires a higher degree of protection by law.

Policy AT&T depends on our employees to report improper use or disclosure of customer or employee information. It is important that employees report a potential data privacy incident quickly and appropriately to Asset Protection, **do not delay**.

. . .

Examples of incidents to report to Asset Protection:

- Suspected improper or fraudulent use of customer or employee information
- Theft or loss of sensitive customer or employee information, including:
  - Social Security Number, any form of national ID, date of birth, financial account information or other SPI
  - Outside the US—name, address, phone number or other PI/PII
- Accidental or intentional disclosure of sensitive customer or employee information to third party, including
  - Social Security Number, any form of national ID, date of birth, financial account information or other SPI
  - Customer call records, billing information or other CPNI
  - Outside the US—name, address, phone number or other PI/PII
- Improper access to, or disclosure of, employee medical information, health-related records or other human resource records
- Improper storage, disposal, or retention of confidential AT&T customer or employee files or records
- Other customer or employee privacy-related issues or incidents that may negatively impact employees or customers or result in negative financial and/or reputational consequences to AT&T.

. . .

(Emphasis in original.)

Applying *Boeing*,[13] the judge found that the policy is unlawful. To begin, the judge first found that, because the policy is facially neutral, the *Boeing* balancing test applies. Thereafter, the judge acknowledged that, because the "definitions" section of the policy specifies the three types of information that fall under the policy's non-disclosure requirement (specifically, CPNI, PI/PII, SPI), it is unlikely that employees would construe the rule as applying to their wages and other terms and conditions of employment. He also acknowledged that the Respondent has a strong and legitimate interest in protecting this information from disclosure. Nevertheless, the judge found that the inclusion of "other customer or employee privacy-related issues or incidents that may negatively impact

[13] *Boeing Co.*, 365 NLRB No. 154 (2017). Under *Boeing*, a facially neutral rule or policy must be evaluated in such a way as to strike a proper balance between the asserted business justifications for the rule and the invasion of employee rights in light of the Act and its policies, viewing the rule or policy from the employees' perspective. Id., slip op. at 3.

employees or customers or result in negative financial and/or reputational consequences to AT&T" as one of the "[e]xamples of incidents to report" might lead employees to believe that sharing information about their coworkers' wages and benefits could subject them to discipline for engaging in protected activity. The judge concluded that the potentially adverse effects on protected activity outweighed the rule's justification and could be cured by a simple clarification in the policy.

We disagree that the confidentiality policy is unlawful. As mentioned above, the judge recognized that the "definition" section in the policy specifies the three types of information to which the disclosure requirements pertain—CPNI, PI/PII, and SPI. The judge further recognized that the policy on its face clearly sets forth the reason for the policy: to safeguard employees' and customers' private data in its possession and to report potential data breaches promptly. The "[e]xamples of incidents" provided in the rule are consistent with this stated purpose. In finding the rule unlawful, however, the judge seems to have disregarded this context, and his own findings, and instead relied exclusively on the potential breadth of the last "[e]xample[] of incidents."

It is well established that the Board, in evaluating the legality of particular phrases set forth in rules or policies, must not consider such phrases out of context, and we decline to do so here. See *Lutheran Heritage Village-Livonia*, 343 NLRB 646, 646 (2004) (stating that the Board "must refrain from reading particular phrases in isolation"). Accordingly, we conclude that a reasonable employee, reading the policy in its entirety, would understand that the policy was intended to protect private information maintained by the Respondent from potentially harmful data breaches, not to prohibit or interfere with employees' exercise of Section 7 rights.[14]

III. DISCIPLINE AND SUBSEQUENT DISCHARGE OF HOOKER

The judge found that the Respondent violated Section 8(a)(3) and (1) by disciplining and subsequently discharging Hooker. In making this determination, the judge considered every adverse action taken against Hooker in the aggregate and, as a result, concluded that none of Hooker's disciplines nor his discharge would have occurred but for the Respondent's unlawful decision to place Hooker back in the load and require an activity log. We disagree with the judge's conclusion.

The judge's analysis was based on an assumption that each act of disciplining Hooker following his return to the load was de facto tainted by the Respondent's animus in placing him there in the first place. We find the cases cited by the judge in support of this assumption distinguishable, and we further note that the Board has never applied these cases to confer an employee with general immunity from discipline or discharge for all future misconduct—in principle, until the employee either resigns or retires. Because the judge assumed that all of Hooker's disciplines and his discharge were tainted by the Respondent's unlawful decision to put Hooker back in the load, he failed to make specific findings or resolve conflicting testimony as to the events surrounding each discipline.[15] We find that these specific findings, however, are necessary to decide the issue of whether the Respondent's disciplining of Hooker was, as the Respondent contends, based on intentional misconduct committed by Hooker rather than his union activity. Therefore, we shall remand to the judge the issue of whether the Respondent unlawfully disciplined and discharged Hooker so that the judge can make the requisite credibility determinations and factual findings.

AMENDED CONCLUSIONS OF LAW

Delete Conclusions of Law 4 and 6 and renumber Conclusion of Law 5 accordingly.

[14] Therefore, this rule would be considered a "Category 1(a)" rule under *Boeing*, 365 NLRB No. 154, slip op. at 4, 15, and *LA Specialty Produce Co.*, 368 NLRB No. 93, slip op. at 2 fn. 2 (2019).

In the alternative, even if a reasonable employee would interpret the confidentiality policy as potentially interfering with the exercise of Sec. 7 rights, as the judge found, we would still find the rule lawful under Category 1(b). Any potential interference with Sec. 7 rights is slight given the clear focus of the rule to prevent data breaches. On the other side of the balance, the interests served by the policy are substantial and compelling. The improper disclosure of this information can affect companies, consumers, and employees in countless ways, not least of which is exposure to significant financial loss. Thus, Federal and State data security laws require companies like the Respondent to take reasonable measures to protect against unauthorized access to or use of confidential personal information. Therefore, we find that the Respondent's interest in protecting the privacy of its customer and employee information and complying with Federal and State law in the event of a data breach significantly outweighs the slight impact this rule may have on the exercise of employees' Sec. 7 rights.

[15] For instance, regarding Hooker's February 11, 2016 warning for misuse of time, the judge cited Hooker's testimony that he did not respond to his supervisor's calls or texts because he had not read the instructions for how to operate his new cell phone. The Respondent questions this excuse, noting that Hooker was assigned a simple flip phone. Likewise, with respect to Hooker's February 14, 2016 warning for misuse of time, the judge cites Hooker's testimony that he encountered a type of job on which he had never before worked and spent time inspecting the work before calling his supervisor. At the investigatory interview, however, the judge notes that when asked by his supervisor what he did in the three hours that morning, Hooker answered that he could not remember. Similarly, there are questions surrounding Hooker's May 10, 2016 discipline as to whether the relevant facts and testimony support his version of events that his GPS device fell out or the Respondent's claim that Hooker intentionally removed it.

ORDER

The National Labor Relations Board orders that the Respondents, Michigan Bell Telephone Company and AT&T Services, Inc., Grand Rapids, Michigan, a joint employer, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally changing the terms and conditions of employment of its unit employees.

(b) Changing the terms and conditions of employment of its unit employees or otherwise discriminating against them for supporting Local 4034, Communications Workers of America (CWA), AFL–CIO (the Union) or any other labor organization.

(c) Refusing to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

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

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

(a) Rescind the requirements that the Union's administrative assistant perform technician work and fill out union activity logs.

(b) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following bargaining unit:

> All employees whose job titles and locations are included in Appendix B of the collective bargaining agreement between Respondents and the International Union, which is effective for the period of April 15, 2015, through April 14, 2018, excluding confidential employees, guards, and supervisors as defined by the Act.

(c) Within 14 days from the date of this Order, remove from its files any reference to the August 12, 2016 written verbal warning of Brian Hooker, and within 3 days thereafter, notify him in writing that this has been done and that the warning will not be used against him in any way.

(d) To the extent it has not already done so, furnish to the Union in a timely manner the information requested by the Union on December 23, 2015, and May 26, 2016.

(e) Post at their facilities in Michigan where the Union represents technician Copies of the attached s c notice marked "Appendix."[16] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondents' authorized representative, shall be posted by the Respondents 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, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondents customarily communicate with their employees by such means. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since December 13, 2015.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

IT IS FURTHER ORDERED that the allegation that the Respondent violated Section 8(a)(3) and (1) by disciplining and discharging Hooker, other than the August 12, 2016 written verbal warning, is severed and remanded to Administrative Law Judge Ira Sandron for further appropriate action as set forth above.

IT IS FURTHER ORDERED that the judge shall prepare a supplemental decision setting forth credibility resolutions, findings of fact, conclusions of law, and a recommended Order. Copies of the supplemental decision shall be served on all parties, after which the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

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[16] If the facilities involved in these proceedings are open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facilities involved in these proceedings are closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facilities reopen and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. 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."

Dated, Washington, D.C. July 17, 2020

John F. Ring, Chairman

Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT change your terms and conditions of employment without first notifying Local 4034, Communications Workers of America (CWA), AFL–CIO (the Union) and giving it an opportunity to bargain.

WE WILL NOT change your terms and conditions of employment or otherwise discriminate against you for supporting the Union or any other labor organization.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

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

WE WILL rescind the requirements that the Union's administrative assistant perform technician work and fill out union activity logs.

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following bargaining unit:

> All employees whose job titles and locations are included in Appendix B of the collective bargaining agreement between Respondents and the International Union, which is effective for the period of April 15, 2015, through April 14, 2018, excluding confidential employees, guards, and supervisors as defined by the Act.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the August 12, 2016 written verbal warning of Brian Hooker, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the warning will not be used against him in any way.

WE WILL furnish to the Union in a timely manner the information requested by the Union on December 23, 2015, and May 26, 2016.

MICHIGAN BELL TELEPHONE COMPANY, AND
AT&T SERVICES, INC., JOINT EMPLOYERS

The Board's decision can be found at www.nlrb.gov/case/07-CA-161545 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

Steven E. Carlson, Esq., for the General Counsel.

Stephen J. Sferra and *Jeffrey A. Seidle, Esqs. (Littler Mendelson, P.C.),* and *John M. Phelan, Esq.*, for the Respondents.

Michael L. Fayette, Esq. (Pinsky, Smith, Fayette &Kennedy, LLP), for the Charging Party.

DECISION

STATEMENT OF THE CASE

IRA SANDRON, Administrative Law Judge. This matter is before me on a second amended consolidated complaint and notice of hearing (the complaint) issued on February 27, 2017, arising from unfair labor practice charges that Local 4034, Communications Workers of America (CWA), AFL–CIO (the Union or the Local) filed against Michigan Bell Telephone Company, and AT&T Services, Inc., Joint Employers (the Respondent or the

Company).[1]

Pursuant to notice, I conducted a trial in Grand Rapids, Michigan, on August 15–17, October 30–November 3, and December 11–15, 2017, at which I afforded the parties a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence.

Issues

(1) Did the Respondent, by requiring Administrative Assistant Brian Hooker to resume performing work as a technician (tech) in the workload on December 13, 2015, and to fill out a union activity log, retaliate against him for his activities on behalf of the Union and/or make unilateral changes in a mandatory subject of bargaining without giving the Union notice and an opportunity to bargain?

(2) Since about December 23, 2015, did the Respondent fail and refuse to furnish the Union with relevant information that it requested (RFI) pertaining to Hooker's grievance for being placed back in the workload and having to submit union activity logs?

(3) Did the Respondent retaliate against Hooker for his union activities by taking the following adverse actions against him:

(A) Written warning—March 3, 2016.[2]
(B) Suspension—April 27.
(C) Final written warning/suspension—May 10.
(D) Final written warning/suspension—May 10.
(E) Written verbal warning—August 12.
(F) Counseling—September 6.
(G) Counseling—September 6.
(H) Verbal warning—September 6.
(I) Suspension pending discharge – October 10.
(J) Discharge—October 13.

(1) Since about April 8 and about May 26, did the Respondent fail and refuse to furnish the Union with relevant information that it requested pertaining to a grievance regarding the Company's "swapping" of assigned trucks between Hooker and two other techs on February 28?

(2) Since at least March 22, has the Respondent maintained a corporate confidentiality policy entitled "Reporting Privacy Related Incidents" that contravenes the Board's test in *Boeing Co.*, 365 NLRB No. 154 (2017)?

At trial, counsel for the General Counsel (the General Counsel) orally withdrew Paragraphs 9, 15, and 16 of the Complaint.

For reasons to be stated, I conclude the following:

(1) The Respondent violated both Section 8(a)(3) and (5) of the Act by putting Hooker back in the load and requiring him to fill out union activity logs.

(2) The Respondent violated the Act by issuing Hooker the various disciplines listed above, which never would have arisen had the Respondent not unlawfully placed him back in the load. I point out that I am not an arbitrator with the discretion to weigh the equities in fashioning a remedy that I would find ideal.

(3) The Respondent violated the Act with regard to part of the RFI regarding placing Hooker in the load and requiring him to submit weekly union activity logs.

(4) The Respondent violated the Act as to the second truck swap RFI but not the first such RFI.

(5) The Respondent's confidentiality policy violated the Act.

Wtnesses and Credibility

The General Counsel called:

(1) Brian Hooker.
(2) Local President Ronald Letts.
(3) Chief Steward Cardesian Campbell, who testified on: (A) his interaction with Hooker on a job on September 20 and what he told Manager Andrew Sharp thereon at an investigatory interview on September 22; and (B) what he stated during an asset protection investigation of what Brash averred was Hooker's misuse of the GPS in his truck.

The Respondent called:

(1) George Mrla, Director of Technical Field Services (TFS) for Michigan.
(2) Area Manager Ted Brash.
(3) Manager Andrew Sharp, Hooker's first-line supervisor since November 2015.
(4) Manager Jeffrey Osterberg, who testified about his observations of Hooker and his GPS on April 24.
(5) Judy Vilik, asset protection manager, who conducted the GPS investigation.
(6) Gary Smith, AT&T's national assistant vice president of compliance operations, who testified on the confidentiality policy. His credibility is not at issue.

In making credibility resolutions, I have considered several established precepts. The first is that a witness may be found partially credible; the mere fact that the witness is discredited on one point does not automatically mean that he or she must be discredited in all respects. *Golden Hours Convalescent Hospitals*, 182 NLRB 796, 799 (1970). Rather, a witness' testimony is appropriately weighed with the evidence as a whole and evaluated for plausibility. Id. at 798–799; see also *MEMC Electronic Materials, Inc.*, 342 NLRB 1172, 1183 fn. 13 (2004), quoting *Americare Pine Lodge Nursing*, 325 NLRB 98, 98 fn. 1 (1997), enf. granted in part, denied in part 164 F.3d 867 (4th Cir. 1999); *Excel Container*, 325 NLRB 17, 17 fn. 1 (1997). As Chief Judge Learned Hand stated in *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 754 (2d Cir. 1950), regarding witness testimony, "[N]othing is more common in all kinds of judicial decisions than to believe some and not all." Here, many witnesses were reliable on some matters but not on others.

Secondly, an adverse inference is appropriate when a witness was not questioned about potentially damaging statements attributed to him or her. *L.S.F. Transportation, Inc.*, 330 NLRB 1054, 1063 fn. 11 (2000); *Asarco, Inc.*, 316 NLRB 636, 640 fn. 15 (1995), modified on other grounds 86 F.3d 1401 (5th Cir.

[1] The Respondents admitted joint employer status for purposes of this case, and they were generally referenced as one entity throughout the course of the trial. Unless the distinction is otherwise relevant, I will henceforth refer to them in the singular.

[2] All dates hereinafter occurred in 2016 unless otherwise indicated expressly or clear by context.

1996). More broadly, several witnesses were not questioned about certain events in which they were involved, and I have generally credited the uncontroverted testimony of opposing witnesses.

Finally, when credibility resolution is not based on observations of witnesses' testimonial demeanor, the choice between conflicting testimonies rests on the weight of the evidence, established or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole. *Taylor Motors, Inc.*, 366 NLRB No. 69, slip op. 1 at fn. 3 (2018); *Lignotock Corp.*, 298 NLRB 209, 209 fn. 1 (1990).

I have taken into account the many events that occurred over a long period of time, and the natural inability of witnesses to recall every detail in such circumstances. In some cases, however, professed lack of recall was not believable, particularly when opposing witnesses offered detailed and credible testimony. I now turn to particular witnesses.

Hooker was partially credible, candid and plausible on certain subjects but not on others. Thus, Hooker was quite frank in admitting that he used intemperate language in conversations with Mrla. He testified that when Mrla talked to him in January 2014 about his going back in the load, he responded that Letts was his other boss and "that's the person you have to check with to get me to put my ass in a truck." In a mid-August 2015 conversation about a grievance Hooker had filed on the discipline of employees for driving while talking on their cell phones, he told Mrla that "if he was goddamn in love with keeping employees safe," he should instruct his managers not to drive all over the place talking on the phone or texting. Such candor and lack of attempt to downplay or minimize the immoderate language he used with a high-level manager bolsters his credibility.

However, Hooker testified unevenly, with certainty and in considerable detail on some conversations but very vaguely or not at all on others. Notably, he offered no testimony on several conversations to which Brash and Sharp testified in detail.

Certain aspects of Hooker's testimony lacked credulity. Although Hooker testified that he submitted activity logs in January–March, he claimed that he did not retain copies of them. I find this wholly implausible in light of Hooker's fastidious carefulness in documenting all of his other contacts with management, no doubt stemming from what he viewed as the Respondent's hostility toward him because of his union activities.

Hooker testified that at a first-step grievance meeting on March 8 concerning the truck swap, Sharp commented that Campbell was "arguably the best technician in the whole district." Sharp, on the other hand, testified that he stated that Campbell was the most qualified technician in his crew but that he lacked knowledge of the skill levels of techs in the nine other garages in the district. I find Sharp's version more plausible and credit it over Hooker's, noting that Campbell, who was present at the meeting, offered no testimony on the subject.

Finally, Hooker's contradictory testimony concerning problems that he had accessing his tools prior to April 10 sheds doubt on his version of what occurred that day. More generally, even taking into account Hooker's absence from the workload for many years, he reported to management a suspiciously high number of obstacles that he encountered in performing his work.

Letts testified credibly and consistently on direct and cross examination, and I generally credit his testimony. In this regard, Letts candidly testified that managers, including Area Manager Mike Jarema, had voiced issues with Hooker's conduct as administrative assistant going back to 2012. However, as to several conversations he had with management, their accounts were considerably more detailed than his, and I credit them.

Campbell's limited testimony was also credible and did not seem designed to skew the facts. Thus, he testified that when he had the truck, the GPS became loose but never fell out, partially but not necessarily fully supporting Hooker's assertion that it became completely dislodged.

I credit Campbell's version of what he told Vilik on about April 26, during her asset protection investigation; that when he first got the truck, he had bumped the new GPS a couple of times, and it had become lose and needed to be plugged back in. Firstly, his testimony was consistent with Osterberg, who testified that techs have called him and said their GPS was loose and that he told them to plug it back in; and with an April 19 form email to Sharp and Brash from Etech Texas, the GPS vendor that services the GPS units. It stated that one reason Hooker's GPS could have stopped working on February 28 was that driver usage could sometimes partially dislodge the device. Secondly, for reasons to be stated, Vilik was not a reliable witness on what Campbell told her.

I also credit Campbell as to what he told Sharp at an investigatory interview on September 22 regarding Hooker's work on September 20: that Hooker's misdiagnosis of a problem on the job that Campbell ended up completing was an easy one to make because of the nature of the problem. Sharp, on the other hand, could not recall if Hooker or Campbell said anything along those lines, and therefore did not deny Campbell's account, and Sharp's notes of the meeting say at the end, "spotty notes." (R. Exh. 62 at 2.)

Mrla was in many respects an unreliable witness, and I largely credit other witnesses where their testimony diverged from his. Mrla testified that Hooker called him in mid-August 2015 concerning the Flores grievance. However, Hooker's cell phone records corroborated Hooker's testimony that Mrla called him. For this reason, and because Hooker's account was considerably more detailed and more plausible based on other record evidence, I credit it over Mrla's abbreviated and sanitized version.

Mrla testified at one point that he only learned in mid-September 2015 that Hooker was not on the vacation schedule, when Brash so informed him. However, he later testified that in March 2014, he had determined that Hooker should be on both work and vacation schedules. In this regard, in early 2014 he raised to both Letts and Hooker the subject of Hooker being placed back in the load. His testimony on this subject was therefore unreliable.

Although Mrla recalled telephone conversations with Hooker in 2014 and around August 2015, he professed not to recall a telephone conversation with him in early October 2015, a day before Hooker was scheduled to testify in an unfair labor practice proceeding. Hooker's cell phone records show that Mrla called him on October 5, 2015, at 2:05 p.m., and I credit Hooker that Mrla stated that the Company had to get him a truck and tools to get him back to work.

Despite Brash's testimony and what the parties stipulated was

in Brash's notes of an October 23, 2015 management-union meeting, Mrla professed not to recall stating at the meeting that Hooker made an RFI to harass the Company.

Mrla was initially evasive in answering whether he would have put Hooker back in the workload had Hooker been elected rather than appointed as administrative assistant, but he eventually stated that his main concern was that Hooker was the only appointed official in his organization on full-time union status and that fairness to other stewards was his paramount consideration. In this regard, Mrla equivocated on the role that workload needs played in the decision to put Hooker in the load in 2015, but he ultimately testified that he "wanted" but did not need Hooker in the load and that he would have put Hooker in the load in 2015 regardless of the amount of rehabilitation work that the Company was performing at the time.[3]

Brash had a generally good recall in light of the many incidents about which he testified and was candid on certain matters. For example, regarding the October 23, 2015 meeting, Brash testified that Mrla stated that the decision to put Hooker back in the load was nonnegotiable, and that he thought the RFI Hooker had made was "intentionally burdensome" and "for harassment." Moreover, Brash's testimony was not always fully consistent with Mrla's.

Brash's testimony did have the following flaws. Most notably, on direct examination, Brash equivocated on whether he made the comment at the October 23, 2015 meeting that "Mr. Hooker was difficult to deal with," but he then added that he said Hooker "liked to yell a lot in grievance meetings. I said it wasn't helpful to the procedure." However, on cross-examination, he backtracked, stating that he could not recall making such statements. This apparent attempt to recant his earlier testimony raises questions about his candor. I credit his earlier account, noting that it was similar to the statements that Letts attributed to him and that Mrla offered no testimony thereon. Additionally, Brash offered no explanation for why he did not provide to Vilik the Etech Texas email referenced above.

Sharp had a generally very good recall and testified in greater detail on a more consistent basis than any other major witness. To the extent that Hooker did not rebut Sharp's accounts of certain conversations that they had, I credit him. However, on two matters, Sharp's testimony was questionable. Firstly, he testified that when he introduced himself to Hooker as the new supervisor of the garage and laid out his goals, Hooker stated, "I will absolutely never work with anyone with the Company" or "I refuse to work with . . . anyone from the Company," and that Sharp did not respond. Granted, the record demonstrates that Hooker could be far from tactful, but I am skeptical that he would have made such an outrageous statement at the outset of their relationship. Moreover, based on Sharp's demeanor and record evidence, Sharp struck me as an assertive individual who would not have let such a statement go by without any response. Also, as noted above, Sharp, despite his generally very good recall, testified that he could not remember if Hooker or Campbell said anything on September 22 along the lines that Hooker's misdiagnosis on September 20 was an error easy to make.

Turning to Osterberg, I have no reason to question Osterberg's truthfulness in reporting what he observed on April 24. I do have a serious issue concerning his testimony about what Brash instructed him to do that day and why. According to both Brash and Osterberg, Brash told him there was an open asset protection investigation of Hooker's use of his GPS, and he directed Osterberg to observe Hooker, pull his GPS, and make sure that it was working.

Osterberg testified that Brash gave him no specific instructions about how to accomplish this and that he made the decision on his own to observe Hooker's work throughout the day. Respondent's Exhibit 43(a) reflects that Osterberg's observations went far beyond the scope of anything relating to the GPS by encompassing everything that Hooker did, minute-by-minute. I highly doubt that Osterberg as a first-line supervisor would have sua sponte engaged in such lengthy and detailed observation unless Brash, his manager, directed him to do so. Moreover, Brash later asked him to prepare a detailed timeline of everything that he observed Hooker do that day. I note, too, Vilik's testimony that she could not recall ever before seeing such a detailed report describing what an individual did on a daily basis—an indication that this was highly unusual.

Significantly, Osterberg testified that he had no reason to go to the jobsite to check if Hooker's GPS was working because he located Hooker at the jobsite through U-Dash, which is linked to the GPS. Furthermore, Osterberg admitted on cross-examination that he did not need to be at a worksite to see if Hooker's GPS was reporting; he could have checked that in his Lansing office as long as he had internet service. Lastly, Osterberg had no explanation for why Vilik stated in her notes (R. Exh. 67 at 5) that "Osterberg stated he went to the office and ran the VTS report for Hooker's vehicle at various times throughout the late morning and early afternoon and found the VTS had not reported since 10:19 a.m. . . ."

As to Vilik, I find wholly baffling why she, a trained investigator, meticulously recorded in her notes what various witnesses reported to her yet failed to mention whatsoever therein, or in her report, the telephone conversation she had with Campbell on about April 26. She admitted that she had "no reason" not to put it in her report. Significantly, she failed to deny Campbell's testimony about what he told her but averred lack of recall. I therefore specifically discredit her testimony that Campbell told her that he had experienced no problems with the GPS. I also find somewhat suspicious her failure to document in her notes anything that was said in her conversation with Mrla when he called her on April 19, and her testimony that she could recall nothing of their conversation. On the other hand, I do credit her detailed account of her investigatory meeting with Hooker on April 27, about which Hooker did not testify and therefore failed to refute.

I will discuss other incident-specific credibility determinations below.

Facts

Based on the entire record, including testimony and my

[3] Tr. 2589, 2670. Brash similarly testified that management wanted, but did not need, to place Hooker in the load and that the work volume in 2015 vis-à-vis prior years had no effect on their decision. Tr. 1042, 1816–1817. Such testimony fatally undercuts any contention that workload factors were of any major concern. Accordingly, I reject any claims by the Respondent that they were, and I will not further address them.

observations of witness demeanor, documents, written and oral stipulations, and the thoughtful posttrial briefs that the General Counsel, the Union, and the Respondent filed, I find the following. All written communications were by email unless otherwise specified. I will not overburden the reader by including a verbatim account of every single instance of what can best be described as an ongoing war between Hooker and the Local and company management.

At all times material, the Respondents have been corporations with an office and facilities in Grand Rapids, Michigan, engaged in providing a range of nonretail telecommunications services. The Respondents have admitted jurisdiction as alleged in the complaint, and I so find.

In August 2016, the Respondent created the Technical Field Services (TFS) organization, in which two groups of technicians (techs) were placed. One group consisted of techs who performed work on the Respondent's network infrastructure, including the installation and repair of non-accessible cable. These techs had previously worked for Network Infrastructure Business Services (NIBS).[4]

A TFS tech "in the load" is on the work schedule to perform either (1) demand work—customer service problems; or (2) nondemand work or rehab—bad plants conditions (BFCs) or something wrong in the network that does not affect service. "In the load" also refers to being on the work schedule. Techs bid on the work schedule in order of seniority, in 5-week increments. They can select different schedules weekly. The standard or regular shift is Monday through Friday, 8 a.m. to 4:30 or 4:45 p.m. (depending on the length of the lunch break). There are also "off shifts," either Monday through Friday starting at 10 a.m. (late shift) or shifts that include working on a Saturday or Sunday. Techs also bid in order of seniority on the vacation schedule for the coming calendar year, normally starting in about October. Only a certain percentage of techs can be off any given week, depending on the anticipated workload.

George Mrla, based in Detroit, was director of NIBS since January 2014 and then became director of TFS. At all times, he has had responsibility over all of Michigan. Nine to 12 area managers, approximately 100 first-line supervisors (managers), and 1400 employees have reported to him. Ted Brash has been a TFS area manager since April 2015, with responsibility over several garages, including the one on 36th Street in Grand Rapids (the garage), where Hooker was based; and others in Comstock Park (Grand Rapids), Howell, and Lansing, Michigan. In November 2015, Andrew Sharp replaced Sidney Bragg as manager of the garage and assumed direct supervision of about 14 technicians, including Hooker. Jeffrey Osterberg has been manager of the Lansing garage since March 2014.

For many years, the Communications Workers of America, AFL–CIO (CWA), has been the collective-bargaining representative for unit employees who work in the Respondent's operations throughout Michigan. CWA District 4 is a geographical subdivision of CWA. One of its locals is Local 4034 (the Union or the Local), which represents about 450 of the Respondent's employees, including those in TFS, in central and west Michigan.

The Respondents and other affiliated entities have been parties with the CWA to a series of collective-bargaining agreements (CBAs) through the years. The parties' most recent CBA (GC Exh. 2), effective April 12, 2015, through April 14, 2018, covers bargaining-unit employees who work in the Respondents' network telephone operations throughout the traditional five-state "Midwest" region that includes Michigan (see Appendix B of the CBA).

Article 10, Union Officers and Representatives, contains provisions regarding union representatives getting excused time to conduct union business under two categories, Company paid and Union paid:

> *(Company) Payment for Joint Meeting Time (MXUP)*[5]
>
> Art. 10.05—"For purposes of processing grievances, the Company agrees for authorized Union representatives to confer with representatives of the Company without loss of pay during such employees' regularly scheduled working hours," including traveling for grievance meetings.
>
> Art. 10.06—"When the Company meets with a Union representative(s) during such employee'[s] regularly scheduled working hours for purposes other than the processing of grievances and further agrees to pay for the time involved," the employee will be paid.
>
> Art. 10.07—"Employees who are excused in accordance with the provisions of this Section . . . shall give their immediate Supervisor reasonable advance notice of the intended absence and of the probable duration of the absence."
>
> *(Union paid) Absence for Union Business (MXUU)*
>
> Art. 10.08—"The Company, insofar as work schedules permit, agrees to grant to any employee who is an Officer or properly designated representative of the Union reasonable time off up to [1,080] hours during a calendar year, unless mutually agreed otherwise, without pay, to transact business of the Union, provided that the Company is given reasonable advance notice of such absence."

The GCAS system is the Company's timekeeping attendance report that all employees complete daily. It contains employee records, including benefits and vacation information. Employees performing union business input in GCAS as nonproduction exempted or excepted time MXUP and MXUU, in quarter-hour increments, and assign a specific activity code for the MXUP (see GC Exh. 5, a sample screenshot).

The Local's membership elects its officers: President Ryan Letts, Executive Vice President Pam Beach, and Secretary-Treasurer Ralph Prince. Since encumbering those positions, they have been on union business full-time and performed no work for the Company. Letts and Prince are in Mrla's organization; Beach is not. The Local's president appoints chief stewards

[4] For additional details about the various organizational changes made since January 1, 2014, see Jt. Exh. 1 at 2, as well as Jt. Exh. 2, a stipulated glossary of terms.

[5] Such meetings include full committee, joint, disciplinary, and investigatory meetings (Letts' uncontroverted testimony).

and stewards, whereas lead stewards are elected annually by their work group peers. See General Counsel's Exhibit 4, a list of the local's officers and other representatives as of July 2017.

The Local president also appoints to the administrative assistant (AA) position in the Local. No other local representing employees in Mrla's district has had an AA position (see R. Exhs. 23, 25). Letts became an AA in late 2003 and served in that position until he became president in late 2010. At around the same time, Beach, the other AA, became executive vice president, and Letts appointed Hooker AA. Prior to Hooker being placed in the load in 2015, everyone in the AA position going back at least as far as Letts in late 2003 was on full-time union business status.

Hooker's Employment Prior to December 2015

Hooker began employment with the Company in 1996 and was a field tech in TFS or its predecessors for about 12 years until his discharge on October 13. Prior to his appointment as AA in late 2010, Hooker had served as a steward, lead steward, and chief steward, starting in 1999. In all of these positions, he occasionally worked in the load. He did not normally give his supervisor advance notice for MXUP time but rather did so more casually at the last minute, depending on when he learned of a meeting. When Hooker was appointed AA in 2010, he became full-time union, and management took him off the workload and vacation schedules.

As the AA, Hooker engaged in a wide range of duties, including editing the newspaper; developing and administering the website; directing social media; streamlining grievance processing; training stewards; chairing all second-step grievance meetings and assisting Letts at third step grievance meetings; and involvement in NLRB, other administrative proceedings, and arbitrations. Letts assigned him at times to assist other locals in those functions. In late 2013 or 2014, District 4 appointed him as safety coordinator for CWA locals in Michigan, and around the same time, the CWA appointed him as a part-time health and safety instructor for locals in the Midwest and nationally.

Hooker's only reporting requirement was to enter his union time in GCAS, as described above. He was never denied MXUP and never had to give advanced notice for either MXUP or MXUU time, comporting with the practice of the Local's other full-time union officers. If Hooker was out of town on travel and had no access to GCAS, he called his supervisor and asked him to input Hooker's MXUP and MXUU time. Hooker coded phone calls from managers as MXUP, depending on their substance, but preparing for grievance meetings or preparing RFIs he coded as MXUU.

Events Prior to December 2015

On January 3, 2014, Mrla called Hooker (see GC Exh. 81) and introduced himself as the new TFS manager for Michigan. I credit Hooker's considerably more detailed account of their conversation, as follows, noting that Mrla's more summary version was not necessarily inconsistent. Mrla stated that he was thinking that Hooker would really do well if he got some training and a new truck and could be in the load. Hooker sarcastically replied that sounded "awesome," but he would have to check with his boss.[6] Mrla said that he was Hooker's boss, and Hooker replied that Letts was his other boss and "that's the person you have to check with to get me to put my ass in a truck."[7]

In March 2014, Mrla first raised with the Union the subject of changing Hooker's status from full-time union, in a phone call with Letts that Mrla initiated. Letts' testimony was rather sketchy and did not address anything that Mrla specifically said about Hooker. Mrla, on the other hand, gave a detailed and fully coherent account, and I credit it where there were differences in their versions. Mrla asked Letts why Hooker was not in the workload, to which Letts answered that was the way his organization was set up and that the AA was always excused from the workload. Mrla asked if there was a local agreement somewhere, and Letts replied that there was no written agreement, but it was just agreed upon. Mrla stated that he considered the AA to have the responsibilities of a chief steward and that his experience was that anybody in the position was in the workload. The call ended with Mrla saying that they needed to start planning to get Hooker in the load and that the matter would be revisited later. Mrla testified that he took no action to follow up on this because he had other priorities.

On May 11, 2015, Lansing technician Ronald Flores was involved in a motor vehicle accident. As part of the accident investigation, Brash followed his practice of pulling VTS records (GPS report) and Flores' cell phone usage records (COU report) for the entire day. As a result, management determined that during that day, Flores had been talking on his mobile phone while driving. At the investigatory interview, Flores admitted this, and for that offense he received a written warning and 1-day suspension for violation of safety standards (GC Exh. 36). At around this time, another employee at the same garage admitted to the same misconduct and received the same discipline. Brash testified that the disciplines were based on the employees' admissions, not on company records.

On June 1, Prince filed a grievance and RFI regarding Flores' warning and suspension (the Flores grievance) (GC Exh 37) concerning the Company's use of monitoring equipment to look at an employee's activity the entire day on which a motor vehicle accident occurred. The grievance was denied on July 15 at the first step.

On August 10, Mrla called Hooker (see GC Exh. 82, Hooker's phone records). Mrla began their conversation with, "What the hell is going on with all of this crap I'm hearing about your objections to—to making your members safer by making sure they're not driving with cell phones?"[8] Hooker responded that the policy conflicted with a memorandum of understanding in the CBA on employee monitoring, and might discourage an employee from reporting an injury or an accident. Mrla replied that he did not agree, and he said that Hooker was being stubborn and that he (Mrla), unlike Hooker was trying to keep the employees safe. Hooker responded that "if [Mrla] was goddamn in love with keeping employees safe," he should instruct his managers not to drive all over the place talking on the phone or texting.[9] Mrla stated that Hooker had raised a good point and he would do

[6] Tr. 408.
[7] Ibid.
[8] Tr. 378.
[9] Ibid.

so.

On August 13, Hooker filed a voluminous RFI (GC Exh. 38) regarding the Flores grievance, consisting of over 2-1/2 pages of single-spaced items and requesting, inter alia, detailed information about the monitoring technology operator training, monitor technology data, monitor technology accuracy, and a complete list of all employees who were involved in a motor-vehicle accident or occupational injury within the geography covered by the Midwest CBA (five-state region) for the last 3 years.

On September 24, Steward Eric Buker reported to Hooker conversations that he had had with Jarema and Manager Don Amante (see R. Exh. 21). None of the three testified. The following day, when Hooker and Buker were speaking before work, Jarema interrupted them and asked Buker to confirm that Jarema had not denied him a steward. Later that morning, Jarema asked Hooker to come to his office for a few minutes, but Hooker said that he could not do so because he had a scheduled meeting. Jarema asked with whom he was meeting, and Hooker replied that was confidential. After Amante began the regular morning meeting, Jarema returned and warned Hooker not to interrupt the meeting.[10]

An unfair labor practice hearing was scheduled on October 6 in Case 07–CA–150005, on charges that Hooker had filed alleging that the Company had unlawfully failed to provide requested information to the Union (see GC Exh. 41, the transcript). A day before the hearing, Mrla called Hooker (see GC Exh. 82). I credit Hooker's unrebutted account that Mrla stated that he had to get Hooker a truck and some tools and back on a truck.

On October 6, Hooker testified at the hearing. During the course of the trial, Area Manager Mike Ten Harmsel and Andrew Maki, another manager, characterized Hooker's behavior and demeanor in his meetings with managers as intimidating and bullying.

The following day, Letts spoke by phone with Mrla, who said that he wanted to talk about Hooker's union status. Their versions of the conversation were substantially consistent, with no conflicting additional details, and the following is a composite. Mrla stated that Hooker was the only appointed union official in his entire organization not working in the load and that he was going to be put on the work schedule like every other appointed steward. Letts asked if they could negotiate, and Mrla replied no. Letts objected, stating that there was no distinction in the CBA between elected and appointed, and he pointed out that Hooker took phone calls and had meetings. Mrla replied that phone calls were not MXUP under the contract and that MXUP required face-to-face meetings. Letts asked if company labor relations (LR) was on board, and Mrla replied that he had read the contract and talked with LR. Mrla further stated that Hooker, as did other stewards, would have to tell the Company with whom he was meeting, where, and the duration of the meeting, for MXUP payroll verification purposes. Mrla suggested that they have regular monthly meetings, and Letts agreed.

Before this, Letts had always reported as MXUP phone calls with managers in which they discussed work-related matters or grievances. He based this on practice, not on any specific provision in the CBA.

In a mid-October regular planning call with his area managers, Mrla polled them on whether they had a nonelected union official excused full-time from the load. Brash aside, they all said no.

On October 20, Brash called Hooker. Brash gave considerable details of their conversation, whereas Hooker's testimony thereon was very conclusionary but not inconsistent with Brash's. I therefore credit Brash as follows. Brash advised Hooker that he was going to have to put in a vacation bid for 2016 and to bid on the work schedule. He stated that the Company would train him, get him a truck, and tool him up to work in the load. Hooker said that he did not agree, had discussed it with Letts, and had many questions about how management would proceed. Brash replied that he knew Hooker had been absent from the load for a few years, that he was going to have an off shift (based on his seniority) and would be needed for work outside regular shift hours, and that he would get a truck, tools, and training. Hooker brought up Art. 10.08 and said it guaranteed 1080 MXUU hours, to which Brash replied that it was not automatic and required supervisory approval.

Brash further said that Hooker would have to request his MXUP in advance according to the CBA. Hooker replied that he had many confidential phone calls that were MXUP and could not be requested in advance and had too chaotic a schedule to request time in advance. Brash replied that he could not have a confidential meeting that the Company paid for; as area manager, Brash had to verify with whom he was meeting but did not need to know the content. Brash also stated that a manager calling Hooker to schedule a grievance in a 3-minute phone call would not count as MXUP and that it should be coded as whatever he was doing at the time, not as 15 minutes of MXUP. Hooker continued to object, particularly to reporting MXUP, and Brash suggested that they could devise a way for him to keep track by writing it down. Hooker requested a union steward, and the call ended. I further find that, as Hooker testified, Brash specifically stated that Hooker had to provide union activity logs (see GC Exh. 43, an email that Hooker sent to Letts that day).

After a grievance meeting at the Lansing garage on October 21, Brash and Hooker had a conversation during which Brash repeated to Hooker what he had said the day before. Brash further stated that Hooker would have to work when he was scheduled on non-regular shift hours; and fill out union activity logs for MXUP time, indicating the names of supervisors with whom he met, the hours, and the nature of the business. Hooker stated that he considered these unilateral changes and in retaliation for his participating in the NLRB hearing on October 6 and his union activities in general. Brash said that he would create an Excel sheet for Hooker to report his MXUP; if he was not able to report it in advance, he could do so each afternoon. Brash testified that this was an accommodation to Hooker because all other stewards were expected to request time in advance.

October 23, 2015 Management-Union Meeting

Mrla, Brash, Letts, and Beach met at the Lansing garage for

[10] Management, including Jarema, had complained to Letts about Hooker's conduct as AA as far back as 2012.

about 2 hours, to discuss the Flores grievance RFI and Mrla's decision to place Hooker in the workload.[11] Prior to the meeting, Mrla and Brash had already made the decision that the AA position would no longer be full-time union.[12]

Brash's recollection of the meeting, as refreshed by the notes he took (which were not offered in evidence), was considerably more detailed than Letts' or Mrla's. The parties stipulated that his testimony comported with his notes, and Brash appeared to be candid in relating what was said. I therefore credit his testimony. Based on what Letts and Hooker said at other times, I also believe their testimony that they made statements that were not included in Brash's account. None of the versions varied in overall substance, and I find the following.

After Mrla discussed his good relationships with other locals, he brought up the Flores grievance RFI and stated that he did not understand it inasmuch as both drivers had admitted during the investigation to talking on the phone while driving; the Company had not told them that their records were pulled and had not relied on those records in issuing the disciplines. Mrla went over several items one by one and asked the relevance to the grievance, to which Letts repeatedly answered "functional knowledge" (Brash and Mrla) or "constructive knowledge" (Letts).[13] Mrla then said that there was no point in discussing the RFI any further if that was going to be the only thing Letts was going to say, and that he thought the RFI Hooker had made was "intentionally burdensome" and "for harassment."[14][14]

Mrla then discussed Hooker returning to the workload, saying that he would have to select a work schedule, participate in vacation scheduling, and report his MXUP to his manager. Mrla explained that Hooker was a non-elected union official and that he (Mrla) did not have any other non-elected union official in his organization excused from the load full-time; returning Hooker to the work schedule would be fair and consistent with his organization. Mrla showed them the latest weekly report that Debbie Schall of his staff had prepared, showing month-to-date use of MXUU and MXUP time by union officials in Mrla's organization (the Schall Report) (see R. Exh. 23, the report of Nov. 23, 2015, admitted to illustrate the format of the document). Mrla commented that Hooker was one of the highest and would have to report that time to be excused from the workload. He further said that he knew which ones on the report were elected or non-elected. The Union requested a copy of the Schall Report.[15][15] During the discussion, Mrla repeated that MXUP required face-to-face meetings and did not include off-the-record discussions with managers.

Letts and Beach protested that this was a big change to the way they had done business and would adversely affect the Union, including grievance handling. Mrla responded that he was not completely taking Hooker away from the organization and that Hooker would have to work off shifts, likely a Sunday shift, but not Monday through Friday for the present. Letts again asked if the decision to put him in the workload was negotiable, and Mrla replied no.

During the course of the meeting, Brash stated that dealing with Hooker was difficult and that Hooker "liked to yell a lot in grievance meetings" which was not helpful to the procedure,[16][16] to which Letts said that he was aware of Hooker's style.

Over the following week, Letts and Mrla had several phone calls discussing the subject in which they reiterated their respective positions. Mrla testified that he emphasized that no other appointed union representative in his organization was off the load.

On November 10, Letts emailed Mrla (GC Exh. 8), formally objecting to Mrla's stance as to Hooker and requesting a copy of the Schall Report.

November 16, 2015 Management-Union Meeting

Once again, the testimony of Letts, Brash, and Mrla was largely reconcilable. This meeting took place at the same location. Letts asked for the Schall Report. Mrla showed it to the Union and went through who was appointed and who was elected.

Mrla and Brash brought up the union activity log that Brash had created and stated that Hooker would be required to fill it out after he met with a manager, indicating with whom, when, and where he met. Letts asked why, when no one else was required to do so, and Mrla and Brash answered that they could not get Hooker to give advanced notice. Brash stated that he would need Hooker in the workload 1 day per month for compliance training (leader-led training at the garage on subjects such as defensive driving or handling new equipment). Letts agreed that the Union would assist in this. Another meeting was scheduled for December 16.

Both Letts and Brash testified about at least one phone call they had following the meeting, on about November 30. Their description of the subject matters discussed leads me to believe that they had two separate calls. In any event, neither Letts nor Brash disputed the other's version, and I credit them both.

In one call, Brash stated that Hooker had to fill out the work schedule that was being circulated. Letts replied that at the November 16 meeting, Brash had stated he needed Hooker only 1 day a month. Brash agreed that was true but said they also needed him to fill out the work schedule because he would be in the workload as any other appointed steward. Letts asked him to send over a copy of the union activity log. Brash said he would and later that day sent it to Letts (GC Exh. 9).

In the other call, Brash told Letts that Hooker needed to select some training dates during the week because not all training or safety meetings could take place on the Sundays that Hooker had chosen. Letts stated that this went against their agreement on October 23. Brash said no, that training such as safety meetings and competencies needed to be conducted during the week when he had his management staff available; that Letts agreed Hooker would come in to attend a safety meeting once monthly; and that Brash would give Hooker as much advance notice as possible

[11] These same individuals attended all subsequent monthly management-union meetings hereinafter referenced.

[12] Tr. 1672 (Brash).

[13] Tr. 134, 1084, 2616.

[14] Tr. 1697 (Brash).

[15] Mrla testified that he did not give the report to the Union because he did not know if it was "proprietary." However, he never provided this explanation to the Union and offered no elaboration at trial.

[16] Tr. 1100 (Brash).

and try to accommodate as much as possible Hooker's needs to conduct union activity.

Tech training is provided in a variety of forms. All techs are required to attend one safety meeting a month (compliance training), and each of Brash's managers conducts a weekly safety meeting with the crew, held Monday–Friday. Managers also hold safety training and competency tests in the garage. Other training can be done electronically via iPad. Finally, there is "ride-along" or on-the-job training with another tech.

On December 2, Sharp advised Hooker that starting next week (December 6–12), he wanted Hooker to do 1 full day ride-along weekly (R. Exh. 2 at 3). This triggered a series of emails (R Exh. 2, continued in R. Exh. 24), summarized as follows. The same day, Hooker responded that he had pre-scheduled union commitments the entire next week and would be available to train on December 13 and 20, and January 2, 3, and 10. On December 4, Brash told Letts that that was unacceptable and that Hooker would need to make himself available 1 weekday each week for training. On December 8, Letts objected to what the Company was requiring, and he set out Hooker's MXUP and MXUU commitments in the coming weeks. The same day, Brash clarified that Hooker needed weekday training, as opposed to Sundays when he would have ride-along training, and that his non-Sunday training would be deferred until after January 4 and scheduled in advance so it would work best for both company and union schedules. On December 14, Letts stated that advanced scheduling beyond the current (5-week) work schedule would be difficult.

In mid-December, Brash told Sharp to set up ride partners for Hooker for the next several Sundays, or whatever day he was going to be in the load, so Hooker could observe and re-familiarize himself with how to perform work. I credit Brash's unrebutted testimony that within a week of December 13, he called Hooker and told him that Sunday, December 13, would be his first day back in the load and that he would be doing ride-along training. Hooker renewed his objection to being put in the load, to which Brash replied that was the Company's directive.

Hooker's Return to the Load

On November 30, 2015, for all of the 5 weeks beginning on December 13, Hooker bid for shifts having Sunday as one of the days off (GC Exh. 50). His first day working in the load was December 13, when he did ride-along training. He also did ride training on December 20 and January 2, 3, 19, 23, 24, and 28, 2016. He first worked on his own on January 31 (see R. Exhs. 27, 29).[17] Hooker had not touched a tool for at least 7 years, during which time he had not received any training and many technological changes had occurred. Brash anticipated that Hooker could function on his own in the field within about 2 months after finishing training.

When Hooker was assigned to work on his own, Brash instructed the load balance manager at the network dispatch center to pre-assign Hooker POTS ("plain old telephone service") residential repair work (entry-level work) the night before. All other techs were assigned by their hitting the dispatch button in GCAS.

[17] In approximately May or June, he bid for and secured a Monday through Friday late shift.

Early on, Brash came to believe that Hooker was not paying full attention during his ride-alongs, not taking steps to ensure that his vehicle was completed stocked, and creating excuses not to perform tech work. Hooker's conduct at times reinforced these conclusions.

Union Activity Logs

Brash testified that he made the decision to require Hooker to fill out a union activity log. After creating it, he emailed it on November 5, 2015 to Bragg, who forwarded it to Hooker via company email and asked Hooker to email him the activity logs weekly (R. Exh. 17). When Sharp took over Bragg's position, he assumed this responsibility.

On December 8, Hooker and Brash exchanged a series of emails (GC Exh. 45), summarized as follows. Brash reminded Hooker to get in his activity log for last week to Sharp. Hooker said that it would take him some time to reconstruct his calendar and asked how he should code his time for filling it out. Brash replied that Hooker should complete it as quickly as possible, and in the future update it during the week so that he could turn it in on Monday morning. As far as accounting time, Brash referred to the 20 minutes of administrative time at the start and end of the shift, for which coding was based on the activity after or before it, and pointed out that the time Hooker needed should be minimal. Hooker then asked how he should code filling out the activity log. Brash replied that it should only take a minute or so to input an entry and that it would be regular paid time.

Brash met with Hooker in Sharp's office on July 28, 2016, on a number of matters. Regarding the activity logs, Brash stated that Hooker had not complied with his directive to submit them. Hooker replied that he would need all of his time records from June 6 or 9 from Sharp so he could recreate his calendar, figure out with whom he met, and why he charged MXUP because he could not remember. Brash initially denied his request but then had Sharp pull Hooker's attendance summary from eLink and give it to Hooker, who stated that he would comply under protest.

That afternoon, Hooker advised Sharp by email that he could not complete the activity log because the information that Sharp had provided was inadequate, and that Hooker would have to wait until Prince returned from vacation the following week to cross-reference union payroll records (R. Exh. 50).

On August 12, at the garage, Brash and Hooker had a meeting at which they discussed the activity log. Only Brash testified about what was said on the subject, and I credit his unrebutted account as follows. Brash asked if Hooker had brought a completed activity log with him that day. Hooker replied that he had not because he still had not had time, and Brash reminded him of his commitment on July 28 to submit such by August 5. He then issued Hooker a written verbal warning for violation of non-management expectation, for failing on August 5 to provide joint meeting activity details as required by management (GC Exh. 29; also R. Exh. 53). Hooker repeated a threat to schedule grievance meetings only on Mondays and Fridays, and to suspend all of the Local's stewards and personally take over the grievance process for the entire district. Brash told Hooker that scheduling

grievances only on the days that he was supposed to do company business was unacceptable.

General Counsel Exhibits 46 and 47 are the activity logs that Hooker turned in. The first is one page, with entries for June 16 and 17, and July 21; the second is one page with an August 19 entry. They do not show on what dates Hooker actually submitted them, and Brash's uncontroverted testimony was that Hooker turned in both on August 19. On the July 21 entry, Hooker wrote "attendees confidential." He gave conflicting testimony on whether Brash told him that was unacceptable, first saying yes but later that he could not recall.

Hooker subsequently submitted activity logs for union time on the days of September 19, October 3, and October 7 (GC Exhs. 48, 49).

The Respondent's counsel represented that Hooker received one warning for not turning in the union activity logs (on August 12, described above) and that it was not a reason for his termination, that he was never disciplined for taking improper MXUP or MXUU, and that his termination was not based on either his filling out activity logs or his claims for MXUP.

December 23, 2015 Grievance and RFI

Hooker filed a grievance contending that he was discriminated against for union activity (GC Exh. 51), and on the same date he made a RFI consisting of about 2-1/2 single-spaced pages and over 60 individual requests (GC Exh. 52). I will address the items on which Hooker offered testimony as to why he considered them relevant.

For items 2–6, the requested information pertained to NIBS or its predecessors in the Grand Rapids FAA (force adjustment area) since January 1, 2010: (2) all work-group schedules; (3) all work-group vacation-selection schedules; (4) a list of each day's starting workload and each day's ending workload which was not completed that day or carried over to the next day; (5) a list of all dates during which employees were "loaned" into or from other organizations within the Company; and (6) a list of all personnel who received training, including name of the trainee, name of the training, dates and duration, and type.

Hooker testified that RFI items 2–6 were based on the Company's assertions that it needed him back in the load because of heavy workload needs. However, Hooker conceded on cross-examination that no one in management actually said this to him. On the other hand, management never stated that workload considerations were irrelevant to their decision.

Item 7 had two parts: (1) a list of all designated CWA representatives in Mrla's organization, including names and titles, reporting unit, union title, whether appointed or elected, and whether required to fill out a special timesheet; and (2) the genesis of the "special timesheet," the company policy that mandated it, how it would be stored, the length of retention, and who would have access to it.

Hooker testified that his was for the purpose of challenging the Company's position that he was the only full-time, nonelected representative in Mrla's organization and had the most MXUP time in Mrla's territory, and to confirm that he was the only one required to fill out a special time sheet.

Brash replied to Hooker on February 5, 2016 (GC Exhs. 54, 55), attaching 39 documents. He raised as general objections to the RFIs as being overly broad in timeframe and as being for the purpose of obtaining information for use in pending ULP charges that the Union had filed. On the following specific items, he responded:

> (2) The Company will provide the requested work schedules for 2015 on.
>
> (3) Please explain the relevance.
>
> (4) The Company does not maintain the requested records in the normal course of business but will provide responsive records in its possession.
>
> (5) The Company does not maintain or possess records in the form requested.
>
> (6) The Company will provide the records it has in its possession from the previous 6 months.
>
> (7) Part 1—The Company objects on the grounds that the Union, not the Company, possesses this information. Part 2 – The Company does not maintain documents known as "special timesheets." In accordance with the CBA, time for conducting union business requires advance notice to the employee's immediate supervisor; in the event advance notice is not provided, time reporting and record retention is handled on the local level.

Hooker responded on March 4 (GC Exhs. 56, 57), averring that the requested information was relevant to the subject of the grievance. As to item 3, in particular, Hooker stated that it was relevant to the Company's assertion that "schedule fairness" was one of the reasons for putting him back in the load. Brash replied on March 21 (by email and letter) (GC Exhs. 58, 59), adhering to the Company's prior objections but attaching 14 documents covering the 2015 and 2016 annual vacation reports in response to item 3. Finally, on April 18, Hooker renewed the arguments that he had earlier raised (GC Exh. 60).

In late February or early March, Brash and Hooker discussed the RFI when they attended a grievance meeting at the Lansing union office. Regarding item 2, Brash objected on over-breadth grounds—that the workloads were completely different from last year, let alone 5 years earlier. As to item 3, Brash raised the relevance objection, agreeing with Hooker that Hooker was not on the vacation schedule after he became AA. On items 4 and 5, Brash questioned the relevance to the decision made in December 2015 and also stated that there was no way to get accurate information. As to item 6, Brash questioned the relevance of documents going back to 2010 but said that the Company would provide a limited number of records. Regarding item 7, Brash stated that Hooker was the only union representative asked to fill out the activity log. Hooker restated his belief that he needed everything that he had requested.

Ongoing Dispute over Hooker's Placement in the Load

General Counsel's Exhibit 11 is a series of emails from February 25–March 14, summarized as follows. In addition to Brash and Letts repeating their respective positions concerning placing Hooker in the load, (1) Sharp asked Hooker to attend weekly Wednesday safety meetings required of all techs, to which Hooker responded that most of his annual Wednesdays were already booked for union business; (2) Brash advised Letts that

Sharp would coordinate with Hooker once a month to come in for a safety meeting and coverages on a weekday according to Hooker's availability; (3) Hooker asked Brash if his training could not take place on Sundays, to which Brash replied no, because of limited resources and available managers; and (4) Letts questioned Brash whether safety meetings had to be conducted during the week when the Company had an on-duty manager on Sundays.[18]

On March 17, Brash advised Letts that Hooker had to be available in the workload for days other than Sunday and that Hooker and the Local had not been cooperative (GC Exh. 74). Therefore, beginning with the weekly schedule of April 3, Hooker would be required under Art. 10.07 to provide advance notice each week for any and all union time; and for MXUP, the time needed, the person(s) with whom he would meet, and the nature of the meeting, for payroll verification. If he failed to comply, Hooker's time would be coded 10.08 (MXUU) (charged to the Union).

In an April 1 email to Letts (GC Exh. 12), Brash contended that Hooker was not providing his schedule needs on an upfront basis each week for his needed time to conduct union business under Art. 10.07. The same day, Letts stated that he would continue to utilize Hooker within his organization when Hooker was scheduled on days that fell Monday through Friday (GC Exh. 13).

Letts exchanged emails with Sharp or Brash on June 3 and 4 (GC Exh. 17–19; also in R. Exh. 44). In the first of these, Sharp stated that he needed Hooker in the load on Monday, June 6, Thursday, June 9, and Friday, June 10, and that Hooker would be attending a training class for the entire week. Letts replied that Hooker had union responsibilities and needed to be out of the load all of next week, and Brash replied that Hooker was expected to report on those dates or face possible discipline.

Sharp later approved Hooker being off on union time from June 7–9 but not June 6. Hooker did not report on June 6, and Brash emailed Letts on June 9 (GC Exh. 20), setting out in detail the Company's expectations relating to Hooker's union reporting time obligations. Hooker would have to report to work at the start of his scheduled shift unless leave was approved in advance, and at the end of each week in which he reported payment for MXUP, he would have to provide the following information on the weekly union activity log: (a) managers at the meeting; (b) date, time, location, and duration of the meeting; (c) the purpose of the meeting; and (d) if the meeting was not for the purpose of processing grievances, the name of the Company manager who approved the meeting time as paid time. Brash also stated that Hooker was on a final written warning for failing to meet Tech Expectations because of his failure to report for his scheduled shift on June 6, which would be treated as an incidental (unexcused) absence (see GC Exh. 30).

Regarding the events of June 10, I credit Sharp's clear and more detailed account of what occurred over Hooker's, although their versions were not inconsistent. I find the following.

On June 10, a grievance meeting was scheduled at the garage. Starting at 8 a.m., Hooker worked on preparing the grievance at the union hall. When he did not report to the garage at 8 a.m., Sharp tried unsuccessfully to reach him on his company and personal cell phones, and left voicemails. At about 8:45 a.m., Sharp called Hooker again and asked where he was and why he had not been at the garage at 8 a.m. Hooker replied that he was in a grievance meeting down the hallway (in the garage). They met in the hallway. Sharp stated that he did not give Hooker approval to have the day off out of the load, and Hooker replied that he was in the calendar invitation from Steward Charles Johnson for the meeting (GC Exh. 69). Sharp replied that was insufficient.

I credit Sharp's and Brash's uncontroverted testimony of the events that followed. Sharp called Brash, who arrived at the garage at about 10:30 a.m. They met with Hooker (and Campbell and Johnson). Brash reiterated what Sharp had said about the calendar invitation not constituting an approval. Brash brought the email he had sent to Letts the previous day, and he read out verbatim a document concerning what management expected from Hooker regarding union time. Brash said that it was standard for everyone else to request union time in advance so that the Company could properly build the load and that Hooker would have to do this or be marked as an attendance violation. Hooker stated that Brash's stance was illegal and threatened to file unfair labor practice charges. I credit Sharp's testimony that Hooker was very upset and that both sides were angry when the meeting ended.

In June 15–16 and July 1 and 25 emails, Letts and Brash disagreed over Brash's assertion that any bargaining concerning application of article 10 of the CBA with respect to MXUP and MXUU was at the CWA District 4 level (GC Exhs. 20–24). Brash reiterated what he expected of Hooker, including the requirement that Hooker give his supervisor reasonable advance notice of the absence, which would be granted if work schedules permitted.

On July 27, Hooker submitted his schedule bids for the weeks of August 14–September 11, all for regular shift, but stating that under article 10 of the CBA (reasonable time to transact union business), he was notifying Sharp that he would be transacting union business for all scheduled hours during those weeks (R. Exh. 49 at 1). The following day, Sharp denied his request to be full union time for the entirety of that 5-week schedule (ibid).

Brash and Sharp testified about a meeting they had with Hooker and Campbell in Sharp's office on July 28 concerning a number of matters; Hooker and Campbell did not. Based on their testimony, I find as follows. Brash stated that Hooker would not automatically be excused Monday through Friday for union business just because he requested it and that 5 weeks out in advance was very far off absent a planned trip; a week or two would work better for the Company. Brash further stated that if Hooker was scheduled to work and wanted to attend a grievance meeting, he had to inform Sharp in advance and ask him, not just later put it on his activity log. Hooker replied that he would schedule his grievance meetings only on Mondays and Fridays because Sharp had told him those were the busiest days and he was most needed

[18] Brash's managers rotate more or less weekly in serving as the weekend duty manager. There is a specific duty manager phone number for techs to call.

in the load. Brash accused him of being obstructive.

Brash presented Hooker with an attendance counseling for his unexcused absence on June 6; for tardiness on June 10 when he attended a grievance meeting in the morning without Sharp's permission; and a verbal warning for those incidents (see GC Exh. 17) plus a sick day on June 18, for which Hooker's request for a vacation day had been denied.

Unless the Company approves FMLA leave, reporting off ill is treated as a chargeable absence. Chargeable absences are accrued over a 12-month period; a chargeable absence stays extant for 12 months. Because the counseling and verbal warning erroneously included an early June 2016 violation that had dropped off, they were not issued that day; rather, Brash issued corrected versions to Hooker on September 6 (GC Exhs. 30–32).

RFI over Truck Reassignments

Techs use three basic types of vehicles: (1) utility van or truck for the simplest work; (2) bucket truck, assigned to someone qualified for in-the-air as well as ground work; and (3) underground truck, a bucket truck specially equipped for work underground or in close spaces, for a tech who is also qualified to perform such work. Prior to February 28, Jim Smith drove a bucket truck, and Campbell had an underground truck.

Starting in January, Hooker worked in the load 1 day a week. He is 6-foot-4-inches tall and found that the first truck to which he was assigned, a full-size van, too small. As a result, he did not fit behind the wheel and had trouble reaching the brakes. In about late January, he backed the vehicle into another company vehicle in the parking lot and was assigned a different utility truck. He found the vehicle comfortable, but on February 11, the brake lines blew out while he was operating it.

Brash and Safety Manager Steven Roden conducted an accident investigation involving the first truck. Hooker stated that its cab was too small for him to drive safely, and Roden had him drive Campbell's underground truck or a similar truck, in the garage. He told them that it was comfortable. On February 28, the Company effectuated a switch of vehicles among Hooker, Campbell, and Smith. The General Counsel does not contend that the truck swap itself violated the Act. Hooker was assigned Campbell's underground truck, a new vehicle; Campbell was assigned Smith's bucket truck; and Smith was assigned Hooker's original utility van or a very similar vehicle.

On February 29, Hooker filed a grievance over the truck swap (GC Exh. 61), contending that the Company violated the mutual respect provision (art. 4) in the CBA. Hooker testified that he believed Sharp was retaliating against the Union by sowing dissent among the crew, particularly within the Union inasmuch as Campbell was Hooker's chief steward and liked doing underground work. The Union proposed keeping Campbell in the specially equipped bucket truck and trading Hooker and Smith.

On March 8, a first-step grievance meeting was held at the garage between Hooker, Campbell, and Johnson; and Brash and Sharp. Hooker asked for information that became the basis for his subsequent RFI. Sharp stated during the conversation that Campbell was the most qualified technician in his crew. The Company denied the grievance at the first step. Management stated that they were going to have underground equipment installed in what had been Smith's bucket truck so that Campbell could continue to perform underground functions. After such equipment was later installed in Campbell's new truck, Campbell informed Sharp that he was happy with it (Sharp's unrebutted testimony).

On April 7, Hooker filed an RFI (GC Exh. 62), requesting, inter alia, item (1), a list of vehicles provided to Campbell, Hooker, and Smith since January 1, 2009, and the reason for each change of vehicle for each employee; (2) a list of all factors considered for the truck swap on February 24; (3) the estimated date for completion of the removal of air equipment from Hooker's truck and placement of same in Campbell's truck, and the cost estimate. Further, in reference to Sharp's purported statement at the March 8 meeting that Campbell was the "most qualified employee in the district," Hooker requested (item 4) a list of all employees in the district and their qualifications.

On April 8, Brash responded (GC Exh. 63), questioning the relevance of the request in view of the Company's discretion to assign tools and equipment in accordance with business needs, and the relevance of documents going back more than 6 months. On April 11, Hooker suggested a meeting at which he could answer the Company's questions and concerns (GC Exh. 64). Brash responded on April 25 (GC Exh. 66). Brash emphasized at the start that Sharp had informed the Union that the special equipment was installed on Campbell's vehicle because Sharp deemed him to be the most qualified member in his crew to use the equipment, and because Campbell had more qualifications listed on the call out list than any other tech in the crew. Brash voiced the general objection that the requests were not relevant to the Union's statutory duties inasmuch as the Company had the discretion to distribute work tools, including vehicles, as business needs required.

Brash stated that as to: item 1, the Company did not maintain this information or have it reasonably accessible; item 2, those reasons had already been provided to the Union, the Company had discretion to assign work tools, and all three were assigned work trucks based on their qualifications to do different jobs; and item 3, the switch of equipment on the trucks had been completed, and Campbell's new truck had been in service since April 20. The cost was not relevant to the Union's statutory duties but such information had already been provided.

As to item 4, Brash stated that he was repeating information that had already been provided to the Union, and he referred to the call out list. Brash did provide a list of all technicians in Sharp's crew and the call out sheet for the week April 22–29, containing checks by the types of work they were qualified to perform.

On May 26, Hooker responded (GC Exh. 67), asking as to item 1 what obstacles prevented the Company from providing such information, including a description of how the information was collected, maintained, stored and/or accessed; as to item 2, the specific tasks and business requirements contemplated by the Company when it moved Campbell and Smith into different vehicles, including a detailed listing of training and/or other requirements for "underground work" and "air work" as referenced by the Company in explaining Campbell's move into his current vehicle, and the date prior to the conversion of Campbell's truck in which any other bucket truck was converted within the geographical scope of Mrla's responsibility; and as to

item 3, details regarding the method and manner by which the information was provided to the Union. Concerning item 4, Hooker requested the dates Campbell, Hooker, and Smith achieved the qualifications listed on the call-out list, a comprehensive list of the criteria used to assign a "qualified" designation for employees in the district; and any and all company material describing how to assign qualifications to employees within the work-group. Hook reiterated the request for a list of employees and their qualifications districtwide.

Hooker testified that his request for information pertaining to training for underground and air work related to the Company's assigning him a bucket truck and then an underground truck and not another basic utility truck, the only vehicle for which he was trained. As far as conversion of other trucks, Hooker testified that he found it unbelievable that the Company would go to the expense of duplicating equipment already installed on a vehicle.

The Company did not respond to the May 26 RFI.

Adverse Actions Relating to Hooker's Performance

Expectations for field techs, including those in Mrla's organization, are set out in Respondent's Exhibit 5. Brash was the decision-maker in all of the disciplines that Hooker received.

February 18 Management-Union Meeting

This meeting took place at the Lansing garage. Letts', Brash's, and Mrla's versions were quite similar. Mrla brought a copy of the Schall Report (R. Exh. 25), which he again showed but did not give to the Union. Mrla and Brash recited what they viewed as deficiencies in Hooker's work performance and his noncompliance with turning in the work sheet, amounting to insubordination, work avoidance, and obstruction. The Union expressed disagreement with the Company's characterizations. Mrla asked if Letts condoned Hooker's behavior, and Letts responded that he wished every one of his members was like Hooker. Mrla then stated that he could see he would get no help from the Union, he now knew who Letts was, and there was no reason to continue talking. Mrla ended the meeting and left.

A. Written warning for Violation of Nonmanagement (Tech) Expectations—March 3, 2016 (GC Exh. 26), for Misusing Time on February 14 and 21, and Working Overtime Without Permission on February 11

As to February 11, the warning states that Sharp had reassigned the job because Hooker stated he could not work overtime; Hooker did not answer or respond to Sharp's phone call voicemail or text; and he worked overtime without Sharp's knowledge or permission.

That afternoon, Hooker worked on a residential job with Training Manager Russ Jordan, who was training him on the use of new meters that Hooker had never used. At about 3:50 p.m. Hooker messaged Sharp that he would not be able to finish the job without working overtime (past 4:30 p.m.) because he had another commitment. Sharp tried unsuccessfully to reach Hooker on his company cell phone and then arranged to have John Root, a tech from another garage, take over the job. Root came to the site, but Hooker ended up finishing the job and arriving back at the garage at about 5:15 p.m. Sharp encountered him and asked why he was working overtime and why he did not respond to Sharp's calls or texts. Hooker replied that it was a new phone, and he had not had enough time to read the instructions.

Hooker testified that he had received his company cell phone fresh out of the box that day. It had no volume button, with the result that he did not hear when it rang or received a text. On the other hand, Sharp testified that the phone was not an iPhone but a simple "flip" phone, with a green on button and red off button. He had never given instructions to any tech on operating a flip phone and did not believe Hooker's explanation that he had not had time to read the instructions.

Techs are expected to notify management if they think that their jobs may run into overtime, which is voluntary. Brash testified that techs do not need permission for incidental overtime if a job runs over, but Hooker had called to have the job removed and then stayed and worked overtime. Because Hooker ended up working overtime, the Company had to pay overtime to both him and Root.

Concerning February 14, the warning states that Hooker misused his time on the first job as he started his shift at 8 a.m., did not dispatch until 9:30 a.m., and then called the duty line at 11:03 a.m., saying that there was nothing to do at the BPC address, and the narrative in his job detail report for the day (R. Exh. 28 at 6) reflected no trouble. The report has his dispatch time as 8:08 a.m. and completion time as 1:21 p.m.

Hooker testified that the job was BPC, a type of job on which he had never before worked. When he arrived, the work appeared to have been completed, but he inspected the work from one end to the other to make certain. Another tech showed up at the jobsite and was there for 30–40 minutes. When Hooker was satisfied there was nothing else to do on the job, he called Sharp.

However, Sharp testified that Hooker's job was a simple BPC cross bar or cosmetic pedestal (ped) job requiring no line testing or diagnosis. Occasions do occur when another tech has already fixed a ped, but Hooker should not have waited until 11:03 a.m. to contact him but instead should have closed it out earlier and gotten another dispatch.

Regarding February 21, the warning states that Hooker dispatched at 9:30 a.m. even though his shift started at 8 a.m. and that the expectation was for him to dispatch, get any necessary stock, and leave the garage within 20 minutes of his shift.

Hooker testified that he was dispatched at 9:30 a.m. through his iPad. Before then, when he pressed the dispatch button, he got the message that no work was available. However, Sharp testified that on Sundays, three techs worked out of the garage. They reported at 8 a.m., and if they did not have an assignment, they were expected to immediately contact the load balance manager or the duty manager using the fixed duty manager phone number. Hooker admitted that Sharp had told him earlier that if he got such a message, he should "SmartChat" with the dispatch center to get work, and that Sharp had sent out an email to his crew stating that they should call him if they failed to get a dispatch.

On February 22, Sharp held an investigatory interview with Hooker concerning what occurred on February 11, 14, and 21. Hooker had no specific recall of what was said at the meeting ("I

don't remember much. . . . ").[19]

I credit Sharp's better recall and find the following. As to February 11, Hooker stated that he had not yet read the instructions for his cell phone. As to February 14, Sharp asked what he did in the 3 hours that morning, and Hooker answered that he could not remember. Regarding February 21, Sharp asked what he did between 8 and 9:30 a.m. Hooker replied that he did not want to do administrative work when dispatched on a job and that he had to get stock and supplies. Hooker had never asked Sharp prior to February 21 to come in early or for more time to get stock and supplies.

B. Suspension Pending Investigation—April 27. This Related to the Intelligent Vehicle Device (IVD) or GPS Warning/Suspension That was Issued on May 10, Below

C. Final Written Warning/3-day Suspension for Code of Business Violation/Violation of Tech Expectations—May 10 (GC Exh. 28), for Tampering with his Intelligent Vehicle Device (IVD) on February 28 and April 24 and Causing it to Stop Reporting

IVD or GPS devices are black hard plastic, a little bigger than a pack of cigarettes that are plugged in under the dash board. Typically, nonreporting by a GPS is due to software or programming issues and sent to EtechTexas, which does the diagnostics (see CP Exh. 2, R. Exh. 41 at 18).

Hooker testified that on February 28, his first day using the truck, he found the GPS on the floor. Sharp testified that Hooker never informed him of this, and there are no documents of record to the contrary.

On April 17, Jason Bigelow, the duty manager on April 17, discovered that Hooker's GPS was not recording, and he advised Brash on April 18 that he had put in a repair ticket for it. Brash asked Sharp to pull GPS records from Telogis to see when it had stopped recording. Those records showed that it had not been reporting since February 28. Sharp related this to Brash.

The GPS was reinstalled in Hooker's truck on April 18. Hooker testified that on April 24, his first day in the load since April 18, he hit the device with his foot while applying the parking brake, and it popped out.

On April 19 (between the two dates in question), Brash reported to the asset protection office that Hooker had tampered with the GPS unit in a company vehicle. The case was assigned to Judy Vilik, senior investigator with the asset protection office, who conducted an investigation. She maintained an event log of her step-by-step actions during the investigation (R. Exh. 67 at 1–8) and prepared a 36-page report, including attachments (R. Exh. 41, dated May 2). Vilik recalled no other times when she was asked to investigate a non-reporting GPS unit.

Brash and Sharp on April 19 received a form email from Etech Texas, the Respondent's vendor that services the GPS system, regarding GPS nonreporting issues. It stated in relevant part, "Driver usage can sometimes partially dislodge the device, especially when releasing the parking brake." (CP Exh. 2.) Brash never provided this email to Vilik. He had seen this form email on previous occasions. On April 25, Brash raised the April 24 date to Vilik as a result of what Duty Manager Osterberg reported to him about Hooker's GPS stopping reporting at 10:19 a.m. that day.

On April 27, Vilik conducted an interview with Hooker at the Lansing garage, with Brash and Beach present as witnesses. I credit her unrebutted account as follows. She asked Hooker questions and wrote down his answers, which she typed out and printed out as a statement and then gave to Hooker to make any additions or corrections. She incorporated those into his final statement, which he reviewed and affirmed was true and accurate but refused to sign (R. Exh. 41 at 34–35).

The following summarizes the statement. On February 28, Hooker did not know what the IVD was when, as he went to push down the emergency brake, he knocked it to the floor and then placed it in the driver's side storage container. He then reported this to Sharp, who told him to submit a repair ticket to Fleet. On April 12, Hooker was advised at a union meeting that the device was the GPS unit for the vehicle. He was also advised at the meeting that the GPS had caused malfunctions in some company vehicles. On April 18, in a repair ticket for issues with the vehicle, Hooker included a reference to a "strange device" laying in the driver's side door storage (see R. Exh. 41 at 28). Vilik asked why he referred to the GPS as a "strange device" when he had been told what it was, and Hooker replied no reason. Regarding April 24, Hooker accidentally knocked the GPS out of its plug when he went to apply the parking brake. Vilik asked him why he did not submit a repair ticket for the GPS, and he replied that he did not have time at the end of his shift and had been disciplined in the past for misuse of time. Vilik asked why he did not notify the duty manager, and he replied that it did not occur to him. Hooker denied that he had intentionally unplugged the GPS.

At the interview, according to both Vilik and Brash, Hooker voluntarily demonstrated how he had kicked out the GPS with his feet when he set the parking brake. At the conclusion of the interview, Hooker was suspended (with pay) pending the outcome of the investigation.

Brash later tried himself and found it very difficult to dislodge the GPS device and almost impossible to dislodge with his feet. After the interview, Vilik examined a vehicle similar to Hooker's. She found that it had a zip-tie securing the unit to the plug (although there was no zip- tie on the GPS unit in Hooker's vehicle at either time) (R. Exh. 41 at 5).[20] However, she concluded that, based on the GPS report, Osterberg's statement, and Hooker's statement, Hooker would have been releasing, not applying, the parking brake (ibid).

Vilik's investigative findings (ibid at 3, 4) were:

> (1) On April 18, an email from Fleet was sent to Hooker advising him that the "strange device" he reported was the GPS unit and the unit was plugged back in.
>
> (2) On April 24, Hooker's first day working in the load since the GPS was plugged back in, the GPS device lost power at 10:19 a.m. During a safety inspection by the duty manager

[19] Tr. 564.

[20] Osterberg testified that he likes zip-ties around the GPS, so that the tech who wants to pull the GPS out has to cut the zip-tie, but that he does not require them. I have to wonder why no one in management ever suggested this to Hooker or, on the other hand, why Hooker did not know this from other techs.

(Osterberg), the unit was found unplugged and in the driver's side door of Hooker's work vehicle. Hooker never told the duty manager about it being unplugged or submitted a repair ticket.

(3) What Hooker stated in their April 27 interview (set out above).

(4) Sharp stated that Hooker never mentioned the GPS device being knocked to the floor board in February, and Sharp never directed him to submit a repair ticket for it. Fleet Manager John Asaro stated that Hooker submitted no such repair ticket.

Vilik's notes (R. Exh. 67 at 3) state that "Mrla called Vilik to discuss the case" but say nothing about their conversation, and she testified that she could not recall anything about it. Vilik's notes say nothing about the phone conversation she had with Campbell on about April 26, and I credit Campbell as follows. Vilik asked him questions about the GPS, and he told her that when he got the vehicle it was brand new and had the new (plug-in) GPS placed in a different position than the old GPS, which was mounted. Because it was not reading properly, Bragg came out and informed him that the GPS was moved and that the plug-in unit was under the driver's seat. Campbell also told her that after, he had a couple of incidents when he bumped it, it became loose, and he just plugged it back in.

When techs have called Osterberg and said their GPS units were loose, he had told them to plug them back in; the only times when they reported that the GPS had fallen out was after the truck had been in for service at the dealership, where they were pulled out.

Osterberg testified that the Friday preceding April 24, when he was scheduled to be duty manager, Brash called, informed him that there was an open asset investigation against Hooker, and asked him to observe Hooker on Sunday and to pull his GPS and make sure that it was reading. I further find that Brash directed Osterberg to observe Hooker to determine if he was misusing time.

On April 24, Osterberg drove to the jobsite at which Hooker was working after locating it through U-Dash, which was receiving signals from Hooker's GPS. He arrived at about 9:25 a.m. and parked 100 yards away so that Hooker would not detect his presence. Osterberg proceeded to observe in great detail everything Hooker did that morning and to record his observations, which he put into a timeline (at Brash's request) and sent to Vilik and Brash on April 25, along with photographs that he took inside Hooker's truck relating to the GPS (R. Exh. 43(a)). Osterberg's timeline indicates that he tried to pull Hooker's GPS at 10:34 a.m. but it showed nothing after 10:19, meaning that it stopped reporting at that time.

Osterberg and Brash gave differing accounts of which one of them initiated a safety observation or inspection of Hooker's truck that afternoon. Under either version, Osterberg went to Hooker's truck and took pictures of the non-reporting GPS unit, which was in the door cubby and not in the vehicle plug (R. Exh. 41 at 11–13; R. Exh. 43(b) at 2, 4–6).

After reading Vilik's report, Brash concluded that as to February 28, Hooker falsely (1) stated that he removed the GPS while moving into the truck and setting the parking brake, but it did not report at all that day, indicating that the GPS was removed before the truck was even started; (2) claimed that he reported or put in a repair ticket into fleet; and (3) claimed that Sharp told him to be in a repair ticket, when Sharp was unaware of any such problem.

Regarding April 17, Brash concluded that Hooker had engaged in misconduct by (1) never telling Osterberg that he had removed the GPS; (2) referring on the repair ticket to the GPS as a "strange device" when he was already aware what it was); (3) claiming that he crossed his right foot over his left leg to set the parking brake when he would have used his left foot; (4) never mentioning anything to Sharp about knocking any device out of place in his truck.

D. Final Written Warning/3-day Suspension for Violation of Tech Expectations—May 10 (GC Exh. 27), for Misusing Time on April 10 (Claiming he Could not Access His Tools) and on April 24 When Observed by the Duty Manager

Dated May 9, the discipline was issued to Hooker the following day. On April 10, Hooker was assigned to work on a PC in Grand Rapids. As reflected in his 9:37 a.m. email to Duty Manager Bragg (R. Exh. 40), he encountered a "roadblock" in that he did not have the right code to open the padlocks on the truck for access to his tools. Hooker testified that the code he had been given (the last four digits of the truck identification number) did not work. Hooker and Sharp offered conflicting accounts of what thereafter occurred, in particular, Bragg's involvement and whether the last four digits were the correct code. However, I need not get into the details of their contradictory testimony inasmuch as neither the discipline itself nor Brash's testimony addressed the matter of the correct code. Rather, Brash testified that he issued the discipline because Hooker was late in dispatch on April 10; after initially calling Bragg for the right code, waited over an hour to tell Bragg that the lock still was not working; and then did not perform basic work on the ped. I do note that Hooker offered inconsistent testimony on whether he had previously experienced problems opening the locks.

As earlier noted, Osterberg observed Hooker on April 24, presumably in connection with the GPS investigation. Based on those observations and Hooker's emails and communications with him, Osterberg testified that he concluded Hooker's misuse of time that morning included: (1) taking his iPad to a job that did not need it (replacing a ped); (2) "fumbling" in and around his truck; (3) not taking the necessary equipment out to the job; (4) saying that he did not have the necessary safety gloves for working near a potential electrical hazard; (5) claiming that there was a roadblock in digging up the ped; and (6) taking 30 minutes' excess time for lunch. During Osterberg's afternoon safety inspection, he reviewed Hooker's work and determined that no work had been done on the job; further, Hooker did not complete all of the necessary work that afternoon.

Brash and Sharp met with Hooker and Campbell on May 10 in Sharp's office. Brash was the only one of the four who testified about this meeting, and I credit his following uncontested testimony. On the April 10 padlock matter, Brash asked why Hooker took an hour after he spoke with the duty manager to tell the duty manager that the code was still not working; Hooker answered that he had no specific reason but had not realized how much time had passed. As to April 24, Brash asked him no

questions about the GPS. He showed Hooker Osterberg's timeline reflecting what Osterberg had observed. Brash asked why, when he needed material from another tech, he sat in the garage for 30 minutes instead of going to the worksite and having the tech meet him there (the site was only 5–10 minutes away). Hooker replied that he did not know or consider it but that he was busy looking at prints and job aids (however, Brash testified that replacing a ped was a straightforward job not requiring the use of prints). Brash told Hooker that if his behavior continued, he might well be terminated. Hooker responded that he was being retaliated against, which Brash denied.

Brash brought up Hooker's availability for the load, stating that it was very difficult to get him to do training. Hooker replied that he had three bosses, and AT&T was only one of them. Brash responded that AT&T facilitated his involvement with the others and that he needed to take care of his job. Brash also said that Hooker had turned in only a few activity logs to date and that he needed to request his time in advance. Hooker replied that many things happened quickly, and he threatened to suspend all stewards and be the only union representative who filed and sat in on grievances.

Prior to this meeting, Hooker generally worked Sunday through Thursday, but he had already selected a Monday through Friday late shift. Brash testified that he had previously told Letts and Hooker that if Hooker worked a late shift, Brash wanted him to report by 2 or 2:30 p.m. At the meeting, Hooker stated that as per Mrla's conversation with Letts last October, anything between 8 a.m. and 4:30 p.m. Monday through Friday belonged to Letts, and he would show up to work at 4:30 p.m. and work until 6:30 p.m. Brash said this was unacceptable.

E. Suspension Pending Discharge—for Violation of Tech Expectations Including Time Management and Violation of Company Policy on September 20, 21, and 23 and October 3–October 10 (GC Exh. 33)

F. Termination—October 14 (GC Exh. 34)

The CBA provides that suspension pending dismissal is required before a termination (see GC Exh. 2 at 19). Brash made the decision to terminate Hooker because he did not believe that Hooker would change his attitude of fighting the Company despite repeated warnings.

Concerning September 20, Hooker's testimony about the chronology of events was confusing and contradictory. He testified that Campbell came out to the jobsite about 4 or 5 hours after he started, but he also testified that in the midmorning, Campbell was present at the jobsite. According to both Sharp and Campbell, Campbell was never there in the morning. Hooker testified that he had problems accessing his VPN to access network blueprints (Translore) and that he attempted to contact Brash and Sharp by email and telephone, possibly also by text message, at different times, starting with a phone call to Sharp about half an hour or an hour after he was dispatched in the morning. However, the only written communication in the record was a text sent by Hooker at 3 p.m., stating that the VPN was still not working (GC Exh. 78). I doubt that Sharp and Brash would have ignored any such emails and phone calls. Moreover, Hooker's descriptions of his communications with Sharp were sketchy and lacking in detail.

Sharp, in contrast, provided a much more detailed account of the day's events, refreshed by his notes of his meeting with Hooker on September 22 (R. Exh. 61), and Campbell corroborated him in part. Accordingly, I credit his testimony and Campbell's more limited testimony as to what occurred and find as follows.

On September 20, Hooker dispatched out at 8:46 a.m. on a POTS job, restoring dial tone service (R. Exh. 28 at 32, Hooker's job ticket). He encountered several roadblocks, one of which was that his iPad was not working correctly and he was unable to connect to the company's VPN to access Translore to determine to which circuit the customer belonged. Hooker went to the jobsite, where he tested the F1 cable pairs and found a problem, and also tested the F2 cable pairs.

Hooker returned to the garage in the afternoon. Sharp asked what he was doing back. Hooker replied that he needed some safety supplies and a water cooler and that his VPN was not working, and Sharp told him that he should have called or texted him while in the field and then contacted tech support, rather than returning to the garage. Hooker returned to the jobsite but called Sharp at 1:18 p.m. and stated that he needed a hut key to access central office (OE) equipment. Sharp told him to come back to the garage and get the key from Campbell. Hooker came back to the garage and stayed for about 40 minutes. Sharp saw him outside talking on the phone and asked to whom he was talking. Hooker replied Letts. Sharp asked what he was still doing there, and he said he had taken his lunch break and talked to Campbell about the job.

Hooker and Campbell went to the jobsite. Hooker explained what he had done and said that he had isolated the F1 cable pair and changed it but still had no dial tone. They worked on it together for a short period. When the end of the shift approached, Hooker called Sharp at about 3:30 p.m. and said that he could not work overtime. Sharp directed Campbell to take over the job, and Hooker returned to the garage. Campbell concluded that the pair that had been assigned was not correct, and he changed the pair. There was still no dial tone, and he realized that the trouble was on the OE, managed by the central office. Because of the time, no techs were at the central office, and Campbell had to wait for the roving tech to come to the site to make the switch in equipment. As a result, Campbell had to work overtime to finish the job.

As to September 21, Hooker offered no testimony about the day's events, the General Counsel relying on documentary evidence (GC Exhs. 78–80), and I credit Sharp's unrebutted account of what took place beyond those documents.

That morning, Hooker and Sharp had various communications, by email, text, or phone. At 8:21, Hooker texted Sharp that his VPN was again switching itself off (GC Exh. 78). At 8:52, he sent Sharp another text, stating that his VPN did connect but he still could not get into the LTE app (ibid). He also brought up another roadblock—that the automobile charger for his iPad was missing. He explained that he had enough battery life left to pick up a job but needed it to be charged.

Hooker dispatched out at 8:53 (R. Exh. 28 at 33) on a POTS job. At 9:35, while still at the garage, Hooker texted Sharp that severe weather was hampering his morning start (GC Exh. 79).

He also stated that he had been unsuccessful finding a charging cord for his iPad, that he had not heard back from Sharp, and that he would continue to look for one in the garage until it was safe to leave. No other techs experienced a delay in leaving the garage due to weather conditions that morning.

At 10:11 a.m., Hooker sent Sharp another email (GC Exh. 80), stating that he had found his charger shoved down between the metal box and power inventor because someone else must have shoved it there when using his truck. He also said that he was reporting a work injury that he had received while retrieving the cord. Hooker further said that as to Sharp's instruction to "go to work," he could not get on the network yet because the last lightning strike was .4 miles from him within the last 30 minutes.

Sharp called Hooker and asked about his injury. Hooker said that he had hurt his hand, and Sharp asked if he needed to go to Concentra, the Company's medical center. Hooker said no, that it was just a scrape but that he would monitor it.

Hooker left the garage at 10:13 a.m. but returned at 2:45 p.m. He called Sharp and stated that his hand was getting worse, and he thought it needed medical attention. Sharp told him to go to Concentra. Thereafter, Sharp reassigned the job to Dan Quick, who finished it in 45 minutes to an hour by replacing a defective F1 pair.

September 22 and October 5 Interviews

On September 22, Sharp interviewed Hooker about his conduct on September 20 and 21 because he believed that Hooker had misused time on both days. Campbell and Manager Dean Miller were also present. Hooker did not testify about what was said at the interview; Sharp relied primarily on his notes (R. Exh. 62, an email to Brash), which were not necessarily inconsistent with Campbell's testimony. I find the following.

As to September 20, Campbell stated it was easy to assume (as Hooker had) that the F1 was bad rather than the OE because problems with OE were less common. Campbell opined at trial that Hooker had isolated the trouble fairly well aside from the OE issue, but there is no evidence that he said this at the meeting.

Regarding September 21, Hooker explained the work that he had done at the jobsite, including testing the F2. Sharp testified that this made no sense because Hooker said the trouble was in the F1.

Following the interview, Sharp sent Brash a chronology of events for September 20 and 21 (R. Exh. 61).

On October 5, at Brash's direction, Sharp had a second interview with Hooker concerning Hooker's activities on September 21 (see R. Exh. 63, Sharp's notes emailed to Brash that day). Campbell and Miller were again also present. Only Sharp testified about the meeting, and he once more relied on his notes for refreshment. He concluded that Hooker provided no new information. Brash concurred with Sharp that Hooker had misused time on both days, including misrepresenting the work he performed on September 20.

The September 23 and October 3 conduct involved paid training hours for which Hooker put in. Brash was the only witness who offered testimony on this, and I credit his account. All technicians have required monthly trainings or courses that they take on the mLearning app on their iPads, and Hooker had required trainings due for August and September on three subjects (see R. Exh. 57). As per mLearning, the total estimated course length for all three was 1-1/2 hours. As of the week of September 19, Hooker had not completed them. Sharp provided him paid time on September 23 to do so, and Hooker reported 2.75 hours for training on his timecard. He completed no training that day.

On October 3, Sharp provided Hooker further training time. Hooker reported 3 hours for training but completed no courses that day. However, the following day, he did complete them, as well as two other courses, when he was on MXUU (unpaid time) (see R. Exh. 58).

Brash conceded that if a tech leaves the mLearning application open on his/her iPad, accrued time continues to be recorded even if the tech is not actually taking the training. If the tech goes into the app on more than one day, time accumulates.

Brash testified that Hooker had billed the Company for 5.75 hours of training whereas they should have taken less than 2 hours. He rejected Hooker's explanation that VPN issues and interruptions by coworkers had delayed him.

Confidentiality Policy

The Company's confidentiality policy in effect since at least March 22 (GC Exh. 35, effective that date), entitled "Reporting Privacy Related Incidents," applies to all business activities and employees at AT&T. The purpose is described as preserving employees' and customers' private data. The Definitions section that follows lists (1) CPNI, customer proprietary network information – about existing services and service usage); (2) PI/PP, personally identifiable information – information that directly identifies or reasonable can be used to figure identity of a customer or user; and (3) SPI, sensitive personal information – information that identifies or can link to the customer and lead to identify theft. After that is the policy that employees report improper use or disclosure of customer or employee information, giving as examples fraudulent, intentional, or accidental disclosure, and "other customer or employee privacy-related issues or incidents that may negatively impact employees or customers or result in negative financial and/or reputational consequences to AT&T."

AT&T Vice President Gary Smith testified that the policy is designed to be in compliance with Federal and state laws and that "employee information" means CPNI, PI/PP, and SPI, as set out in the Definitions section, and no other information. He pointed out that the rule does not apply to self-disclosure.

Analysis and Conclusions

Hooker's Placement in the Load

An employer violates Section 8(a)(5) and (1) of the Act when it unilaterally makes substantial changes on subjects of mandatory bargaining; to wit, employees' wages, hours, or other terms and conditions of employment, without first affording notice and a meaningful opportunity to bargain to the union representing the employees. *NLRB v. Katz*, 369 U.S. 736 (1962); *United Cerebral Palsy of New York City*, 347 NLRB 603, 608 (2006).

A specific working condition or benefit that is a mandatory subject of bargaining does not need to derive from the express terms of the governing CBA; rather, it may be the result of a longstanding practice or custom that employees can reasonably expect to continue or recur on a regular and consistent basis. See

Philadelphia Coca-Cola Bottling Co., 340 NLRB 349, 353–354 (2003); *Eugene Iovine, Inc.*, 328 NLRB 294, 297 (1999); *Central Illinois Public Service Co.*, 139 NLRB 1407, 1415 (1962), enfd. 324 F.2d 916 (7th Cir. 1963). If so, it cannot be changed without affording the collective-bargaining representative notice and an opportunity to bargain, absent a clear and unequivocal waiver of this right. *Sunoco, Inc.,* 349 NLRB 240, 244 (2007), citing, inter alia, *Granite City Steel Co.*, 167 NLRB 310, 315 (1967); *DMI Distribution of Delaware*, 334 NLRB 409, 411 (2001). This holds true even if the practice is denominated as a "privilege" voluntarily instituted or bestowed by the employer. *Central Illinois Public Service Co.*, above at 1415.

As the Board stated in *Axelson, Inc.*, 234 NLRB 414, 415 (1978), enfd. 599 F.2d 91 (5th Cir. 1979), employer benefits conferred on an employee who performs union functions "inure to the benefit of all of the members of the bargaining unit by contributing to more effective collective-bargaining representation and thus 'vitally affect' the relationship between an employer and employee." In accordance with this principle, the remuneration of union representatives for time spent administering a CBA, including grievance processing, is a mandatory subject of bargaining. *BASF Wyandotte Corp.*, 276 NLRB 1576 (1985); *BASF Wyandotte Corp.*, 274 NLRB 978 (1985), enfd. 798 F.2d 849 (5th Cir. 1986); *American Ship Building Co.*, 226 NLRB 788 (1976), affd. sub nom., 574 F.2d 636 (D.C. Cir. 1978) (unpublished opinion), cert. denied 439 U.S. 860 (1978). Therefore, an employer cannot unilaterally change the wages, hours, or working conditions of employee union representatives or stewards that have been established by practice. *American Ship Building Co*, above.

Here, there is no question that the past practice going back at least as far as late 2003 was that the AA was on full-time union status and not in the load; and prior to 2015, Hooker was in that situation at all times for approximately 5 years. The Respondent admittedly made the decision to put him back in the load without any consultation with the Union and announced it as a fait accompli in October 2015. Far from waiving any right to bargain, the Union repeatedly protested the Company's decision both before and after it was effectuated. That the Respondent might have been willing to engage in bargaining over the details of Hooker's return to the load does not change the fundamental fact that the key change was removing him from full-time union status. Accordingly, by unilaterally requiring Hooker to return to the load on December 13, 2015, after 5 years of being full-time union, the Respondent violated Section 8(a)(5) and (1).

Turning to whether the Respondent also violated Section 8(a)(3) by placing him back in the load, Hooker had not performed tech work for 5 years. The Respondent has not contended that this was a disciplinary action. Therefore, the four-factor test set out in *Atlantic Steel Co.*, 245 NLRB 814, 816 (1979), is not applicable. Rather, the issue is employer motivation that is analyzed under *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

Under *Wright Line*, the General Counsel must make a prima facie showing sufficient evidence to support an inference that the employee's protected conduct motivated an employer's adverse action. The General Counsel must show, either by direct or circumstantial evidence, that the employee engaged in protected conduct, the employer knew or suspected the employee engaged in such conduct, the employer harbored animus toward the protected conduct (which may be inferred from all of the circumstances), and the employer took action because of this animus.

If the General Counsel establishes a prima facie case of discriminatory conduct, it meets its initial burden to persuade, by a preponderance of the evidence, that protected activity was a motivating factor in the employer's action. The burden of persuasion then shifts to the employer to show that it would have taken the same adverse action even in absence of such activity. *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399−403 (1983); *Kamtech, Inc. v. NLRB*, 314 F.3d 800, 811 (6th Cir. 2002); *Manno Electric*, *Inc.,* 321 NLRB 278, 280 fn. 12 (1996), enfd. 127 F.3d 34 (5th Cir. 1997) (per curiam). To meet this burden, "[A]n employer cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected conduct." *Serrano Painting,* 332 NLRB 1363, 1366 (2000), citing *Roure Bertrand Dupont, Inc.*, 271 NLRB 443 (1984).

If the employer's proffered defenses are found pretextual, i.e., the reasons given for the employer's actions are either false or were not, in fact, relied on, the employer fails by definition to show that it would have taken the same action for those reasons, and there is no need to perform the second part of the *Wright Line* analysis. On the other hand, further analysis is required if the defense is one of "dual motivation," that is, the employer defends that, even if an invalid reason might have played some part in the employer's motivation, the employer would have taken the same action against the employee for permissible reasons. *Palace Sports & Entertainment, Inc. v. NLRB*, 411 F.3d 212, 223 (D.C. Cir. 2005).

Hooker's activities on behalf of the Union, the Employer's knowledge thereof, and the action of putting him back in the load, are undisputed. The only question is whether the Respondent's motivation was retaliation against him for his union activities.

Undoubtedly, company management found Hooker difficult and abrasive. However, during the course of Hooker's performing his union duties prior to December 2015, the Company never averred that his conduct was so egregious that it was removed from the Act's protection. Indeed, employees who engage in demonstrative, vulgar, and defamatory displays when they are engaged in protected activity ordinarily will not forfeit the Act's protection. See, e.g., *Leasco, Inc.*, 289 NLRB 549, 552 (1988); *Consumers Power Co.*, 282 NLRB 130, 132 (1986). Contrast, situations where the employee commits violence or advocates insubordination or a work slowdown. See, e.g., *Hillside Ave. Pharmacy, Inc.*, 265 NLRB 1613, 1622 (1982); *Richmond Dist. Neighborhood Center*, 361 NLRB 833, 833–835 (2014); *DaimlerChrysler Corp.*, 344 NLRB 1324, 1325 (2005).

The timing of Mrla's placing Hooker in the workload raises a serious question about the Company's motivation. Mrla first questioned Hooker in January 2014 and Letts in March 2014 why Hooker was not in the workload. At one point, Mrla testified that he knew in 2014 that Hooker was not in the work schedule or on the vacation schedule, yet not until October 5, 2015—

over a year-and-a-half later—did Mrla again bring up the subject of placing Hooker in the workload to either Letts or Hooker. Thus, only 1 day before a scheduled NLRB hearing on charges that Hooker had filed against the Company, Mrla called Hooker and stated that he had to get Hooker a truck and tools and back in the load. Both Mrla and Brash testified that in 2015 they did not need Hooker back in the load and would have placed him in the load regardless of any workload considerations. Mrla therefore offered no legitimate justification for his sudden resurrection of the subject after its long dormancy.

Additionally, both Mrla and Brash testified that Mrla considered Hooker to be in a steward position because he was appointed and not elected, and that "consistency" with the treatment of other stewards in Mrla's organization motivated their decision to put him back in the load. However, Mrla announced the decision to the Union and Hooker before he polled his area managers to determine whether they had any nonelected union officials on full-time union status. The only logical conclusion is that at the time Mrla made and announced the decision, he did not know as a fact that Hooker was the only union representative in that status.

Significantly, certain statements by Mrla demonstrated hostility toward Hooker because of his conduct as a union official. On August 10, 2015, Mrla called him regarding the Flores grievance and started the conversation with, "What the hell is going on with all this crap I'm hearing about your objections to—to making your members safer by making sure they're not driving with cell phones?" Moreover, Mrla stated at a management-union meeting on October 23, 2015, that he considered that Hooker had filed a (voluminous) August 13 RFI in connection with the Flores grievance to harass management. Granted, the RFI was exceedingly lengthy, and the Respondent certainly had the right, which it exercised, to object to production on relevance and other grounds (this holds true of all RFIs at issue in this case); however, any retaliation against Hooker in his terms and conditions of employment was not a proper vehicle to express opposition to the way he was conducting union business. Furthermore, at the February 18 management-union meeting, Mrla and Brash averred that Hooker's noncompliance in turning in activity logs amounted to insubordination, and the meeting ended with Mrla accusing Letts of condoning Hooker's misconduct and, in essence, walking out.

Based on the above, I find both express and implied animus. In particular, the timing of Mrla's call to Hooker on October 5, 2015 on the subject—the first since January 2014, and only a day before the NLRB hearing—raises a strong inference of unlawful motive. See *State Plaza Hotel*, 347 NLRB 755, 756 (2006); *La Gloria Oil & Gas Co*., 337 NLRB 1120 (2002), enfd. 71 Fed.Appx. 441 (5th Cir. 2003).

I therefore conclude that the General Counsel has met all four elements in establishing a prima facie case of unlawful action. I now turn to whether the Respondent has rebutted this prima facie showing. Again, the Respondent's justification for putting Hooker back in the load was not that it needed him for workload considerations but that Mrla wanted "consistency" in his organization as far as the treatment of stewards. I find this argument flimsy in light of (1) no evidence that any stewards or union members ever complained to management that Hooker was not in the load, (2) the practice was long established that the AA was on full-time union status, and Hooker had enjoyed such status for approximately 5 years; (3) business considerations were essentially irrelevant, and the Respondent provided no cogent legitimate justification for the timing of its conduct. Accordingly, I conclude that the Respondent has not met its burden of persuasion of showing that it would have placed Hooker back in the load in December 2015 had it not been for his engagement in union activity as the Local's AA. Therefore, the Respondent also violated Section 8(a)(3) and (1) by such conduct.

Requiring Hooker to Complete Union Activity Logs

Prior to Hooker's returning to the load in December 2015, Brash created an activity log form for Hooker to fill out to document his MXUP time after the fact. Brash attempted to portray this as an accommodation to Hooker, inasmuch as all other stewards had to give advanced notice before they took such time, and the Respondent's brief reiterates this argument (Br. at 131, et. seq.). Clearly, Hooker resisted complying with the requirement. However, absent the Respondent's unlawful removal of Hooker from full-time union status and placing him in the load, the matter of activity logs would never have materialized. That aside, none of the elected union officials or Hooker prior to December 2015 had to do anything other than enter their MXUP and MXUU, and code the former, in the electronic recordkeeping program. If the Respondent did have issues concerning whether Hooker was properly claiming MXUP as a full-time union representative, it had the option of disputing his claim for such and having the Union grieve any denials of such time if it so chose.

The Respondent argues (Br. 135–136) that the activity log was not a unilateral change "but a contractual prerogative." However, the cases cited involved modification or more consistent enforcement of existing policies, not imposition of new reporting requirements on an AA where none previously existed. Nor do I conclude, as the Respondent contends (Br. 137 – 138), that it was not required to bargain over their imposition because they were "so minimal that they lack[ed] an impact." Rather, they must be viewed in conjunction with the Respondent's unilateral change in compelling Hooker to go back in the load—a change that Hooker and the Union clearly viewed as seriously detrimental and retaliatory.

Accordingly, for the same reasons that I stated for finding Hooker's return to the load a violation of Section 8(a)(3), (5), and (1), the Respondent violated the Act by imposing on Hooker the requirement that he complete activity logs for his union activities. The August 12 written verbal warning flowed directly from the activity log requirement and was therefore similarly unlawful.

Adverse Actions Pertaining to Hooker's Performance

I will treat the various adverse actions in the aggregate since each one cannot be considered separately and in a vacuum. The record demonstrates, and I conclude, that management long considered Hooker to be difficult and overbearing in his conduct of union business, and that from the outset of Hooker's return to the load, (1) management believed that he misused union time and was suspicious of his willingness to perform tech work; (2) Hooker suspected that management was targeting him and

looking to find faults in his performance; and (3) Hooker was clearly peeved at being placed back in the load and did not act in a manner that diffused management's negative perceptions. The result of the confluence of these factors was incessant and escalating conflict.

Again, the appropriate framework for analysis is *Wright Line*, since employer motivation is key. I previously discussed why the elements of union activity and employer knowledge have been established. As to actions, the Respondent imposed various disciplines on Hooker, ultimately resulting in his termination. The animus that I found was behind his being put back in the load has to be considered to have continued when he returned to work rather than having been magically extinguished. This is especially so when, after Hooker returned to the load, he continued to have friction with management over the way he conducted union business. Accordingly, the General Counsel has established a prima facie case that the disciplines were unlawfully motivated.

The remaining issue is whether the Respondent has rebutted that prima facie case. The answer is no. First and foremost, an employer may not discipline an employee for conduct that would not have occurred but for the employer's unfair labor practice. This is based on the principle that an employer should not be allowed to benefit from its own unlawful actions. See *E.I. Dupont De Nemours & Co.*, 362 NLRB No. 98 (2015) (employer prohibited from disciplining employee based on statements made during investigative interviews where employee was unlawfully denied union representation); *Preferred Transportation, Inc.*, 339 NLRB 1, 3 (2003), in which the Board stated: "[M]isconduct provoked by an employer's unfair labor practice is not grounds for discharge. The common law principle is that employers should not be permitted to take advantage of their unlawful actions, even if employees may have engaged in conduct that—in other circumstances—might justify discipline (internal citation omitted)."

None of Hooker's disciplines would have occurred had the Respondent not placed Hooker back in the load in violation of Section 8(a)(3) and (5), and to allow the Respondent to benefit from the direct consequence of its initial commission of unfair labor practices would be an untenable result. Significantly, the accusations against Hooker related to how he performed his work as a tech and not to any allegations of gross misconduct such as violence against others, destruction of company property, malicious maligning of the Company to the public, or the like. Accordingly, I find that any derelictions in his conduct were not egregious to the point where they severed the causal connection between the Respondent's disciplines and its original unlawful act.

Additionally, certain conduct on management's part after Hooker returned to the load gives rise to an inference of continued animus. Thus, Brash's handling of the GPS investigation reflected a desire to find cause to discipline Hooker rather than have impartial fact-finding: Brash did not furnish to Vilik a document from the GPS contractor that might have lent credence to Hooker's version of the problems that he had with his GPS, and Brash used the GPS investigation as a means of having Osterberg spend a good part of a day observing Hooker to find fault with his conduct wholly unrelated to the GPS matter. Moreover, trained investigator Vilik thoroughly documented her investigation of Hooker's nonreporting GPS but offered no explanation for her failure to include her conversation with Cardesian, who offered evidence that might have supported Hooker's version of his problems with the GPS. Finally, Sharp did not take into account Cardesian's statement on September 22 that Hooker's mistake in diagnosing a problem on September 20 was an easy one for a tech to make.

The Respondent cites (R. Br. 161) Section 10(c) of the Act and decisions thereunder, for the proposition that Hooker was terminated for cause and therefore barred from reinstatement and backpay; in particular, the Respondent relies on *Anheuser-Busch, Inc.*, 351 NLRB 644, 644 (2007) as holding that reinstatement is barred by Section 10(c) where an employee engages in misconduct, even if that misconduct is connected to a unilateral change. However, the employees in that case were disciplined as a result of unilaterally-installed security cameras detecting their misconduct; the unilateral change had discovered but not caused or contributed to any misconduct, contrary to the situation here. Moreover, I have found that the Respondent's disciplines of Hooker were motivated by animus for his union activities. This case therefore squarely fits within the exception to management's right to discharge employees enunciated in *Anheuser-Busch,* above at 644: an employer "may not discharge when the real motivating purpose is to do that which [the Act] forbids. . . ."

I therefore conclude that the Respondent violated Section 8(a)(3) and (1) of the Act by imposing on Hooker the various disciplines, including discharge, which stemmed from its unlawfully placing him in the load.

Failure to furnish Relevant Information

An employer is obliged to supply information requested by a collective-bargaining representative that is relevant and necessary to the latter's performance of its responsibilities to the employees it represents. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956). To trigger this obligation, the requested information need only be potentially relevant to the issues for which it is sought. *Pennsylvania Power & Light Co.*, 301 NLRB 1104, 1104–1105 (1991); *Conrock Co.*, 263 NLRB 1293, 1294 (1982). Relevance is determined on a case-by-case basis. *Columbus Products Company*, 259 NLRB 220, 220 fn. 1 (1981).

Requests for information concerning the terms and conditions of bargaining-unit employees are presumptively relevant. *Postal Service*, 359 NLRB 56, 56 (2012); *LBT, Inc.*, 339 NLRB 504, 505 (2003); *Uniontown County Market*, 326 NLRB 1069, 1071 (1998). An employer must furnish presumptively relevant information on request unless it establishes legitimate affirmative defenses to production. *Detroit Newspaper Agency*, 317 NLRB 1071, 1071 (1995).

Because a bargaining representative's responsibilities include the administration of the collective-bargaining agreement and the processing and evaluating of grievances thereunder, an employer is obliged to provide information that is requested for the processing of grievances or potential grievances. *Acme Industrial*, supra at 436; *Postal Service*, 337 NLRB 820, 822 (2002); *Beth Abraham Health Services*, 332 NLRB 1234, 1234 (2000).

When information is presumptively relevant, the employer has the burden of rebutting the presumption by showing that the information is either not relevant or cannot, in good faith, be supplied. *Coca Cola Bottling Co.*, 311 NLRB 424, 425 (1993).

If an employer effectively rebuts the presumption of relevance or otherwise demonstrates a valid reason for not providing the information, the employer is excused from providing the information or from providing it in the form requested. *United Parcel Service of America, Inc.*, 362 NLRB No. 22, slip op. at 3 (2015), citing *Coca Cola Bottling*, above.

RFI—Hooker's Placement in the Load and Having to Submit Union Activity Logs

Items 2–6 of Hooker's December 23, 2015 RFI requested over 60 individual requests for information going back to January 1, 2010 for techs in the Grand Rapids FAA. Brash initially responded on February 5, 2016, along with sending 39 email attachments. On specific items, he responded:

Item 2—work group schedules—Brash objected on relevance but provided the work schedules for 2015 on. At a grievance meeting in late February or early March, Brash explained that the workloads were completely different from last year, let alone 5 years earlier.

Item 3—vacation schedules—Brash objected on relevance but later provided the 2015 and 2016 annual vacation reports.

Item 4—each day's starting workload and ending workload not completed that day or carried over to the next day—Brash responded that no such documents were maintained but responsive records in the Company's possession would be provided.

Item 5—dates during which employees were "loaned" into or from other organizations within the Company—Brash responded that the Company did not maintain or posses—personnel who had received training—Brash objected on relevance but provided such information for the preceding 6 months.

Concerning items 4 and 5, I conclude that the Respondent satisfied its obligation to timely disclose that no such requested information existed. See *Graymont PA, Inc.*, 364 NLRB No. 37 (2016), citing *Endo Painting Service, Inc.*, 360 NLRB 485, 486 (2014). In this regard, Hooker requested a great deal of information, and the Respondent's response 5 weeks later in this context was not unduly dilatory. Contrast this with the 13-month delay in *Endo Painting* and the 6-month delay in *Graymont*, both found unlawful. The Union did not thereafter ask the Respondent for further information or whether any alternative sources existed.

Regarding items 2, 3, and 6, the Respondent only partially complied, providing no documents prior to 2015. Here, I note Hooker's testimony that although these RFIs were based on the Company's assertions that it needed him back in the load because of heavy workload needs, no one in management actually said this to him prior to his making the RFI. However, the Respondent did not, in its objections to the RFIs, clearly state that the documents were irrelevant because workload needs played no part in its decision to place him back in the load in 2015. Had the Company done so, then its relevance objection to those documents would have been justified. Because management did not, the Respondent did not rebut the presumptive relevance of documents concerning work levels between 2010 and 2015. In this regard, Brash's conclusionary statement at the grievance meeting that workloads were completely different from year to year did not answer the question of whether the workload changes between 2010 and 2015 provided a basis for Hooker being placed back in the load in 2015.

Based on Hooker's testimony regarding the purpose for the RFIs, I do see a relevance issue as to item 6. However, it was up to the Respondent to explain why the information was irrelevant, and by furnishing 6 months of training records, the Respondent tacitly conceded the relevance of the subject matter (although not for the period sought).

Turning to item 7, relating to the union activity logs, part 1 requested information concerning all designated CWA representatives in Mrla's organization, including whether they were appointed or elected, and whether they were required to fill out "special timesheets"; and part 2 requested information regarding the "special timesheet": the genesis of the "special timesheet," the company policy that mandated it, how it would be stored, the length of retention, and who would have access to it.

Hooker testified that this was for the purpose of challenging the Company's position that he was the only full-time, nonelected representative in Mrla's organization and had the most MXUP time in Mrla's territory, and to confirm that he was the only one required to fill out a special time sheet.

Brash responded on February 5 that the Union, not the Company, possessed the information in Part 1. As to part 2, he replied that the Company did not maintain documents known as "special timesheets." At the grievance meeting in February or early March, Brash told Hooker that he was the only union representative asked to fill out the activity log.

As to part 1, Mrla represented to the Union that Hooker was the only full-time union nonelected union representative in his organization and advanced that reason for putting him in the load. At meetings with the Union, he cited the Schall Report as corroboration. He allowed union representatives to look at the document but not give them a copy, as they requested, because it might have been "proprietary." Neither at those meetings nor at trial did Mrla provide any basis for such a conclusion. Such information was clearly relevant to the grievance and not in any way burdensome. That the union might have had alternative means to obtain it, i.e., from sister locals, is unavailing as a defense. *River Oak Center for Children, Inc.*, 345 NLRB 1335, 1335–1336 (2005), citing *Hospital Care Center,* 307 NLRB 1131, 1135 (1992), enf. denied on other grounds 35 F.3d 828 (3d Cir. 1994).

Therefore, the Respondent was obliged to furnish the Schall Report in response to part 1. Regarding part 2, the communications between the parties established that Brash originated the activity log specifically for Hooker, so that its genesis was already known to Hooker and the Union. On the other hand, Hooker had a legitimate interest in knowing how the timesheet would be stored, length of retention, and who would have access to it. The Respondent did not provide any of this information.

Accordingly, I conclude that the Respondent violated Section 8(a)(5) and (1) by not providing all of the documents requested in items 2, 3, 6, and 7.

RFI—Truck Swap Grievance

Hooker's April 7 RFI request stemmed from his grievance over the truck swap, which contended that the Company violated the mutual respect provision (art. 4) in the CBA. Hooker testified that he believed Sharp was retaliating against the Union by sowing dissent among the crew, particularly within the Union inasmuch as Campbell was Hooker's chief steward.

Hooker requested, (1) a list of vehicles provided to Campbell, Hooker, and Smith since January1, 2009, and the reason for each change of vehicle for each employee; (2) a list of all factors considered for the truck swap on February 24; (3) the estimated date for completion of the removal of air equipment from Hooker's truck and placement of same in Campbell's truck and the cost estimate; and (4) in reference to Sharp's purported statement at the March 8 meeting that Campbell was the "most qualified employee in the district," Hooker requested a list of all employees in the district and their qualifications. As I stated, I credit Sharp that he said Campbell was the most qualified employee in his crew. Therefore, the Company was not required to provide such information district-wide.

Brash responded the next day, questioning the relevance of the request in view of the Company's discretion to assign tools and equipment in accordance with business needs, and the relevance of documents going back more than 6 months. On April 25, Brash answered the specific requests:

> Item 1—the Company did not maintain the information or have it reasonably accessible.
>
> Item 2—the Company had already provided those reasons to the Union (at the first-step grievance meeting), the Company had discretion to assign work tools, and all were assigned work trucks based on their qualifications.
>
> Item 3—the refitting of Campbell's truck had been completed, and the truck had been in service since April 20. The cost had already been provided to the Union.
>
> Item 4—Brash provided a list of all technicians in Sharp's crew and the call-out sheet for the week of April 22–29, which checked off the types of work for which they were qualified.

On May 26, Hooker filed a second RFI. He asked as to item 1 what obstacles prevented the Company from providing such information, including a description of how the information was collected, maintained, stored, and/or accessed. The burden then shifted back to the Company to justify its position that the information was not maintained or reasonably accessible. As to item 2, Hooker requested a wide range of information regarding the business justifications for the truck swap, and the conversation of other vehicles. On item 3, Hooker requested details regarding the method and manner by which the information was provided to the Union. Concerning item 4, Hooker requested the dates Campbell, Hooker, and Smith achieved the qualifications listed on the call-out list, a comprehensive list of the criteria used to assign a "qualified" designation for employees in the district; and any and all company material describing how to assign qualifications to employees within the work-group. The Company never responded to his second RFI.

Although the RFIs were based on Hooker's suspicion as to the motive behind the truck swap, *Southern Nevada Builders Assn.*, 274 NLRB 350, 351 (1985), cited by the Respondent (Br. 170), is inapposite because it held that a union "must offer more than mere 'suspicion or surmise' for it to be entitled to the information" it requests concerning nonbargaining unit employees.

As to the first RFI, the Respondent timely answered that it did not maintain or have readily available the requested information or had already provided the information, and I find no violation of Section 8(a)(5).

However, the Respondent failed to respond in any way to the Union's second RFI, which asked for further information supporting the Company's claim that certain documents were not maintained or readily available and its claim that certain information had already been provided to the Union. The Respondent could easily have elaborated on these contentions. Nor did the Respondent respond to the request for additional information regarding item 2. The Respondent might well have been justified in timely objecting to furnishing certain information on the grounds of relevance, burdensomeness, or other legitimate grounds, but it did not enjoy the prerogative of simply ignoring the request. See *Columbia University*, 298 NLRB 941, 945 (1990), citing *Ellsworth Sheet Metal*, 232 NLRB 109, 109 (1977). Therefore, the Respondent violated Section 8(a)(5) and (1) by not furnishing such information (other than Hooker's renewed request for information pertaining to the qualifications of employees district-wide, which was overly broad).

Respondent's Confidentiality Policy

The policy of Reporting Privacy Related Incidents applies to all business activities and employees at AT&T. The rule mentions nothing explicitly about employees' compensation or benefits. AT&T Vice President Smith testified that the policy is designed to be in compliance with Federal and state laws and that "employee information" means customer proprietary network information (CPNI), personal information/identifiable information (PI/PII), and sensitive personal information (SPI), and no other information. The rule does not, however, contain that clarification.

In *The Boeing Co.*, 365 NLRB No. 154 (2017), the Board overturned *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), and set out a new test to evaluating rules that are not explicitly unlawful: balancing (1) the rule's potential impact on protected concerted activity; and (2) the employer's legitimate business justifications for maintaining the rule. As the Board explained, if the justifications for the rule outweigh the potential impact on employees' rights, the rule is lawful; conversely, if the potential impact on employees' rights outweighs the justifications for the rule, it is unlawful. The Board set out three categories of employer rules:

> Category 1—(1) the rule, when reasonably interpreted does not prohibit or interfere with the exercise of NLRA rights, such as rules governing the harmonious interactions and relationships or requiring employees to abide by basic standards of civility; or (2) the rule's potential adverse impact on protect rights is outweighed by justifications associated with the rule.

The Board in *Boeing* found that the Company's numerous justifications for its noncamera rule, among which were limiting the

risk that employees' personally identifiable information would be released, and complying with federally mandated requirements, outweighed any potential adverse ("comparatively slight") impact on protected rights. Ibid at slip op. 4–5. Accordingly, the Board concluded that the rule was a lawful "Category 1" rule.

> Category 2—rules requiring individualized scrutiny on whether they would prohibit or interfere with NLRA rights and, if so, whether any adverse impact on protected conduct is outweighed by legitimate justifications.
>
> Category 3—rules that are unlawful to maintain because they would expressly prohibit or limit NLRA-protected conduct, and the adverse impact on NLRA rights is not outweighed by justifications associated with the rule.

I agree with the parties (GC Br. at 68, et. seq.; R. Br. at 178, et seq.) that the rule is facially neutral and that its justifications must be weighed against the degree to which it negatively impacts employees' protected activity, placing it in category 2. The Respondent contends that it has a compelling interest in protecting the privacy of customer and employee information, and that the rule has an "insignificant impact" on Section 7 rights (R. Br. at 181). The General Counsel, on the other hand, argues that the rule has a "severe" impact on those rights, chilling employees from discussing among themselves, or sharing with others (including union representatives), information relating to their wages, hours, or working conditions (GC Br. at 71).

Because the Definitions section specifies the three types of information to which the disclosure requirement pertains (CPNI, PI/PII, SPI), the inference is weakened that employees would construe the rule as applying to their wages and other terms and conditions of employment. The Respondent certainly has a strong and legitimate interest in protecting such information from disclosure; even a legal obligation to do so. However, the last example that is given is "other customer or employee privacy-related issues or incidents that may negatively impact employees or customers or result in negative financial and/or reputational consequences to AT&T." This ambiguous and open-ended description tends to undermine a reasonable reading of the rule as applying only to CPNI, PI/PII, and SPI and might well lead employees to believe that sharing each other's wages and benefits might run afoul of the policy and subject them to discipline for engaging in protected activity. The exception for self-disclosure does not cure this defect because the wages and benefits of a single employee cannot be viewed in isolation or properly evaluated in a vacuum apart from his or her coworkers. Indeed, collective activity by definition is conduct by employees in the plural.

Accordingly, I conclude that the potentially adverse effects on protected activity outweigh the rule's justifications. I note that the addition of a simple clarification could cure the policy's defect.

I therefore conclude that the confidentiality policy violates Section 8(a)(1).

Conclusions of Law

1. The Respondents are employers engaged in commerce 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.

3. By unilaterally placing Hooker in the load and requiring him to fill out union activity logs, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(a)(3), (5), and (1) of the Act.

4. By issuing disciplines to Hooker, culminating in his discharge, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(a)(3) and (1) of the Act.

5. By not providing the Union with relevant and necessary information concerning (A) Hooker's grievance over his placement in the load and the activity log requirement, and (B) the "truck swap," the Respondents have engaged in an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(a)(5) and (1) of the Act.

6. By maintaining a confidentiality policy that is unlawful under the test that the Board enunciated in *The Boeing Co.*, supra, the Respondent has engaged in an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(a)(1) of the Act.

Remedy

Because I have found that the Respondents have engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondents having discriminatorily terminated Brian Hooker, must make him whole for any losses of earnings and other benefits suffered as a result of his discharge. A make-whole remedy is appropriate because a remedy should "restore as nearly as possible the situation that would have prevailed but for the unfair labor practices." *E. I. Dupont*, 362 NLRB 843, 849 (2015), quoting *State Distributing Co.*, 282 NLRB 1048, 1048 (1987).

Specifically, the Respondents shall make Brian Hooker whole for any losses, earnings, and other benefits that he suffered as a result of his unlawful discharge. The make-whole remedy shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with *King Soopers, Inc.,* 364 NLRB No. 93 (2016), enfd. in pertinent part 859 F.3d 23 (D.C. Cir. 2017), the Respondents shall compensate Brian Hooker for search-for-work and interim employment expenses regardless of whether those expenses exceed his interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center,* supra. In accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014), the Respondents shall compensate Brian Hooker for the adverse tax consequences, if any, of receiving a lump sum backpay award, and, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016), the Respondents shall, within 21 days of the date the amount of backpay is fixed either by agreement or Board order,

file with the Regional Director for Region 7 a report allocating backpay to the appropriate calendar year for Brian Hooker. The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration at the appropriate time and in the appropriate manner.

The Respondents having discriminatorily discharged Brian Hooker must also offer him full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights or privileges previously enjoyed.

The Respondents shall expunge from their records any and all references to the disciplines and discharge of Brian Hooker.

The Respondents shall rescind the requirements that Brian Hooker perform technician work and submit union activity logs.

The Respondents shall provide additional information requested by the Union in its December 23, 2015, and May 26, 2016 requests for information.

The Respondents shall rescind the confidentiality policy in question or modify it so that it does not interfere with employees' protected rights.

The Respondents shall post a notice to employees as set out below.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[21][21]

ORDER

The Respondents, Michigan Bell Telephone Company, and AT&T Services, Inc., Joint Employers, Grand Rapids, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally changing the terms and conditions of employment of union officials.

(b) Changing the terms and conditions of employment of union officials or disciplining, terminating, or otherwise discriminating against them because they engage in activities on behalf of Local 4034, Communications Workers of America (CWA), AFL–CIO (the Union).

(c) Failing and refusing to provide information that the Union requests that is relevant and necessary to its processing of grievances under the collective-bargaining agreement.

(d) Maintaining a confidentiality policy that interferes with employees' protected rights.

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

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

(a) Within 14 days from the date of the Board's Order, offer Brian Hooker full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Brian Hooker whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful disciplines and discharge of Brian Hooker, and within 3 days thereafter notify him in writing that this has been done and that the disciplines and discharge will not be used against him in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Rescind the requirements that Brian Hooker perform technician work and fill out union activity logs.

(f) Provide the Union with information that it requested that is relevant and necessary to its processing of its grievance over Brian Hooker's assignment to the load and requirement that he fill out union activity logs, and to its grievance over the reassignment of trucks.

(g) Rescind the confidentiality policy, or modify it so that it does not interfere with employees' protected rights.

(h) Within 14 days after service by the Region, post at their facilities in Michigan where the Union represents technicians, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondents' authorized representative, shall be posted by the Respondents 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, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondents customarily communicate with their employees by such means. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since December 13, 2015.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

I FURTHER ORDER that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. June 21, 2018

APPENDIX

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

[21] 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.

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.

Local 4034, Communications Workers of America (CWA), AFL–CIO (the Union) is the collective-bargaining representative of certain of our employees.

WE WILL NOT make changes in the working conditions of your union representatives without first providing the Union with notice and an opportunity to bargain.

WE WILL NOT change the working conditions of, discipline, discharge, or otherwise discriminate against your union representatives because they have engaged in activities on behalf of the Union.

WE WILL NOT require Brian Hooker to work in the load or fill out union activity logs.

WE WILL NOT fail and refuse to provide the Union with information that it requests that is relevant and necessary for it to represent unit employees.

WE WILL NOT maintain a confidentiality policy that unlawfully interferes with your rights to engage in the protected activities described above.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights under Section 7 of the Act, as set forth at the top of this notice.

WE WILL within 14 days from the date of the Board's Order, offer Brian Hooker full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Brian Hooker whole for any loss of earnings and other benefits he suffered as a result of our discrimination, with interest.

WE WILL remove from our files any references to Brian Hooker's disciplines and discharge, and we will, within 3 days thereafter notify him in writing that this has been done and that the disciplines and discharge will not be used against him in any way.

WE WILL provide the Union with the information that it requested regarding (1) the Union's grievance over our placing Hooker in the load and requiring him to fill out union activity logs, and (2) the Union's grievance over our reassignment of trucks between Hooker and other employees.

WE WILL rescind our "Reporting Privacy Related Incidents" policy or modify it to make it clear that it does not prohibit you from engaging in protected activities, and notify you in writing of this rescission or modification.

MICHIGAN BELL TELEPHONE COMPANY, AND AT&T SERVICES, INC., JOINT EMPLOYERS

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/07-CA-161545 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.