

# 20-1163-ag

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**United States Court of Appeals**  
*for the*  
**Second Circuit**

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INTERNATIONAL BROTHERHOOD  
OF ELECTRICAL WORKERS, LOCAL UNION 43,

*Petitioner,*

– v. –

NATIONAL LABOR RELATIONS BOARD,

*Respondent,*

ADT LLC,

*Intervenor.*

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ON APPEAL FROM THE NATIONAL LABOR RELATIONS BOARD

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## **DEFERRED JOINT APPENDIX**

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United States Government

**NATIONAL LABOR RELATIONS BOARD**

**OFFICE OF THE GENERAL COUNSEL**

Washington, D.C. 20570

May 18, 2020

Catherine O'Hagan Wolfe  
Clerk of the Court  
United States Court of Appeals  
for the Second Circuit  
Thurgood Marshall U.S. Courthouse  
40 Foley Square, Room 1802  
New York, NY 10007

Re: *International Brotherhood of Electrical Workers, Local Union 43 v. NLRB*  
2nd Cir. No. 20-1163  
Board Case Nos. 03-CA-184936, 03-CA-192545,

Dear Ms. Wolfe:

I am enclosing a certified copy of the agency record in this case.

/s/ David Habenstreit  
David Habenstreit  
Assistant General Counsel  
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(202) 273-0979

Enclosure

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

INTERNATIONAL BROTHERHOOD OF	)	
ELECTRICAL WORKERS, LOCAL UNION 43	)	
	)	
	)	
	)	
Petitioner	)	No. 20-1163
	)	
v.	)	Board Case Nos.
	)	03-CA-184936
	)	03-CA-192545
NATIONAL LABOR RELATIONS BOARD	)	
	)	
Respondent	)	

**CERTIFIED AGENCY RECORD**

Pursuant to authority delegated in Section 102.115 of the National Labor Relations Board’s Rules and Regulations, 29 C.F.R. § 102.115, I certify that the list below fully describes all papers and documents, which constitute the record before the Board in *ADT, LLC d/b/a ADT Security Services*. Board Case Nos. 03-CA-184936, 03-CA-192545

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1 (a-t)

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*Roxanne L. Rothschild*

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Roxanne L. Rothschild  
Executive Secretary  
National Labor Relations Board  
1015 Half Street SE  
Washington, DC 20570-0001 (202)  
273-1940

May 18, 2020

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

INTERNATIONAL BROTHERHOOD OF	)	
ELECTRICAL WORKERS, LOCAL UNION 43	)	
	)	
	)	
	)	
Petitioner	)	No. 20-1163
	)	
v.	)	Board Case Nos.
	)	03-CA-184936
	)	03-CA-192545
NATIONAL LABOR RELATIONS BOARD	)	
	)	
Respondent	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on May 18, 2020, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system. I certify that the foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system.

/s/ David Habenstreit  
David Habenstreit  
Assistant General Counsel  
NATIONAL LABOR RELATIONS BOARD  
1015 Half Street, SE  
Washington, DC 20570-0001  
(202) 273-0979

Dated at Washington, DC  
this 18th day of May 2020

**In The Matter Of:**

*ADT, LLC d/b/a ADT SECURITY SERVICES, and  
IBEW Local 43*

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*June 13, 2017*

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*Original File adt.txt*

*Min-U-Script® with Word Index*



June 13, 2017

<p style="text-align: right;">Page 5</p> <p>1 PROCEEDINGS 2 (Time Noted: 10:35 a.m.) 3 JUDGE ROSAS: On the record. 4 Alright. This is a formal proceeding in the matter of 5 ADT, LLC d/b/a ADT Security Services and International 6 Brotherhood of Electrical Workers, Local Union 43. Counsel for 7 the parties state your appearance. General Counsel? 8 MS. PENDER: Alicia Pender for the General Counsel. 9 MR. ARNAULT: Bryan Arnault for the Charging Party. 10 JUDGE ROSAS: Respondent? 11 MR. MORTIZ: Jeremy Mortiz for Respondent. 12 JUDGE ROSAS: Okay. Counsel, I remind everyone you've 13 received my hearing rules and practices. This is a formal 14 proceeding in a Federal Administrative Court under The National 15 Labor Relations Act and The Administrative Procedures Act. I 16 run my hearings in a very formal matter. Please keep your 17 witnesses and parties informed of the formality of the 18 proceedings. 19 This is not a mediation or arbitration. I often times 20 have to remind counsel of that in these proceedings. I don't 21 do business that way, as you might have otherwise been 22 previously accustomed. 23 If you have any questions with respect to any of my 24 procedures let me know. Alright. The formal papers, General 25 Counsel, I have them. Can you identify them?</p>	<p style="text-align: right;">Page 7</p> <p>1 giving testimony regarding events to which they will be 2 expected to testify. 3 So if anyone has any questions as we proceed, essentially 4 I follow a very simple rule and that is that your 5 representative or designated persons who are expected to 6 testify may remain in the hearing room at all times, except 7 when you are calling someone on your case who's going to 8 testify to that same sequence of events that they are going to 9 testify to, because the people that are under your control 10 presumably you would have prepped them, know what they're all 11 going to say. They don't need to be listening to each other, 12 especially with respect to any cross examination that they're 13 going to be expected to confront. Okay. Counsel at that point 14 can substitute, if they have to step out, someone else to help 15 counsel understand the nature of the case or assist in any 16 regard. 17 Okay. So from this point on until the hearing is finally 18 closed no witness may discuss with any potential witnesses 19 either the testimony they have given or they intend to give. 20 Under this rule counsel for a party may not in any manner, 21 including the showing of transcripts, inform a witness about 22 the content of any testimony given by a preceding witness 23 without my permission. The exception is that counsel for a 24 party may inform counsel's own witness of the content of 25 testimony, including the showing of transcripts given by a</p>
<p style="text-align: right;">Page 6</p> <p>1 MS. PENDER: Yes, Your Honor. I offer into evidence the 2 formal papers. They have been marked for identification as 3 General Counsel's exhibit 1(a) through 1(t) inclusive, exhibit 4 1(t) being an index and description of the entire exhibit. 5 This exhibit has been shown to all parties. 6 (General Counsel's GC-1(a) through 1(t) identified) 7 JUDGE ROSAS: Counsel, have you seen the formal papers? 8 MR. MORTIZ: Yes. 9 JUDGE ROSAS: Okay. Any objection? 10 MR. MORTIZ: No. 11 JUDGE ROSAS: Alright. General Counsel's 1(a) through 12 1(t) are received in evidence without objection. Alright. 13 There's a sequestration order request in this case I assume? 14 (General Counsel's GC-1(a) through (t) received in evidence) 15 MS. PENDER: Yes, Your Honor. 16 JUDGE ROSAS: Okay. Alright. So at this point I'm going 17 to order that all persons who are going to testify in this 18 proceeding, with specific exceptions, may only be present in 19 the hearing room when they are going to testify. Exceptions 20 are alleged discriminatees, natural persons who are parties, 21 representative parties or any person shown by a party to be 22 essential to the presentation of the party's case. They may 23 remain in the hearing room, even if they're going to testify or 24 have testified. However, these persons may not remain in the 25 hearing room when other persons called by their counsel are</p>	<p style="text-align: right;">Page 8</p> <p>1 witness for opposing side to prepare for rebuttal testimony. 2 Okay. It is the obligation of counsel to police these 3 witnesses among themselves, and if there are any issues discuss 4 among yourselves and bring it to me if you can't resolve it. 5 Okay? Any questions? 6 MR. ARNAULT: No, Your Honor. 7 MS. PENDER: Not at this point. 8 JUDGE ROSAS: Okay. 9 MR. MORTIZ: No. 10 JUDGE ROSAS: Identify who you're going to have remain in 11 the hearing room at this point. Counsel for the General 12 Counsel, anyone? 13 MS. PENDER: The Union's party representative. 14 JUDGE ROSAS: Sir, your name is? 15 MR. COSTELLO: Patrick Costello. 16 JUDGE ROSAS: Okay. Respondent? 17 MR. MORTIZ: James Nixdorf, ADT. 18 JUDGE ROSAS: Okay. Alright. Does the General Counsel 19 desire any opening statement? 20 MS. PENDER: Yes, Your Honor, although I'm going to close 21 the door first. We've got a witness who's sitting outside. 22 JUDGE ROSAS: Okay. 23 MS. PENDER: Also, Your Honor, before -- would you rather 24 us do Joint exhibits before or after opening statement? 25 JUDGE ROSAS: However you prefer.</p>

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Page 9	Page 11
<p>1 MS. PENDER: Okay. Let's do the Joint exhibits first --</p> <p>2 JUDGE ROSAS: Okay.</p> <p>3 MS. PENDER: Joint exhibit 1 is an email dated Tuesday,</p> <p>4 September 6th. It's two pages. There's two emails sent from</p> <p>5 Michael Stewart to Michael Kirk. The second email is also</p> <p>6 September 6th sent from Michael Kirk.</p> <p>7 (Joint exhibit J-1 identified)</p> <p>8 JUDGE ROSAS: Okay. Well, go down the list --</p> <p>9 MS. PENDER: Okay.</p> <p>10 JUDGE ROSAS: -- and we'll see if there are any issues.</p> <p>11 MS. PENDER: Okay. Joint exhibit 2 is the current</p> <p>12 collective bargaining agreement between Respondent and the</p> <p>13 Union for the Syracuse office. Joint exhibit 3 is the current</p> <p>14 collective bargaining agreement between the Union and</p> <p>15 Respondent for the Albany office. Joint exhibit 4 is two</p> <p>16 emails, one dated September 7th from Michael Stewart to Pat</p> <p>17 Costello and the email being forwarded from Pat Costello to</p> <p>18 Dave Madsen on the same day, Wednesday, September 7th of 2016.</p> <p>19 Joint exhibit 5 is the September 19, 2016 information</p> <p>20 request sent from Pat Costello to Michael Stewart. Joint</p> <p>21 exhibit 6 is two pages of emails. The second page first email</p> <p>22 is from Pat Costello sending the information request by email.</p> <p>23 The first -- the bottom email on the first page is Michael</p> <p>24 Stewart's October 6th response to Pat Costello and the top email</p> <p>25 is Pat Costello's response the same day back to Mr. Stewart.</p>	<p>1 sending to Michael Stewart the other letter from October 24th</p> <p>2 on the information relating to the six day workweek.</p> <p>3 Joint exhibit 14 is Pat Costello Thursday, December 15th</p> <p>4 to Michael Stewart asking for all responses to the information</p> <p>5 requests. And finally Joint exhibit 15 is Michael Stewart</p> <p>6 Friday, December 16th responding to Pat Costello's email,</p> <p>7 providing a email of two pages and then there's there pages of</p> <p>8 a memo that was attached to the email that's titled install and</p> <p>9 service team manager talking points. Those are all of the</p> <p>10 Joint exhibits.</p> <p>11 (Joint exhibits J-2 through 15 identified)</p> <p>12 JUDGE ROSAS: Alright. Joint exhibits 1 through 15, as</p> <p>13 articulated by General Counsel, are these indeed stipulated to?</p> <p>14 MR. MORTIZ: Yes.</p> <p>15 JUDGE ROSAS: Okay. Alright. So Joint exhibits 1 through</p> <p>16 15 are received.</p> <p>17 (Joint exhibits J-1 through 15 received in evidence)</p> <p>18 MS. PENDER: Thank you, Your Honor. The International</p> <p>19 Brotherhood of Electrical Workers Local 43 or the Union</p> <p>20 represents the service and installation technicians at</p> <p>21 Respondent ADT Security Services Syracuse, New York facility</p> <p>22 and the service and installation technicians at Respondent's</p> <p>23 Albany, New York facility among others. Those are the two that</p> <p>24 at issue here.</p> <p>25 Respondent and the Union have one current collective</p>
<p>Page 10</p> <p>1 Joint exhibit 8 is a letter dated October 24th 2016 from</p> <p>2 Pat Costello to Michael Stewart following up on the September</p> <p>3 19th information request, specifically relating to customer</p> <p>4 service targets. Joint exhibit 9 is a letter dated October 24,</p> <p>5 2016 from Pat Costello to Michael Stewart, following up on the</p> <p>6 September 19th information request, specifically relating to</p> <p>7 the six day workweek. Joint exhibit 10 is an email from</p> <p>8 Michael Stewart to Pat Costello Monday October 31, which was</p> <p>9 then forwarded from Pat Costello to Bryan Arnault on the same</p> <p>10 day.</p> <p>11 I'm sorry, I skipped Joint exhibit 7. It was out of</p> <p>12 order in my stack. Joint exhibit 7(a), (b) and (c). 7(a) is a</p> <p>13 Thursday October 13th email from Michael Stewart to Pat</p> <p>14 Costello responding to the September 19th information request.</p> <p>15 Joint exhibit 7(b) is one spreadsheet that was sent in response</p> <p>16 to that information request. And Joint exhibit 7(c) the second</p> <p>17 spreadsheet that was sent in response to the information</p> <p>18 request. Both were attached to the email that's 7(a).</p> <p>19 Joint exhibit 11 is an email from Pat Costello to Michael</p> <p>20 Stewart Friday November 18th, attaching a letter which is the</p> <p>21 second page, following up on the September 19th and October</p> <p>22 24th information request letters. Joint exhibit 12 is Pat</p> <p>23 Costello Friday, November 18th sending to Michael Stewart</p> <p>24 resending the customer service targets letter from October</p> <p>25 24th. Joint exhibit 13 is Pat Costello Friday, November 18th</p>	<p>Page 12</p> <p>1 bargaining agreement for the Syracuse service and installation</p> <p>2 technicians and another current collective bargaining agreement</p> <p>3 for the Albany service and installation technicians. Both CBAs</p> <p>4 specifically state the normal work schedule for the service and</p> <p>5 installation departments. For Albany the CBA states that the</p> <p>6 normal work schedule for the service department is five</p> <p>7 consecutive days at eight and a half hours a day or four</p> <p>8 consecutive days at 10 and a half hours per day.</p> <p>9 For Albany installation department the contract states</p> <p>10 that employees can be scheduled for any eight hour period</p> <p>11 between 7:00 to 5:30 in any given day between Monday and Friday</p> <p>12 or through Tuesday through Saturday if customer needs make it</p> <p>13 necessary. For both departments when scheduling overtime the</p> <p>14 company will first seek qualified volunteers for the work. If</p> <p>15 no volunteers come forward they then assign the work to the</p> <p>16 least senior qualified person.</p> <p>17 The Syracuse contract states the normal work schedule for</p> <p>18 the service department is five consecutive days, eight and a</p> <p>19 half hours a day. And there will also be a four day workweek</p> <p>20 of 10 and a half hour shifts. In the Syracuse installation</p> <p>21 department employees can be scheduled for any eight hour period</p> <p>22 between 7:00 to 5:30 on any given day between Monday through</p> <p>23 Friday.</p> <p>24 As in Albany, volunteers are sought for work outside the</p> <p>25 normal schedule. If none are forthcoming the work is assigned</p>

June 13, 2017

<p style="text-align: right;">Page 13</p> <p>1 to the least senior period. With regard specifically to the  2 Syracuse installation department, the contract states that  3 customer needs may periodically make it necessary for work to  4 be performed on Saturdays. It's important to note that this  5 provision only applies to the Syracuse installation department.  6 In September 16 Respondent announced that employees in  7 Syracuse and Albany will begin to work six hour days to get rid  8 of what it termed a backlog. Respondent informed employees of  9 the change to the schedule. The Syracuse employees would work  10 six days every other week, Albany employees would work six days  11 every week until Respondent determined that the backlog was  12 cleared.  13 This was not the first time that employees had been  14 expected to work longer hours to clear out a backlog. However,  15 this was the first time that the employer didn't go to the  16 Union and work together to come up with a way to satisfy the  17 problem. Instead, Respondent announced the mandatory six day  18 workweek to employees first and then informed the Union by  19 email of what the change was going to be.  20 When the Union demanded that Respondent rescind the change  21 and bargain, Respondent refused. When the Union requested  22 information, based on Respondent's claim to need to implement  23 the policy, Respondent delayed responding and provided only a  24 partial response. Not only did Respondent announce and  25 implement a mandatory six day work week without the Union's</p>	<p style="text-align: right;">Page 15</p> <p>1 However, at no point during that back and forth did Respondent  2 contact the Union to bargain about exempting him from the six  3 day workweek requirement, instead dealt with him directly.  4 And finally the evidence will show that Respondent has  5 both delayed its response to the Union's September 19th 2016  6 information request and failed to provide information  7 sufficient to satisfy that request in violation of the Act.  8 Assistant business manager Pat Costello sent his information  9 request on September 19th, which included a second request to  10 rescind the unlawful six day workweek. After some  11 communication, Respondent provided Costello with two Microsoft  12 Excel spreadsheets on October 13th and an email updating him on  13 the status of the backlog.  14 Respondent's email also claimed that some of the  15 information requested by the Union was vague or seemed  16 irrelevant. Costello followed up with two letters clarifying  17 and reiterating his information request. Respondent told him  18 it was working on a response. He followed up with Respondent  19 three weeks later and again a month after that, each time  20 reiterating his request for information.  21 Finally, on December 16th, three months after the initial  22 request, Respondent sent Costello a three page memo and told  23 him it had provided all relevant information at that time. The  24 General Counsel asks that the Union find that by the conduct  25 described Respondent has violated the Act by engaging in</p>
<p style="text-align: right;">Page 14</p> <p>1 consent and without providing the Union notice or an  2 opportunity to bargain, it also carved out exceptions to the  3 six day work week without talking to the Union. On top of that  4 when creating one of the exceptions, Respondent dealt directly  5 with an employee.  6 The evidence will show that the Respondent implemented its  7 mandatory six day work week without providing notice or an  8 opportunity to bargain to the Union and included exceptions to  9 that work week for certain employees also without providing the  10 Union notice or a chance to bargain. Respondent unilaterally  11 changed terms and conditions of employment for the Syracuse and  12 Albany service and installation technicians in violation of the  13 Act. Further, Respondent made those changes during the term of  14 both contracts without the Union's consent.  15 The language in both contracts is unambiguous. Employees  16 in the Syracuse service department and the Albany service and  17 installation department worked four or five day schedules.  18 Respondent made unlawful midterm modifications to the  19 collective bargaining agreements in violation of the Act.  20 Respondent also violated the Act when it bypassed the  21 Union and dealt directly with employee Michael Sopok to carve  22 out an exception for him to the mandatory six day workweek.  23 Sopok approached Respondent with his concerns. There was some  24 back and forth between Respondent and Mr. Sopok. And finally  25 Respondent granted him an exception from working the six days.</p>	<p style="text-align: right;">Page 16</p> <p>1 midterm modification of two collective bargaining agreements,  2 unilaterally changing employees' terms and conditions of  3 employment, dealing directly with an employee and delaying in  4 providing and failing to provide information. Thank you.  5 JUDGE ROSAS: Alright. Charging Party and Respondent, you  6 have the option of giving brief opening statements at this  7 time, waiving such statements or reserving them until the  8 commencement of your respective cases. Charging Party, what do  9 you desire?  10 MR. ARNAULT: I'll make a brief opening statement at this  11 time --  12 JUDGE ROSAS: Okay.  13 MR. ARNAULT: -- Your Honor. Good morning, Your Honor.  14 The facts of this case are decidedly straightforward. Rather  15 than repeat the facts the General Counsel's attorney has  16 already outlined for you, I will touch on the key points that  17 we believe are relevant. Now, over the course of this hearing  18 you will hear evidence that the Respondent ADT unilaterally  19 changed the duration of the scheduled workweek from four or  20 five days, as negotiated between the parties and clearly and  21 explicitly set forth in the parties' CBA, to mandatory six day  22 work week for all employees. This was not a case the least  23 senior employee being assigned to perform work. This was a  24 flat change in work schedule to six days.  25 You will also hear evidence the Respondent failed to</p>

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<p style="text-align: right;">Page 17</p> <p>1 provide relevant requested documents relating to the six day  2 workweek and the Respondent's claims of a newly established  3 customer service target. Moreover, you will hear evidence that  4 as a result of Respondent's unilateral changes to the duration  5 of the workweek, employees left the employ of ADT.  6 Now, as the attorney for the General Counsel noted, in the  7 Syracuse installation department employees may be scheduled in  8 an eight hour shift in any period between Monday and Friday.  9 And customer needs may periodically make it necessary for work  10 to be performed on a second shift and/or Saturday. However,  11 the contract also provides that the Respondent must first seek  12 qualified volunteers to perform such work for this Syracuse  13 installation department. If there are no qualified volunteers  14 then the least senior qualified person will be assigned to  15 perform the work. That did not happen here.  16 You will hear that on or about September 7th 2016 the  17 employer emailed all northeast region employees, including  18 those in Albany and Syracuse and advised in relevant part that  19 until the company meets customer service targets it will be  20 implementing a mandatory six day work week. That's the  21 company's language; we are implementing a mandatory six day  22 workweek. And they advised that it will continue in each  23 market until it achieves the desired target, which the manager  24 will post locally for each market.  25 The six day workweek was implemented in Syracuse on a</p>	<p style="text-align: right;">Page 19</p> <p>1 to bargain, by unreasonably delaying the providing of  2 information and by failing to provide the requested relevant  3 information. Thank you, Your Honor.  4 JUDGE ROSAS: Respondent?  5 MR. MORTIZ: We'll reserve.  6 JUDGE ROSAS: Okay. Alright. General Counsel, call your  7 first witness.  8 MS. PENDER: General Counsel calls Patrick Costello.  9 JUDGE ROSAS: Sir, please raise your right hand.  10 Whereupon,  11 PATRICK COSTELLO  12 Having been first duly sworn, was called as a witness and  13 testified herein as follows:  14 JUDGE ROSAS: Alright. Please have a seat. State and  15 spell your name and provide us with an address.  16 THE WITNESS: Patrick Costello, C-O-S-T-E-L-L-O, 11  17 Jessica Place, Whitesboro, New York, 13492.  18 DIRECT EXAMINATION  19 BY MS. PENDER:  20 Q. Good morning, Mr. Costello.  21 A. Good morning.  22 Q. I'm going to ask you some questions this morning. I ask  23 that you speak so that everyone can hear you. There's a  24 microphone in front of you. It's not going to amplify your  25 voice.</p>
<p style="text-align: right;">Page 18</p> <p>1 biweekly basis, in Albany on a weekly basis. Obviously, this  2 lacks some clarity in which the Union sought to follow up with  3 the company, as to the contours of this six day workweek as  4 well as the customer service targets. At all times the Union  5 did not get sufficient responses and the company rebutted and  6 refused to rescind the six day workweek.  7 In addition, you'll hear evidence that -- concerning the  8 impact of the change of the mandatory workweek on the  9 bargaining unit employees. You will hear from one employee  10 that due to custody arrangements, the unilateral change  11 impacted the bargaining unit employees. You will hear evidence  12 that one employee Mike Sopok could lose custody of his child,  13 if we was required to regularly forgo weekends with his  14 daughter. When this complaint was made known to Respondent,  15 Respondent negotiated an exemption from the six day workweek  16 directly with Mr. Sopok without notice to the Charging Party.  17 Finally, we will hear testimony from Mr. Sopok that in  18 lieu of working a six day workweek, the Respondent attempted to  19 extend the work hours of his five day workweek. This too  20 interfered with his custody arrangement and as a result Mr.  21 Sopok was forced to leave the employ of the employer. Based on  22 the forgoing the Charging Party contends that the evidence  23 presented will show that Respondent violated section 8(a)(1),  24 8(a)(5) and 8(d) of the Act by its midterm modification of the  25 CBAs, by the unilateral change without notice of an opportunity</p>	<p style="text-align: right;">Page 20</p> <p>1 A. Okay.  2 Q. I also ask that you allow me to get my entire question out  3 before you answer. I'll pay you the same courtesy, let you  4 answer fully before I ask the next question. If any question I  5 ask is unclear, or you don't understand or you can't hear me,  6 please let me know. I'm happy to ask it again or rephrase it  7 so that it makes sense to you. Okay?  8 A. Okay.  9 Q. Mr. Costello, are you currently employed?  10 A. Yes.  11 Q. Where do you work?  12 A. IBEW Local 43.  13 Q. And what's your job there?  14 A. I'm assistant business manager and president of the Local  15 Union.  16 Q. How long have you been the president?  17 A. Nine years, going on 10.  18 Q. And the assistant business manager?  19 A. 21 going on 22.  20 Q. What are you job duties as the assistant business manager  21 and as the president of the Local?  22 A. Handle grievances, negotiate contracts, day to day stuff  23 in the office and handle complaints. That's it.  24 Q. Can you think of any other job duties that you have as  25 assistant business manager or president?</p>

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<p style="text-align: right;">Page 21</p> <p>1 A. Well, as president -- well, as assistant business manager  2 I certainly sit on all negotiating committees, all committees  3 that handle the day to day operations of the Union hall,  4 involving some referral of workers, visit the sites, talk to  5 the men.  6 Q. Do you ever send out information requests?  7 A. Yes, absolutely.  8 Q. And you bargain on behalf of the Union, is that correct?  9 A. Correct.  10 Q. How does that happen? How does the Union bargain?  11 A. I'm the lead bargaining person from the Union. We  12 normally have our -- in this case we have our two stewards sit  13 on the committee. We form a committee, we go through our  14 proposals and then we present the proposals to management and  15 they present their proposals. We negotiate a contract.  16 Q. Do stewards have the authority to bargain on behalf of the  17 Union themselves?  18 A. No.  19 Q. If you could look at exhibit 2 in front of you?  20 JUDGE ROSAS: General Counsel's exhibit?  21 MS. PENDER: Yes. Or Joint exhibit rather.  22 THE WITNESS: Yes.  23 BY MS. PENDER:  24 Q. Do you recognize that?  25 A. Yes, I do.</p>	<p style="text-align: right;">Page 23</p> <p>1 A. Four 10's, consecutive four 10's.  2 Q. And four 10's is four days at 10 hours?  3 A. Yes.  4 Q. And what about Albany? How many days per week did unit  5 employees work in Albany?  6 A. Five eight hour days consecutively.  7 Q. Any other option?  8 A. Four 10's consecutively.  9 Q. Did any employees in Syracuse, before September 2016,  10 routinely work a six day schedule?  11 A. No.  12 Q. Did any employees in Albany, before September 2016,  13 routinely work a six day schedule?  14 A. No.  15 Q. Did there come a time when you learned that ADT planned to  16 implement at six day schedule at Albany and Syracuse?  17 A. Yes.  18 Q. Do you know when you heard that?  19 A. I think September 7th.  20 Q. Do you know how you heard that?  21 A. I got a -- an email from Mike Stewart that was forwarded.  22 I think it came from Mike Kirk. Mike Stewart sent it to me.  23 Q. Can you look at Joint exhibit 4 in front of you?  24 A. Okay.  25 Q. If you look at that email, is that the email that you got?</p>
<p style="text-align: right;">Page 22</p> <p>1 Q. Did you participate in bargaining that collective  2 bargaining agreement?  3 A. I did.  4 Q. Is there an article in that contract that covers the  5 employees' work schedule?  6 A. Yes. Article six.  7 Q. And to your recollection, when you were bargaining this  8 contract, were there any proposals to change the work schedule?  9 A. No.  10 Q. If you could look at Joint exhibit 3, the next one. It's  11 the Albany contract.  12 A. Yes.  13 Q. Did you participate in bargaining this contract?  14 A. I did.  15 Q. And is there an article that covers employee work  16 schedules?  17 A. Yes, article six I believe also. Yes, article six.  18 Q. And in that latest round of bargaining for this contract,  19 were there any changes to that article?  20 A. No.  21 Q. I'm going to direct you attention to the time before  22 September of 2016. How many days per week did unit employees  23 at the Syracuse facility work?  24 A. Five days, five consecutive days.  25 Q. Any other schedule?</p>	<p style="text-align: right;">Page 24</p> <p>1 A. Yes.  2 Q. And what did you do after you got this email?  3 A. I -- well, I forwarded it on to the -- to my two stewards  4 in Albany and Syracuse. I called -- either I called or Mike  5 called me. We had a discussion on the phone about it.  6 Q. When you say Mike, which Mike are you referring to?  7 A. Mike Stewart.  8 Q. And what's Mike Stewart's title if you know?  9 A. I think he's a regional HR. Regional HR, yeah.  10 Q. Do you recall when you talked to Mike Stewart? How soon  11 after you got the email?  12 A. Very soon after.  13 JUDGE ROSAS: Counsel --  14 THE WITNESS: Same day --  15 JUDGE ROSAS: -- I just want to make something clear.  16 We've got documents in front of witnesses. When we're asking  17 him questions wherein we seek to elicit present recollection, I  18 don't want it to be confused with their past recollection or  19 having it refreshed from a document. Okay?  20 MS. PENDER: Certainly.  21 JUDGE ROSAS: These documents speak for themselves  22 obviously. So just want to keep you abreast of that.  23 MS. PENDER: Okay.  24 BT MS. PENDER:  25 Q. You can not look at any of that --</p>

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<p style="text-align: right;">Page 25</p> <p>1 A. Gotcha, gotcha.  2 Q. -- for the time being. Tell me about the conversation  3 that you had with Mr. Stewart.  4 A. I believe it went something like I thought it was a direct  5 violation of our current collective bargaining agreement and I  6 would -- I request that it be rescinded immediately.  7 Q. And did he respond to you?  8 A. His response was he would send it up the ladder, but he  9 was pretty sure that it wasn't going to be rescinded.  10 Q. Do you recall anything else from that conversation?  11 A. No.  12 Q. Had anyone from ADT mentioned a six day workweek to you,  13 prior to you receiving that email on September 7th?  14 A. No.  15 Q. Do you know when employees received that email?  16 A. I believe September 7th.  17 Q. How do you know that?  18 A. It was confirmed by the stewards that they know about it.  19 They got an email that day, September 7th.  20 Q. Did you take any other action to communicate with ADT  21 about the proposed change to the work schedule?  22 A. Not that day, no.  23 Q. At any time after that?  24 A. Yeah, we asked for -- requested information.  25 Q. Look at Joint exhibit 5 in front of you.</p>	<p style="text-align: right;">Page 27</p> <p>1 Q. If you could look at Joint exhibit 7(a) in front of you?  2 It's the top page.  3 A. Yes.  4 Q. Is that the email response that you received from  5 Respondent?  6 A. Yes.  7 Q. And if you could look at 7(b) and 7(c)? Just take a  8 second to flip through and see if you recognize those.  9 A. Yes.  10 Q. Are those the two spreadsheets that were attached to the  11 email?  12 A. Correct.  13 Q. Did you receive any other information on October 13th,  14 other than what's in exhibit 7(a), (b), (c)?  15 A. I don't think so.  16 Q. And was the information that you received in exhibit 7(a),  17 (b) and (c) sufficient to you?  18 A. No.  19 Q. What if anything did you do, after you received the  20 information on October 13th?  21 A. It was obvious that I didn't understand it or couldn't  22 comprehend what was sent. So I wrote another letter asking for  23 clarification.  24 Q. If you could look at Joint exhibit 8 and Joint exhibit 9?  25 A. Yes.</p>
<p style="text-align: right;">Page 26</p> <p>1 A. Okay.  2 A. Is that the information request that you sent?  3 A. Yes.  4 Q. You don't need to look at that anymore. Did there come a  5 time when the six day workweek actually went into effect?  6 A. Yes.  7 Q. Do you recall when that was?  8 A. I think it was the pay week of September 22nd. September  9 22nd isn't the Saturday, but it's the pay week of.  10 Q. Did you hear back from ADT after you sent the information  11 request on September 19th?  12 A. That they were working on it I believe, yes.  13 Q. Can you look at Joint exhibit 6 in front of you?  14 A. Yes.  15 Q. Do you recognize those?  16 A. Yes.  17 Q. Are those the emails that were sent back and forth between  18 you and Mr. Stewart.  19 A. Mr. Stewart, yes.  20 Q. You can set that aside. Did ADT ever respond to your  21 information request?  22 A. They did.  23 Q. Do you remember when their first response was?  24 A. It was a couple weeks later I think. I'm not sure of the  25 date.</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. Are those the two letters that you sent asking for  2 clarification?  3 A. Correct.  4 Q. Did you receive a response to your October 24th letters?  5 A. Yes.  6 Q. If you'd look at Joint exhibit 10?  7 A. Yes.  8 Q. Is this the response that you received?  9 A. Yes.  10 Q. And did you hear from Michael Stewart or anyone from ADT  11 after you got this email that's in Joint exhibit 10?  12 A. Yes.  13 Q. Do you recall when you heard from them?  14 A. Not exactly, no. I don't know the date.  15 Q. Can you look at Joint exhibit 11? This is an email with a  16 letter that you sent on November 18th, is that right?  17 A. Dated November 18th, correct.  18 Q. Did you hear from ADT between the time they sent you the  19 October 31st letter and the time you sent this November 18th  20 letter?  21 A. Yes. No. I'm sorry, no, I did not. As I recall, I did  22 not.  23 Q. You can set aside 11 and just take a look at Joint exhibit  24 12 and 13. You sent both of these emails to Mr. Stewart on  25 November 18th, the same day as you sent the letter, is that</p>

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<p style="text-align: right;">Page 29</p> <p>1 right?</p> <p>2 A. Correct.</p> <p>3 Q. Why did you resend your two October 24th letters?</p> <p>4 A. I didn't get a response yet, so I thought I would send the</p> <p>5 letters again so we could have them.</p> <p>6 Q. If you look at exhibit 11? Just go back to 11 for a</p> <p>7 second. The second page, which is your letter, in the second</p> <p>8 paragraph you ask that they provide information by November</p> <p>9 22nd --</p> <p>10 A. Yes.</p> <p>11 Q. -- 2016? Did you receive any information by November 22nd</p> <p>12 of 2016?</p> <p>13 A. No.</p> <p>14 Q. Did you take any action after you reached the 22nd and</p> <p>15 didn't have anything?</p> <p>16 A. Sent out the following letters on the 24th.</p> <p>17 Q. When you got to November 22nd?</p> <p>18 A. I don't recall what action I took then.</p> <p>19 Q. Take a look at Joint exhibit 14. Do you send this email</p> <p>20 on December 15th?</p> <p>21 A. Yes.</p> <p>22 Q. And at that point had you receive any information from</p> <p>23 Respondent other than what they initially provided on October</p> <p>24 13th?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 31</p> <p>1 childcare issues, was taken off the six day schedule.</p> <p>2 Q. How did you become aware of that?</p> <p>3 A. Dave Madsen the steward told me.</p> <p>4 Q. Do you know when Mr. Madsen told you that?</p> <p>5 A. I think it was before the program implemented. So it</p> <p>6 would have been before the 22nd, because I don't think that</p> <p>7 particular employee was ever -- ever worked a Saturday, I don't</p> <p>8 think.</p> <p>9 Q. Did Mr. Madsen tell you anything about Sopok and his</p> <p>10 schedule?</p> <p>11 A. Not in too many details, just that it was a childcare</p> <p>12 issue that he had to have -- he had to be home on Saturday to</p> <p>13 watch his daughter I believe.</p> <p>14 Q. Mr. Madsen is a steward?</p> <p>15 A. He is.</p> <p>16 Q. Does he have any authority to bargain on the Union's</p> <p>17 behalf?</p> <p>18 A. No.</p> <p>19 Q. And did anyone from ADT contact you to discuss Mr. Sopok's</p> <p>20 schedule?</p> <p>21 A. No.</p> <p>22 MS. PENDER: I have no further questions for this witness</p> <p>23 at this time.</p> <p>24 JUDGE ROSAS: Charging Party, any follow up?</p> <p>25 MR. ARNAULT: A few brief questions, Your Honor.</p>
<p style="text-align: right;">Page 30</p> <p>1 Q. If you would look at Joint exhibit 15? The first two</p> <p>2 pages are an email. The last three pages are a memo. Is this</p> <p>3 the email that you got on December 16th from Michael Stewart?</p> <p>4 A. Yes.</p> <p>5 Q. And the memo was attached to the email?</p> <p>6 A. The memo? The talking points? Yes.</p> <p>7 Q. Yes.</p> <p>8 A. Yes.</p> <p>9 Q. And did any -- did Respondent provide any other</p> <p>10 information to you, other than this email and memo, as of</p> <p>11 December 16th?</p> <p>12 A. No.</p> <p>13 Q. And have you gotten any further information from them</p> <p>14 since this point -- since that point?</p> <p>15 A. I have not.</p> <p>16 Q. Mr. Costello, at any time has anyone from ADT contacted</p> <p>17 you to discuss exceptions to the six day schedule?</p> <p>18 A. No.</p> <p>19 Q. I'm sorry, can you say that again?</p> <p>20 A. No.</p> <p>21 Q. Thank you. Are you aware of whether ADT has made</p> <p>22 exceptions to the schedule?</p> <p>23 A. Yes.</p> <p>24 Q. What exceptions are you aware of?</p> <p>25 A. One of the employees in the Albany office, because of</p>	<p style="text-align: right;">Page 32</p> <p>1 DIRECT EXAMINATION</p> <p>2 BY MR. ARNAULT:</p> <p>3 Q. Good morning.</p> <p>4 A. Good morning.</p> <p>5 Q. So you testified you're the assistant business manager and</p> <p>6 president?</p> <p>7 A. Correct.</p> <p>8 Q. In that capacity, what knowledge do you have of the size</p> <p>9 of the bargaining unit in the Albany Local -- Albany unit?</p> <p>10 A. I've negotiated the past six or seven contracts, 21-22</p> <p>11 years. So I have a knowledge of the size of the workforce.</p> <p>12 Q. And what about in Syracuse?</p> <p>13 A. Same.</p> <p>14 Q. The same? Okay. And how -- before September 22nd 2016,</p> <p>15 how large was the bargaining unit in Albany, to the best of</p> <p>16 your recollection?</p> <p>17 A. I think it was as many as 12. ADT had 12 employees.</p> <p>18 Q. Okay. And how about the Syracuse office?</p> <p>19 A. Syracuse had probably 16 at one time.</p> <p>20 Q. Okay. And on or about September 22nd 2016, do you know</p> <p>21 how many members were in the Albany bargaining unit?</p> <p>22 A. Three I believe.</p> <p>23 Q. And what about Syracuse?</p> <p>24 A. 12.</p> <p>25 Q. And currently are you aware of how many men are in the</p>

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<p style="text-align: right;">Page 33</p> <p>1 Albany bargaining unit?  2 A. Well, there's three. Three that are active --  3 Q. Okay.  4 A. -- working.  5 Q. Are those the same three that were there as of September  6 22nd?  7 A. Yes. One -- well, no, one is a new hire. And one came  8 back from medical, but I think he was -- I would count him as a  9 member who was out on medical leave.  10 Q. Okay. So has the number of -- has the size of the Albany  11 bargaining unit changed since September 22nd --  12 A. Yes.  13 Q. -- 2016. And have individuals left the Albany bargaining  14 unit since September 22nd 2016?  15 A. Two.  16 MR. ARNAULT: No further questions, Your Honor.  17 JUDGE ROSAS: Respondent, cross?  18 MR. MORTIZ: Has the witness provided any witness  19 statements, affidavits or Jencks statements?  20 MS. PENDER: Yes.  21 MR. MORTIZ: We'd ask for disclosure of that at this time.  22 JUDGE ROSAS: How many pages?  23 MS. PENDER: Three, double-sided.  24 JUDGE ROSAS: Would that be six?  25 MS. PENDER: One is blank.</p>	<p style="text-align: right;">Page 35</p> <p>1 bargaining unit. If I looked back at the Syracuse service unit  2 a year, would I find all Saturdays worked?  3 A. Beg your pardon?  4 Q. All Saturdays worked or not? Well, let me rephrase that.  5 Employees do work Saturdays, right?  6 A. Yes.  7 Q. Okay. Including employees from Monday through Friday's  8 schedule, correct?  9 A. Yes.  10 Q. And that's because the contract gives the employer the  11 right to schedule work on a day off, correct?  12 A. Correct.  13 Q. Which is what Saturday is for people on Monday through  14 Friday's schedule?  15 A. Correct.  16 Q. And that would be the sixth day, right?  17 A. Yes.  18 Q. And the employer has the right to schedule work on that  19 sixth day or day off?  20 A. Yes.  21 Q. Okay. Now, the contract defines the normal workweek  22 right?  23 A. Correct.  24 Q. Okay. Isn't it true, sir, that this change to get rid of  25 the backlog only lasted two or three months?</p>
<p style="text-align: right;">Page 34</p> <p>1 JUDGE ROSAS: Total of?  2 MS. PENDER: Total of five.  3 JUDGE ROSAS: Okay. So I'll give you five-six minutes.  4 Off the record.  5 (Whereupon, a brief recess was taken)  6 JUDGE ROSAS: On the record.  7 Respondent, cross.  8 CROSS EXAMINATION  9 BY MR. MORTIZ:  10 Q. Mr. Costello, how long again have you been the president  11 of the Local?  12 A. Nine years, going on 10.  13 Q. Have you had a relationship with ADT in Syracuse that  14 entire time?  15 A. Longer than that.  16 Q. Same with Albany?  17 A. Yes.  18 Q. This change was implemented around September 22nd, is that  19 correct?  20 A. The week of, yes.  21 Q. The week of? How long did it last?  22 A. I'm not quite sure of when it ended.  23 Q. Is it currently in effect?  24 A. I don't believe so.  25 Q. If I looked back -- let's start with the Syracuse</p>	<p style="text-align: right;">Page 36</p> <p>1 A. Could have been two or three months, yes.  2 Q. Okay. So if I was an employee working for ADT, let's say  3 for the last two years, my normal schedule would have been the  4 five day workweek, right?  5 A. As in the contract, correct.  6 Q. Okay. But for those two or three months an exception was  7 made to meet customer needs, right?  8 A. Not made by the Union.  9 Q. The contract says, sir. If I looked at a two year period  10 backwards and forward -- backwards from September 22nd and to  11 the date this change ended, most of the time would have  12 involved a five day workweek, right?  13 A. Correct.  14 Q. The vast majority in fact, correct?  15 A. Correct.  16 Q. It is only an isolated two to three month period max where  17 this six day schedule was in effect, correct?  18 A. Correct.  19 Q. Okay. Which would have been an assignment for the five  20 day folks on their scheduled day off?  21 A. Correct.  22 Q. And do you have Joint exhibit 2 still in front of you,  23 sir?  24 A. Syracuse contract?  25 Q. Yes.</p>

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<p>1 A. Yes.</p> <p>2 Q. Article six, section three, the end of the first full</p> <p>3 sentence talks about work on a scheduled day off, isn't that</p> <p>4 correct?</p> <p>5 A. Article three (sic), the second sentence?</p> <p>6 Q. First sentence in, the second line.</p> <p>7 A. Talks about the compensation, yes.</p> <p>8 Q. Compensation is time and a half on a scheduled day off,</p> <p>9 right?</p> <p>10 A. Correct.</p> <p>11 Q. Which is the sixth day, right?</p> <p>12 A. Yes. Yeah.</p> <p>13 Q. And the employer has the right to assign work on that day,</p> <p>14 right?</p> <p>15 A. Yes.</p> <p>16 Q. And that's already contained in the contract, isn't it,</p> <p>17 sir?</p> <p>18 A. Overtime provisions are in the contract, correct.</p> <p>19 Q. As is work on a scheduled day off, correct?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And if you go up to section one, the beginning of</p> <p>22 the first paragraph, that talks in terms of normal workweek,</p> <p>23 right, or normal work schedule? Excuse me.</p> <p>24 A. Correct.</p> <p>25 Q. Okay. And again for those who had been at the Syracuse</p>	<p>1 Q. Okay. So long as the normal workweek is five days,</p> <p>2 correct?</p> <p>3 A. Yeah. Yes.</p> <p>4 Q. So you're not claiming that this was done for any sort of</p> <p>5 a union-related purpose, right? The company stated a business</p> <p>6 need, correct?</p> <p>7 A. Eventually, yeah. Not -- yeah.</p> <p>8 Q. You have no reason to doubt the legitimacy of the business</p> <p>9 need to cure this backlog?</p> <p>10 A. I don't know. The backlog -- I don't know.</p> <p>11 Q. Well, my question, sir, is do you have any reason to</p> <p>12 believe that they're operating on something other than</p> <p>13 legitimate business needs and expectations?</p> <p>14 A. I can't answer that.</p> <p>15 Q. Have any evidence that it was for union animus or union</p> <p>16 hatred purposes?</p> <p>17 A. I can't answer that --</p> <p>18 Q. Any evidence that it was just to mess with people and</p> <p>19 their schedule?</p> <p>20 A. No.</p> <p>21 Q. And the stated basis was customer needs, right?</p> <p>22 A. Eventually it was the stated basis.</p> <p>23 Q. And you've got no reason to believe those customer needs</p> <p>24 didn't actually exist, right?</p> <p>25 JUDGE ROSAS: I'm sorry? Repeat the question.</p>
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<p>1 bargaining unit for the three years prior to that change and</p> <p>2 are still with us, the vast majority of that time they were on</p> <p>3 a five day workweek, right?</p> <p>4 A. Correct.</p> <p>5 Q. Just this exceptional period of a couple months had the</p> <p>6 six day, right?</p> <p>7 A. There were some Saturdays worked prior to this three month</p> <p>8 period.</p> <p>9 Q. The backlog schedule that you're here complaining about</p> <p>10 lasted --</p> <p>11 A. Correct.</p> <p>12 Q. -- two to three months, right?</p> <p>13 A. The change of the work schedule is what we're --</p> <p>14 Q. Okay.</p> <p>15 A. -- complaining --</p> <p>16 Q. But the normal schedule still remained a five day week,</p> <p>17 right?</p> <p>18 A. Absolutely.</p> <p>19 Q. Okay. The contract permits that, correct?</p> <p>20 A. Permits?</p> <p>21 Q. A six day work week. Working on a sixth day, so long as</p> <p>22 the normal workweek if five days.</p> <p>23 A. The contract allows for work Saturdays, correct.</p> <p>24 Q. And allows for work on a sixth day, correct?</p> <p>25 A. Correct.</p>	<p>1 MR. MORTIZ: You have no reason to believe those customer</p> <p>2 needs didn't actually exist, right?</p> <p>3 THE WITNESS: I think I'll say no. I have no reason --</p> <p>4 BY MR. MORTIZ:</p> <p>5 Q. Okay.</p> <p>6 A. -- to believe.</p> <p>7 Q. Now, this change was tied explicitly to the backlog,</p> <p>8 correct?</p> <p>9 A. We were told that, yeah.</p> <p>10 Q. And no one ever said that it was going to be permanent,</p> <p>11 right?</p> <p>12 A. I think could last until June was --</p> <p>13 Q. Okay. But a timeframe was put on it, right? It was made</p> <p>14 clear this was temporary.</p> <p>15 A. I think until rescinded. It was a six day workweek until</p> <p>16 rescinded.</p> <p>17 Q. Okay. But you just testified that someone indicated it</p> <p>18 might go as --</p> <p>19 A. I heard --</p> <p>20 Q. -- long as June, right?</p> <p>21 A. I heard June, yes.</p> <p>22 Q. And what had actually happened is it went two or three</p> <p>23 months, right?</p> <p>24 A. I can't say for sure.</p> <p>25 Q. And it only went a couple of weeks in one of the Albany</p>

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<p style="text-align: right;">Page 41</p> <p>1 installation categories, right?  2 A. I don't know when it ended for sure.  3 Q. And then everyone in all units, in all classifications  4 went back to their normal schedule, correct?  5 A. I believe so.  6 Q. Okay. Now, you were asked a series of questions, sir,  7 about all this correspondence concerning information. Do you  8 recall that?  9 A. Yes.  10 Q. Okay. The company did respond on October 13th, correct?  11 A. Yes.  12 Q. And that attached a bunch of spreadsheets regarding the  13 backlog in various regions and all that --  14 A. Correct.  15 Q. -- information? Okay. They did give you that response,  16 correct?  17 A. Correct.  18 Q. And then do you have Joint exhibit 15 in front of you,  19 sir? And I'm under --  20 A. Yes.  21 Q. I'm under the redacted section. Do you see the second  22 sentence there?  23 A. "We have now provided", that sentence?  24 Q. Yes, "we have now provided". It says "we have now  25 provided all the information in our possession that is</p>	<p style="text-align: right;">Page 43</p> <p>1 evidence that there's additional information they withheld from  2 you?  3 A. No.  4 MR. MORTIZ: Okay. Can we have one minute, Your Honor?  5 JUDGE ROSAS: Sure.  6 MR. MORTIZ: Do we have our own room, or is there an extra  7 room or no?  8 MS. PENDER: You can go -- there's a --  9 JUDGE ROSAS: Let's go off the record.  10 (Whereupon, a brief recess was taken)  11 JUDGE ROSAS: Back on the record.  12 MR. MORTIZ: Thank you.  13 BY MR. MORTIZ:  14 Q. Mr. Costello, I'm talking about normal workdays now. The  15 company can hold an employee longer to complete a job, correct?  16 A. Correct.  17 Q. Past eight hours, right?  18 A. Yes.  19 Q. And for a 10 hour employee, past 10 hours, right?  20 A. Correct.  21 Q. And that results in additional premium compensation,  22 right?  23 A. Yes.  24 Q. Okay. And the company has the right to do that with every  25 employee, right?</p>
<p style="text-align: right;">Page 42</p> <p>1 responsive to your request", correct?  2 A. That's what it says.  3 Q. And you have no evidence, sir, that that's not true, do  4 you?  5 A. I don't.  6 Q. Okay. And you've served as a union business agent and  7 president for how long?  8 A. Nine years as president, 21 years as assistant business  9 manager.  10 Q. Would you agree with me, given that background, that the  11 company is only required to present to the Union, assuming its  12 relevant and all that, that already exists?  13 A. Yes.  14 Q. Okay. Now, you testified, sir, that you were still  15 confused and didn't understand or comprehend the information,  16 correct?  17 A. The spreadsheets?  18 Q. Yes.  19 A. Correct.  20 Q. Okay. Now, that's different than them failing to provide  21 you a document that exists, right?  22 A. Correct.  23 Q. You were testifying that you couldn't quite follow it?  24 A. Exactly.  25 Q. Okay. But there's no evidence -- you're not aware of any</p>	<p style="text-align: right;">Page 44</p> <p>1 A. Yes.  2 Q. Okay. Now, you testified about a Mr. Sopok. Do you  3 recall that testimony?  4 A. Yes.  5 Q. Okay. And I believe you stated, but correct me if I'm  6 wrong, that Mr. Socop -- Sopok had to work extra on days not  7 Saturday, right?  8 A. I didn't say that.  9 Q. Okay. Can you tell me what your understanding of what  10 happened to Mr. Sopok was?  11 A. My understanding is that he was removed from the mandatory  12 six day workweek and placed on an extended Monday through  13 Friday workday.  14 Q. Okay. Every day?  15 A. I'm not sure how many days.  16 Q. What do you base that understanding on, sir?  17 A. A conversation with the steward, my steward.  18 Q. Ever talk directly with Mr. Sopok?  19 A. I did not.  20 Q. Did review Mr. Sopok's time records?  21 A. Have I what?  22 Q. Reviewed Mr. Sopok's time records.  23 A. I think that was part of our information request.  24 Q. It was. I'm asking if you've reviewed them, sir?  25 A. I have not.</p>

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<p style="text-align: right;">Page 45</p> <p>1 Q. Okay. So you don't know what Mr. Sopok worked?  2 A. I do not.  3 Q. Okay. And you don't know if Mr. Sopok was held over any  4 more or less than what normally occurs Monday through Friday,  5 right?  6 A. I don't know, but I -- no, I don't know.  7 Q. Okay. Now, the company has a right to hold Mr. Sopok over  8 on Monday through Friday, right?  9 A. There is -- yes. There's a clause I think where they call  10 in, if they're going to run overtime, they usually get  11 manager's approval.  12 Q. That's correct. But the contract already spells those  13 rights out for both the company and the employee, right?  14 A. Correct.  15 Q. Okay. So there's nothing new there, as far as after  16 September 22nd, isn't that --  17 A. The mandatory part of it is --  18 Q. I'm not talking about Saturdays, sir. There's nothing new  19 on holding a person over Monday through Friday, right?  20 A. Working late on Monday through Friday's schedule, no.  21 Q. So if Mr. Sopok worked a little later Monday through  22 Friday, there's nothing out of the ordinary with that. That's  23 always existed, correct?  24 A. That has always existed.  25 Q. Okay. So Mr. Sopok is not giving anything up or anything</p>	<p style="text-align: right;">Page 47</p> <p>1 A. Whether he approached the steward first or the company, I  2 don't know. When it was rolled out there was a lot of concerns  3 from a lot of members.  4 Q. Okay. I'm just starting with Mr. Sopok now.  5 A. Okay.  6 Q. Mr. Sopok was in fact exempted from some Saturdays, that's  7 your understanding?  8 A. It is.  9 Q. But not all Saturdays, right? Do you know, sir?  10 A. He was not mandatory -- he did not fall into the mandatory  11 six day workweek.  12 Q. Do you know whether he had to work some Saturdays is my  13 question?  14 A. In his history with ADT?  15 Q. No, during this period September 22nd to the two or three  16 months, whenever it ended, as far as Albany goes.  17 A. It's my belief he didn't work any Saturdays.  18 Q. Not a single one?  19 A. Not that I know of.  20 Q. Do you know that for sure, sir, or --  21 A. No, I haven't seen the pay.  22 Q. Okay.  23 A. I don't know.  24 Q. Okay. But you -- let's --  25 A. He was taken off the six day mandatory list. I know that.</p>
<p style="text-align: right;">Page 46</p> <p>1 extra, right?  2 A. The change is his work schedule was changed to 12 hour  3 days instead of eight.  4 Q. Okay. That right already existed?  5 A. Well, that's why we're here.  6 Q. Okay. Now, Mister -- yeah, I understand why we're here.  7 Now, Mr. Sopok had a child custody issue, correct?  8 A. Correct.  9 Q. And was getting threats from his ex-wife, right?  10 A. Correct.  11 Q. That she was going to march him into court and try to take  12 sole custody?  13 A. My understanding is, yes.  14 Q. Okay. You don't doubt the legitimacy of that issue, do  15 you?  16 A. No.  17 Q. Okay. And you don't doubt Mr. Sopok's right to raise that  18 with the company either, do you?  19 A. I doubt that I wasn't -- the Union wasn't involved in any  20 of those --  21 Q. Okay.  22 A. -- talks.  23 Q. Mr. Sopok took the initiative to raise that issue, right?  24 A. Yes.  25 Q. He approached the company, right?</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. And he worked additional time that he's always been  2 required or susceptible too, right?  3 A. If asked he probably did, yes.  4 Q. Okay. So he didn't give up anything extra to get off the  5 Saturday schedule?  6 A. Yeah, I think he did.  7 Q. What?  8 A. I think he was assigned a -- instead of a 8:00 to 4:30  9 slot he assigned an 8:00 to 8:30 slot.  10 Q. But that could have happened anytime before September  11 22nd, correct?  12 A. Not mandatory.  13 Q. That's a preexisting right already contained in the  14 agreement, sir.  15 A. They -- well, day by day. They could not change his work  16 week.  17 Q. They didn't change his work week. He's still working the  18 same days, right? That's the whole point. He's not working  19 Saturdays.  20 A. He was not working Saturdays, correct.  21 Q. Okay. He's not working any days different?  22 A. Monday through Friday.  23 Q. Right. He's not working any days different than he always  24 has?  25 A. No, but the hours changed.</p>

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<p style="text-align: right;">Page 49</p> <p>1 Q. Okay.</p> <p>2 A. Mandatory --</p> <p>3 Q. He's not working any hours extra outside what the contract</p> <p>4 already permits? That's my question.</p> <p>5 A. Well, I would say he's working four hours a day extra.</p> <p>6 Q. Which is permitted by the contract already.</p> <p>7 A. It's spelled out --</p> <p>8 MR. ARNAULT: Objection, asked and answered.</p> <p>9 JUDGE ROSAS: I'm going to sustain.</p> <p>10 MR. MORTIZ: Okay.</p> <p>11 JUDGE ROSAS: Asked and answered.</p> <p>12 BY MR. MORTIZ:</p> <p>13 Q. Was that the only exception you're here complaining about,</p> <p>14 sir?</p> <p>15 A. That's the only one I know of, yes.</p> <p>16 Q. Limited to Mr. Sopok and his custody situation?</p> <p>17 A. Uh-huh.</p> <p>18 MR. MORTIZ: No more questions at this time, subject to</p> <p>19 rebuttal.</p> <p>20 JUDGE ROSAS: Any redirect?</p> <p>21 MS. PENDER: Very brief, Your Honor.</p> <p>22 REDIRECT EXAMINATION</p> <p>23 BY MS. PENDER:</p> <p>24 Q. Mr. Costello, could you look at Joint exhibit 2, please?</p> <p>25 It is the Syracuse contract.</p>	<p style="text-align: right;">Page 51</p> <p>1 six?</p> <p>2 A. It's my belief they did not.</p> <p>3 Q. Do you know what they did instead?</p> <p>4 A. Mandatory total workforce will be working six days and</p> <p>5 Saturdays.</p> <p>6 Q. And when the company started this policy, did they tell</p> <p>7 the employees how long it would last?</p> <p>8 A. I'm not sure if they did or not. I think until further</p> <p>9 notice kind of a thing.</p> <p>10 Q. Can you look at Joint exhibit 5, please? That's your</p> <p>11 September 19th information request.</p> <p>12 A. Okay.</p> <p>13 Q. Did you know, when you sent this information request, why</p> <p>14 ADT was implanting or why ADT said it was implementing the six</p> <p>15 day week?</p> <p>16 A. No. Not fully. Not fully, no.</p> <p>17 Q. If you look at Joint exhibit 1, the bottom email starts</p> <p>18 "team".</p> <p>19 A. Yes.</p> <p>20 Q. The first line "we have been given new customer service</p> <p>21 targets".</p> <p>22 A. Yeah. Yes.</p> <p>23 Q. And did you request information to verify that claim?</p> <p>24 A. I did, because I didn't quite understand it. It's</p> <p>25 different than a historical backlog.</p>
<p style="text-align: right;">Page 50</p> <p>1 A. Yes.</p> <p>2 Q. Can you look at article six of that, please?</p> <p>3 A. Article six?</p> <p>4 Q. Yes.</p> <p>5 A. Okay.</p> <p>6 Q. Look about five lines down toward the right side of the</p> <p>7 page. It talks about, five lines down in the first full</p> <p>8 paragraph under section one --</p> <p>9 A. Section one? Okay.</p> <p>10 Q. -- the company will first seek qualified volunteers to</p> <p>11 perform such work.</p> <p>12 A. Yes.</p> <p>13 Q. And then in the next paragraph talking about the</p> <p>14 installation department the second line, customer needs may</p> <p>15 make it necessary for work on second shift and/or Saturdays,</p> <p>16 the company will first seek qualified volunteers to perform</p> <p>17 such work.</p> <p>18 A. Correct.</p> <p>19 Q. Do you know if the same language is in the Albany</p> <p>20 contract?</p> <p>21 A. Yes.</p> <p>22 Q. It is?</p> <p>23 A. I believe so, yes.</p> <p>24 Q. Okay. Do you know whether starting on September 22nd the</p> <p>25 company sought qualified volunteers in accordance with article</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. And did you ever receive information that was helpful to</p> <p>2 you, in determining whether that was --</p> <p>3 MR. MORTIZ: Objection, the test is not whether it's</p> <p>4 helpful. The test whether the company provided relevant</p> <p>5 information --</p> <p>6 JUDGE ROSAS: Rephrase.</p> <p>7 MS. PENDER: Did you receive information on the employer's</p> <p>8 customer needs?</p> <p>9 THE WITNESS: Yes.</p> <p>10 BY MS. PENDER:</p> <p>11 Q. Did you receive information that responded to all of your</p> <p>12 information requests?</p> <p>13 A. No.</p> <p>14 Q. Can you look at Joint exhibit 15, please? It's the</p> <p>15 December 16th email plus memo.</p> <p>16 A. Correct.</p> <p>17 Q. The memo is the last three pages. Can you just glance</p> <p>18 through that? Are there any years mentioned in this memo?</p> <p>19 A. No.</p> <p>20 Q. If you look at the first page of the memo, the second</p> <p>21 bullet point that's bolded.</p> <p>22 A. Yes.</p> <p>23 Q. It reads "nationally we are designating one Saturday and</p> <p>24 one Monday in August and in September".</p> <p>25 A. Yeah.</p>

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<p style="text-align: right;">Page 53</p> <p>1 Q. Is that what happened in this situation, one Saturday and 2 one Monday in August and one Saturday and one Monday in 3 September? 4 A. No. 5 Q. You can set that aside now. 6 A. Okay. 7 Q. Thank you. You testified on cross examination that you 8 didn't review Mr. Sopok's time records, is that right? 9 A. Correct. 10 Q. Why not? 11 A. I didn't have them. 12 Q. Had you requested time records in your information 13 request? 14 A. I believe so, yes. 15 Q. Did you receive them? 16 A. No. 17 MS. PENDER: No further questions, Your Honor. 18 JUDGE ROSAS: Charging Party? 19 MR. ARNAULT: Yes, Your Honor. 20 DIRECT EXAMINATION 21 BY MR. ARNAULT: 22 Q. You mentioned that backlogs had happened in the past, 23 right? 24 A. Correct. 25 Q. Prior to September 22nd 2016, can you describe how a</p>	<p style="text-align: right;">Page 55</p> <p>1 two guys getting stuck with all of it. 2 Q. And why would the low senior guy get stuck with all of it? 3 A. That's the way it's spelled out in the contract, that if 4 there's no volunteers the least senior qualified. 5 Q. Prior to September 22nd 2016, in the event of a backlog, 6 were all -- has all members ever been required to work on 7 Saturdays? 8 A. No. 9 Q. Has it been mandatory for all employees to work a backlog, 10 prior to September 22nd 2016? 11 A. No. 12 Q. Has it ever been requested that all employees work a 13 backlog prior to September -- 14 A. Not that I recall. We've historically worked it out. You 15 know, I like to think we have a good relationship with both 16 offices and we've worked it out. And when guys couldn't work, 17 they didn't work, when guys would step up to fill the void. 18 Q. Okay. I refer you to Joint exhibit 1. 19 A. Okay. 20 Q. The first sentence of the Michael Kirk email on September 21 6th 2016 "with the integration of ADT in Protection 1 we have 22 been given new customer service targets." Is a customer 23 service target different than a backlog? 24 A. Well, this particular service target is different than a 25 backlog in my opinion, because --</p>
<p style="text-align: right;">Page 54</p> <p>1 backlog scenario would come about and how the Union would 2 resolve it? 3 A. Prior to this particular incident, when backlogs occurred, 4 they were determined by management, orders placed that were 5 backing up, hence backlog. So different managers I think were 6 triggered by different amounts, but if there was -- and they 7 were a week -- maybe a week or two weeks out, orders came in 8 that weren't done yet, that triggered a -- sort of an emergency 9 response that we had to get the -- you know, management would 10 normally call me about that. 11 They would follow the contract, ask for volunteers. If 12 they got the volunteers I usually wasn't in the loop, other 13 than I knew that they were following the contract as written. 14 If there was no volunteers is when they would ask for help from 15 the Union to reach out. 16 Q. And when the Union reached out, what does that mean? 17 A. We would -- I would call the members and say listen, you 18 know, it's crunch time. It's a customer-orientated business. 19 We have to take care of the customer. These are new customers, 20 an install anyway. Service is different, but a customer comes 21 first. 22 We have to suck it up. We have to, you know, work the 23 Saturday. If you can't work it for different reasons, work 24 together. What I didn't want to happen and what fortunately 25 didn't happen very often is the low senior -- seniority guy or</p>	<p style="text-align: right;">Page 56</p> <p>1 MR. MORTIZ: Objection, there's no foundation for this 2 answer. 3 JUDGE ROSAS: What was the question again? 4 MR. ARNAULT: What's the -- basically, what's the 5 difference between a customer service target and a backlog, in 6 your opinion? 7 MR. MORTIZ: There's no foundation that he understands the 8 lingo that's being used here. There's no foundation that he's 9 been involved in that distinction before. 10 JUDGE ROSAS: Well, that would be the purpose of the 11 information -- 12 MR. ARNAULT: Okay. 13 JUDGE ROSAS: -- request. 14 MR. ARNAULT: So -- 15 MR. MORTIZ: Well, you can't ask an opinion question 16 without a foundation. 17 JUDGE ROSAS: Let's make it simple, let's make it simple. 18 You can ask him -- well, you've pretty much -- you're 19 exhausting it at this point. What is a backlog, to his 20 knowledge, under the customer's -- under the employer's custom 21 and practice -- 22 MR. ARNAULT: Uh-huh. 23 JUDGE ROSAS: -- as well as the correlation to -- you were 24 attempting to correlate this to a customer service target? 25 MR. ARNAULT: Yes.</p>

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<p>1 JUDGE ROSAS: You can ask him about a customer service 2 target as it was implemented and -- 3 MR. ARNAULT: Okay. 4 JUDGE ROSAS: -- I can make a decision, in terms of any 5 comparisons or distinction. Okay? 6 MR. ARNAULT: Okay. 7 JUDGE ROSAS: Alright. We'll leave the legal conclusions 8 for me to make. 9 MR. ARNAULT: So what is a customer service target, as you 10 understand it? 11 THE WITNESS: That's new language to me, but it certainly 12 shortens what I would consider a backlog period. As I stated 13 earlier, prior to this backlogs were kind of manager's 14 discretion. There was times when there was two weeks -- an 15 order came in and it was two weeks before it got addressed. 16 And one manager told me there's only a backlog if we're going 17 to lose a customer. So there was no timeframe attached. This 18 service target has a certain very small window of a timeframe. 19 CONTINUED REDIRECT EXAMINATION 20 BY MR. ARNAULT: 21 Q. So I direct your attention to Joint exhibit 3, page 10. 22 And with specific reference to the installation department. 23 It's the third paragraph down. 24 A. Okay. 25 Q. It says "customer needs may periodically make it necessary</p>	<p>1 MR. ARNAULT: An additional day scheduled. 2 MR. MORTIZ: I've held my tongue, but -- 3 JUDGE ROSAS: Sustained. 4 MR. MORTIZ: -- objection, leading. 5 JUDGE ROSAS: Asked and answered. 6 BY MR. ARNAULT: 7 Q. The language relating to an additional shift for Tuesday 8 through Saturday for installation department, how does that 9 compare with the service department? 10 A. The installation department it's spelled out they can 11 establish a Tuesday to Saturday shift and the service 12 department does not. 13 Q. Okay. Is that the same between the Albany contract and 14 the Syracuse contract? 15 A. I believe it is, yes. 16 Q. Opposing counsel questioned you about a temporary change 17 in the normal work schedule. I'm paraphrasing of course. That 18 was only two to three months. Is there -- where in the 19 contract did you negotiate the employer ability to depart from 20 the terms of the agreement, if only for a short period of time? 21 A. We did not. 22 Q. Okay. Opposing counsel questioned you about the 23 continuation of a job. The employer's right to have an 24 individual -- or the employer's right of an individual to 25 continue performing work that they were doing on a certain day.</p>
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<p>1 to add an additional shift for residential installers from 2 Tuesday through Saturday." 3 A. Correct. 4 Q. What is an additional shift? 5 A. Second shift is any shift that starts after 12:00 noon. 6 Q. And how do you know that that's any shift that starts 7 after 12:00 noon? 8 A. That's the last sentence in that section. 9 Q. So what does this paragraph contemplate in the need of 10 additional work? 11 A. It doesn't really address overtime. There's a 12 compensation for the second shift, but it just says that 13 business needs, if customer -- if there was business needs for 14 a second shift, they could implement one and they would start 15 after 12:00 sometime, you know, continue for eight hours. 16 Q. Would that involve -- how would that work with the 17 existing workforce? 18 A. The technician would just report at a different reporting 19 time and would work eight hours five days a week. He would be 20 on second shift. 21 Q. Okay. So it's a change in the scheduled shift? 22 A. Correct. It's a change. Change of starting time. 23 Q. Okay. It doesn't mean the addition of new day? 24 MR. MORTIZ: Objection, leading. 25 JUDGE ROSAS: It doesn't mean the addition of what?</p>	<p>1 How does that compare to an additional shift? 2 A. I think it's way different. To finish a job that you're 3 on that would extend past your normal quitting time is sort of 4 crucial in our security business. You don't leave a customer 5 without fire alarm, without access codes or -- you know, you 6 don't do that. 7 So our guys understand that on occasion they have to work 8 until the job is done. It's not a new shift. It's just a 9 responsibility that we all understand. 10 Q. How does it relate to finishing -- is there a difference 11 between finishing a job and having to perform a new job? 12 A. Yes. 13 Q. And what is that difference? 14 A. Like to assign a job at 4:30 in the afternoon, obviously 15 that tech would get overtime. If you start a job at 1:00 16 O'clock in the afternoon and it runs past your normal quitting 17 time, our technician would stay and finish the job. But, you 18 know, we have had discussions and negotiations about assigning 19 work close to or after your normal quitting time. 20 Q. Okay. And what about assigning work on a day off, has 21 that been discussed at negotiations? 22 A. No. Like a mandatory day? No. 23 MR. ARNAULT: Nothing further. 24 JUDGE ROSAS: Respondent, any follow up? 25 RE-CROSS EXAMINATION</p>

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<p style="text-align: right;">Page 61</p> <p>1 BY MR. MORTIZ:  2 Q. The contract specifically states that work on a scheduled  3 day off is permitted, right?  4 A. It's permitted, correct.  5 Q. Okay. And I can also hold people over on a normal day,  6 right?  7 A. Yes.  8 Q. The contract sets no limit on the number of volunteers the  9 company can seek for working on a scheduled day off, right?  10 A. No limit, least senior qualified.  11 Q. I understand that. The company sets the number of  12 volunteers, right?  13 A. Yeah.  14 Q. The company says all hands on deck, there's 12 -- yeah, we  15 need 12 volunteers.  16 A. They never said that before.  17 Q. I understand, but this was a different type of backlog.  18 You did understand that, right?  19 A. Short window backlog, yes.  20 Q. Right. Caused by unique circumstances, you also  21 understood, didn't you, sir? Which is the Protective (sic) I  22 ADT --  23 A. Well, that's what the response said, yes.  24 Q. Yeah. They told you what the reason was, correct?  25 A. Correct.</p>	<p style="text-align: right;">Page 63</p> <p>1 Q. Why not?  2 A. I was hoping that they would just rescind it --  3 Q. Okay.  4 A. -- on face value.  5 Q. You testified you have a decent relationship with this  6 company, right?  7 A. I do. I think I do.  8 Q. In the normal course of things, a grievance is the way to  9 sort things out in house, isn't it?  10 A. We have had grievances, yes.  11 Q. But you didn't take that step in this instance, right?  12 A. Did not.  13 Q. You informed the regional office that you were getting  14 threats of decertification, didn't you?  15 A. I did.  16 Q. By the way, the assignment of mandatory overtime is not  17 done by seniority, right?  18 A. Mandatory overtime?  19 Q. Yeah.  20 A. I don't know what mandatory overtime is. It's not --  21 Q. Well, the assignment --  22 A. -- addressed in the contract.  23 Q. -- of overtime is not necessarily by seniority, right?  24 A. I think it is.  25 Q. Expected overtime -- the extension of a shift, because the</p>
<p style="text-align: right;">Page 62</p> <p>1 Q. They told you it wasn't permanent, correct?  2 A. Until rescinded.  3 Q. Okay. So they told you it was not going to be a permanent  4 situation, right?  5 A. Yeah, I guess so. Until rescinded.  6 Q. And it didn't change the normal schedule percentage wise,  7 did it, sir?  8 A. The normal percentage --  9 Q. If I look back an entire year from September 22nd, the  10 majority of the schedules would be the Monday through Friday,  11 correct?  12 A. Correct.  13 Q. So Monday through Friday is still normal, right?  14 A. It's what the contract says, yeah --  15 Q. That's right. Well, the contract says the normal shift  16 shall be Monday through Friday and that occurred, didn't it,  17 sir?  18 A. Yes.  19 Q. Okay. The abnormal stretch was the two to three months to  20 get through the backlog, right?  21 A. Correct.  22 Q. And then it went away?  23 A. Correct.  24 Q. You file a grievance over this issue, sir?  25 A. No.</p>	<p style="text-align: right;">Page 64</p> <p>1 job took too long or a new job coming in, that's not  2 necessarily by seniority order, right? That depends where  3 people are, depends how much of the day they have left, other  4 factors, right?  5 A. Yes.  6 Q. Okay. So it is true that a more senior person, even if  7 inconvenient, could be forced to work overtime in some  8 circumstances?  9 A. Could. Could also refuse it.  10 Q. The contract could assign -- the company could assign  11 everyone overtime under the contract, right?  12 A. Yes.  13 Q. Okay. I may need to go in seniority order sometimes,  14 other times not, but there's no limitation on the assignment of  15 overtime, right?  16 A. No.  17 Q. And there's no limitation on the number of people assigned  18 to work a scheduled day off, is there?  19 A. A limitation?  20 Q. Yeah.  21 A. They could refuse and then they would have to the least  22 senior.  23 Q. Okay. But if I -- the company sets the number, right?  24 A. I would still think seniority would play -- if a guy  25 couldn't make it for whatever reason, he would say no and then</p>

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<p>1 they would go to someone less senior than him.</p> <p>2 Q. Let's try this. The company has the right to schedule</p> <p>3 work on what normally was a scheduled day off, right?</p> <p>4 MR. ARNAULT: Objection.</p> <p>5 MR. MORTIZ: They may need to ask --</p> <p>6 JUDGE ROSAS: Hold on, hold on. What's the basis?</p> <p>7 MR. ARNAULT: He's -- his questions are assuming facts not</p> <p>8 in evidence, that the company has the right to assume that's</p> <p>9 the reason -- they have the right to schedule overtime. That's</p> <p>10 --</p> <p>11 MR. MORTIZ: Questioning --</p> <p>12 MR. ARNAULT: -- why we're here.</p> <p>13 MR. MORTIZ: -- the Union's president.</p> <p>14 JUDGE ROSAS: Let's ask it one more time. If you know.</p> <p>15 MR. MORTIZ: You're the Union president, right, sir?</p> <p>16 THE WITNESS: I am, yes.</p> <p>17 BY MR. MORTIZ:</p> <p>18 Q. And you bargained these agreements?</p> <p>19 A. Yeah.</p> <p>20 Q. Sat at the table?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And you administer them?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. Now, my question is the company has the right to</p> <p>25 establish the number of people needed to work a scheduled day</p>	<p>1 A. The complaint is that you changed a five day workweek to</p> <p>2 six days mandatory. That's the complaint.</p> <p>3 Q. Which I am permitted to do.</p> <p>4 A. I don't believe so.</p> <p>5 JUDGE ROSAS: We're going --</p> <p>6 MR. ARNAULT: Objection.</p> <p>7 JUDGE ROSAS: -- around and around I think.</p> <p>8 MR. MORTIZ: Okay.</p> <p>9 JUDGE ROSAS: I think we're there.</p> <p>10 MR. MORTIZ: Okay.</p> <p>11 JUDGE ROSAS: I think --</p> <p>12 BY MR. MORTIZ:</p> <p>13 Q. By the way, it can be mandatory sometimes, based on</p> <p>14 seniority, right? In other words the least senior you need to</p> <p>15 just take it when the scheduled -- work on a scheduled day off</p> <p>16 --</p> <p>17 A. Is the least senior mandated to work when everybody else</p> <p>18 refuses?</p> <p>19 Q. Yeah.</p> <p>20 A. Yes.</p> <p>21 Q. That's forced non-voluntary action, right?</p> <p>22 A. Based on the contract.</p> <p>23 MR. MORTIZ: Nothing further at this time.</p> <p>24 JUDGE ROSAS: Okay. Anything else?</p> <p>25 MS. PENDER: I just have one question, Your Honor.</p>
<p>Page 66</p> <p>1 off, right?</p> <p>2 A. Yes.</p> <p>3 Q. Now, let's say I have 10 employees, but I only need five</p> <p>4 to work that day. The procedure is to ask for five volunteers,</p> <p>5 right?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And then it goes in reverse seniority order, if I</p> <p>8 don't get my five, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And maybe the Union steps in and helps find those five,</p> <p>11 right?</p> <p>12 A. On occasion.</p> <p>13 Q. But nothing prohibits the company from saying you need 10</p> <p>14 volunteers on this day? In other words 100% of the workforce.</p> <p>15 A. But the employees could refuse.</p> <p>16 Q. And then it would go in reverse seniority order, right?</p> <p>17 A. Correct.</p> <p>18 Q. Until I get the 10th guy, who is the most senior person,</p> <p>19 correct?</p> <p>20 A. Right.</p> <p>21 Q. Is that what your complaint is here, sir, that we didn't</p> <p>22 go through a voluntary process that ends with 100% being</p> <p>23 picked?</p> <p>24 A. Are you asking what the complaint is?</p> <p>25 Q. Yeah.</p>	<p>Page 68</p> <p>1 REDIRECT EXAMINATION</p> <p>2 BY MS. PENDER:</p> <p>3 Q. To your knowledge is there a difference between going over</p> <p>4 your quit time to finish a job and having to be available after</p> <p>5 your normal quit time, in case a new job comes up?</p> <p>6 A. Yes.</p> <p>7 MS. PENDER: Nothing further.</p> <p>8 JUDGE ROSAS: Okay. I think we're already exhausted that</p> <p>9 point as well. So sir, you're excused. Do not discuss --</p> <p>10 MR. MORTIZ: I --</p> <p>11 JUDGE ROSAS: -- your testimony with anyone until you're</p> <p>12 advised -- yeah?</p> <p>13 MR. MORTIZ: I have one brief question.</p> <p>14 JUDGE ROSAS: On that?</p> <p>15 MR. MORTIZ: Yes.</p> <p>16 JUDGE ROSAS: Okay.</p> <p>17 RE-CROSS EXAMINATION</p> <p>18 BY MR. MORTIZ:</p> <p>19 Q. Sir, you would agree with me that we're sort of all</p> <p>20 discussing interpretations of the contract, right?</p> <p>21 A. Correct.</p> <p>22 Q. Would you agree that there's reasonable disagreement at</p> <p>23 times with the interpretation of the contract?</p> <p>24 A. Is there?</p> <p>25 Q. There can be reasonable disagreement on what words mean,</p>

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<p>1 correct?</p> <p>2 A. Correct.</p> <p>3 MR. MORTIZ: Okay. Nothing further.</p> <p>4 JUDGE ROSAS: Okay. Sir, do not discuss your testimony</p> <p>5 with anyone until you're advised otherwise by counsel and to</p> <p>6 the extent that you need to consult with counsel with respect</p> <p>7 to the examination of other witnesses. Okay?</p> <p>8 THE WITNESS: Okay.</p> <p>9 JUDGE ROSAS: Alright. Your next witness, short,</p> <p>10 intermediate, long?</p> <p>11 MS. PENDER: Short.</p> <p>12 MR. ARNAULT: Short.</p> <p>13 JUDGE ROSAS: Alright. Let's do the next witness.</p> <p>14 MR. ARNAULT: Step out to use the restroom --</p> <p>15 JUDGE ROSAS: Okay.</p> <p>16 (Whereupon, a brief recess was taken)</p> <p>17 JUDGE ROSAS: On the record.</p> <p>18 MS. PENDER: General Counsel calls Michael Sopok to the</p> <p>19 stand.</p> <p>20 JUDGE ROSAS: Sir, please raise your right hand.</p> <p>21 Whereupon,</p> <p>22 MICHAEL SOPOK</p> <p>23 Having been first duly sworn, was called as a witness and</p> <p>24 testified herein as follows:</p> <p>25 JUDGE ROSAS: Alright. Please have a seat. State and</p>	<p>1 A. They were my representing union.</p> <p>2 Q. Directing your attention to before September of 2016, how</p> <p>3 many days a week did you work?</p> <p>4 A. Five.</p> <p>5 Q. And how many hours a day did you work?</p> <p>6 A. At least eight.</p> <p>7 Q. On which days of the week did you work?</p> <p>8 A. Monday through Friday.</p> <p>9 Q. Did you ever work Saturdays?</p> <p>10 A. I did on request.</p> <p>11 Q. Do you know how many times, as a full time employee, you</p> <p>12 worked a Saturday?</p> <p>13 A. I think twice.</p> <p>14 Q. Did there come a time when you learned your work schedule</p> <p>15 was going to change?</p> <p>16 A. Yes.</p> <p>17 Q. Do you remember when you learned that?</p> <p>18 A. It was approximately September 7th.</p> <p>19 Q. And how did you learn that?</p> <p>20 A. It was a mass email. An email sent to myself and my</p> <p>21 fellow technicians.</p> <p>22 Q. Would you look at Joint exhibit 1, please? Should be in</p> <p>23 the stack there. I don't know if they're still in order or</p> <p>24 not.</p> <p>25 A. Okay.</p>
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<p>1 spell your name.</p> <p>2 THE WITNESS: Michael Sopok, S-O-P-O-K.</p> <p>3 JUDGE ROSAS: And provide us with an address.</p> <p>4 THE WITNESS: 3265 Pangburn Road, Duanesburg, New York,</p> <p>5 12056.</p> <p>6 JUDGE ROSAS: Okay.</p> <p>7 DIRECT EXAMINATION</p> <p>8 BY MS. PENDER:</p> <p>9 Q. Mr. Sopok, are you familiar a company called ADT Security</p> <p>10 Services?</p> <p>11 A. Yes.</p> <p>12 Q. How are you familiar with ADT?</p> <p>13 A. I was employed by them.</p> <p>14 Q. How long did that employment last?</p> <p>15 A. I was a full time employee of them from October 2015 until</p> <p>16 December 24th 2016.</p> <p>17 Q. What job position did you hold with ADT?</p> <p>18 A. My ending title was service technician.</p> <p>19 Q. Are you familiar with International Brotherhood of</p> <p>20 Electrical Workers Local 43?</p> <p>21 A. Yes.</p> <p>22 Q. If I refer to them as the Union or IBEW will you know what</p> <p>23 I mean?</p> <p>24 A. Yes.</p> <p>25 Q. How are you familiar with the Union?</p>	<p>1 Q. Do you see about three-quarters down the page it says</p> <p>2 "team, with the integration of"?</p> <p>3 A. Yes.</p> <p>4 Q. Can you just quickly glance over that and tell me if</p> <p>5 that's the email that you received?</p> <p>6 A. As I remember, yes.</p> <p>7 Q. You can set that aside now. Thank you. And after</p> <p>8 learning of the six day workweek, did you ever actually work</p> <p>9 that six day schedule?</p> <p>10 A. No.</p> <p>11 Q. Why not?</p> <p>12 A. I have prior obligations to my daughter. 11 year old</p> <p>13 daughter.</p> <p>14 Q. Did you talk to anyone from ADT about the six day</p> <p>15 schedule?</p> <p>16 A. I talked to my shop steward Dave Madsen and then I</p> <p>17 notified Peter Bernard.</p> <p>18 Q. Do you know Peter Bernard's title?</p> <p>19 A. When I left it was interim ITM, which a install team</p> <p>20 manager.</p> <p>21 Q. Do you know when you spoke to Mr. Bernard?</p> <p>22 A. It was very shortly after getting the email.</p> <p>23 Q. Do you remember how the communication took place?</p> <p>24 A. I called him, because he was remote, not in our office.</p> <p>25 Q. And what did you tell him?</p>

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<p>1 A. I explained to him that I had a agreement with my 2 daughter's mother and that I was not going to be able to work 3 the six day workweek, because I get my daughter on all weekends 4 throughout the year. 5 Q. And you said that there was at least one or two occasions 6 that you had worked Saturdays before, is that right? 7 A. Yes. 8 Q. And you were able to do that, correct? 9 A. Yes. 10 Q. But not to work the six day workweek that included a 11 Saturday? 12 A. I was able to set up times that I could negotiate with my 13 daughter's mother, so if I didn't get her on Saturday, I could 14 have her for a little bit of extra time on maybe another day. 15 But being that she was a full time employee also, it was up to 16 her when she could set that up. 17 Q. When you talked to Mr. Bernard what did he tell you? 18 A. He told me that I would have to put it in writing why I 19 couldn't do it and that he would pass it up the ladder. 20 Q. Did you provide Mr. Bernard with a letter? 21 A. I did. 22 Q. I'll have you look -- there's -- 23 MS. PENDER: I apologize, Your Honor. It's not marked. 24 We thought it might be a Joint exhibit, but it's going to be a 25 General Counsel exhibit. I wasn't sure if you want me to start</p>	<p>1 16. 2 JUDGE ROSAS: Any objection? Voir dire? 3 MR. MORTIZ: No. 4 JUDGE ROSAS: Okay. General Counsel's 16 is received. 5 (General Counsel's GC-16 received in evidence) 6 BY MS. PENDER: 7 Q. Do you remember when you gave this letter to Mr. Bernard? 8 A. I would have to say approximately 9/20 give or take a day. 9 Q. Do you remember the circumstances under which you gave it 10 to him? 11 A. It was in lieu of him requesting it in writing why I 12 couldn't do it. 13 Q. I mean do you remember where you were when you gave it to 14 him or -- 15 A. Oh, I emailed it. 16 Q. And did you get a response from Mr. Bernard about the 17 letter you gave him? 18 A. He had called me and said that I would need to provide a 19 court document of such agreement or something saying that, you 20 know, I had custody of my child. Being that there was no court 21 document, it was an agreement between my me and my daughter's 22 mother, she gave me a notarized document. 23 Q. If you look at what's exhibit 17? It's also going to be a 24 General Counsel exhibit. Do you recognize this letter? 25 A. I do.</p>
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<p>1 with GC-2 or it already has 16 on it. Just go for it. It's 2 one of the sideways ones in the back. 3 JUDGE ROSAS: So you've pre-marked it as General Counsel's 4 exhibit 2? 5 MS. PENDER: It's pre-marked as exhibit 16. I didn't know 6 if it was going to be Joint -- 7 JUDGE ROSAS: Oh. 8 MS. PENDER: -- in which case it would have been Joint 16. 9 JUDGE ROSAS: Doesn't matter. 10 MS. PENDER: Okay. So we'll just keep it as General 11 Counsel's 16. 12 JUDGE ROSAS: Okay. 13 MS. PENDER: So do you have that in front of you, what's 14 marked as exhibit 16? 15 THE WITNESS: Yeah, on the bottom? Yes. 16 BY MS. PENDER: 17 Q. Do you recognize this document? 18 A. I do. 19 Q. What is this? 20 A. This was the first letter I provided to Pete Bernard 21 stating I couldn't do it. 22 (General Counsel's GC-16 identified) 23 Q. Is that your signature at the bottom? 24 A. It is. 25 MS. PENDER: Your Honor, I offer General Counsel exhibit</p>	<p>1 Q. What is this? 2 A. This was the letter from Nicky Sherman (ph), my daughter's 3 mother. 4 (General Counsel's GC-17 identified) 5 Q. And this document is not notarized, is that correct? 6 A. It is not notarized, yeah. 7 Q. Is this the pre-notarized letter? 8 A. It is, it is. 9 Q. And the notarized version of this letter is what you 10 provided back to ADT, is that right? 11 A. I gave it to Mike Kirk, yes. 12 MS. PENDER: I offer General Counsel exhibit 17. 13 JUDGE ROSAS: Any objection? 14 MR. MORTIZ: Voir dire on this one. 15 JUDGE ROSAS: Sure. 16 VOIR DIRE EXAMINATION 17 BY MR. MORTIZ: 18 Q. Was there a signature on the original, sir? Or is it 19 covered, do you know? 20 A. On the notarized copy there was indeed a signature, yes. 21 Q. Oh, did your wife sign it -- well, do you know when your 22 wife signed it is the question? 23 A. I don't. It was between her and the notary. 24 Q. Okay. You're -- I think you're going to testify that 25 there was a subsequent document that had both the signature and</p>

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<p style="text-align: right;">Page 77</p> <p>1 a notary on it. Is that where this is going?  2 A. This document did get notarized and signed.  3 MR. MORTIZ: No further questions --  4 JUDGE ROSAS: Any objection?  5 MR. MORTIZ: -- and no objection.  6 JUDGE ROSAS: No objection?  7 MR. MORTIZ: No.  8 JUDGE ROSAS: Alright. General Counsel's 17 is received.  9 (General Counsel's GC-17 received in evidence)  10 CONTINUED DIRECT EXAMINATION  11 BY MS. PENDER:  12 Q. And who did you give the notarized letter to?  13 A. Michael Kirk.  14 Q. When did you give that to him?  15 A. At our tech meeting that he had called.  16 Q. Where was that meeting?  17 A. ADT office in Clifton Park, New York.  18 Q. Is Clifton Park considered the Albany office?  19 A. Yes.  20 Q. Do you remember when that meeting was?  21 A. I do not.  22 Q. Did anyone from ADT ever contact you after that meeting  23 about what your schedule would be?  24 A. Shortly after that meeting I received a call from Pete  25 Bernard stating that in lieu of the document I would not have</p>	<p style="text-align: right;">Page 79</p> <p>1 would still impact my time picking up my daughter.  2 Q. Did you ever work the 12 hour Monday through Friday  3 schedule?  4 A. No.  5 MS. PENDER: Nothing further at this time.  6 JUDGE ROSAS: Charging Party?  7 MR. ARNAULT: So to pick up there, a couple brief  8 questions.  9 DIRECT EXAMINATION  10 BY MR. ARNAULT:  11 Q. You testified your employment came to an end?  12 A. Yes.  13 Q. How did it come to an end?  14 A. I -- well, after getting notified of the 12 hour workdays  15 it wasn't commenced right away after our conversation. So I  16 didn't argue. I just said okay, well I'll deal with it when  17 that day comes.  18 Q. Uh-huh.  19 A. Later on past that, I don't know the date, but Mr. Bernard  20 called me up and said hey, just so you know your 12 hour  21 workdays are going to start December 1st. I got off the phone  22 with him and then I called him back shortly after, said this is  23 my two week notice.  24 Q. Two week notice. So you resigned?  25 A. Yes.</p>
<p style="text-align: right;">Page 78</p> <p>1 to work the six day workweek.  2 Q. To your knowledge are you aware if anyone from ADT reached  3 out to the Union about your schedule?  4 A. I was told that Dave Madsen was in contact with Pat  5 Costello.  6 Q. Who told you that?  7 A. Dave Madsen.  8 Q. Did anyone from ADT ever tell you anything about the  9 Union?  10 A. No.  11 Q. Did there a come a time that you left employment at ADT?  12 A. I did, yes.  13 Q. When was that?  14 A. I believe my last day was December 24th.  15 Q. And what were the circumstances under which you left?  16 A. Approximately two to three weeks after the whole notarized  17 letter was given in and I didn't have to work the six day  18 workweek, I was contacted by Peter Bernard. Mr. Bernard told  19 me that because I didn't work the six day workweek that my  20 schedule would have to be adjusted to 12 hour days Monday  21 through Friday.  22 Q. And what does that have to do with you leaving?  23 A. Yet again, 12 hours days, being that I pick up my daughter  24 around late afternoon Friday and drop her off, you know, late  25 afternoon Sunday, the Friday 12 hours days, if not longer, lit</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. What role did the change in schedule play in you  2 resigning?  3 A. I couldn't do --  4 MR. MORTIZ: Objection, relevance to the allegation in the  5 complaint.  6 JUDGE ROSAS: We've already got the response. I'm going  7 to sustain the objection.  8 BY MR. ARNAULT:  9 Q. But for the change in work schedule, would you have still  10 --  11 MR. MORTIZ: Objection.  12 MR. ARNAULT: -- worked --  13 MR. MORTIZ: Relevance to the allegation stated in the  14 complaint, including the subsection of the Act stated in the  15 complaint.  16 JUDGE ROSAS: Okay. I'm going to sustain the objection.  17 MR. ARNAULT: Your Honor, the -- if I may offer a response  18 to this point here? That the complaint allows for any relief  19 that's made just and proper and this is an 8(a)(5) and 8(d)  20 violation. And there's ample case law to support an 8(3)  21 remedy for an 8(5) and that's what we're looking into now.  22 JUDGE ROSAS: You're shifting this to an 8(a)(3) now?  23 MR. ARNAULT: No, an 8(3) remedy for a 8(5) violation,  24 which we're trying to explore with the witness at this time.  25 JUDGE ROSAS: Sustained.</p>

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<p>1 BY MR. ARNAULT:  2 Q. What was your discussion like with Dave Madsen, the union  3 steward?  4 A. He was my shop steward. Chain of command. If I ever had  5 any, you know, union issues at all I was to report to him.  6 Q. Okay. And did you have any conversations with the Union  7 assistant business manager/president Pat Costello about your --  8 the change in work schedule as it relates to you?  9 A. Not that I recall. No, not about this, no.  10 MR. ARNAULT: Nothing further at this time.  11 JUDGE ROSAS: Okay. Respondent?  12 MR. MORTIZ: Has the witness provided any witness  13 statements, affidavits, Jencks statements?  14 MS. PENDER: Yes.  15 MR. MORTIZ: I'd request them at this time. Thank you.  16 JUDGE ROSAS: How many pages?  17 MS. PENDER: There is a one page statement and a two page  18 affidavit.  19 JUDGE ROSAS: Okay. Alright. Let's go off the record.  20 (Whereupon, a brief recess was taken)  21 JUDGE ROSAS: On the record.  22 MR. MORTIZ: Ready when you are.  23 JUDGE ROSAS: You're ready? Okay. Respondent, cross.  24 CROSS EXAMINATION  25 BY MR. MORTIZ:</p>	<p>1 A. Can -- I don't understand.  2 Q. You initiated the discussions with the company, regarding  3 your particular and unique custody situation?  4 A. Yes, I did.  5 Q. No one from the company went out of their way to approach  6 you?  7 A. No.  8 Q. That includes Mr. Bernard and Mr. Kirk, correct?  9 A. Yes, sir.  10 Q. Okay. As a result of that you ended up not working  11 Saturdays during this brief period, right?  12 A. Yes.  13 Q. Okay. Now, you weren't paid any more for not working  14 Saturdays, right?  15 A. No.  16 Q. You weren't paid any less for not working Saturdays --  17 A. No.  18 Q. -- right? Weren't given a better truck?  19 A. No.  20 Q. Better tools?  21 A. No.  22 Q. Anything better or worse, as far as employment was  23 concerned?  24 A. No.  25 Q. Nor were you asked to receive anything better or worse,</p>
<p>Page 82</p> <p>1 Q. Mr. Sopok, where do you currently work?  2 A. Tyco Simplex Grinnell.  3 Q. When did you start working there?  4 A. It was shortly -- it was within a week of December 14th.  5 Q. And you already had that job lined up in early December,  6 right?  7 A. When I was -- put in my two week notice, I started  8 looking.  9 Q. Well, you put in your two week notice via email, isn't  10 that correct, sir?  11 A. Well, my two week notice was given verbally.  12 Q. Okay. When?  13 A. It was December -- or November 30th, December 1st,  14 somewhere in that timeframe.  15 Q. Okay. Did you already have the offer from Simplex  16 Grinnell at that time?  17 A. No.  18 Q. When did you secure -- did you interview?  19 A. Huh?  20 Q. Had you interviewed?  21 A. No.  22 Q. How did you secure that position?  23 A. A previous employee of ADT.  24 Q. Now, you approached the company about your custody  25 situation, right?</p>	<p>Page 84</p> <p>1 right?  2 A. Just the extra day, that's it.  3 MR. MORTIZ: Nothing further.  4 JUDGE ROSAS: Any follow up?  5 MS. PENDER: Just one question.  6 REDIRECT EXAMINATION  7 BY MS. PENDER:  8 Q. Mr. Sopok, when you approached the company to discuss an  9 exemption, what was your understanding of how long the six day  10 workweek would be in effect?  11 A. We were told until further notice.  12 MS. PENDER: Nothing further.  13 JUDGE ROSAS: Any follow up?  14 MR. ARNAULT: Nothing further.  15 JUDGE ROSAS: Okay. Anything? Thank you. Alright. Sir,  16 you're excused. Please do not discuss your testimony with  17 anyone until you're advised by counsel or otherwise the case is  18 closed. Okay?  19 MR. MORTIZ: Thank you, Your Honor.  20 JUDGE ROSAS: Thank you. Have a good day. Alright.  21 Let's go off the record.  22 (Whereupon, at 12:30 p.m. a luncheon recess was taken to  23 reconvene at 1:30 p.m.)</p>

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<p>1 A F T E R N O O N S E S S I O N 2 (1:26 P.M.) 3 JUDGE ROSAS: On the record. 4 Next witness. 5 MS. PENDER: General Counsel calls David Madsen. 6 JUDGE ROSAS: Please raise your right hand. 7 Whereupon, 8 DAVID MANSEN 9 Having been first duly sworn, was called as a witness and 10 testified herein as follows: 11 JUDGE ROSAS: Please have a seat. And if you could state 12 and spell your name? 13 THE WITNESS: My name is David Madsen, D-A-V-D M-A-D-S-E- 14 N. 15 JUDGE ROSAS: And provide us with an address. 16 THE WITNESS: 5 Franklin Street, Poestenkill, New York, 17 12140. 18 JUDGE ROSAS: Okay. 19 DIRECT EXAMINATION 20 BY MS. PENDER: 21 Q. Good afternoon, Mr. Madsen. Have a few questions for you. 22 I am going to ask you to speak up. The microphone in front of 23 you records, but it won't amplify your voice. 24 A. Alright. 25 Q. I will ask you to let me get a full question out before</p>	<p>1 A. I have been part of the Union since I started with ADT. 2 Q. Do you hold any position within the Union currently? 3 A. I am currently the shop steward. 4 Q. In what shop? 5 A. The Albany branch. 6 Q. What are your duties as shop steward? 7 A. To relay any problems that may occur with the company and 8 the union contract. Relay those up to our supervisor or our 9 management in the Union to have them address any problems. 10 Q. And who was the person that you report to? 11 A. Pat Costello. 12 Q. Do you participate in bargaining contracts? 13 A. I do not. 14 Q. Are you present for bargaining? 15 A. Yes. 16 Q. Do you have any authority to bargain on behalf the Union? 17 A. I do not. 18 Q. Who does have that authority? 19 A. Pat Costello. 20 Q. When you bring issues to Mr. Costello's attention, do you 21 also try to solve those issues with management yourself? 22 A. Depending on the issue at hand, I may try to resolve it, 23 but anything that's out of the -- out of my scope of being a 24 shop steward, I certainly relay all the stuff to Pat Costello. 25 Q. I'm going to turn your attention to the time prior</p>
<p>1 you provide the answer. And I will let you get your full 2 answer out before I ask another question so the record is 3 clear. And if I ask a question that you don't understand or 4 it's unclear to you in any way, let me know and I'm happy to 5 rephrase it so that it makes sense. Okay? 6 A. Okay. 7 Q. Mr. Madsen, are you currently employed? 8 A. Yes. 9 Q. Where do you work? 10 A. ADT Security. 11 Q. What's your job title? 12 A. Installation technician. 13 Q. How long have you worked for ADT? 14 A. Since '99. 15 Q. 1999? 16 A. 1999. 17 Q. Have you been an installation technician that whole time? 18 A. Yes. 19 Q. Are you familiar with the International Brotherhood of 20 Electrical Workers Local 43? 21 A. Yes. 22 Q. If I called them the Union will you know what I'm 23 referring to? 24 A. Yes. 25 Q. How are you familiar with the Union?</p>	<p>1 September of 2016. Before September 2016 did you have a 2 regular work schedule? 3 A. Yes. 4 Q. Can you tell me what that schedule was? 5 A. 8:00 to 4:30, five days a week, 40 hours. 6 Q. Did you ever work overtime? 7 A. Yes. 8 Q. And how would it come about that you would work overtime? 9 A. A voluntary basis. It was not mandatory. 10 Q. How did you know that it was voluntary, as opposed to 11 mandatory? 12 A. They would ask you if you could stay late or had told you 13 if you wanted to stay late on a particular job, that you could 14 stay. They didn't have a problem. 15 Q. And what days of the week did you normally work? 16 A. Monday through Friday. 17 Q. Did you ever work on Saturdays? 18 A. No. 19 Q. Were you ever asked to work a Saturday? 20 A. Yes. 21 Q. And you refused? 22 A. Yes. 23 Q. Were you disciplined for refusing to work a Saturday? 24 A. No. 25 Q. Did there come a time when you learned that your schedule</p>

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<p style="text-align: right;">Page 89</p> <p>1 would change?  2 A. Yes.  3 Q. Do you remember when that was?  4 A. In September at some point.  5 Q. Of which year?  6 A. 2016.  7 Q. How did you find out about that change?  8 A. It was either by an email or a print out. I think it was  9 email and someone had printed out that email with the scope --  10 the roll out of the six day workweek, when that was going to  11 happen.  12 Q. Can you look at Joint exhibit 1? It should be in front of  13 you. It says JX-1 on the bottom.  14 A. Yes.  15 Q. Would you look at the middle of the email, down where it  16 say team? Can you just glance at that and tell me if that  17 looks like the email that you saw?  18 A. Yes.  19 Q. Thank you. You can set that aside now. Did you actually  20 work the six day schedule?  21 A. Yes.  22 Q. Do you remember for how long you worked it?  23 A. I don't.  24 Q. How often did you work that six day schedule?  25 A. I did at least four or four of the six maybe Saturdays.</p>	<p style="text-align: right;">Page 91</p> <p>1 Q. Do you know how you learned about it?  2 A. Yes.  3 Q. How did you learn about it?  4 A. When I called in to the coordinators that coordinate our  5 work schedule for the day, indicated to me that I seemed to be  6 the only one doing the Saturdays. And I didn't realize that  7 until that moment.  8 Q. And that was after the September 22nd 2016 implementation  9 date?  10 A. Yes.  11 MS. PENDER: No further questions at this time.  12 JUDGE ROSAS: Charging Party?  13 MR. ARNAULT: Yes, Your Honor.  14 DIRECT EXAMINATION  15 BY MR. ARNAULT:  16 Q. So you said you act as a relay for information and issues  17 the bargaining may have and pass them along to Pat Costello.  18 Have you ever filed a grievance in connection with that?  19 A. I have not, no.  20 Q. Do you make decisions on filing grievances?  21 A. I do not.  22 Q. So do you know approximately when you stopped working the  23 six day workweek?  24 A. January. The end of December, January.  25 Q. So between September and the end -- God bless you. End of</p>
<p style="text-align: right;">Page 90</p> <p>1 Q. Did you become aware of any issues that other bargaining  2 unit employees may have had with the six day schedule?  3 A. Yes.  4 Q. What did you do when you heard those issues?  5 A. Well, as soon as the rollout came out in my hand there was  6 discussion and most of the employees had an issue with working  7 the six day workweek. And being the shop steward, know the  8 agreement that we had in place didn't have that included. And  9 it was a problem. So I relayed the information to Pat Costello  10 of this rollout.  11 Q. Did Michael Sopok talk to you about the six day schedule?  12 A. Yes.  13 Q. Do you recall when he first talked to you about it?  14 A. It was that -- I think it was that morning that we all  15 found out we were going to be doing a six day workweek.  16 Q. Did Mr. Sopok ask you to talk to ADT for him?  17 A. He did not.  18 Q. Did anyone from ADT management approach you to talk about  19 Mr. Sopok's schedule?  20 A. They did not.  21 Q. Did you ever become aware that Mr. Sopok was not working  22 the six day schedule?  23 A. Yes.  24 Q. Do you recall when that -- when you became aware of that?  25 A. I don't recall exactly when.</p>	<p style="text-align: right;">Page 92</p> <p>1 December and January you worked those Saturdays?  2 A. Were you aware of any exceptions to get out of not working  3 Saturdays?  4 A. Yes.  5 Q. And what were those exceptions?  6 A. Schooling was in the clause of exceptions.  7 Q. What do you mean schooling?  8 A. If you were attending higher education, you were exempt  9 from working the Saturdays.  10 Q. Did the company raise that exemption with you?  11 A. No.  12 Q. How did you find out about that exemption?  13 A. It was in the email that -- in the roll out email with the  14 implementation of the six day workweek.  15 Q. Have you ever handled an information request on behalf of  16 the Union?  17 A. I have not.  18 MR. ARNAULT: No further questions at this time.  19 JUDGE ROSAS: Respondent, cross.  20 MR. MORTIZ: The witness provide any witness statements,  21 affidavits, Jencks statements?  22 MS. PENDER: Yes.  23 MR. MORTIZ: If so we request them.  24 JUDGE ROSAS: Let's go off the record.  25 (Whereupon, a brief recess was taken)</p>

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Page 93	<p>1 JUDGE ROSAS: On the record.</p> <p>2 Respondent, cross.</p> <p>3 CROSS EXAMINATION</p> <p>4 BY MR. MORTIZ:</p> <p>5 Q. Madsen? Mr. Madsen, is that correct?</p> <p>6 A. Yes.</p> <p>7 Q. Been working for this company since 1999?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Where does that place you on the seniority list,</p> <p>10 sir?</p> <p>11 A. At the top.</p> <p>12 Q. The very top?</p> <p>13 A. Yes.</p> <p>14 Q. Anyone close?</p> <p>15 A. No.</p> <p>16 Q. You're pretty much the longest there, right?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Longest tenure?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. The company can require overtime, right?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. It's got to be done in a certain order, correct?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And there's no limit on how many people the company</p> <p>25 can require for overtime, is there?</p>	Page 95	<p>1 you're just giving your opinion, right?</p> <p>2 A. Can you say that again?</p> <p>3 Q. Yes. You don't have authority, I believe you testified,</p> <p>4 to be the bargainer or to bargain with the company, correct?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. That's handled by Mr. Costello, right?</p> <p>7 A. Correct.</p> <p>8 Q. Perhaps others?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. So when you testified about what a contract clause</p> <p>11 means, you were just giving sort of your layman's opinion,</p> <p>12 right?</p> <p>13 A. What the contract stated is what I --</p> <p>14 Q. Okay. You're just giving us your reading, right?</p> <p>15 A. Yes.</p> <p>16 Q. You weren't the bargainer, right?</p> <p>17 A. No.</p> <p>18 Q. If I asked you about bargaining history and the exchange</p> <p>19 of proposals you wouldn't know?</p> <p>20 A. No.</p> <p>21 Q. Thank you. And I may have gotten this wrong, sir, but I</p> <p>22 thought you said that you talked to the dispatcher or scheduler</p> <p>23 and there was a comment you're the only one doing Saturday.</p> <p>24 Did I get that wrong? Do you recall saying that?</p> <p>25 A. Yeah. I said that.</p>
Page 94	<p>1 A. Not to my knowledge.</p> <p>2 Q. Okay. Okay. But if they were to for instance require</p> <p>3 everyone to work overtime, you'd be the last one chosen, right?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. So when you're testifying, sir, about voluntary and</p> <p>6 involuntary, you're describing a function of your advanced</p> <p>7 seniority, correct?</p> <p>8 A. Can you repeat that?</p> <p>9 Q. Yeah. You're describing your experience with overtime.</p> <p>10 It's usually voluntary, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. But you're the top man on the totem pole, correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And therefore if everyone declines you are the last one</p> <p>15 hit with the mandatory overtime requirement, right?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. But you could be hit with it, if overtime was</p> <p>18 required by all, from top to bottom of the list, right?</p> <p>19 A. Yes.</p> <p>20 Q. That just rarely happens, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. You say you have no authority to bargain the</p> <p>23 contract? To you recall saying that?</p> <p>24 A. Not to my knowledge.</p> <p>25 Q. Alright. So when you testified what the contract says,</p>	Page 96	<p>1 Q. What was that conversation again, sir?</p> <p>2 A. When I had called in to our coordinating team to find out</p> <p>3 if there was anybody else working, to find out if somebody</p> <p>4 needed help, because I had finished my task for that Saturday,</p> <p>5 the comment came back that I was the only one working.</p> <p>6 Q. Is it your understanding, sir, that Saturday was required</p> <p>7 of all employees in Syracuse and Albany except for Mr. Sopok?</p> <p>8 A. I was not aware.</p> <p>9 Q. Do you have any basis to know whether it was required of</p> <p>10 all or something short of all?</p> <p>11 A. It was required of all, as it stipulated in the rollout,</p> <p>12 except for higher education.</p> <p>13 Q. And Mr. Sopok's situation, correct?</p> <p>14 A. As I found out later.</p> <p>15 Q. By the way, higher education that's a company provided</p> <p>16 benefit, isn't it?</p> <p>17 A. I can't say.</p> <p>18 Q. Are you aware that the company provides the benefit of</p> <p>19 higher education to technicians, and as a result of that pays</p> <p>20 the institute of higher learning in advance?</p> <p>21 A. I did not know that.</p> <p>22 Q. Okay. You don't have any reason to believe it's not true</p> <p>23 that that exemption is because the company has already paid for</p> <p>24 that schooling and it occurs on Saturday?</p> <p>25 A. No, I don't know that.</p>

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<p style="text-align: right;">Page 97</p> <p>1 Q. You have no information about that do you?</p> <p>2 A. No.</p> <p>3 Q. You have no reason to believe that's untrue through do</p> <p>4 you?</p> <p>5 A. I have -- no.</p> <p>6 Q. Are you familiar with the company ancillary benefit book?</p> <p>7 A. No.</p> <p>8 Q. In your opinion, that's a good benefit, correct? That's</p> <p>9 advantageous --</p> <p>10 MS. PENDER: Objection.</p> <p>11 MR. MORTIZ: -- for employees?</p> <p>12 JUDGE ROSAS: Sustained. There's facts, there's opinion,</p> <p>13 there's alternate facts. I mean however you want to put it.</p> <p>14 It's whatever he knows that's in the contract. Whatever is in</p> <p>15 the contract.</p> <p>16 MR. MORTIZ: Let's not go down that road, Your Honor.</p> <p>17 BY MR. MORTIZ:</p> <p>18 Q. Mr. Sopok has a unique custody situation, right?</p> <p>19 A. I don't know.</p> <p>20 Q. But he did approach you about his situation, didn't he?</p> <p>21 A. Not in detail.</p> <p>22 Q. Okay. You learned at some point he approached the company</p> <p>23 also and said what his problem was with Saturdays --</p> <p>24 A. Yes.</p> <p>25 Q. -- is that correct?</p>	<p style="text-align: right;">Page 99</p> <p>1 MR. MORTIZ: No further questions.</p> <p>2 JUDGE ROSAS: Okay. Any follow up?</p> <p>3 MS. PENDER: Just very briefly, Your Honor.</p> <p>4 REDIRECT EXAMINATION</p> <p>5 BY MS. PENDER:</p> <p>6 Q. Mr. Madsen, how do you know week to week what your work</p> <p>7 schedule is?</p> <p>8 A. It's already established Monday through Friday 8:00 to</p> <p>9 4:30 per the Union contract.</p> <p>10 Q. And so if you are asked to perform overtime, is that noted</p> <p>11 on your normal weekly schedule?</p> <p>12 A. If it's an out of town type thing, you know, there's a</p> <p>13 protocol to follow to let us know or ask us if we can</p> <p>14 accommodate that. If we can't they do the -- find out who</p> <p>15 could do it and assign them that job.</p> <p>16 Q. And if you -- even though you're at the top of the</p> <p>17 seniority list, if there's a situation where you had to work</p> <p>18 overtime, how would that be denoted on your schedule?</p> <p>19 A. There's a place on the timesheet for end of day time to</p> <p>20 put in for the overtime, as we have completed. If we can work</p> <p>21 the overtime, generally speaking, we are allowed to work. If</p> <p>22 for some reason you cannot, it's not mandatory that you do. It</p> <p>23 would be nice if you could.</p> <p>24 Q. So after September 22nd 2016, when the six day workweek</p> <p>25 was in effect, how were you apprised of your schedule at that</p>
<p style="text-align: right;">Page 98</p> <p>1 A. Yeah.</p> <p>2 Q. Okay. And he also notified you?</p> <p>3 A. Notified me?</p> <p>4 Q. Mr. Sopok shared his situation, at least generally --</p> <p>5 A. Yeah.</p> <p>6 Q. -- with you also?</p> <p>7 A. Yes, generally.</p> <p>8 Q. You didn't approach the company, right?</p> <p>9 A. I did not.</p> <p>10 Q. No one from the company refused to talk to you about it?</p> <p>11 A. No one approached me, no.</p> <p>12 Q. Okay. No -- you didn't file a grievance over it?</p> <p>13 A. I did not, no.</p> <p>14 Q. You didn't request a meeting?</p> <p>15 A. I did not.</p> <p>16 Q. Okay. You have no evidence, do you, sir, that the</p> <p>17 company's treatment of Mr. Sopok was designed to undermine your</p> <p>18 role as a steward, do you?</p> <p>19 A. Say that again.</p> <p>20 Q. You have no evidence that the company's dealings with Mr.</p> <p>21 Sopok was somehow an attempt to undermine you status as a union</p> <p>22 steward?</p> <p>23 A. Not that I'm aware of.</p> <p>24 Q. Or an attempt to undermine the Union generally?</p> <p>25 A. I wouldn't know that.</p>	<p style="text-align: right;">Page 100</p> <p>1 point?</p> <p>2 A. Say that again.</p> <p>3 Q. How did you know what your weekly schedule was?</p> <p>4 A. I'm not sure where we're at here.</p> <p>5 Q. My question I guess is were the Saturdays after September</p> <p>6 22nd scheduled the same way as overtime would have been before</p> <p>7 September of 2016?</p> <p>8 A. No, the Saturdays became a regular work day that you would</p> <p>9 -- Monday through Friday and not it's Monday through Saturday.</p> <p>10 That's your work week. It would be set. And they would book</p> <p>11 jobs accordingly to those days.</p> <p>12 MS. PENDER: Nothing further.</p> <p>13 JUDGE ROSAS: Charging Party?</p> <p>14 MR. ARNAULT: Yes.</p> <p>15 DIRECT EXAMINATION</p> <p>16 BY MR. ARNAULT:</p> <p>17 Q. So you just mentioned that you would -- the company would</p> <p>18 book jobs on Saturday. How did you learn about your booked</p> <p>19 jobs?</p> <p>20 A. We would get our scope of work through our laptops. The</p> <p>21 jobs would be presented through they call it MASTerMind.</p> <p>22 Q. Okay. So on Monday morning you come in, you open you --</p> <p>23 A. Turn on the laptop and look to see what the schedule is</p> <p>24 for that day. The jobs would populate on a certain page, and</p> <p>25 we would see all the jobs, the addresses and scope of work for</p>

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<p style="text-align: right;">Page 101</p> <p>1 each of the jobs.  2 Q. Okay. So then you said you workday was 8:00 to 4:30,  3 Monday through Friday?  4 A. Typically, yes.  5 Q. So 8:00 O'clock on Monday you would -- you'd open this up,  6 and you'd got to your first job and just work your way through  7 the list?  8 A. Yes.  9 Q. What if you didn't finish the jobs on the list for that  10 day?  11 A. You would have to reschedule those to go back on a later  12 date to complete those jobs.  13 Q. Okay. Could you look forward for the -- look forward to  14 the entire week, as to what jobs you had scheduled on Tuesday,  15 Wednesday?  16 A. Usually not.  17 Q. Usually not? Okay. On Saturday when you went in, what  18 time would you go to work on these Saturdays?  19 A. Regular 8:00 to 4:30 shift.  20 Q. 8:00 to 4:30 after September 22nd 2016 was your daily work  21 schedule on Saturdays?  22 A. Yes.  23 Q. Okay. And the exact -- you would open up your laptop --  24 A. Yeah.  25 Q. -- and it'd have a list of jobs?</p>	<p style="text-align: right;">Page 103</p> <p>1 comes where a job, it runs overtime -- runs into overtime  2 naturally because of things that happen on the job at which  3 time you have the option, in my understanding is to stay and  4 work if the customer will allow it or the jobsite can maintain  5 you being there after hours or it has to be rescheduled to go  6 back another day.  7 Q. Okay. Alright. You were asked about the potential  8 undermining of the Union and the dealing with Mike Sopok. Have  9 you ever heard any comments from management about the Union?  10 MR. MORTIZ: Objection, relevance, and no foundation and  11 no timeframe.  12 JUDGE ROSAS: Both questions are irrelevant, but I'm going  13 to allow counsel to bring it out. Go ahead. Tit for tat.  14 THE WITNESS: Can you repeat the question?  15 MR. ARNAULT: Yes. Have you heard any comments from any  16 of the management personnel about the Union and the Union -- or  17 the Union's abilities?  18 THE WITNESS: I want to say I haven't.  19 BY MR. ARNAULT:  20 Q. Okay. Did they talk about the Union when they rolled out  21 the six day workweek?  22 MR. MORTIZ: Objection, no --  23 JUDGE ROSAS: It's starting to get a little vague and it's  24 starting to get a little afield. I'm going to put a cap on it.  25 I'll give you one more question in this --</p>
<p style="text-align: right;">Page 102</p> <p>1 A. Correct.  2 Q. How large in the -- after September 22nd 2016, how many  3 employees were in the Albany bargaining unit?  4 A. Four.  5 Q. Four? Could you name them?  6 A. Myself, Joe Reed --  7 Q. Okay.  8 A. -- John Brady and Adam Montgomery.  9 Q. And Mike Sopok?  10 A. Mike Sopok.  11 Q. Okay. So five?  12 A. Five.  13 Q. Were any of those on disability?  14 A. Adam Montgomery. And Joe Reed was soon to be going out  15 for heart surgery.  16 Q. Okay. So there's three people on that list?  17 A. Yeah.  18 Q. Okay. And then Mike Sopok did not work on the -- on  19 Saturdays?  20 A. Right.  21 Q. So you had two people working on Saturdays?  22 A. Yes.  23 Q. Okay. So how was overtime schedules? Sorry, can you  24 clarify that for me?  25 A. Overtime isn't scheduled on a regular basis. Overtime</p>	<p style="text-align: right;">Page 104</p> <p>1 MR. ARNAULT: Alright.  2 JUDGE ROSAS: -- domain.  3 MR. MORTIZ: Alright. So I'll stick with that one.  4 BY MR. ARNAULT:  5 Q. The -- when the six day workweek was rolled out, was there  6 any discussion about the Union's ability to address the six day  7 workweek?  8 A. I think there was a comment made in reference to that,  9 you're not going to be able to do anything about it. We're  10 just going to have to do it.  11 MR. ARNAULT: No further questions.  12 JUDGE ROSAS: Any follow up?  13 RE-CROSS EXAMINATION  14 BY MR. MORTIZ:  15 Q. The majority of your shifts for 2012 remained Monday  16 through Friday, right?  17 A. Yes.  18 Q. Monday through Saturday would be the minority of the time,  19 right?  20 A. Yes.  21 Q. For a defined segment of the year, correct?  22 A. Correct.  23 Q. Due to a specific customer backlog. Is that your  24 understanding?  25 A. I didn't know if we had one or if this was something other</p>

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<p style="text-align: right;">Page 105</p> <p>1 than that.</p> <p>2 Q. You understood that was the company's position, correct?</p> <p>3 A. Yes.</p> <p>4 Q. That it was all hands on deck to meet a specific customer</p> <p>5 need for a specified time?</p> <p>6 A. Yes.</p> <p>7 Q. And then it went away and you went back to Monday-Friday,</p> <p>8 right?</p> <p>9 A. The Saturday went away and they implemented overtime on</p> <p>10 Mondays and Tuesdays.</p> <p>11 Q. Okay. But you're not -- the complaint doesn't address</p> <p>12 that. The complaint here is about Saturday work, right?</p> <p>13 A. Right. So the answer to your question --</p> <p>14 Q. Yeah. There's nothing improper about the current overtime</p> <p>15 distribution, right?</p> <p>16 A. I think there is.</p> <p>17 Q. That's not why we're here today, right?</p> <p>18 A. Right.</p> <p>19 Q. Alright. Now, you talked about in the normal course of</p> <p>20 things when extra work or overtime work is to be required</p> <p>21 everyone tries to work it out, right?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. And if fewer than less than the full compliment is</p> <p>24 required you take volunteers, right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 107</p> <p>1 only straight time 100%, right?</p> <p>2 A. It would seem.</p> <p>3 Q. For economics only, setting aside quality of life and all</p> <p>4 that, straight time is better if you're the company?</p> <p>5 MS. PENDER: I mean I'm going to object, because he can't</p> <p>6 speak on behalf -- what the company might want --</p> <p>7 MR. MORTIZ: I'm asking your understanding.</p> <p>8 JUDGE ROSAS: If you know. He might have a different</p> <p>9 answer --</p> <p>10 MR. MORTIZ: Asking your understanding.</p> <p>11 JUDGE ROSAS: -- than one might expect, but go ahead.</p> <p>12 MR. MORTIZ: Pure economics, it's better for an employer</p> <p>13 to pay straight time. You understand that, right?</p> <p>14 THE WITNESS: It's cheaper.</p> <p>15 BY MR. MORTIZ:</p> <p>16 Q. Cheaper?</p> <p>17 A. Yes.</p> <p>18 MR. MORTIZ: Yes. No further questions.</p> <p>19 JUDGE ROSAS: Okay. Any follow up?</p> <p>20 MS. PENDER: Just briefly.</p> <p>21 REDIRECT EXAMINATION</p> <p>22 BY MS. PENDER:</p> <p>23 Q. Mr. Madsen, when you -- like during -- you know, from</p> <p>24 September 22nd of 2016 until when the mandatory six day</p> <p>25 workweek was taken out of effect, when you weren't -- went to</p>
<p style="text-align: right;">Page 106</p> <p>1 Q. And we kind of work with both the employees and the Union</p> <p>2 to figure out who's most willing to work?</p> <p>3 A. That's usually the case.</p> <p>4 Q. Try to do it in the most employee friendly manner, right?</p> <p>5 A. I'm always the first one to volunteer for the overtime.</p> <p>6 Q. Okay. Because you make more money, right?</p> <p>7 A. No, because I'm a leader and I want to lead --</p> <p>8 Q. Okay.</p> <p>9 A. -- to show --</p> <p>10 Q. In the normal course though it's less than the full</p> <p>11 compliment, right?</p> <p>12 A. Say that again.</p> <p>13 Q. In the normal course it's less than 100% of the employees</p> <p>14 working the overtime, right?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Because that's no necessary normally, right?</p> <p>17 A. Not in my opinion, no.</p> <p>18 Q. Okay. The company pays more for overtime, right?</p> <p>19 A. Yes.</p> <p>20 Q. And you make more?</p> <p>21 A. Yes.</p> <p>22 Q. So there's not much incentive for the company to get into</p> <p>23 a situation where it pays overtime if it can be avoided, right?</p> <p>24 A. Yeah.</p> <p>25 Q. If you're the company, the best thing to do is it's all --</p>	<p style="text-align: right;">Page 108</p> <p>1 work on a Saturday, were you finishing up old jobs that hadn't</p> <p>2 been completed throughout the week?</p> <p>3 A. Yes.</p> <p>4 Q. Were you also assigned new jobs for Saturday?</p> <p>5 A. Yes.</p> <p>6 Q. And was there typically enough work to fill up the entire</p> <p>7 8:00 to 4:30 period of the day?</p> <p>8 A. Yes.</p> <p>9 Q. When you found out about the six day workweek in</p> <p>10 September, were you told when it would come to an end?</p> <p>11 A. No.</p> <p>12 MS. PENDER: Nothing further.</p> <p>13 MR. ARNAULT: Nothing further.</p> <p>14 JUDGE ROSAS: You good or you got something?</p> <p>15 MR. MORTIZ: No.</p> <p>16 JUDGE ROSAS: Okay. Thank you, sir. You're excused.</p> <p>17 Please do not discuss your testimony with anyone until you find</p> <p>18 out that the case is closed. Alright?</p> <p>19 THE WITNESS: Okay.</p> <p>20 JUDGE ROSAS: Thank you. Have a good day. Take a two</p> <p>21 minute break.</p> <p>22 (Whereupon, a brief recess was taken)</p> <p>23 JUDGE ROSAS: On the record.</p> <p>24 General Counsel?</p> <p>25 MS. PENDER: The General Counsel rests as this time, you</p>

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<p style="text-align: right;">Page 109</p> <p>1 know, pursuant to need for rebuttal.  2 JUDGE ROSAS: Okay. Does the Charging Party have any  3 witnesses?  4 MR. ARNAULT: We do not, Your Honor.  5 JUDGE ROSAS: Okay. Respondent?  6 MR. MORTIZ: Five minutes, sir?  7 JUDGE ROSAS: Okay. Off the record.  8 (Whereupon, a brief recess was taken)  9 JUDGE ROSAS: On the record.  10 Respondent?  11 MR. MORTIZ: At best here, Your Honor, this is a contract  12 interpretation dispute. It's our position that the contract  13 does and has always called for work on scheduled days off,  14 which is what occurred here for a defined and short period. It  15 permits mandatory overtime, it permits being held over. It  16 speaks to all of these things.  17 While it might not be the quote/unquote norm or normal,  18 which is the word the contract explicitly uses, there's no  19 claim here that this became the norm. It was based on a unique  20 circumstance surrounding an integration of two companies. It  21 applied largely equally across the country, union and non-union  22 spots alike.  23 There's no evidence in the record of any union animus,  24 that this is somehow an end run or an attempt to undermine the  25 Union. It may well be that not everyone likes to work</p>	<p style="text-align: right;">Page 111</p> <p>1 spell your name. Provide us with an address.  2 THE WITNESS: Sure. It's James Nixdorf, N-I-X-D-O-R-F.  3 And 899 Southwest 19th Street, Boca Raton, Florida, 33486.  4 DIRECT EXAMINATION  5 BY MR. MORTIZ:  6 Q. Mr. Nixdorf, what is your current position?  7 A. I'm director of labor relations for ADT.  8 Q. How long have you held that position?  9 A. Approximately eight years.  10 Q. Briefly, your responsibilities in that role, sir?  11 A. So I'm responsible for negotiating and administering all  12 of the union contracts in the U.S. and Canada, dealing with  13 employee disciplines of bargaining unit employees and other  14 matters involving collective bargaining agreements.  15 Q. You're the lead spokesman typically, sir, is that correct?  16 A. Yes, that's correct.  17 Q. Do you know of an outfit named Protection 1?  18 A. Yes.  19 Q. Who are they?  20 A. Protection 1, they're a subsidiary of our -- well, they're  21 a subsidiary of Apollo. Apollo Group purchased ADT in 2016 and  22 subsequently merged P-1, Protection 1 and ADT.  23 Q. Okay. You've sat though testimony, sir, about a six day  24 workweek, correct?  25 A. Yes.</p>
<p style="text-align: right;">Page 110</p> <p>1 Saturdays, but that's why the contract says normally schedules  2 the hours defined. That doesn't prohibit, where business  3 circumstances permit, other schedules at certain time.  4 As far as Mr. Sopok, there's no dispute he had a unique  5 situation, which he chose to raise directly with the company.  6 No evidence thus far of evidence to undermine the Union. No  7 suggestion that that was the company's intent or that it had  8 that effect. No grievances will filed over this, which at best  9 belongs in an arbitration, not a Board or federal statutory  10 hearing.  11 With respect to the other allegation, which is the  12 exemption for paid time, that's a paid company benefit that had  13 been prescheduled before the need to induce Saturday. It  14 wasn't some sort of gift to certain people or anything like  15 that. For all those reasons the complaint should be dismissed  16 in its entirety. With that I'll call Mr. Nixdorf.  17 JUDGE ROSAS: Alright. I take that as a motion to  18 dismiss, based on failure to provide a prima facie case. I'll  19 reserve on that. And sir, can you come on up? Please raise  20 your right hand.  21 Whereupon,  22 JAMES NIXDORF  23 Having been first duly sworn, was called as a witness and  24 testified herein as follows:  25 JUDGE ROSAS: Alright. Please have a seat. State and</p>	<p style="text-align: right;">Page 112</p> <p>1 Q. What prompted the business need for that workweek, sir?  2 A. So when we were acquired by Apollo, one of the concerns  3 that was raised by that parent organization was our customer  4 retention. And Protection 1 actually had a better customer  5 retention rate. So we were adopting one of the policies, it's  6 called In Standard, that Protection 1 had. And essentially In  7 Standard means that for service calls 75% of those calls would  8 be responded to within 24 hours.  9 Q. Are you familiar with both the collective bargaining  10 agreements we've discussing here today, sir?  11 A. Yes.  12 Q. Does each agreement define a quote/unquote normal  13 schedule?  14 A. Yes.  15 Q. Okay. Are you familiar with the clause that permits work  16 on a scheduled day off?  17 A. Yes.  18 Q. In your opinion, sir, does the contract prohibit the  19 company from requiring work on Saturdays?  20 A. No.  21 Q. And you base that on what?  22 A. Well, number one it's contemplated in the overtime  23 language that people are compensated for work on a scheduled  24 day off and there's no limitation to that.  25 Q. And in your experience on these contacts is mandatory</p>

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<p style="text-align: right;">Page 113</p> <p>1 overtime permitted?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Now, the contract talks about seniority, correct?</p> <p>4 A. Correct.</p> <p>5 Q. And where it's less than 100% mandatory overtime, I assume</p> <p>6 seniority plays a role?</p> <p>7 A. It does.</p> <p>8 Q. Okay. Are you familiar with arbitration awards discussing</p> <p>9 the 40 hour normal work week and the normal work week</p> <p>10 definition in other contexts?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. You participated in the arbitration hearing in</p> <p>13 those matters?</p> <p>14 A. I did.</p> <p>15 Q. Okay. Generally, how did those come out?</p> <p>16 A. That the 40 hour language is more of a scheduling than a</p> <p>17 guarantee or strict limitation.</p> <p>18 Q. You familiar with any arbitration award calling that a</p> <p>19 guarantee quote/unquote that it's always 40?</p> <p>20 A. No.</p> <p>21 Q. Okay. Anything that says that must be always the schedule</p> <p>22 as opposed to normal schedule?</p> <p>23 A. No, we couldn't operate that way.</p> <p>24 Q. Alright. Ever lost an arbitration concerning the</p> <p>25 guarantee, or normal or abnormal language?</p>	<p style="text-align: right;">Page 115</p> <p>1 A. Sure. What it does is it discusses how employees are paid</p> <p>2 overtime. So on scheduled days off. And also if -- you know,</p> <p>3 the excess of eight or 40 hours in a week.</p> <p>4 Q. And the word mandatory is not used, is that correct?</p> <p>5 A. I'm not sure that the word is used, no.</p> <p>6 Q. Can you take a look at Joint exhibit 3, which is the</p> <p>7 Albany contract?</p> <p>8 A. Sure.</p> <p>9 Q. If you'd turn to page 10 I believe is the page with</p> <p>10 article six. Can you tell me where in this article it states</p> <p>11 that mandatory overtime is permitted?</p> <p>12 A. So obviously the language contemplates work on a scheduled</p> <p>13 workday off or in excess of eight or 10 hours.</p> <p>14 Q. And -- but you can't point to the word mandatory in this</p> <p>15 section, can you?</p> <p>16 A. No.</p> <p>17 MS. PENDER: Okay. Nothing further from General Counsel.</p> <p>18 JUDGE ROSAS: Charging Party?</p> <p>19 MR. ARNAULT: Yes.</p> <p>20 DIRECT EXAMINATION</p> <p>21 BY MR. ARNAULT:</p> <p>22 Q. Good afternoon. Bryan Arnault with the -- representing</p> <p>23 the Union here. A couple questions here. You talked about</p> <p>24 this ADT and Protection 1 adopted In Standard policy. And you</p> <p>25 said it was for service calls, correct?</p>
<p style="text-align: right;">Page 114</p> <p>1 A. No.</p> <p>2 Q. Alright. You reviewed the Union's information request in</p> <p>3 this case?</p> <p>4 A. No.</p> <p>5 MR. MORTIZ: Okay. No further questions.</p> <p>6 JUDGE ROSAS: Cross?</p> <p>7 MS. PENDER: Can we just have one minute, Your Honor?</p> <p>8 MR. ARNAULT: Yeah. We might need more than -- can we</p> <p>9 take five or so?</p> <p>10 JUDGE ROSAS: Let's go off the record.</p> <p>11 (Whereupon, a brief recess was taken)</p> <p>12 JUDGE ROSAS: On the record.</p> <p>13 Go ahead.</p> <p>14 CROSS EXAMINATION</p> <p>15 BY MS. PENDER:</p> <p>16 Q. Good afternoon, Mr. Nixdorf. I'm Alicia Pender, counsel</p> <p>17 for the General Counsel. I just have some brief questions for</p> <p>18 you today. If you'd take a look at Joint exhibit 2? It's in</p> <p>19 the pile in front of you. It's the Syracuse contract.</p> <p>20 A. Okay.</p> <p>21 Q. Can you look at article six of that contract, which is on</p> <p>22 page seven? Can you tell me where in article six the contract</p> <p>23 states that mandatory overtime is permitted?</p> <p>24 A. So --</p> <p>25 Q. Just point me to the language.</p>	<p style="text-align: right;">Page 116</p> <p>1 A. Correct.</p> <p>2 Q. So why did you have mandatory overtime it applied --</p> <p>3 strike that. Mandatory overtime apply to service technicians</p> <p>4 as well as installation technicians, correct?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. Is your position that the company can mandate a</p> <p>7 seven day workweek --</p> <p>8 A. Again, there's no limitation on --</p> <p>9 Q. Yes.</p> <p>10 A. Correct.</p> <p>11 Q. Seven day workweek, 24 hours a day, that's entirely within</p> <p>12 the company's discretion?</p> <p>13 A. Again, there's no contractual limitation.</p> <p>14 Q. Okay. Now you mentioned some arbitration decisions or you</p> <p>15 were questioned about arbitration decisions. None of those</p> <p>16 were with the Syracuse -- under the Syracuse contract, correct?</p> <p>17 A. No.</p> <p>18 Q. And none of those were under the Albany contract, correct?</p> <p>19 A. Correct.</p> <p>20 Q. So as your discussion about a normal workweek, none of the</p> <p>21 arbitrations applied to either the Syracuse or Albany units,</p> <p>22 correct?</p> <p>23 A. Well, it's the same language. So --</p> <p>24 Q. It's not the --</p> <p>25 A. -- I --</p>

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<p style="text-align: right;">Page 117</p> <p>1 Q. Sorry. Is it the same contract?  2 A. It's not the same contract --  3 Q. Okay.  4 A. -- no.  5 Q. Who made the decision to implement the six day workweek?  6 A. Again, I'm not sure who the decision maker was.  7 Q. Were you involved in the decision making process?  8 A. The only -- my involvement was whether there was a  9 restriction in any of the agreements across the U.S. where we  10 implemented this.  11 Q. Okay. And so you reviewed every agreement in the  12 contracts?  13 A. Yes.  14 Q. Okay. And you decided the only exception was for those  15 technicians currently attending class and enrolled in higher  16 education?  17 A. No, I think that we could have required them to work.  18 Q. Okay. But that's the one that corporate decided was an  19 acceptable exception?  20 A. Correct.  21 Q. And that was not discussed with the Union?  22 A. No.  23 Q. Okay. Was -- in your conversations in the roll outs, did  24 you discuss implementing this with units with collective  25 bargaining agreements?</p>	<p style="text-align: right;">Page 119</p> <p>1 Q. Okay. Direct your attention to Joint exhibit 1.  2 A. Yes.  3 Q. Were you involved in the drafting of the Michael Kirk  4 email?  5 A. No.  6 Q. So this ADT exemption for higher education, what if an  7 individual was enrolled in higher education on their own dime  8 and not ADT's dime, were they allowed to have that exemption?  9 A. I don't think that came up.  10 Q. Okay. And you said you were not involved in the  11 information request process?  12 A. No.  13 Q. Are you -- I'm going to direct your attention to Joint  14 exhibit 15. Starting on page three.  15 A. Yes.  16 Q. It's the install and service team manager talking points.  17 A. Uh-huh.  18 Q. Have you seen this document before?  19 A. It looks familiar.  20 Q. And it's an internal ADT document, correct?  21 A. Yes.  22 Q. And it discusses a nationwide mandatory workday on  23 Saturdays, correct?  24 A. Yes.  25 Q. And the dates referenced are August 22nd and 24th and</p>
<p style="text-align: right;">Page 118</p> <p>1 A. I'm sorry?  2 Q. Did you discuss the implementation of this with any of the  3 units that were represented unions?  4 A. No. Oh.  5 MR. MORTIZ: Is that nationwide question?  6 JUDGE ROSAS: Are you referring to the Albany and Syracuse  7 units?  8 MR. ARNAULT: We'll start with the Albany and Syracuse  9 units.  10 THE WITNESS: Okay.  11 BY MR. ARNAULT:  12 Q. Prior to implementation, did you discuss this with the  13 Syracuse or Albany unit?  14 A. No.  15 Q. So you didn't discuss with IBEW 43 prior to September 7th?  16 A. No.  17 Q. Alright. Did you discuss this with any of the unions in  18 the country prior to September 7th?  19 A. No.  20 Q. Did this rollout on September for all, across the country  21 nationwide?  22 A. Yes. Where there were -- again, where there was  23 identified a backlog where they weren't meeting In Standard.  24 And I believe it covered the -- almost every location in the  25 U.S.</p>	<p style="text-align: right;">Page 120</p> <p>1 September 19th and 21st in the second bullet point, on the  2 first page of the memo, page three of the exhibit, correct?  3 A. Pardon me?  4 Q. The dates referenced are August 22nd and 24th and  5 September 19th and 21st in the second bullet, right?  6 A. Yes, but I'm not sure this is 2016.  7 Q. That was going to be the next question. Well done. Do  8 you know what year this is? Do you know when this came out?  9 A. What happened is we've had multiple occasions where we've  10 required -- where we required a mandatory overtime. So again,  11 not being completely familiar with this document, I can't tell  12 you if it was 2016 or 20-7 -- or 2015 or 2016.  13 Q. Okay. But it would not be -- so strike that. It was  14 either 2015 or 2016 is your testimony that this document was  15 put together?  16 A. That would be my best guess.  17 Q. Okay. So would it also be your best guess that this  18 document existed prior to September 7th 2016?  19 A. It very well may, yes.  20 Q. Okay. And so this would have been available as of  21 September 19th, when the Union requested information, correct?  22 A. Yes.  23 Q. Okay. And it would have been available on September 13th,  24 when the company responded to the Union's information request?  25 Strike that. October 13th, when the Union -- or the company</p>

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<p style="text-align: right;">Page 121</p> <p>1 responded to the Union's information request?  2 A. Yes.  3 Q. Okay. Do you know to whom the talking points memo was  4 sent?  5 A. No.  6 Q. Did the education exemption apply only to people who were  7 in class on Saturdays or just people that were enrolled in the  8 plan?  9 A. Well, it obviously would only apply if there was a  10 conflict between your classes and the overtime.  11 Q. Okay. Are the ADT classes only run on Saturdays?  12 A. No, they're not ADT classes.  13 Q. Okay. What are the classes through?  14 A. It's a tuition reimbursement program.  15 Q. Tuition reimbursement program. So it would be any  16 university?  17 A. Correct.  18 MR. ARNAULT: Okay. No further questions at this time.  19 JUDGE ROSAS: Any follow up?  20 REDIRECT EXAMINATION  21 BY MR. MORTIZ:  22 Q. The contract speaks about volunteers, is that correct? Is  23 that you're understanding, Mr. Nixdorf?  24 A. Yes.  25 Q. Are you aware of any limitation on the number of</p>	<p style="text-align: right;">Page 123</p> <p>1 disciplined for not reporting to work?  2 A. Yes.  3 MS. PENDER: Nothing further.  4 JUDGE ROSAS: Charging Party?  5 MR. ARNAULT: Nothing further.  6 JUDGE ROSAS: Any follow up?  7 MR. MORTIZ: No, sir.  8 JUDGE ROSAS: Okay. Thank you, sir. You're excused. Any  9 other witnesses?  10 MR. MORTIZ: I'd confer with my rep. I doubt it.  11 (Whereupon, a brief recess was taken)  12 JUDGE ROSAS: On the record.  13 Alright. Any rebuttal?  14 MS. PENDER: Nothing from the General Counsel.  15 JUDGE ROSAS: Charging Party?  16 MR. ARNAULT: Nothing from the --  17 JUDGE ROSAS: Okay.  18 MR. ARNAULT: -- Charging Party.  19 JUDGE ROSAS: Alright. Well, that concludes the testimony  20 and the evidence in this case. I'm going to ask the parties to  21 submit proposed findings in the briefs, submitting proposed  22 findings of fact and conclusions of law. I refer you to the  23 Board's rules and regulations for the submission thereof.  24 Please, be cognizant as far the Charging Party and  25 Respondent that you're filing these in the Division of Judges</p>
<p style="text-align: right;">Page 122</p> <p>1 volunteers?  2 A. No.  3 Q. What was the percentage of volunteers in this stretch,  4 where the six day workweek applied? I'm sorry, what was the  5 percentage of required overtime, amongst the units during this  6 stretch?  7 A. Right. We needed everybody.  8 MR. MORTIZ: Okay. No more questions.  9 JUDGE ROSAS: Any follow up on that?  10 MS. PENDER: Just two brief questions, Your Honor.  11 RECROSS EXAMINATION  12 BY MS. PENDER:  13 Q. Prior to September of 2016, if volunteers were required  14 and not enough volunteers were forthcoming or people refused to  15 work overtime, were they disciplined?  16 A. For what? For insubordination?  17 Q. For refusing to work.  18 MR. MORTIZ: Objection, relevance to this proceeding.  19 JUDGE ROSAS: If you know was anybody disciplined?  20 THE WITNESS: We required people to work.  21 BY MS. PENDER:  22 Q. And if they didn't show up what happened?  23 A. They would have been disciplined.  24 Q. And after the -- you know, the six day workweek was rolled  25 out, would employees who didn't show up for Saturday also be</p>	<p style="text-align: right;">Page 124</p> <p>1 Washington drop down menu on NexGen, not the Region's. Okay?  2 Because if it doesn't get to me I'm not going to read it and  3 I'm not going to ask you either to send it. So just be  4 cognizant of that. Please submit those by July 18th 2017.  5 There being nothing further, we're off the record.  6 (Whereupon, at 2:33 p.m. the hearing in the above-entitled  7 matter was closed)</p>

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C E R T I F I C A T E

This is to certify that the attached proceedings done before  
the NATIONAL LABOR RELATIONS BOARD REGION THREE

In the Matter of:

ADT, LLC d/b/a ADT SECURITY SERVICES,

Respondent,

And

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL  
UNION 43,

Charging Party.

Case No.: 03-CA-184936 & 03-CA-192545

Date: June 13, 2017

Place: Albany, NY

Were held as therein appears, and that this is the original  
transcript thereof for the files of the Board

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Official Reporter

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(973) 692-0660

ADT, LLC d/b/a ADT SECURITY SERVICES, and  
IBEW Local 43

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			<b>8 (2)</b> 10:1;27:24 <b>8:00 (9)</b> 48:8,9;88:5;99:8; 101:2,5,19,20;108:7 <b>8:30 (1)</b> 48:9 <b>83 (2)</b> 80:20,23 <b>85 (2)</b> 80:21,23 <b>899 (1)</b> 111:3 <b>8a1 (1)</b> 18:23 <b>8a3 (1)</b> 80:22 <b>8a5 (2)</b>	
			<b>3</b>	
			<b>3 (4)</b> 9:13;22:10;57:21; 115:6 <b>30th (1)</b> 82:13 <b>31 (1)</b> 10:8 <b>31st (1)</b> 28:19 <b>3265 (1)</b> 70:4 <b>33486 (1)</b> 111:3	
			<b>4</b>	
			<b>4 (2)</b> 9:15;23:23 <b>4:30 (8)</b> 48:8;60:14;88:5; 99:9;101:2,19,20; 108:7	

A-55

FORM EXEMPT UNDER 44 U.S.C. 3512

INTERNET  
FORM NLRB-501  
(2-08)

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 03-CA-184936	Date Filed 9/26/2016

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

<b>1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT</b>	
a. Name of Employer ADT Security Services	b. Tel. No. 585-471-6602
	c. Cell No. 585-281-5218
	f. Fax No.
d. Address (Street, city, state, and ZIP code) 75 Town Center Drive Suite 200 Rochester, New York 14623	e. Employer Representative Michael Stewart, Regional HR Manager, Northeast Region
	g. e-Mail mstewart@adt.com
	h. Number of workers employed approximately 10
i. Type of Establishment (factory, mine, wholesaler, etc.) Construction, Service	j. Identify principal product or service Installation and maintenance of security systems
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)  Since September 22, 2016, the employer, by its officers, agents, and representatives, has failed to bargain in good faith and refused to collectively bargain with IBEW Local 43, the collective bargaining representative of the employer's employees in an appropriate collective bargaining unit, by abnegating the provisions of its collective bargaining agreement regarding the duration of the work week by implementing a six-day work week.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) International Brotherhood of Electrical Workers	
4a. Address (Street and number, city, state, and ZIP code) Patrick Costello International Brotherhood of Electrical Workers, Local Union 43 4568 Waterhouse Road Clay, New York 13041	4b. Tel. No. 315-422-0435
	4c. Cell No.
	4d. Fax No. 315-472-5823
	4e. e-Mail pcostello@ibew43.org
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) International Brotherhood of Electrical Workers	
<b>6. DECLARATION</b>	
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By:  (signature of representative or person making charge)	Bryan T. Arnault, Esq. (Print type name and title or office, if any)
	Tel. No. 315-422-7111
	Office, if any, Cell No.
	Fax No. 315-471-2623
	e-Mail btarnault@bklawyers.com
Address: Blitman & King LLP, 443 N. Franklin St., Syracuse, NY 13204	9/22/16 (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

General Counsel's Exhibit 1(a)

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ADT SECURITY SERVICES  
Charged Party  
and  
INTERNATIONAL BROTHERHOOD OF  
ELECTIRCAL WORKERS, LOCAL UNION 43  
Charging Party

Case 03-CA-184936

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on September 26, 2016, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

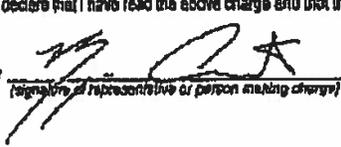
Michael Stewart, Regional HR Manager,  
Northeast Region  
ADT Security Services  
75 Town Center Drive, Suite 200  
Rochester, NY 14623

September 26, 2016  
Date

Jerry T. Tidd, Designated Agent of NLRB  
Name

/s/Jerry T. Tidd  
Signature

A-57

INTERNET FORM NLRB-601 (2-08)		UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD CHARGE AGAINST EMPLOYER		FORM EXEMPT UNDER 44 U.S.C. 3512 <b>DO NOT WRITE IN THIS SPACE</b>	
INSTRUCTIONS: File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.		Case 03-CA-184936	Date Filed 11/29/2016		
Amended					
<b>1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT</b>					
a. Name of Employer ADT Security Services		b. Tel. No. 585-471-6602		c. Cell No. 585-281-5218	
d. Address (Street, city, state, and ZIP code) 75 Town Center Drive Suite 200 Rochester, New York 14823		e. Employer Representative Michael Stewart, Regional HR Manager, Northeast Region		f. Fax No. g. e-Mail mstewart@adt.com	
h. Number of workers employed approximately 10		i. Type of Establishment (factory, mine, wholesaler, etc.) Construction, Service		j. Identify principal product or service installation and maintenance of security systems	
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (5) and (d) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.					
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) Since September 22, 2016, the employer, by its officers, agents, and representatives, has failed to bargain in good faith and refused to collectively bargain with IBEW Local 43, the collective bargaining representative of the employer's employees in an appropriate collective bargaining unit, by abnegating the provisions of its collective bargaining agreement regarding the duration of the work week by implementing a six-day work week. Since on or about September 19, 2016, the employer, by its officers, agents, and representatives, has failed to bargain in good faith and refused to collectively bargain with IBEW Local 43, the collective bargaining representative of the employer's employees in an appropriate collective bargaining unit, by failing to furnish information requested by IBEW Local 43 necessary for, and relevant to, IBEW Local 43's performance of its duties as the exclusive collective-bargaining representative of the unit.					
3. Full name of party filing charge (if labor organization, give full name, including local name and number) International Brotherhood of Electrical Workers					
4a. Address (Street and number, city, state, and ZIP code) Patrick Costello International Brotherhood of Electrical Workers, Local Union 43 4568 Waterhouse Road Clay, New York 13041		4b. Tel. No. 316-422-0435		4c. Cell No.	
		4d. Fax No. 315-472-5823		4e. e-Mail pcostello@ibew43.org	
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) International Brotherhood of Electrical Workers					
B. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.				Tel. No. 315-422-7111	
By  Bryan T. Arnault, Esq. (signature of representative of person making charge) (Print type name and title or office, if any)				Office, if any, Cell No.	
				Fax No. 315-471-2623	
				e-Mail btarnault@bklawyers.com	
Address Blitman & King LLP, 443 N. Franklin St., Syracuse, NY 13204				11/29/16 (date)	

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Collection of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

General Counsel's Exhibit 1(c)

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ADT SECURITY SERVICES  
Charged Party  
and  
INTERNATIONAL BROTHERHOOD OF  
ELECTIRCAL WORKERS, LOCAL UNION 43  
Charging Party

Case 03-CA-184936

**AFFIDAVIT OF SERVICE OF FIRST AMENDED CHARGE AGAINST EMPLOYER**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on November 29, 2016, I served the above-entitled document(s) by regular mail upon the following persons, addressed to them at the following addresses:

Michael Stewart, Regional HR Manager,  
Northeast Region  
ADT Security Services  
75 Town Center Drive, Suite 200  
Rochester, NY 14623

Christopher R. Coxson, ESQ.  
Ogletree, Deakins, Nash, Smoak & Stewart,  
P.C.  
10 Madison Avenue, Suite 400  
Morristown, NJ 07960

Brian D. Lee, Esquire  
Ogletree, Deakins, Nash, Smoak & Stewart,  
P.C.  
10 Madison Avenue, Suite 400  
Morristown, NJ 07960

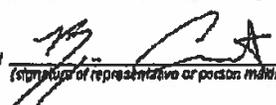
November 29, 2016  
Date

Jerry T. Tidd, Designated Agent of NLRB  
Name

/s/Jerry T. Tidd  
Signature

General Counsel's Exhibit 1(2)

A-59

INTERNET FORM NLRB-501 (2-09)		UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD CHARGE AGAINST EMPLOYER		FORM EXEMPT UNDER 44 U.S.C. 2012	
<b>DO NOT WRITE IN THIS SPACE</b>					
Case 03-CA-184936			Date Filed 12/19/2016		
<b>INSTRUCTIONS:</b> File an original with NLRB Regional Director for the region in which the alleged unfair labor practices occurred or is occurring.					
<b>1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT</b>					
a. Name of Employer ADT Security Services			b. Tel. No. 585-471-6602		
			c. Cell No. 585-281-5218		
			f. Fax No.		
d. Address (Street, city, state, and ZIP code) 75 Town Center Drive Suite 200 Rochester, New York 14623			e. Employer Representative Michael Stewart, Regional HR Manager, Northeast Region		g. e-Mail mstewart@adt.com
			h. Number of workers employed approximately 10		
l. Type of Establishment (factory, mine, wholesaler, etc.) Construction, Service			j. Identify principal product or service Installation and maintenance of security systems		
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (1st subsections) (5) and (d) _____ of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.					
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)					
See attached.					
3. Full name of party filing charge (If labor organization, give full name, including local name and number)					
International Brotherhood of Electrical Workers					
4a. Address (Street and number, city, state, and ZIP code) Patrick Costello International Brotherhood of Electrical Workers, Local Union 43 4568 Waterhouse Road Clay, New York 13041			4b. Tel. No. 315-422-0435		
			4c. Cell No.		
			4d. Fax No. 315-472-5823		
			4e. e-Mail pcostello@bew43.org		
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filed in when charge is filed by a labor organization) International Brotherhood of Electrical Workers					
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.			Tel. No. 315-422-7111		
By  (Signature of representative or person filing charge)			Office, if any, Cell No.		
Bryan T. Arnault, Esq. (Print name and title or office, if any)			Fax No. 315-471-2823		
Address Blitman & King LLP, 443 N. Franklin St., Syracuse, NY 13204			e-Mail btarnault@bklawyers.com		
			12/19/16 (Date)		

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

## PRIVACY ACT STATEMENT

Submission of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain those uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

General Counsel's Exhibit 1(e)

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ADT SECURITY SERVICES  
Charged Party  
and  
INTERNATIONAL BROTHERHOOD OF  
ELECTIRCAL WORKERS, LOCAL UNION 43  
Charging Party

Case 03-CA-184936

AFFIDAVIT OF SERVICE OF SECOND AMENDED CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on December 19, 2016, I served the above-entitled document(s) by regular mail upon the following persons, addressed to them at the following addresses:

Michael Stewart, Regional HR Manager, Northeast  
Region  
ADT Security Services  
75 Town Center Drive, Suite 200  
Rochester, NY 14623

Christopher R. Coxson, ESQ.  
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
10 Madison Avenue, Suite 400  
Morristown, NJ 07960

Brian D. Lee, Esquires  
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
10 Madison Avenue, Suite 400  
Morristown, NJ 07960

JEREMY C. MORITZ, Attorney  
Ogletree Deakins Nash Smoak & Stewart, P.C.  
155 N Wacker Dr Ste 4300  
Chicago, IL 60606-1731

December 19, 2016  
Date

Jerry T. Tidd, Designated Agent of NLRB  
Name

/s/Jerry T. Tidd  
Signature

General Counsel's Exhibit 1( f )

A-61

INTERNET  
FORM NLRB-601  
(7-09)

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C. 3513

DO NOT WRITE IN THIS SPACE	
Case 03-CA-184936	Date Filed 12/19/2016

INSTRUCTIONS:

3rd Amended

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer ADT Security Services	b. Tel. No. 565-471-6602
	c. Cell No. 585-281-5218
	f. Fax No.
d. Address (Street, city, state, and ZIP code) 75 Town Center Drive Suite 200 Rochester, New York 14623	e. Employer Representative Michael Stewart, Regional HR Manager, Northeast Region
	g. e-Mail mstewart@adt.com
	h. Number of workers employed approximately 10
i. Type of Establishment (factory, mine, wholesaler, etc.) Construction, Service	j. Identify principal product or service Installation and maintenance of security systems
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (5) and (d) _____ of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)	
See attached.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number)	
International Brotherhood of Electrical Workers	
4a. Address (Street and number, city, state, and ZIP code) Patrick Costello International Brotherhood of Electrical Workers, Local Union 43 4668 Waterhouse Road Clay, New York 13041	4b. Tel. No. 315-422-0435
	4c. Cell No.
	4d. Fax No. 315-472-5823
	4e. e-Mail pcostello@ibew43.org
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) International Brotherhood of Electrical Workers	
6. DECLARATION	
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By  (Signature of representative or person making charge)	Bryan T. Arnault, Esq. (Print type name and title or office, if any)
	Tel. No. 315-422-7111
	Office, if any, Cell No.
	Fax No. 315-471-2623
	e-Mail btarnault@bklawyers.com
Address: Blitman & King LLP, 443 N. Franklin St., Syracuse, NY 13204	12/19/16 (Date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-48 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

General Counsel's Exhibit 1(9)

**3<sup>rd</sup> Amended Unfair Labor Practice Charge Attachment – December 19, 2016  
ADY Security Services and IBEW Local Union 43**

- (1) Since September 22, 2016, the employer, by its officers, agents, and representatives, has failed to bargain in good faith and refused to collectively bargain with IBEW Local 43, the collective bargaining representative of the employer's employees in an appropriate collective bargaining unit, by abnegating the provisions of its collective bargaining agreement regarding the duration of the work week by implementing a six-day work week. This conduct has resulted in employees leaving the employ of the employer to avoid working under the unlawfully imposed conditions.
- (2) Since September 22, 2016, the employer, by its officers, agents, and representatives, has failed to bargain in good faith and refused to collectively bargain with IBEW Local 43, a labor organization representing the employer's employees in an appropriate collective bargaining unit, by unilaterally changing terms and conditions of employment regarding the duration of the work week by unilaterally implementing a six-day work week. This conduct has resulted in employees leaving the employ of the employer to avoid working under the unlawfully imposed conditions.
- (3) Since on or about September 19, 2016, the employer, by its officers, agents, and representatives, has failed to bargain in good faith and refused to collectively bargain with IBEW Local 43, the collective bargaining representative of the employer's employees in an appropriate collective bargaining unit, by failing to furnish information requested by IBEW Local 43 necessary for, and relevant to, IBEW Local 43's performance of its duties as the exclusive collective-bargaining representative of the unit.

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ADT SECURITY SERVICES  
Charged Party  
and  
INTERNATIONAL BROTHERHOOD OF  
ELECTIRCAL WORKERS, LOCAL UNION 43  
Charging Party

Case 03-CA-184936

AFFIDAVIT OF SERVICE OF THIRD AMENDED CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on December 19, 2016, I served the above-entitled document(s) by regular mail upon the following persons, addressed to them at the following addresses:

Michael Stewart, Regional HR Manager, Northeast  
Region  
ADT Security Services  
75 Town Center Drive, Suite 200  
Rochester, NY 14623

Christopher R. Coxson, ESQ.  
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
10 Madison Avenue, Suite 400  
Morristown, NJ 07960

Brian D. Lee, Esquire  
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
10 Madison Avenue, Suite 400  
Morristown, NJ 07960

JEREMY C. MORITZ, Attorney  
Ogletree Deakins Nash Smoak & Stewart, P.C.  
155 N Wacker Dr Ste 4300  
Chicago, IL 60606-1731

December 19, 2016  
Date

Jerry T. Tidd, Designated Agent of NLRB  
Name

/s/Jerry T. Tidd  
Signature

General Counsel's Exhibit 1( h )

A-64

INTERNET  
FORM NLRB-507  
(2-09)

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C. 1612

<b>DO NOT WRITE IN THIS SPACE</b>	
Case 03-CA-192545	Date Filed 2/7/2017

**INSTRUCTIONS:**

File an original with NLRB Regional Director for the region to which the alleged unfair labor practice occurred or is occurring.

<b>1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT</b>	
a. Name of Employer ADT Security Services	b. Tel. No. 585-471-8602
	c. Cell No. 585-281-5218
	f. Fax No.
d. Address (Street, city, state, and ZIP code) 75 Town Center Drive Suite 200 Rochester, New York 14823	e. Employer Representative Michael Stewart, Regional HR Manager, Northeast Region
	g. e-Mail mstewart@adt.com
	h. Number of workers employed approximately 10
i. Type of Establishment (factory, mine, wholesaler, etc.) Construction, Service	j. Identify principal product or service Installation and maintenance of security systems
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (1a) subsections (5) _____ of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) Since September 22, 2016, the employer, by its officers, agents, and representatives, has failed to bargain in good faith and refused to collectively bargain with IBEW Local 43, the collective bargaining representative of the employer's employees in an appropriate collective bargaining unit, by failing to bargain over exceptions to the unilaterally implemented six-day work week. For example, the employer included exemptions for those in higher education and with child care issues. Additionally, since on or about September 22, 2016, the employer has failed to bargain in good faith with the charging party by communicating directly with union-represented employees with the purpose of establishing or changing hours and terms and conditions of employment or undercutting the Union's role in bargaining, and such communication was made to the exclusion of the Union.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) International Brotherhood of Electrical Workers	
4a. Address (Street and number, city, state, and ZIP code) Patrick Costello International Brotherhood of Electrical Workers, Local Union 43 4588 Waterhouse Road Clay, New York 13041	4b. Tel. No. 315-422-0435
	4c. Cell No.
	4d. Fax No. 315-472-5823
	4e. e-Mail pcostello@ibew43.org
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) International Brotherhood of Electrical Workers	
<b>6. DECLARATION</b>	
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By  (Signature of representative or person making charge)	Bryan T. Amault, Esq. (Print type name and title or office, if any)
	Tel. No. 315-422-7111
	Office, if any, Cell No.
	Fax No. 315-471-2623
	e-Mail btamault@bklawyers.com
Address Blitman & King LLP, 443 N. Franklin St., Syracuse, NY 13204	2/8/17 (Date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practices and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

General Counsel's Exhibit 1( )

A-65

10/20/2020

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

**ADT SECURITY SERVICES**  
Charged Party  
and  
**INTERNATIONAL BROTHERHOOD OF  
ELECTIRCAL WORKERS, LOCAL UNION 43**  
Charging Party

Case 03-CA-192545

**AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER**

I, the undersigned employee of the National Labor Relations Board, state under oath that on February 7, 2017, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

Michael Stewart, Regional HR Manager,  
Northeast Region  
ADT Security Services  
75 Town Center Drive, Suite 200  
Rochester, NY 14623

February 7, 2017  
Date

Jerry T. Tidd, Designated Agent of NLRB  
Name

/s/Jerry T. Tidd  
Signature

General Counsel's Exhibit ( 3 )

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 3

ADT LLC D/B/A ADT SECURITY SERVICES

and

Case 03-CA-184936

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL UNION 43

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by International Brotherhood of Electrical Workers, Local Union 43 (Union). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that ADT LLC d/b/a ADT Security Services (Respondent) has violated the Act as described below.

I

(a) The charge in this proceeding was filed by the Union on September 26, 2016, and a copy was served on Respondent by U.S. mail on the same date.

(b) The first amended charge in this proceeding was filed by the Union on November 29, 2016, and a copy was served on Respondent by U.S. mail on the same date.

(c) The second amended charge in this proceeding was filed by the Union on December 19, 2016, and a copy was served on Respondent by U.S. mail on the same date.

(d) The third amended charge in this proceeding was filed by the Union on December 19, 2016, and a copy was served on Respondent by U.S. mail on the same date.

General Counsel's Exhibit 1( K )

vi

II

(a) At all material times, Respondent has been a corporation with offices and places of business in Albany, New York (Respondent's Albany facility) and Syracuse, New York (Respondent's Syracuse facility), and has been engaged in the installation and service of residential and commercial security systems.

(b) Annually, Respondent, in conducting its business operations described above in paragraph II(a), derives gross revenues in excess of \$500,000 from the sale and service of retail alarm systems, and purchases and receives at its Albany and Syracuse, New York facilities goods valued in excess of \$5,000 directly from points outside the State of New York.

III

At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

IV

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

V

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Michael Kirk	-	Area General Manager
Michael Stewart	-	Regional HR Manager

## VI

(a) The following employees of Respondent (the Albany Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees originally described in the certification dated November 20, 1968 (Case Number 3-RC-4533) classified by the Respondent as residential and small business installers, residential and small business high volume commissioned installers, residential and small business service technicians, employed by the Respondent at its facility in Albany, NY; but excluding all alarm service investigators, relief supervisors, all office clerical employees and professional employees, guards and supervisors, as defined in the Act; and excluding all commercial installers and commercial service unless the employees are employed by the Respondent and are located at, or are directly supervised by the Respondent's supervisors located at its Albany, NY facility.

(b) The following employees of Respondent (the Syracuse Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees originally described in the certification dated November 20, 1968 (Case Number 3-RC-4533) classified by the Respondent as residential and small business installers, residential and small business high volume commissioned installers, residential and small business technicians, employed by the Respondent at its facility in Syracuse, NY, but excluding all alarm service investigators, relief supervisors, all office clerical employees and professional employees, guards and supervisors, as defined by the Act; and excluding all commercial installers and commercial service unless the employees are employed by the Respondent and are located at, or are directly supervised by the Respondent's supervisors located at, its Syracuse, NY facility.

(c) At all material times, Respondent has recognized the Union as the exclusive collective-bargaining representative of the Albany Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from June 11, 2015 to June 10, 2018.

(d) At all material times, Respondent has recognized the Union as the exclusive collective-bargaining representative of the Syracuse Unit. This recognition has been embodied

in successive collective-bargaining agreements, the most recent of which is effective from June 11, 2016 to June 10, 2019.

(e) At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Albany Unit and the Syracuse Unit.

#### VII

(a) About September 22, 2016, Respondent failed to continue in effect all the terms and conditions of the agreement described above in paragraph VI(c) by imposing a mandatory six-day workweek for all service and installation technicians in the Albany Unit.

(b) The terms and conditions of employment described above in paragraph VII(a) are mandatory subjects for the purposes of collective bargaining.

(c) Respondent engaged in the conduct described above in paragraph VII(a) without the Union's consent.

(d) Alternatively, Respondent engaged in the conduct described above in paragraph VII(a) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct.

#### VIII

(a) About September 22, 2016, Respondent failed to continue in effect all the terms and conditions of the agreement described above in paragraph VI(d) by imposing a mandatory biweekly six-day workweek for all service technicians in the Syracuse Unit.

(b) The terms and conditions of employment described above in paragraph VIII(a) are mandatory subjects for the purposes of collective bargaining.

(c) Respondent engaged in the conduct described above in paragraph VIII(a) without the Union's consent.

(d) Alternatively, Respondent engaged in the conduct described above in paragraph VIII(a) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct.

#### IX

(a) About September 22, 2016, Respondent imposed a mandatory biweekly six-day workweek for all installation technicians in the Syracuse Unit.

(b) The subject set forth above in paragraph IX(a) relates to wages, hours, and other terms and conditions of employment of the Syracuse Unit and is a mandatory subject for the purposes of collective bargaining.

(c) Respondent engaged in the conduct described above in paragraph IX(a) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct.

#### X

(a) Since about September 19, 2016, the Union has requested in writing that Respondent furnish the Union with the information in attached Exhibit A.

(b) The information requested by the Union, as described above in paragraph X(a) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Albany Unit and the Syracuse Unit.

(c) Since about October 13, 2016, Respondent has replied, in part, to the Union's request for certain information by means of belated and incomplete communications and, thus, has delayed in providing certain information and has failed and refused to furnish the Union with certain information, as described above in paragraph X(a).

**XI**

By the conduct described above in paragraphs VII(a), (c) and (d), VIII(a), (c) and (d), IX(a) and (c), and X(c), Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

**XII**

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

The General Counsel seeks all relief as may be just and proper to remedy the unfair labor practices alleged.

**ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be received by this office on or before March 14, 2017 or postmarked on or before March 13, 2017. Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused

on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

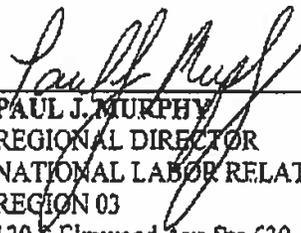
#### **NOTICE OF HEARING**

**PLEASE TAKE NOTICE THAT** on June 13, 2017 at 10:00 a.m., at the Hearing Room at the National Labor Relations Board, Albany Resident Office, 11A Clinton Square, Room 342, Albany, New York, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form

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NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED at Buffalo, New York, this 28<sup>th</sup> day of February, 2017.



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PAUL J. MURPHY  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 03  
130 S Elmwood Ave Ste 630  
Buffalo, NY 14202-2465

Attachments

September 19, 2016

Michael Stewart, Regional HR Manager  
ADT Security Services  
75 Town Centre Drive  
Rochester, NY 14623

**Re: ADT – Six Day Work Week at Syracuse and Albany Locations**

Dear Mr. Stewart:

Pursuant to our discussion, the Union demands that ADT immediately rescind the six-day workweek directive set to take effect on Thursday, September 22.<sup>1</sup> As I previously explained, Article 6 of the CBA explicitly and unambiguously provides for only four or five-day workweeks. At no point does the CBA authorize a six-day workweek or allow ADT to change the agreed-upon schedule. Again, the Union does not consent to the changes set forth in ADT's directive. Accordingly, ADT violates Section 8(d) of the National Labor Relations Act ("Act") by implementing, maintaining, and enforcing a six-day workweek as it would change existing terms and conditions of employment of unit employees embodied in the applicable collective bargaining agreement, all without Local Union 43's consent. The directive is an unlawful mid-term modification.

Under Section 8(d), it is clear that once an agreement is struck, an employer may not change terms and conditions of employment that are governed by a collective bargaining agreement during the term of that agreement, absent the consent of the union representing the employees. *Oakland Physicians Medical Center, LLC*, 362 NLRB No. 149 (2015) (changes constituted mid-term contract modifications within the meaning of Section 8(d)). Thus, if ADT refuses to rescind the unlawful six-day workweek directive, the Union will file an unfair labor practice charge with Region 3 of the National Labor Relations Board.

In addition, pursuant to the National Labor Relations Act, the Union is requesting that the following information be provided:

1. Please provide copies of any survey, study, investigation or summary related to customer service targets for installation and service tickets referenced in ADT's September 7, 2016 correspondence to bargaining unit members, together with any internal or external communications related thereto.

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<sup>1</sup> The Union's demand to rescind the unlawful mid-term modification does not waive the Union's right to engage in bargaining over the effects of the Company's decision to implement a six-day workweek.

EXHIBIT A

2. Please provide copies of all internal and external communications concerning studies, projections, recommendations, or other correspondence by Company personnel or outside personnel related to the need to change to a six-day workweek and/or recommendations on how to implement it operationally.
3. Please provide copies of all internal and external communications concerning application of the collective bargaining agreements between Local 43 and ADT to ADT's plan to implement a six-day workweek.
4. Please provide copies of all internal and external communications concerning application of a collective bargaining agreement between any labor organization and ADT to ADT's plan to implement a six-day workweek. This is relevant as it relates to ADT's knowledge concerning the bargaining process.
5. Please provide copies of all studies, investigations, or summaries and internal and external communications concerning the decision to implement six day workweeks twice a month for some locations and every week for other locations, and the factors ADT considered in setting those frequencies. Specifically, the Union seeks this information to address ADT's reasoning and accuracy of the facts, figures, and theories relied on, which may impact the Union's bargaining position.
6. Please provide copies of all internal and external communications concerning studies, projections, recommendations, or other correspondence by Company personnel or outside personnel relating to the decision to exclude only "those technicians that are currently attending classes and are enrolled in higher education" from having to work the extended workweek. This is relevant because it will impact any effects bargaining, if necessary.
7. Please provide copies of all internal and external communications concerning studies, projections, recommendations, or other correspondence in calculating how and whether each market will achieve the desired customer service target.
8. Please provide all internal and external communications concerning studies, projections, recommendations, or other correspondence detailing how the manager will post locally the desired target at each location, including the frequency of the posting, location of the posting, and general operation of the posting.
9. Please provide copies of all documents, correspondence, and internal and external communications relied on to support ADT's ability to establish a six-day workweek under any collective bargaining agreements between Local 43 and ADT or ADT and another labor organization.

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**This information is necessary for the Union to fulfill its representative duties to administer and enforce the provisions of the collective bargaining agreement. Please provide this information no later than the close of business on Friday, October 7, 2015.**

Very truly yours,

*Patrick Costello*

Patrick Costello

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 3

ADT LLC D/B/A ADT SECURITY SERVICES

and

Case 03-CA-184936

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL UNION 43

**AFFIDAVIT OF SERVICE OF: Complaint and Notice of Hearing (with forms NLRB-4338 and NLRB-4668 attached)**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on February 28, 2017, I served the above-entitled document(s) by certified or regular mail, as noted below, upon the following persons, addressed to them at the following addresses:

Michael Stewart , Regional HR Manager,  
Northeast Region  
ADT Security Services  
75 Town Center Drive, Suite 200  
Rochester, NY 14623

**CERTIFIED MAIL**  
**7011-3500-0000-8314-3473**  
**RETURN RECEIPT REQUESTED**

Christopher R. Coxson , ESQ.  
Ogletree, Deakins, Nash, Smoak & Stewart,  
P.C.  
10 Madison Avenue, Suite 400  
Morristown, NJ 07960

**FIRST CLASS MAIL**

Brian D. Lee , Esquire  
Ogletree, Deakins, Nash, Smoak & Stewart,  
P.C.  
10 Madison Avenue, Suite 400  
Morristown, NJ 07960

**FIRST CLASS MAIL**

Jeremy C. Moritz , ESQ., Shareholder  
Ogletree Deakins Nash Smoak & Stewart,  
P.C.  
155 N Wacker Dr Ste 4300  
Chicago, IL 60606-1731

**FIRST CLASS MAIL**

General Counsel's Exhibit 1( 1 )

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Patrick Costello  
International Brotherhood of Electrical  
Workers Local Union 43  
4568 Waterhouse Road  
Clay, NY 13041-0110

**CERTIFIED MAIL**  
7011-3580-0000-8314-3480  
**RETURN RECEIPT REQUESTED**

Bryan T. Arnault , ESQ.  
Blitman & King LLP  
Franklin Center, Suite 300  
443 North Franklin Street  
Syracuse, NY 13204-5412

**FIRST CLASS MAIL**

February 28, 2017

JULIO GONZALEZ Designated Agent of  
NLRB

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Date

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Name

/S/JULIO GONZALEZ

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Signature

FORM NLRB 4338  
(6-90)

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
NOTICE

Case 03-CA-184936

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in *detail*;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Michael Stewart , Regional HR Manager,  
Northeast Region  
ADT Security Services  
75 Town Center Drive, Suite 200  
Rochester, NY 14623

Christopher R. Coxson , ESQ.  
Ogletree, Deakins, Nash, Smoak & Stewart,  
P.C.  
10 Madison Avenue, Suite 400  
Morristown, NJ 07960

Brian D. Lee , Esquire  
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10 Madison Avenue, Suite 400  
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Ogletree Deakins Nash Smoak & Stewart,  
P.C.  
155 N Wacker Dr Ste 4300  
Chicago, IL 60606-1731

Patrick Costello  
International Brotherhood of Electrical  
Workers Local Union 43  
4568 Waterhouse Road  
Clay, NY 13041-0110

Bryan T. Arnault , ESQ.  
Blitman & King LLP  
Franklin Center, Suite 300  
443 North Franklin Street  
Syracuse, NY 13204-5412

Form NLRB-4668  
(6-2014)

## Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. You may be represented at this hearing by an attorney or other representative. If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: [www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules\\_and\\_regs\\_part\\_102.pdf](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf).

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at [www.nlr.gov](http://www.nlr.gov), click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

### I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

### II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered.

(OVER)

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 3

ADT LLC D/B/A ADT SECURITY )  
SERVICES )  
and ) Cases 03-CA-184936  
INTERNATIONAL BROTHERHOOD )  
OF ELECTRICAL WORKERS, )  
LOCAL UNION 43. )

ANSWER OF ADT, LLC TO COMPLAINT

NOW COMES ADT, LLC ("ADT" or the "Respondent"), by its attorneys, OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C., pursuant to Section 102.20 of the National Labor Relations Board's Rules and Regulations, as amended, and for its Answer to the Complaint, states as follows:

I

(a) The charge in this proceeding was filed by the Union on September 26, 2016, and a copy was served on Respondent by U.S. mail on the same date.

**ANSWER:** Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph I(a), except that Respondent admits being served with the referenced charge.

(b) The first amended charge in this proceeding was filed by the Union on November 29, 2016, and a copy was served on Respondent by U.S. mail on the same date.

**ANSWER:** Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph I(b), except that Respondent admits being served with the referenced first amended charge.

General Counsel's Exhibit 1(m)

(c) The second amended charge in this proceeding was filed by the Union on December 19, 2016, and a copy was served on Respondent by U.S. mail on the same date.

**ANSWER:** Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph I(c), except that Respondent admits being served with the referenced second amended charge.

(d) The third amended charge in this proceeding was filed by the Union on December 19, 2016, and a copy was served on Respondent by U.S. mail on the same date.

**ANSWER:** Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph I(d), except that Respondent admits being served with the referenced third amended charge.

## II

(a) At all material times, Respondent has been a corporation with offices and places of business in Albany, New York (Respondent's Albany facility) and Syracuse, New York (Respondent's Syracuse facility), and has been engaged in the installation and service of residential and commercial security systems.

**ANSWER:** Admitted.

(b) Annually, Respondent, in conducting its business operations described above in paragraph II(a), derives gross revenues in excess of \$500,000 from the sale and service of retail alarm systems, and purchases and receives at its Albany and Syracuse, New York facilities goods valued in excess of \$5,000 directly from points outside the State of New York.

**ANSWER:** Admitted.

III

At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

ANSWER: Admitted.

IV

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

ANSWER: Admitted.

V

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

- Michael Kirk - Area General Manager
- Michael Stewart - Regional HR Manager

ANSWER: Admitted.

VI

(a) The following employees of Respondent (the Albany Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees originally described in the certification dated November 20, 1968 (Case Number 3-RC-4533) classified by the Respondent as residential and small business installers, residential and small business high volume commissioned installers, residential and small business service technicians, employed by the Respondent at its facility in Albany, NY; but excluding all alarm service investigators, relief supervisors, all office clerical employees and professional employees, guards and supervisors, as defined in the Act; and excluding all commercial installers and commercial service unless the

employees are employed by the Respondent and are located at, or are directly supervised by the Respondent's supervisors located at its Albany, NY facility.

**ANSWER:** Denied. Answering further Respondent admits that the unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act is as set forth in the collective bargaining agreement between the Respondent and the Charging Party.

(b) The following employees of Respondent (the Syracuse Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees originally described in the certification dated November 20, 1968 (Case Number 3-RC-4533) classified by the Respondent as residential and small business installers, residential and small business high volume commissioned installers, residential and small business technicians, employed by the Respondent at its facility in Syracuse, NY, but excluding all alarm service investigators, relief supervisors, all office clerical employees and professional employees, guards and supervisors, as defined by the Act; and excluding all commercial installers and commercial service unless the employees are employed by the Respondent and are located at, or are directly supervised by the Respondent's supervisors located at, its Syracuse, NY facility.

**ANSWER:** Denied. Answering further Respondent admits that the unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act is as set forth in the collective bargaining agreement between the Respondent and the Charging Party.

(c) At all material times, Respondent has recognized the Union as the exclusive collective-bargaining representative of the Albany Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from June 11, 2015 to June 10, 2018.

**ANSWER:** Denied. Answering further, Respondent admits that it has recognized the Charging Party as the exclusive collective bargaining representative of the Unit of employees of

the Albany facility as set forth in the collective bargaining agreement between the Respondent and the Charging Party.

(d) At all material times, Respondent has recognized the Union as the exclusive collective-bargaining representative of the Syracuse Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from June 11, 2016 to June 10, 2019.

**ANSWER:** Denied. Answering further, Respondent admits that it has recognized the Charging Party as the exclusive collective bargaining representative of the Unit of employees of the Syracuse facility as set forth in the collective bargaining agreement between the Respondent and the Charging Party.

(e) At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Albany Unit and the Syracuse Unit.

**ANSWER:** Denied.

## VII

(a) About September 22, 2016, Respondent failed to continue in effect all the terms and conditions of the agreement described above in paragraph VI(c) by imposing a mandatory six-day workweek for all service and installation technicians in the Albany Unit.

**ANSWER:** Denied.

(b) The terms and conditions of employment described above in paragraph VII(a) are mandatory subjects for the purposes of collective bargaining.

**ANSWER:** Denied.

(c) Respondent engaged in the conduct described above in paragraph VII(a) without the Union's consent.

**ANSWER:** Denied.

(d) Alternatively, Respondent engaged in the conduct described above in paragraph VII(e) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct.

**ANSWER:** Denied.

### VIII

(a) About September 22, 2016, Respondent failed to continue in effect all the terms and conditions of the agreement described above in paragraph VI(d) by imposing a mandatory biweekly six-day workweek for all service technicians in the Syracuse Unit.

**ANSWER:** Denied.

(b) The terms and conditions of employment described above in paragraph VIII(a) are mandatory subjects for the purposes of collective bargaining.

**ANSWER:** Denied.

(c) Respondent engaged in the conduct described above in paragraph VIII(a) without the Union's consent.

**ANSWER:** Denied.

(d) Alternatively, Respondent engaged in the conduct described above in paragraph VIII(a) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct.

**ANSWER:** Denied.

IX

(a) About September 22, 2016, Respondent imposed a mandatory biweekly six-day workweek for all installation technicians in the Syracuse Unit.

ANSWER: Denied.

(b) The subject set forth above in paragraph IX(a) relates to wages, hours, and other terms and conditions of employment of the Syracuse Unit and is a mandatory subject for the purposes of collective bargaining.

ANSWER: Denied.

(c) Respondent engaged in the conduct described above in paragraph IX(a) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct.

ANSWER: Denied.

X

(a) Since about September 19, 2016, the Union has requested in writing that Respondent furnish the Union with the information in attached Exhibit A.

ANSWER: Denied.

(b) The information requested by the Union, as described above in paragraph X(a) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Albany Unit and the Syracuse Unit.

ANSWER: Denied.

(c) Since about October 13, 2016, Respondent has replied, in part, to the Union's request for certain information by means of belated and incomplete communications and, thus, has

delayed in providing certain information and has failed and refused to furnish the Union with certain information, as described above in paragraph X(a).

**ANSWER:** Denied.

**XI**

By the conduct described above in paragraphs VII(a), (c) and (d), VIII(a), (c) and (d), IX(a) and (c), and X(c), Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

**ANSWER:** Denied.

**XII**

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

The General Counsel seeks all relief as may be just and proper to remedy the unfair labor practices alleged.

**ANSWER:** Denied.

**AFFIRMATIVE AND OTHER DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

The Complaint is barred by the statute of limitations.

Dated: March 14, 2017.

Respectfully submitted,

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

*s/ Jeremy C. Moritz*

Jeremy C. Moritz

Norma Manjarrez

155 North Wacker Drive - Suite 4300

Chicago, IL 60606

312.558.1429 (phone)

312.807.3619 (fax)

*Attorneys for ADT, LLC*

**CERTIFICATE OF SERVICE**

I certify that on March 14, 2017, a copy of the foregoing *ANSWER OF ADT, LLC TO COMPLAINT* was Electronically Filed as a .pdf document via the NLRB's e-filing system and transmitted via U.S. First-Class Mail to:

Patrick Costello  
INTERNATIONAL BROTHERHOOD OF ELECTRICAL  
WORKERS LOCAL UNION 43  
4568 Waterhouse Road  
Clay, NY 1304-0110

Bryan T. Arnault, Esq.  
BLITMAN & KING LLP  
Franklin Center – Suite 300  
443 North Franklin Street  
Syracuse, NY 13204-5412

s/ Jeremy C. Moritz

007116-000288  
28969902.1

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 3

ADT LLC D/B/A ADT SECURITY SERVICES

and

Cases 03-CA-184936  
03-CA-192545

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL UNION 43

ORDER CONSOLIDATING CASES, CONSOLIDATED  
COMPLAINT AND NOTICE OF HEARING

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 03-CA-184936 filed by International Brotherhood of Electrical Workers, Local Union 43 (Union) against ADT LLC d/b/a ADT Security Services (Respondent), in which a Complaint and Notice of Hearing issued on February 28, 2017, is consolidated with Case 03-CA-192545 filed by the Union against Respondent.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act as described below.

I

(a) The charge in Case 03-CA-184936 was filed by the Union on September 26, 2016, and a copy was served on Respondent by U.S. mail on the same date.

(b) The first amended charge in Case 03-CA-184936 was filed by the Union on November 29, 2016, and a copy was served on Respondent by U.S. mail on the same date.

General Counsel's Exhibit 1( v )

(c) The second amended charge in Case 03-CA-184936 was filed by the Union on December 19, 2016, and a copy was served on Respondent by U.S. mail on the same date.

(d) The third amended charge in Case 03-CA-184936 was filed by the Union on December 19, 2016, and a copy was served on Respondent by U.S. mail on the same date.

(e) The charge in Case 03-CA-192545 was filed by the Union on February 7, 2017, and a copy was served on Respondent by U.S. mail on the same date.

## II

(a) At all material times, Respondent has been a corporation with offices and places of business in Albany, New York (Respondent's Albany facility), and Syracuse, New York (Respondent's Syracuse facility), and has been engaged in the installation and service of residential and commercial security systems.

(b) Annually, Respondent, in conducting its business operations described above in paragraph II(a), derives gross revenues in excess of \$500,000 from the sale and service of retail alarm systems, and purchases and receives at its Albany and Syracuse, New York facilities goods valued in excess of \$5,000 directly from points outside the State of New York.

## III

At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

## IV

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

## V

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Peter Bernard	-	Manager
Michael Kirk	-	Area General Manager
Michael Stewart	-	Regional HR Manager

## VI

(a) The following employees of Respondent (the Albany Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees originally described in the certification dated November 20, 1968 (Case Number 3-RC-4533) classified by the Respondent as residential and small business installers, residential and small business high volume commissioned installers, residential and small business service technicians, employed by the Respondent at its facility in Albany, NY; but excluding all alarm service investigators, relief supervisors, all office clerical employees and professional employees, guards and supervisors, as defined in the Act; and excluding all commercial installers and commercial service unless the employees are employed by the Respondent and are located at, or are directly supervised by the Respondent's supervisors located at its Albany, NY facility.

(b) The following employees of Respondent (the Syracuse Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees originally described in the certification dated November 20, 1968 (Case Number 3-RC-4533) classified by the Respondent as residential and small business installers, residential and small business high volume commissioned installers, residential and small business technicians, employed by the Respondent at its facility in Syracuse, NY, but excluding all alarm service investigators, relief supervisors, all office clerical employees and professional employees, guards and supervisors, as defined by the

Act; and excluding all commercial installers and commercial service unless the employees are employed by the Respondent and are located at, or are directly supervised by the Respondent's supervisors located at, its Syracuse, NY facility.

(c) At all material times, Respondent has recognized the Union as the exclusive collective-bargaining representative of the Albany Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from June 11, 2015 to June 10, 2018.

(d) At all material times, Respondent has recognized the Union as the exclusive collective-bargaining representative of the Syracuse Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from June 11, 2016 to June 10, 2019.

(e) At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Albany Unit and the Syracuse Unit.

## VII

(a) About September 22, 2016, Respondent failed to continue in effect all the terms and conditions of the agreement described above in paragraph VI(c) by imposing a mandatory six-day workweek for all service and installation technicians in the Albany Unit.

(b) The terms and conditions of employment described above in paragraph VII(a) are mandatory subjects for the purposes of collective bargaining.

(c) Respondent engaged in the conduct described above in paragraph VII(a) without the Union's consent.

(d) Alternatively, Respondent engaged in the conduct described above in paragraph VII(a) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct.

**VIII**

(a) About September 22, 2016, Respondent failed to continue in effect all the terms and conditions of the agreement described above in paragraph VI(d) by imposing a mandatory biweekly six-day workweek for all service technicians in the Syracuse Unit.

(b) The terms and conditions of employment described above in paragraph VIII(a) are mandatory subjects for the purposes of collective bargaining.

(c) Respondent engaged in the conduct described above in paragraph VIII(a) without the Union's consent.

(d) Alternatively, Respondent engaged in the conduct described above in paragraph VIII(a) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct.

**IX**

(a) About September 22, 2016, Respondent created exceptions to the mandatory six-day workweek policy for all service and installation technicians in the Albany Unit.

(b) The subject set forth above in paragraph IX(a) relates to wages, hours, and other terms and conditions of employment of the Albany Unit and is a mandatory subject for the purposes of collective bargaining.

(c) Respondent engaged in the conduct described above in paragraph IX(a) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct.

## X

(a) About September 22, 2016, Respondent imposed a mandatory biweekly six-day workweek for all installation technicians in the Syracuse Unit.

(b) The subject set forth above in paragraph X(a) relates to wages, hours, and other terms and conditions of employment of the Syracuse Unit and is a mandatory subject for the purposes of collective bargaining.

(c) Respondent engaged in the conduct described above in paragraph X(a) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct.

## XI

(a) Since about September 19, 2016, the Union has requested in writing that Respondent furnish the Union with the information in attached Exhibit A.

(b) The information requested by the Union, as described above in paragraph XI(a) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Albany Unit and the Syracuse Unit.

(c) Since about October 13, 2016, Respondent has replied, in part, to the Union's request for certain information by means of belated and incomplete communications and, thus, has delayed in providing certain information and has failed and refused to furnish the Union with certain information, as described above in paragraph XI(a).

## XII

About September 22, 2016, Respondent, by Peter Bernard, at Respondent's Albany facility, bypassed the Union and dealt directly with its employees in the Albany Unit by informing an employee that he did not have to work the mandatory Saturday shift.

**XIII**

By the conduct described above in paragraphs VII(a), (c) and (d), VIII(a), (c) and (d), IX(a) and (c), X(a) and (c), XI(c) and XII, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

**XIV**

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

The General Counsel seeks all relief as may be just and proper to remedy the unfair labor practices alleged.

**ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be **received by this office on or before May 4, 2017, or postmarked on or before May 3, 2017.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon

(Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

#### **NOTICE OF HEARING**

**PLEASE TAKE NOTICE THAT** on June 13, 2017 at 10:00 a.m., at the Hearing Room at the National Labor Relations Board, Albany Resident Office, 11A Clinton Square, Room 342, Albany, New York, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

A-101

**DATED** at Buffalo, New York, this 21<sup>st</sup> day of April 2017.

/S/PAUL J. MURPHY  
**PAUL J. MURPHY**  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 03  
130 S Elmwood Ave Ste 630  
Buffalo, NY 14202-2465

**Attachments**



A-103

Jeremy C. Moritz Esq., Shareholder  
Ogletree, Deakins, Nash, Smoak & Stewart,  
P.C.  
155 N. Wacker Drive, Suite 4300  
Chicago, IL 60606-1731

FIRST CLASS MAIL

April 20, 2017

JULIO GONZALEZ, Designated Agent of  
NLRB

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

/S/JULIO GONZALEZ

\_\_\_\_\_  
Signature

FORM NLRB 4338  
(6-90)

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
NOTICE

Case 03-CA-184936

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in *detail*;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Christopher R. Coxson , ESQ.  
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P.C.  
155 N. Wacker Drive, Suite 4300  
Chicago, IL 60606-1731

Form NLRB-4668  
(6-2014)

## Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. You may be represented at this hearing by an attorney or other representative. If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: [www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules\\_and\\_regs\\_part\\_102.pdf](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf).

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at [www.nlr.gov](http://www.nlr.gov), click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

### I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

### II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered.

(OVER)

Form NLRB-4668  
(6-2014)

in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

### III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 3

ADT LLC D/B/A ADT SECURITY	)	
SERVICES	)	
	)	
and	)	Cases 03-CA-184936
	)	03-CA-192545
INTERNATIONAL BROTHERHOOD	)	
OF ELECTRICAL WORKERS,	)	
LOCAL UNION 43.	)	

ANSWER OF ADT, LLC TO CONSOLIDATED COMPLAINT

NOW COMES ADT, LLC ("ADT" or the "Respondent"), by its attorneys, OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C., pursuant to Section 102.20 of the Rules and Regulations of the National Labor Relations Board, as amended, and for its Answer to the Consolidated Complaint, states as follows:

I

(a) The charge in Case 03-CA-184936 was filed by the Union on September 26, 2016, and a copy was served on Respondent by U.S. Mail on the same date.

ANSWER: Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph I(a), except that Respondent admits being served with the referenced charge.

(b) The first amended charge in Case 03-CA-184936 was filed by the Union on November 29, 2016, and a copy was served on Respondent by U.S. mail on the same date.

ANSWER: Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph I(b), except that Respondent admits being served with the referenced first amended charge.

(c) The second amended charge in Case 03-CA-184936 was filed by the Union on December 19, 2016, and a copy was served on Respondent by U.S. mail on the same date.

**ANSWER:** Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph I(c), except that Respondent admits being served with the referenced second amended charge.

(d) The third amended charge in Case 03-CA-184936 was filed by the Union on December 19, 2016, and a copy was served on Respondent by U.S. mail on the same date.

**ANSWER:** Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph I(d), except that Respondent admits being served with the referenced third amended charge.

(e) The charge in Case 03-CA-192545 was filed by the Union on February 7, 2017, and a copy was served on Respondent by U.S. mail on the same date.

**ANSWER:** Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph I(e), except that Respondent admits being served with the referenced third amended charge.

## II

(a) At all material times, Respondent has been a corporation with offices and places of business in Albany, New York (Respondent's Albany facility) and Syracuse, New York (Respondent's Syracuse facility), and has been engaged in the installation and service of residential and commercial security systems.

**ANSWER:** Admitted.

(b) Annually, Respondent, in conducting its business operations described above in paragraph II(a), derives gross revenues in excess of \$500,000 from the sale and service of retail

alarm systems, and purchases and receives at its Albany and Syracuse, New York facilities goods valued in excess of \$5,000 directly from points outside the State of New York.

**ANSWER:** Admitted.

**III**

At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

**ANSWER:** Admitted.

**IV**

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

**ANSWER:** Admitted.

**V**

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Peter Bernard	Manager
Michael Kirk	Area General Manager
Michael Stewart	Regional HR Manager

**ANSWER:** Admitted.

**VI**

(a) The following employees of Respondent (the Albany Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees originally described in the certification dated November 20, 1968 (Case Number 3-RC-4533) classified by

the Respondent as residential and small business installers, residential and small business high volume commissioned installers, residential and small business service technicians, employed by the Respondent at its facility in Albany, NY; but excluding all alarm service investigators, relief supervisors, all office clerical employees and professional employees, guards and supervisors, as defined in the Act; and excluding all commercial installers and commercial service unless the employees are employed by the Respondent and are located at, or are directly supervised by the Respondent's supervisors located at its Albany, NY facility.

**ANSWER:** Denied. Answering further, Respondent admits that the unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act is as set forth in the collective bargaining agreement between the Respondent and the Charging Party.

(b) The following employees of Respondent (the Syracuse Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees originally described in the certification dated November 20, 1968 (Case Number 3-RC-4533) classified by the Respondent as residential and small business installers, residential and small business high volume commissioned installers, residential and small business technicians, employed by the Respondent at its facility in Syracuse, NY, but excluding all alarm service investigators, relief supervisors, all office clerical employees and professional employees, guards and supervisors, as defined by the Act; and excluding all commercial installers and commercial service unless the employees are employed by the Respondent and are located at, or are directly supervised by the Respondent's supervisors located at, its Syracuse, NY facility.

**ANSWER:** Denied. Answering further, Respondent admits that the unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act is as set forth in the collective bargaining agreement between the Respondent and the Charging Party.

(c) At all material times, Respondent has recognized the Union as the exclusive collective-bargaining representative of the Albany Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from June 11, 2015 to June 10, 2018.

**ANSWER:** Denied. Answering further, Respondent admits that it has recognized the Charging Party as the exclusive collective bargaining representative of the Unit of employees of the Albany facility as set forth in the collective bargaining agreement between the Respondent and the Charging Party.

(d) At all material times, Respondent has recognized the Union as the exclusive collective-bargaining representative of the Syracuse Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from June 11, 2016 to June 10, 2019.

**ANSWER:** Denied. Answering further, Respondent admits that it has recognized the Charging Party as the exclusive collective bargaining representative of the Unit of employees of the Syracuse facility as set forth in the collective bargaining agreement between the Respondent and the Charging Party.

(e) At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Albany Unit and the Syracuse Unit.

**ANSWER:** Denied.

## VII

(a) About September 22, 2016, Respondent failed to continue in effect all the terms and conditions of the agreement described above in paragraph VI(c) by imposing a mandatory six-day workweek for all service and installation technicians in the Albany Unit.

**ANSWER:** Denied.

(b) The terms and conditions of employment described above in paragraph VII(a) are mandatory subjects for the purposes of collective bargaining.

**ANSWER:** Denied.

(c) Respondent engaged in the conduct described above in paragraph VII(a) without the Union's consent.

ANSWER: Denied.

(d) Alternatively, Respondent engaged in the conduct described above in paragraph VII(a) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct.

ANSWER: Denied.

### VIII

(a) About September 22, 2016, Respondent failed to continue in effect all the terms and conditions of the agreement described above in paragraph VI(d) by imposing a mandatory biweekly six-day workweek for all service technicians in the Syracuse Unit.

ANSWER: Denied.

(b) The terms and conditions of employment described above in paragraph VIII(a) are mandatory subjects for the purposes of collective bargaining.

ANSWER: Denied.

(c) Respondent engaged in the conduct described above in paragraph VIII(a) without the Union's consent.

ANSWER: Denied.

(d) Alternatively, Respondent engaged in the conduct described above in paragraph VIII(a) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct.

ANSWER: Denied.

IX

(a) About September 22, 2016, Respondent created exceptions to the mandatory six-day workweek policy for all service and installation technicians in the Albany Unit.

ANSWER: Denied.

(b) The subject set forth above in paragraph IX(a) relates to wages, hours, and other terms and conditions of employment of the Albany Unit and is a mandatory subject for the purposes of collective bargaining.

ANSWER: Denied.

(c) Respondent engaged in the conduct described above in paragraph IX(a) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct.

ANSWER: Denied.

X

(a) About September 22, 2016, Respondent imposed a mandatory biweekly six-day workweek for all installation technicians in the Syracuse Unit.

ANSWER: Denied.

(b) The subject set forth above in paragraph X(a) relates to wages, hours, and other terms and conditions of employment of the Syracuse Unit and is a mandatory subject for the purposes of collective bargaining.

ANSWER: Denied.

(c) Respondent engaged in the conduct described above in paragraph X(a) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct

**ANSWER:** Denied.

#### XI

(a) Since about September 19, 2016, the Union has requested in writing that Respondent furnish the Union with the information in attached Exhibit A.

**ANSWER:** Denied.

(b) The information requested by the Union, as described above in paragraph XI(a) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Albany Unit and the Syracuse Unit.

**ANSWER:** Denied.

(c) Since about October 13, 2016, Respondent has replied, in part, to the Union's request for certain information by means of belated and incomplete communications and, thus, has delayed in providing certain information and has failed and refused to furnish the Union with certain information, as described above in paragraph XI(a).

**ANSWER:** Respondent admits only that it has lawfully responded to the Union's request for information and denies all remaining allegations in Paragraph XI(c).

#### XII

About September 22, 2016, Respondent, by Peter Bernard, at Respondent's Albany facility, bypassed the Union and dealt directly with its employees in the Albany Unit by informing an employee that he did not have to work the mandatory Saturday shift.

**ANSWER:** Denied.

#### XIII

By the conduct described above in paragraphs VII(a), (c) and (d), VIII(a), (c) and (d), IX(a) and (c), X(a) and (c), XI(c) and XII, Respondent has been failing and refusing to bargain

collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

ANSWER: Denied.

**XIV**

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

The General Counsel seeks all relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER: Denied.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

The Complaint is barred by the statute of limitations.

Dated: May 4, 2017.

Respectfully submitted,  
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

*s/ Jeremy C. Mortiz*

Jeremy C. Mortiz  
Norma Manjarrez  
155 North Wacker Drive - Suite 4300  
Chicago, IL 60606  
312.558.1429 (phone)  
312.807.3619 (fax)

*Attorneys for ADT, LLC*

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**CERTIFICATE OF SERVICE**

I certify that on May 4, 2017, a copy of the foregoing ***ANSWER OF ADT, LLC TO CONSOLIDATED COMPLAINT*** was Electronically Filed as a .pdf document via the NLRB's e-filing system and transmitted via U.S. First-Class Mail to:

Bryan T. Arnault, Esq.  
BLITMAN & KING LLP  
Franklin Center – Suite 300  
443 North Franklin Street  
Syracuse, NY 13204-5412

*s/ Jeremy C. Moritz*

007116-000288  
29622752.2

A-118

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 3

ADT LLC D/B/A ADT SECURITY SERVICES

and

Cases 03-CA-184936  
03-CA-192545

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL UNION 43

AMENDMENT TO ORDER CONSOLIDATING CASES, CONSOLIDATED  
COMPLAINT AND NOTICE OF HEARING

Pursuant to Section 102.17 of the Rules and Regulations of the National Labor Relations Board (the Board), the Order Consolidating Cases, Consolidated Complaint and Notice of Hearing issued on April 21, 2017 is amended as follows:

Change paragraph XIII to read as follows:

XIII

(a) By the conduct described above in paragraphs VII(a) and (c) and VIII(a) and (c), Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

(b) By the conduct described above in paragraphs VII(a) and (d), VIII(a) and (d), IX(a) and (c), X(a) and (c), XI(c) and XII, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

RESPONDENT IS FURTHER NOTIFIED that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Respondent must file an answer to the above amendment to consolidated complaint. The answer must be received by this office on or before May 23,

General Counsel's Exhibit 1(2)

2017, or postmarked on or before May 22, 2017. Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed,

or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the amendment to consolidated complaint are true.

**DATED** at Buffalo, New York, this 9<sup>th</sup> day of May, 2017.

/S/PAUL J. MURPHY

---

**PAUL J. MURPHY**  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 03  
130 S Elmwood Ave Ste 630  
Buffalo, NY 14202-2465

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 3

ADT LLC D/B/A ADT SECURITY SERVICES

and

Cases 03-CA-184936

03-CA-192545

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL UNION 43

AFFIDAVIT OF SERVICE OF ORDER AMENDMENT TO ORDER CONSOLIDATING  
CASES, CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

I, the undersigned employec of the National Labor Relations Board, being duly sworn, say that on May 9, 2017, I served the above-entitled document(s) by regular mail upon the following persons, addressed to them at the following addresses:

Christopher R. Coxson , ESQ.  
Ogletree, Deakins, Nash, Smoak & Stewart,  
P.C.  
10 Madison Avenue, Suite 400  
Morristown, NJ 07960

Brian D. Lee , Esquire  
Ogletree, Deakins, Nash, Smoak & Stewart,  
P.C.  
10 Madison Avenue, Suite 400  
Morristown, NJ 07960

Jeremy C. Moritz , ESQ., Shareholder  
Ogletree Deakins Nash Smoak & Stewart,  
P.C.  
155 N Wacker Dr Ste 4300  
Chicago, IL 60606-1731

Bryan T. Arnault , ESQ.  
Blitman & King LLP  
Franklin Center, Suite 300  
443 North Franklin Street  
Syracuse, NY 13204-5412

General Counsel's Exhibit 1( r )

A-122

Norma Manjarrez , Attorney  
Ogletree, Deakins, Nash, Smoak & Stewart,  
P.C.  
155 N. Wacker Drive, Suite 4300  
Chicago, IL 60606-1731

May 9, 2017

\_\_\_\_\_  
Date

JULIO GONZALEZ, Designated Agent of  
NLRB  
\_\_\_\_\_  
Name  
/S/JULIO GONZALEZ

\_\_\_\_\_  
Signature

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 3

ADT LLC D/B/A ADT SECURITY	)	
SERVICES,	)	
	)	
and	)	Cases 03-CA-184936
	)	03-CA-192545
INTERNATIONAL BROTHERHOOD	)	
OF ELECTRICAL WORKERS,	)	
LOCAL UNION 43.	)	

ANSWER OF ADT, LLC TO AMENDMENT OF CONSOLIDATED COMPLAINT

NOW COMES ADT, LLC ("ADT" or the "Respondent"), by its attorneys, OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C., pursuant to Section 102.20 of the Rules and Regulations of the National Labor Relations Board, as amended, and for its Answer to the Amendment of Consolidated Complaint, states as follows:

XIII

(a) By the conduct described above in paragraphs VII(a) and (c) and VIII(a) and (c), Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

ANSWER: Denied.

(b) By the conduct described above in paragraphs VII(a) and (d), VIII(a) and (d), IX(a) and (c), X(a) and (c), XI(c) and XII, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

ANSWER: Denied.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

The Complaint is barred by the statute of limitations.

**Dated:** May 18, 2017.

Respectfully submitted,

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

s/ Jeremy C. Mortiz

Jeremy C. Mortiz

Norma Manjarrez

155 North Wacker Drive - Suite 4300

Chicago, IL 60606

312.558.1429 (phone)

312.807.3619 (fax)

*Attorneys for ADT, LLC*

**CERTIFICATE OF SERVICE**

I certify that on May 18, 2017, a copy of the foregoing ***ANSWER OF ADT, LLC TO AMENDMENT OF CONSOLIDATED COMPLAINT*** was Electronically Filed as a .pdf document via the NLRB's e-filing system and transmitted via U.S. First-Class Mail to:

Bryan T. Arnault, Esq.  
BLITMAN & KING LLP  
Franklin Center – Suite 300  
443 North Franklin Street  
Syracuse, NY 13204-5412

*s/ Jeremy C. Moritz* \_\_\_\_\_

007116-000288  
29856680.1

A-126

- |                     |   |
|---------------------|---|
| Board's Exhibit No. | 1 (a) Original Charge 03-CA-184936 filed dated September 26, 2016   |
|                     | 1 (b) Affidavit of Service of 1(a) above dated September 26, 2016   |
|                     | 1 (c) Original Charge filed, First Amended dated November 29, 2016  |
|                     | 1 (d) Affidavit of Service of 1 (c) above dated November 29, 2016   |
|                     | 1 (e) Original Charge filed, Second Amended dated December 19, 2016 |
|                     | 1 (f) Affidavit of Service of 1 (e) above dated December 19, 2016   |
|                     | 1 (g) Original Charge filed, Third Amended dated December 19, 2016  |
|                     | 1 (h) Affidavit of Service of 1 (g) above dated December 19, 2017   |
|                     | 1 (i) Original Charge 03-CA-192545 filed dated February 7, 2017     |
|                     | 1 (j) Affidavit of Service of 1 (i) above dated February 7, 2017    |
|                     | 1 (k) Complaint and Notice of Hearing dated February 28, 2017       |
|                     | 1 (l) Affidavit of Service of 1 (k) above dated February 28, 2017   |
|                     | 1 (m) Answer of ADT, LLC to Complaint dated March 14, 2017          |

3-CA-184936  
CASE NUMBER  
EXHIBIT NUMBER GC-1(A-T)  
ID'D \_\_\_\_\_ REC'D \_\_\_\_\_  
DATE  
6/13/17

General Counsel's Exhibit 1( T )

- 1 (n) Order Consolidating Cases, Consolidated Complaint and Notice of Hearing dated April 21, 2017
- 1 (o) Affidavit of Service of 1 (n) above dated April 20, 2017
- 1 (p) Answer of ADT, LLC to Consolidated Complaint dated May 4, 2017
- 1 (q) Amendment to Order Consolidating Cases, Consolidated Complaint and Notice of Hearing dated May 9, 2017
- 1 (r) Affidavit of Service of 1 (q) above dated May 9, 2017
- 1 (s) Answer of ADT, LLC to Amendment of Consolidated Complaint dated May 18, 2017
- 1 (t) Index and description of formal documents

A-128

09/20/2016

To Whom It May Concern,

I am the father of 11 year old Madison Rae Sopok. Approximately 6 years ago, Madison's mother and I parted ways and Madison ended up residing with her mother in Glens Falls, NY. I reside in Duanesburg, NY which is approximately 1 hour to 1 hour and 15 minutes away from Glens Falls. Both Madison's mother and I remained civil with each other for Madison's health, well being, and happiness. The agreement has been, Madison will live with her Mother and go to school in Glens Falls. I receive Madison on Fridays after work and return her Sunday afternoon which equals about 34 total hours from Friday to Sunday. After sleep time the actual only time I get to spend time with her is 12 to 18 hours. Saturdays are my only full day to spend with my daughter and 12 to 18 hours is not even a full day.

My daughter is my world and being that I lost my father at 14, I cherish every minute I get with her. I did not plan on having the relationship with her mother end. It was not a choice but I and we make do with what it is.

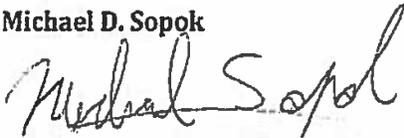
As stated above, Madison's mother and I were and are for the most part civil with each other when it comes to Madison. I announced to her mother 2 weeks ago about having to work "mandatory Saturdays". The conversation did not go well and her mother promised to file for FULL custody if I choose to give up my Saturdays with Madison. I will not just go to court and give up custody of my child and then will be forced to retain an attorney and subject my daughter to the court process. It is a process that I will try to prevent at all cost.

I feel that I am a valuable employee. I learn from my mistakes, I try to learn about all possible work details, I show up every day and don't abuse time off. I do my job to the best of my ability every day. I even passed up a VERY MUCH wanted service position because the stipulation was Saturdays. I don't look at the work I do as a job. I treat it as a career.

I hope after reading this, you can understand as a fellow parent what losing my Saturdays with my child mean to me. I don't give her hugs and kisses before bed every night, I don't see her off to school, I don't get to make her school lunches and I don't get to help her with her nightly homework. I get her on Saturdays and as her father, I cherish that day more than any other.

Sincerely,

Michael D. Sopok



Employee# 160619/ Tech # 271292  
Cell- 518-626-1753

3-CA-184936  
CASE NUMBER  
EXHIBIT NUMBER: GC-16  
ID'D \_\_\_\_\_ REC'D \_\_\_\_\_  
DATE

6/13/17

GC EX. 16

A-129

Sept 23, 2011

Dear Michael Sopok,

Your days with Madison are the following Friday afternoon through Saturday until Sunday afternoon.

If you forfeit your Saturdays with Madison I will be forced to take you to court for custody.

As Madison is in school and lives an hour away from you it would leave you no time to see her.

Sincerely,

3-CA-184936

CASE NUMBER

EXHIBIT NUMBER GC-17

ID#

REC'D

DATE

6/13/17

GC EX. 17

A-130

Stewart, Michael T (West Henrietta)

**From:** Stewart, Michael T (West Henrietta)  
**Sent:** Tuesday, September 06, 2016 5:52 PM  
**To:** Kirk, Michael D  
**Subject:** Re: Mandatory 6 Day Workweek

Hi Mike,

Just arrived and I see you got the letter and off and running. Let me know if you need anything else but looks like you got this one all set.

Thanks,  
Mike

Sent from my iPhone

On Sep 6, 2016, at 4:03 PM, Kirk, Michael D <MKirk@adt.com> wrote:

Team, get this in the hands of every technician no later than 9:00 AM tomorrow morning.... Thanks

**From:** Kirk, Michael D  
**Sent:** Tuesday, September 06, 2016 4:02 PM  
**To:** Glass, Lisa J <LGlass@adt.com>; Bernard, Peter J <pbernard@adt.com>; Hoffman, Daniel A (Allentown) <danielhoffman@adt.com>; Lewis, Katie <KLewis@adt.com>; Mead, Daniel <dcmead@adt.com>; Moreno, Manny <mmoreno@adt.com>; Shuman, Christine L <cshuman@adt.com>; Starkey, Eliot <erstarkey@adt.com>; Varesio, William (Pittsburgh) <WVaresio@adt.com>; Wilson, Lisa M <lmwilson@adt.com>; Yoder, Michael A <myoder@adt.com>  
**Cc:** Hawkins, Alessondra <ahawkins@adt.com>; Stewart, Michael <mastewart@adt.com>; Birchmeier, Mark <mbirchmeier@adt.com>; Lohman, Daniel A <dlohman@adt.com>  
**Subject:** Mandatory 6 Day Workweek

Team,

With the integration of ADT and Protection 1 we have been given new customer service targets of 1.69 days on all new installations and service tickets created. This equates to being able to deliver, 24hour customer service to our new and existing customers 75% of the time which is a great objective to meet, while understanding that 25% of our customers may not be able to be available within 24 hours. While I understand that each market is different, and we need to approach each market as a separate entity and make decisions that are based solely on each location. Until we meet the present target, we will be implanting a mandatory six day workweek in the following markets beginning on Thursday, September 22<sup>nd</sup> and will continue until each market achieves the desired target which the manager will post locally for each market. I understand that this is a burden on some of our technicians and the only exception at this time are those technicians that are currently attending classes and are enrolled in higher education.

3-CA-184936  
Allentown Pa CASE NUMBER  
Wiles-Barre Pa EXHIBIT NUMBER: JT-1  
ID'D \_\_\_\_\_ REC'D \_\_\_\_\_  
DATE

6/13/17

J. EX. 1

A-131

Bridgeville Pa  
Albany NY

The following districts will implement a mandatory 5day workweek on Thursday, September 22 2016 for the second and fourth week of every month until the target is achieved and can change to weekly if needed with no additional notice.

Syracuse NY  
Buffalo NY  
Erie Pa  
Altoona Pa  
Lancaster Pa

I appreciate your understanding and dedication to providing faster service to our customer and I truly appreciate your support, I am providing a two week notice to all technicians as I truly believe that this is the right thing to do! Please keep in constant communication with your manager and myself if you are confused as to why this critical initiative is important and why we need your immediate assistance and to see where we are to the target. Thank you for all that you do and keep those great customer service emails coming to me from your customers as I love to recognize great individual performances.... You guys and girls are awesome. Thank you.

Mike

A-132

LABOR AGREEMENT  
Between  
ADT LLC  
SYRACUSE OFFICE  
And  
LOCAL UNION #43  
INTERNATIONAL BROTHERHOOD  
OF ELECTRICAL WORKERS



Effective: June 11, 2016 through June 10, 2019

3-0A-184936  
CASE NUMBER  
EXHIBIT NUMBER: JT-2  
FILED \_\_\_\_\_ REC'D \_\_\_\_\_  
DATE: 6/13/17

J EX. 2

A-133

<p>MUTUAL INTERESTS.....3</p> <p>    ARTICLE 1.....3</p> <p>MUTUAL RECOGNITION OF RIGHTS .....3</p> <p>ARTICLE 2.....4</p> <p>    ANTI-DISCRIMINATION .....4</p> <p>ARTICLE 3.....4</p> <p>    VOLUNTARY CHECK-OFF .....4</p> <p>ARTICLE 4.....5</p> <p>    GRIEVANCE PROCEURE .....5</p> <p>ARTICLE 5.....6</p> <p>    ARBITRATION .....6</p> <p>ARTICLE 6.....7</p> <p>    HOURS OF WORK AND OVERTIME .....7</p> <p>ARTICLE 7.....8</p> <p>    CALL-OUTS .....8</p> <p>ARTICLE 8.....8</p> <p>    HOLIDAYS .....8</p> <p>ARTICLE 9.....9</p> <p>    VACATION .....9</p> <p>ARTICLE 10.....10</p> <p>    FAIG ABSENCES .....10</p> <p>ARTICLE 11.....11</p> <p>    PLANS FOR EMPLOYEE PENSIONS, DISABILITY     BENEFITS &amp; DEATH BENEFITS ..... 11</p> <p>ARTICLE 12.....11</p> <p>    GROUP HOSPITALIZATION, SURGICAL AND DENTAL     PLAN ..... 11</p>	<p>ARTICLE 13 ..... 12</p> <p>    SENIORITY .....12</p> <p>ARTICLE 14 ..... 13</p> <p>    SEVERANCE PAY ..... 13</p> <p>ARTICLE 15 ..... 14</p> <p>    PAY FOR USE OF EMPLOYEE-OWNED     AUTOMOBILES, TRAVELING TIME AND EXPENSES     ..... 14</p> <p>ARTICLE 16 ..... 14</p> <p>    WAGE RATES .....14</p> <p>ARTICLE 17 ..... 15</p> <p>    BULLETIN BOARD ..... 15</p> <p>ARTICLE 18 ..... 15</p> <p>    LEAVE OF ABSENCE ..... 15</p> <p>ARTICLE 19 ..... 16</p> <p>    WORKING STOPPAGE ..... 16</p> <p>ARTICLE 20 ..... 16</p> <p>    SAFETY ..... 16</p> <p>ARTICLE 21 ..... 16</p> <p>    SEPARABILITY/AGREEMENT OF PARTIES ..... 16</p> <p>ARTICLE 22 ..... 16</p> <p>    ANCILLARY BENEFITS ..... 16</p> <p>ARTICLE 23 ..... 16</p> <p>    TERMINATION DATE ..... 17</p> <p>SCHEDULE "A" ..... 19</p>
---	---

This agreement entered into this 11th day of June 2016 by and between the ADT LLC hereinafter called the "Employer" and Local Union 43, Internationals Brotherhood of Electrical Workers, hereinafter called the "Union."

The masculine pronoun, whenever used herein, shall include the feminine and the words in the singular shall include the plural unless the context indicates otherwise.



The economic interest of the Employer and the employees is better served through the expressed cooperation of the Employer and the Union. Close contact and mutual sympathetic interest between the Employer and the employees will develop a better working system which will tend to constantly improve distribution, production and service, while improving the relationship between the employer, the employees, and the public.

#### ARTICLE 1



**SECTION 1:** ADT LLC (the "Employer") hereby recognizes the Union as the exclusive bargaining representative with respect to rates of pay, wages, hours and other conditions of employment for all full-time and regular part-time employees originally described in the certification dated November 20, 1968 (Case Number 3-RC-4533) classified by the Employer as residential and small business installers, residential and small business high volume commissioned installers, residential and small business service technicians, employed by the Employer at its facility in Syracuse, NY, but excluding all alarm service investigators, relief supervisors, all office clerical employees and professional employees, guards and supervisors, as defined in the Act; and excluding all commercial installers and commercial service unless the employees are employed by the Employer and are located at, or are directly supervised by the Employer's supervisors located at, its Syracuse, NY facility. If during the term of this Agreement the Employer relocates the covered employees from the Syracuse, NY office to another, this provision shall apply to the new office.

**SECTION 2:** The operation of the Employer's business and the direction of the working force including, but not limited to, the making and the enforcement of reasonable rules and regulations relating to the operation of the Employer's business, the establishment of reporting time, the right to hire, transfer, lay off, promote, demote and discharge for cause, assign or discipline employees, to relieve employees from duties because of lack of work or other legitimate reasons, to plan, direct and control operations, to determine the reasonable amount and quality of work needed, to introduce new or improved methods, to change existing business practices, and to transfer employees from one location or classification to another is vested exclusively in the Employer, subject, however to the provisions of this agreement.

**SECTION 3:** All present employees who are now members of the Union or who hereafter become members of the Union and all new employees following 31 days of employment will be required as a condition of employment to

maintain their membership in the Union during the duration of the agreement by offering to pay regular monthly dues and initiation fees levied against all members.

**SECTION 4:** The work to be performed as covered by the terms of this Agreement shall include installation, operation, inspection, maintenance and repair of all ADT equipment including the running of exposed wiring and the pulling of all cable, but on union controlled jobs it will not include the running of conduit except trim, the wiring of commercial lighting circuits, and the wiring of power circuits up to the high voltage (110 volts or higher) distribution pane.

#### ANTI-DISCRIMINATION

**SECTION 1:** The Employer recognizes and will not interfere with the rights of its employees to become members of the Union and there shall be no discrimination, interference, restraint or coercion by the Employer or any of its agents because of membership to the Union.

**SECTION 2:** The Employer recognizes and will not discriminate or segregate its employees in respect to hiring, compensation or other terms and conditions of employment because of the associate's union membership, race, color, religion, sex, creed, national origin or ancestry, age, marital status, veteran or disability status, or any other basis protected by law.

**SECTION 3:** The Employer agrees to notify the Union Representative at the hiring of any new employee and afford an opportunity for the Union Representative to explain the Union benefits and responsibilities.

**SECTION 4:** The Employer agrees that the Business Representative of the Union shall be allowed access to the plant shop where workers are employed under the terms of this agreement. This access shall be at a reasonable time and shall, in all cases, be cleared with management prior to entering the plant shop.

**SECTION 5:** An employee requested by the Employer to transfer permanently to another city shall have the option to accept or reject the request.

#### VOLUNTARY CHECK-OFF

**SECTION 1:** a) For the period of this Agreement, upon receipt of a written, personally signed authorization from any employee subject to this Agreement, the Employer will deduct from such employee's pay, the monthly membership dues, provided however, that the Employer shall not be obligated to deduct any delinquent dues which became delinquent prior to the effective date of the authorization. The Employer will transmit to the Financial Secretary of the Union on or before the 15<sup>th</sup> day of each month, the total deductions made by the Employer, together with a list of those employees for whom such deductions have been made.

b) When earnings are insufficient to cover the authorized deductions, Union dues shall be deducted in the next payroll in which sufficient pay is available.

**SECTION 2:** The Union will indemnify and keep indemnified the Employer against any and all liability and expense of every kind and nature, without any limitation whatsoever, that shall arise out of any action taken by the Employer in making deductions of Union dues and initiation fees and this indemnification shall include, but shall not be limited to, such matters as all costs of suits, proceedings, claims, demands and expenses, attorney's fees and court expenses.

**SECTION 3:** The form of dues deduction authorization shall be as follows:

"I hereby authorize my Employer, ADT, LLC to deduct my weekly membership dues to Local Union 43, International Brotherhood of Electrical Workers, affiliated with the A.F.L. - C.I.O., sick benefit pay and disability pension payments due me weekly, and any delinquent dues owed as of any current week. The amount of said dues shall be determined by official action of said Union and certified to my Employer by the Financial Secretary of the Union. Such deductions shall be transmitted to the Financial Secretary of such Union, on or before the 15<sup>th</sup> day after the last payday of each month. I agree that the Employer and the Union shall be under no liability to me for the deduction of dues determined in the above manner."

"This Authorization shall be automatically renewed, irrevocable for successive annual periods of one (1) year, unless written notice of its revocation is given by me to the Employer by registered mail, return receipt requested, during the ten (10) days immediately preceding the expiration of each term of one (1) year, or until the termination of the applicable collective bargaining agreement between the Employer and the Union, whichever occurs sooner."

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_

**SECTION 4:** No provision of this Agreement shall be construed as requiring any employee to execute a Union dues check-off authorization.

## GRIEVANCE PROCEDURE

### SECTION 1:

A grievance within the meaning of this Agreement shall be defined as any employee alleging a violation of a specific provision of this Agreement. The term "grievance" shall mean a claim by an employee that the Employer has violated an obligation to such employee, expressly provided in this Agreement, or by the Union regarding such an obligation of the employer to the Union.

Except as mutually agreed to by the Union and the Employer, the following procedure shall be followed for the purpose of adjusting grievances:

**STEP 1:** The employee shall discuss the grievance with his immediate Supervisor within ten (10) working days after the alleged violation occurred. The Employee shall, at all times, have the right to have his Union representative present in discussing grievances. The Employer will immediately advise the Union of each request. The supervisor shall attempt to settle the matter within three (3) working days.

**STEP 2:** If the grievance is not settled satisfactorily in STEP 1, it shall be appealed in writing by the Union to the next level of management within five (5) working days after the supervisor has answered. If not so appealed, the grievance shall be deemed not to exist. The Local Manager shall attempt to settle the matter within five (5) working days subsequent to the date of submission of the written grievance form.

**STEP 3:** If the grievance is not adjusted satisfactorily in STEP 2, it shall be appealed within five (5) working days to the Human Resources Representative of the Employer and the Business Representative of the Union. If not so appealed, the grievance shall be deemed not to exist.

**STEP 4:** If not adjusted satisfactorily in STEP 3 within ten (10) working days, the grievance shall be subject, at the insistence of either party, to arbitration as provided in Article 5. The time limit may be extended in this step if extenuating circumstances require.

**SECTION 2:** The Union and the Employer shall keep each other currently informed of their respective duly authorized representatives who will handle each of the steps of the grievance procedure.

**SECTION 3:** Employees shall be compensated for time spent with the Employer's representative on any grievance involving the Employer.

**SECTION 4:** Any form of written discipline will have a copy sent to the respective shop steward. If the discipline is so severe as to warrant either suspension or termination, the respective shop steward shall be notified before such discipline is administered.

**SECTION 5:** Any grievance settled prior to arbitration shall not set precedent nor prejudice any other matters unless specifically agreed to in writing by the Business Representative of the union and the Director of Labor Relations.

## ARBITRATION

**SECTION 1:** In the event that an Agreement cannot be reached between the Union and the Employer with respect to a grievance involving and limited to the interpretation and application of any specific provision of the Agreement, it may be submitted on the request of either party to arbitration, pursuant to the Labor Arbitration Rules of the American Arbitration Association, provided such request is made within thirty (30) days after final decision has been rendered. The decision of the Arbitrator shall be binding on both parties for a period of time to be named in the arbitration decision, but in no event to antedate the period during which the Agreement is effective. The Arbitrator shall not have the authority to alter or modify any of the express provisions of the Agreement. The expenses, including fees and other necessary expenses of the Arbitrator, shall be shared equally by the Union and the Employer.

**SECTION 2:** Changes in business practice, matters involving capital expenditures, the opening and closing of new units, the choice of personnel (subject to seniority provisions if applicable), the choice of materials, services, products, processes and equipment, of other business questions of a like nature, or any dispute which either directly or indirectly involves the interpretation or application of the plans covering employees' pensions, disability benefits and death benefits, shall not be arbitrable.

## HOURS OF WORK AND OVERTIME

**SECTION 1:** The workweek shall be forty (40) hours during any one workweek or eight (8) hours during any workday. The workweek for the purposes thereof shall be the same as the payroll week, which begins on Wednesday and ends on Tuesday.

The normal work schedule for the Service Departments shall be a shift of eight and one-half hours with a thirty-minute lunch period comprising of five consecutive days, Monday through Saturday between the hours of 8:00 a.m. and 12:00 midnight. There will also be a four-day workweek comprised of ten and one half hour shifts, with a thirty-minute lunch period, between the hours of 8:00 a.m. and 12 midnight, Monday through Friday. Customer needs may periodically make it necessary for work to be performed beginning at 7:00 a.m. The Company will first seek qualified volunteers to perform such work. If there are no qualified volunteers then the least senior qualified person will be assigned to perform the work. Second shift will be defined as those shifts beginning at 12:00 noon and after. Advance notice of schedule changes will be given whenever possible, except in cases of emergency, such schedules shall be established one week in advance.

The Installation Department may be scheduled for any eight-hour period between 7:00 a.m. and 5:30 p.m. in any given day between Monday and Friday. Customer needs may periodically make it necessary for work to be performed on a second shift and/or Saturdays. The Company will first seek qualified volunteers to perform such work. If there are no qualified volunteers then the least senior qualified person will be assigned to perform the work. Such second shifts will occur between the hours of 7:00 a.m. and 12:00 midnight. Except in cases of emergency, such schedules shall be established one week in advance. Second shift will be defined as those shifts beginning at 12:00 noon and after.

**SECTION 2:** In accordance with Section 1 of this article, the Employer will establish 12:00 noon to 8:30 p.m. for trouble and maintenance requirements. Volunteers among qualified personnel will be solicited. If no qualified volunteers exist, assignment will be based on reversed seniority among qualified personnel. Assignment for volunteer will be for a minimum of six (6) months. The Employer reserves all rights under Section 1 of this article.

**SECTION 3:** All time worked daily in excess of eight (8) hours in a scheduled 5 x 8 hour workweek, in excess of ten (10) hours in a 4 x 10 hour workweek, or weekly in excess of forty (40) hours, or on scheduled days off shall be compensated for at one and one-half (1 ½) times the employee's regular straight time hourly rate. No time worked except for work performed on paid holidays, as hereinafter, listed in Article 8, shall under any circumstances be compensated for at more than one and ( 1 ½ ) times the straight time hourly rate. There shall be no compounding, duplicating or pyramiding of overtime payments of any description. In any cases when an employee is not able to complete an assigned job during normal scheduled work hours he will notify his Supervisor by 1:30 p.m. of that day. At such point a decision shall be made as to when the job will be completed if the job was scheduled to be completed that day.

**SECTION 4:** Emergency overtime calls from home shall be compensated for at one and one-half ( 1 ½ ) times the employee's regular hourly rate of pay from the time the employee leaves his home to the time reasonably required for him to return home. Employees on-call will receive at least three (3) hours at overtime rate each time they are notified, respond to a call and return home. If they are sent on another call before returning home, the time is added. (Example: Employee is called out, responds to the site and fixes the problem within two (2) hours. He receives a minimum of three (3) hours pay at the overtime rate. If he is beeped prior to returning home and responds

to another call for an additional hour he would be paid three (3) hours minimum for the first call and one (1) hour for the second call. Total call-out pay is four (4) hours overtime.)

**SECTION 5:** Service Technicians are to "call in" with the one hour period prior to the end of their regularly scheduled workday to obtain their first work order for the next day. If a new system is implemented, it shall allow for retrieval of job assignments during regularly scheduled work hours.

**SECTION 6:** In order to assure continuity of service and production standards, it is agreed that a supervisor may perform installation and maintenance work when there is an insufficient number of Alarm Technicians available and when such work will not result in the layoff of any Alarm Technicians.

Supervisors shall not handle emergency call-outs except when Alarm Technicians assigned to the particular Central Station office are not available or except in major emergency situations.

#### CALL-OUTS

The call-out list shall include all qualified employees as so deemed by management with assignment based on seniority. All Service Technicians and Installers will be assigned to the call-out list no later than one year from date of hire.

A call-out shift is assigned for a period of one (1) week to coincide with the current payroll period of Wednesday through Tuesday. The call-out list will be scheduled months in advance. Scheduled changes are the responsibility of the technician and must be submitted in writing to the supervisor one (1) week in advance, except in emergencies. On call schedule will start on Wednesday at 4:30 pm and end the following Wednesday at 8:00 am.

The Alarm Technician assigned to the call-out shift shall be paid one-hundred and fifty dollars (\$150.00) for each week assigned. During scheduled call-out the Technician must be accessible by pager or telephone at all times during the assignment. The Alarm Technician assigned the call-out shift during a week containing a fixed holiday listed in Article 8 shall be paid two-hundred and ten dollars (\$210.00) for such week.

A call-out, by definition, is that situation when a customer cannot arm their system or any system malfunction which affects the system(s) in such a way that the customer's facility/residence is susceptible to damage or loss due to unauthorized entry, fire, temperature, etc. or is deemed an emergency by the customer.

A reasonable time for call-outs will be for the Technician to be in their vehicle en route to the customer's location within thirty (30) minutes of receiving the call-out. Whenever possible, the technician can attempt to resolve the problem over the telephone. If they are successful, then they are authorized to submit a minimum of thirty (30) minutes per incident at the appropriate overtime rate of pay on their weekly time sheet.

If work extends to twelve (12) or more continuous hours (while not away from home overnight) with manager approval, a dinner payment of up to \$20.00 (with receipt) will be given.

#### HOLIDAYS

**SECTION 1:** The holiday schedule will be the same as the ADI' holiday schedule for a total of eleven holidays. There will be seven annual fixed holidays as follows:

New Year's Day	Labor Day
Martin Luther King Day	Thanksgiving Day
Memorial Day	Christmas Day
Independence Day	

The remaining four holidays will be floating holidays, some, but not all, may be assigned as a fixed holiday each year. The remaining floating holidays may be scheduled with two weeks notice and supervisory approval.

On those holidays identified by management, employees will be given the option of voluntarily working the scheduled day and, in return, be granted an additional day off that may be taken, with management approval, during the remainder of the calendar year. In the event an employee terminates prior to the day being used, the time will be paid at termination.

**SECTION 2:** Employees who are not required to work on these days shall be paid their regular rates when such holidays fall on their regular scheduled workdays.

For those individuals working a 4 x 10 hour schedule, holidays observed on a regularly scheduled workday will receive ten (10) hours of holiday pay. For a holiday observed on an employees scheduled day off, he/she will receive either the next scheduled work day off or a floating holiday to be used during the calendar year.

**SECTION 3:** Employees shall be paid one and one-half (1 ½) times their regular hourly rate in addition to their holiday pay for all work performed on listed holidays.

**SECTION 4:** When an employee is absent from work on a scheduled workday immediately preceding or succeeding a listed legal holiday, he shall not be paid for the holiday unless he submits a certificate from a doctor of medicine as proof of incapacity resulting from an illness or injury, or unless for absences as defined in Article 9, Section 1.

**SECTION 5:** If a guaranteed paid holiday falls on an employee's regular day off, he shall be paid straight time for the day, or at the discretion of the Employer, be allowed a day off in lieu thereof.

## ARTICLE 9

### VACATION

**SECTION 1:** Vacations shall be granted to employees according to the following schedule based upon length of continuous service:

LENGTH OF CONTINUOUS SERVICE	AMOUNT OF VACATION
Up to 5 years	2 weeks / 80 hours
5 years to 9 years	3 weeks / 120 hours
10 years and over	4 weeks / 160 hours

Up to 5 years	2 weeks / 80 hours
5 years to 9 years	3 weeks / 120 hours
10 years and over	4 weeks / 160 hours

Employees will earn vacation on a pro-rated basis subject to their length of service and if an employee terminates during the calendar year he will receive his accrued vacation, if any, on a pro-rated basis. Pro-ration of vacation time does NOT apply to those individuals retiring from the Company.

**SECTION 2:** Vacation eligibility shall be posted by January 15<sup>th</sup> of each calendar year. Vacation shall be scheduled by March 1 with everyone being able to schedule the first two weeks of his or her vacation. Any conflicts in scheduling shall be resolved through the principle of bargaining unit seniority by March 15. Any vacation not scheduled by March 15 shall be scheduled on a first-come, first-serve basis, not subject to seniority. Any vacation not scheduled by October 1 shall be scheduled by management. No more than 20% of any department shall be permitted to schedule vacation at the same time.

If there is any unused vacation remaining as of December 31<sup>st</sup> of each year due to the request of management, based on business conditions, such vacation shall be permitted to be taken by March 31<sup>st</sup> of the following year or be paid in full for the unused time.

**SECTION 3:** If an employee takes his or her vacation during a period which includes a listed legal holiday, the employee shall receive an extra day's vacation, or an extra day's pay at their straight time rate of pay.

**SECTION 4:** In the event of the death of an employee during the year, any unused vacation shall be due and payable.

#### PAID ABSENCES

**SECTION 1:** a) An employee is eligible to take up to five (5) workdays with pay to attend the funeral and take care of personal matters related to the death of a member of your immediate family which includes your spouse, child, parent, or sibling. You may take up to three (3) workdays with pay for the death of any other member of your immediate family. These family members are defined as your spouse's parent, spouse's child by a former marriage, grandparents, or blood relatives residing in the same household.

b) In the event of a winter death where a spring burial is required, the employee shall be allowed to use one of his paid days off at the time of the burial.

**SECTION 2:** If you are called for jury duty, you may take the necessary time off with pay. Please give your supervisor a copy of the jury summons as soon as you can but no later than 48 hours of your receipt. On any day or half day you are not required to serve, please return to work and give your supervisor a statement of jury service. This document should be issued by the court.

**SECTION 3:** Employees having completed one (1) or more years of service shall be entitled to time off with pay at their regular hourly rate for sick leave in case of actual illness/off duty injury of the employee, which incapacitates the employee for work not to exceed five (5) days / forty (40) hours in the calendar year. Employees will call in at least one (1) hour before the start of the shift if the employee is sick. Commencing the end of the 1995 calendar year, the Employer agrees to reimburse employees with two (2) or more years of service for unused sick leave at a rate of 50% pay back. Under no circumstances are payments to exceed three (3) calendar days a year. Such payments shall be made no later than January 30<sup>th</sup> of the following calendar year. The Employer may require a certification from a doctor of medicine as proof of incapacity resulting from illness or injury.

**SECTION 4:** If an employee reports to work and he/she is sent home due to lack of work, he/she shall be paid two (2) hours at the appropriate rate. If this occurs the employee will be given the option of leave without pay (except two (2) hours referenced herein) or using accrued time (i.e. vacation, sick-time) however the use of this time will not be required.

#### PLANS FOR EMPLOYEE PENSIONS, DISABILITY BENEFITS & DEATH BENEFITS

**SECTION 1:** The Employee hereby agrees that the provisions of the plans covering employee's pensions, disability benefits, and death benefits, as amended, subject to all the limitations and qualifications therein contained, are hereby incorporated in and made part of this Collective Bargaining Agreement. The Employer shall not, during the term of this Agreement, terminate this plan. The Employer, however, reserves the right to alter or modify this plan.

**SECTION 2:** The Employer Benefit Plans shall be implemented. Each employee shall receive a written description of benefits provided.

#### GROUP HOSPITALIZATION, SURGICAL AND DENTAL PLAN

The Employer shall provide group hospitalization, surgical and dental benefits to members of the bargaining unit. The Employer Benefit Plans shall be implemented. Each Employee shall receive a written description of the benefits provided.

The Union agrees that the Employer may elect to change carriers, self-insure and/or change benefits during the life of this agreement providing it first notify the Union and fully advise the Union of such changes.

### SENIORITY

**SECTION 1:** For the purpose of this Agreement seniority shall be defined as length of continuous employment with the Employer, for all purposes except layoff and vacation scheduling. There shall be one seniority list.

**SECTION 2:** Full-time employees shall have no seniority rights until they have served the Employer for six (6) months. Part-time employees shall have no seniority until they have served the Employer for one thousand (1,000) work hours, but in no event less than six (6) months. Upon completion of this probationary period the employee shall be considered as a regular employee and shall have seniority from the date of hire.

During the probationary period the employee may be disciplined or terminated at the sole discretion of the Employer, for whatever reason, and such discipline or termination shall not be subject to review through the grievance or arbitration procedure.

**SECTION 3:** When a lay-off (i.e. reduction in force due to lack of work) occurs, bargaining unit seniority shall apply:

1. Part-time employees shall be laid-off first.
2. Full-time employees without seniority shall be laid-off next.
3. After all employees without seniority are laid-off, full-time employees with seniority shall be laid-off next; with the least senior employee laid-off first; second least senior is next, etc. progressing through the appropriate list to the most senior, full-time employee.

In the event of a lay-off where the least senior person is not employed within the classification being reduced (hourly vs. HVC), that employee may be bumped by a senior employee from the other classification. This bumping is at the discretion of the senior employee involved who will be given the option of taking the lay-off rather than change classifications. An individual who uses seniority to bump into a new classification must meet performance expectations within ninety (90) days. If an HVC individual is bumped into an hourly position, management will determine the appropriate hourly rate based on skill and knowledge. The union shall be notified prior to such decision and a representative of the union may participate in this determination at the discretion of the union. If an hourly individual is bumped into an HVC position, he/she will be compensated in accordance with the HVC pay schedule. It is understood that if bumping occurs in a temporary lay-off, at the time of recall the most senior person affected has the right to return to their prior position.

Before a lay-off occurs, the Company will consider alternative measures, such as reduction of workweek hours, before administering a lay-off.

**SECTION 4:** The right of seniority in re-employment shall be accorded to laid-off employees prior to new employees being hired. Job offers shall be made as follows:

1. The seniority list of laid-off employees shall be used to determine the order of job offers with most senior employees offered re-employment first, provided such laid-off employee responds to a call to report to work not more than ten (10) days after such receipt of notice sent to him/her by registered mail, to his/her last known post office address. If such laid-off employee fails to report after fifteen (15) days, he/she shall lose all rights of seniority, unless he/she is temporarily incapacitated, preventing him/her from responding, in which case he/she must notify the Employer in writing within three (3) days after receipt of notice, or as soon as his/her health permits.
2. If no laid-off employees are available from the lay-off list or such employees fail to meet the recall criteria, the Company may transfer employees from other locations or hire new employees.

In all cases listed above, jobs of an emergency nature may be filled at once by those next in line in seniority in the classification, pending return of laid-off employees having seniority who have been notified to report to work as herein provided. Return to work on this basis shall be at the employee's option without penalty for refusal.

Any laid-off employee offered to return for a known assignment of two (2) weeks or less shall not forfeit recall rights if they turn down such assignment.

**SECTION 5:** A voluntary resignation or discharge shall terminate seniority. Seniority shall terminate after six months of unemployment (layoff), absence on authorized furlough or because of sickness or accident disability with respect to employees having less than three (3) years of accumulated seniority; after one (1) year of unemployment (layoff) through any such cause with respect to employees having three (3) but less than ten (10) years of accumulated seniority and after the two (2) years of unemployment (layoff) or absence through any such cause with respect to employees having ten (10) or more years of accumulated seniority.

## SEVERANCE PAY

**SECTION 1:** In the event of permanent layoff, each employee with more than two (2) years of continuous service with the Employer so laid off shall receive severance pay at the rate of one week's pay for each full year of continuous service. Such payment shall be based on the employee's authorized hourly wage rate in effect at the time he is laid off.

**SECTION 2:** If an employee who has received severance pay is rehired and the period since the date of his layoff is less than the period for which he has received severance pay, the amount paid to the employee in excess of the period of his actual layoff shall be considered as an advance to him by the Employer and repayment shall be made through payroll deductions at the rate of ten percent (10%) of the basic weekly wage until the amount is fully repaid; and as a condition of reemployment, the employee either before, at, or subsequent to the time he returns to the payroll, shall, upon the Employer's demand, execute any and all documents that may be necessary, desirable or proper to effectuate this provision.

**SECTION 3:** In the event an employee is rehired within a two (2) year period, his severance pay rights shall be reestablished on the basis of his record of continuous service, provided, however, that in the event of a subsequent

layoff, the severance pay to which he is entitled shall be subject to a deduction equal to the amount of any severance pay previously received and for which the Employer was not reimbursed.

**SECTION 4:** An employee who resigns, is retired with pension, or is discharged, or otherwise dropped for cause shall not be entitled to severance pay.

#### **PAY FOR USE OF EMPLOYEE-OWNED AUTOMOBILES, TRAVELING TIME AND EXPENSES**

**SECTION 1:** a) The Employer shall not favor or discriminate against any employee by reason of the use of his personally-owned car in the service of the Employer.

b) Employees, when using their own cars in the Employer's service, and the Employer's direction, shall be compensated in accordance with IRS regulations with a minimum of Three Dollars and Fifty Cents (\$3.50) per day.

c) Employee-owned motor vehicles shall be used in the service of the Employer only when approved by a Supervisor, Department/Local Manager.

**SECTION 2:** When the Employer deems it necessary to board employees near a job, such employees shall be paid \$55.00 per day for meals (breakfast, lunch and dinner) plus reasonable cost of the room when an employee is required to be away from home overnights. Exceptions may be requested and granted at management's discretion for unusual circumstances or expense requirements. Receipts must accompany any expense over \$25.00.

**SECTION 3:** Employees who report directly to the jobsite from home are responsible for up to 45 minutes of unpaid commuting time from their home to their first job in the morning and up to 45 minutes of unpaid commuting time from their last job to their home each day.

In addition, the employees assigned by management to the Binghamton, Ogdensburg and Utica territories will be compensated for any travel beyond 45 minutes when instructed to report from home to the Syracuse SSO at the start of the day, or from the Syracuse SSO to home at the end of the day.

**SECTION 4:** Employees will receive a minimum of one (1) week's notice (except in the cases of emergencies) for overnight assignments.

#### **WAGE RATES**

**SECTION 1:** The wage scale is to be placed in effect are set forth in Schedule "A" of this Agreement.

**SECTION 2:** Increases or decreases in the basic rates of pay shall not be made effective while the employee is absent due to sickness, accident or unauthorized leave of absence.

**SECTION 3:** When an employee is absent, for any reason except for leave of absence for military service, where credit for time for wage purposes is provided by law, for a continuous period of more than 30 (thirty) days, the interval from his last regular increase until the employee's next regular increase following return to duty, is extended one (1) month for each thirty (30) day period or a major portion thereof beyond the first thirty (30) days absence.

**SECTION 4:** It is understood and agreed that new employees may be hired at any of the rates indicated on the progression tables shown in Schedule "A" attached, consistent with their training, experience and other qualifications. With the exception of during the first year of employment, subject to the provisions of Article 15, Section 3 hereof, such employees thereafter progress in conformity with the periods and amounts shown on that portion of Schedule "A" beyond the rates at which they are employed. Wage increases outside the established progression may be made during the first year of employment at management's discretion.

### BULLETIN BOARD

**SECTION 1:** The Employer shall furnish space on a Bulletin Board for posting of Union Bulletin, etc.

**SECTION 2:** The use of the bulletin boards shall be confined to:

- a) Factual Notices and announcements of the Union pertaining to:
  - 1. Union Meetings
  - 2. Union Elections and nominations
  - 3. Appointment of Union officers
  - 4. Union social and recreational affairs.
- b) Regularly issued financial statements of the Union.
- c) Jointly signed minutes of conferences between the Union and the Employer.
- d) Agreements concluded by the Union and the Employer.
- e) Such other material as may be approved in writing prior to posting, by the Employer.

### LEAVE OF ABSENCE

**SECTION 1:** A leave of absence without pay may be granted to an employee, work conditions permitting, under the following conditions:

- a) Leave of absence will be granted, initially, for a period not exceeding ninety (90) days.
- b) Leave of absence may be extended, upon written request, but in no case for a period of more than an additional ninety (90) days.
- c) Employee will receive no wages during his absence.
- d) Employee will not accept employment of any kind or engage in self-employment.
- e) Employee's service record is governed by the rules and regulations of the Benefit Plan.
- f) Employee's return to work will be subject to employment conditions at that time.
- g) For the performance of ordered military duty in the service of the State or Federal Government.
- x) For all instances in accordance with the FMLA.

ARTICLE 19

### WORKING STOPPAGE

**SECTION 1:** Since the Employer's business is one of protecting its customers against the hazards of fire and burglary and it is the mutual desire of both the Employer and the Union to provide uninterrupted and continuous protection service, to promote industrial peace and to provide for stable labor relations, the Employer agrees that there shall be no lockouts and the Union agrees that there shall be no strikes or other stoppage of work during the life of this Agreement.

ARTICLE 20

### SAFETY

**SECTION 1:** A safety committee will be formed consisting of two members of the management team and two members of the unit, with individual members being rotated on an as needed basis. The goal of the committee will be to identify and recommend work practices to minimize accidents in the work place. The committee shall meet at least four times (quarterly) per year.

ARTICLE 21

### SEPARABILITY/AGREEMENT OF PARTIES

If the enactment of legislation, or a determination of a court of final jurisdiction (whether in a proceeding between the parties or in one based on a similar statement of fact) invalidates any portion of this Agreement it shall not affect the validity of the rest of this Agreement, which shall remain in full force according to its terms in the same manner and with the same effect as if such invalid portion had not originally been included herein.

Any provision invalidated under the preceding paragraph shall immediately become the subject of negotiations between the parties in an effort to bring the provisions into conformance.

The provisions of this Agreement constitute the entire agreement between the parties. No waiver or modification of any provision of this Agreement shall be effective unless signed by the parties hereto, and no such writing, applicable to any particular instance or instances, shall be construed as any general waiver or modification, but shall be strictly limited to extent and occasion specified therein.

ARTICLE 22

### ANCILLARY BENEFITS

The Company may unilaterally confer other benefits not specifically listed in the contract which are offered to non-bargaining unit employees. These benefits will be subject to terms and conditions contained in the applicable plan documents. The Company reserves the right to modify and/or terminate these benefits at any time.

TERMINATION DATE

This Agreement shall be effective from June 11, 2016 and shall remain in effect through June 10, 2019, and thereafter, from year to year, unless prior notice in writing shall be given by either party to the other of its termination or of any changes desired, sixty (60) days prior to the end of the contract year.

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IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement.

Local Union 43, International  
Brotherhood of Electrical Workers

ADT, LLC  
Syracuse, NY

By: \_\_\_\_\_  
Donald Morgan  
Business Manager

By: \_\_\_\_\_  
Jim Nixdorf  
Director Labor Relations

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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	6/11/2015	6/11/2016	6/11/2017	6/11/2018
Start	\$15.77	\$16.16	\$16.57	\$17.02
4 months	\$16.12	\$16.52	\$16.94	\$17.40
8 months	\$16.61	\$17.03	\$17.45	\$17.93
12 months	\$17.05	\$17.48	\$17.91	\$18.41
18 months	\$17.47	\$17.91	\$18.35	\$18.86
24 months	\$18.00	\$18.45	\$18.91	\$19.43
30 months	\$18.50	\$19.27	\$19.75	\$20.29
36 months	\$19.02	\$19.92	\$20.41	\$20.98
42 months	\$19.75	\$21.27	\$21.80	\$22.40
48 months	\$20.23	\$23.79	\$24.39	\$25.06
Lead	\$24.24	\$24.85	\$25.47	\$26.17
SST	\$24.75	\$25.37	\$26.00	\$26.72

Workers who are required to work 2<sup>nd</sup> shift shall receive a \$0.50 per hour differential added to their base rate.

Residential/Small Business Hourly Installer pay to be capped at the thirty-six (36) month rate.

Wirepuller/Inspector pay to be capped at the forty-two (42) month rate except those hired prior to 6/1/2013. All employees hired prior to 6/1/2013 would be grandfathered at the 48 month maximum rate. (Provided they have worked for the company for at least 48 months.)

Company and Union agree that the Company, using management discretion, will have the ability of designating a Lead Mechanic on those jobs where there are four (4) or more technicians (including Lead) assigned to a job. Subcontractors will be considered technicians for the purpose of this section. The intent of providing the Lead Mechanic Incentive payment is for the designated technician to assist job profitability by bringing the job in on time and working as a point person.

Lead Mechanic is to be paid at \$1.00 over scale from the point he/she is assigned as Lead Mechanic until the completion of the job (even if the number of total technicians assigned to the job falls below four (4)). If the job is brought in at or under the estimated total hours, the technician will be paid an additional \$1.00 per hour for all hours he/she works on the job.

The company reserves the right to relieve a technician from the Lead Mechanic position during a job if it is deemed that the technician is not performing satisfactorily.

The parties agree that, subject to ratification, the following will be in effect for the term of the labor agreement (6/11/2015 to 6/10/2016):

1.) Employees shall be guaranteed five (5) hours of "down time" after returning from the last call-out and before starting the next regularly scheduled shift. Employees will only be paid for actual hours worked on that shift. The Company will make every attempt to provide a full eight (8) hour work day when the person starts a shift after the normal start time under these circumstances. When an employee starts his shift after his regular start time he will be responsible to call and notify his supervisor prior to the start of that shift. The above referenced "down time" shall not apply if there is only one call and it begins less than three hours before the normal start time. Further, nothing in this paragraph relinquishes the employee from their obligation to accept multiple callouts.

2.) The cost of prescription safety glasses or safety shoes/boots shall be offset (with a receipt) for up to seventy-five (\$75) dollars per year during the life of this contract.

\_\_\_\_\_  
Donald Morgan  
Business manager  
IBEW Local #43

\_\_\_\_\_  
James Nixdorf  
Director - Labor Relations  
ADT Security Services, Inc.

A-152

Between

ADI, LLC  
ALBANY OFFICE

And

LOCAL UNION #43  
INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS



Effective:

June 11, 2015 through June 10, 2018

J. EX. 3

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This agreement entered into this 11th day of June 2015 by and between the ADT, LLC, hereinafter called the "Employer" and Local Union 43, International Brotherhood of Electrical Workers, hereinafter called the "Union".

The masculine pronoun, whenever used herein, shall include the feminine and the words in the singular shall include the plural unless the context indicates otherwise.

### MUTUAL INTERESTS

The economic interest of the Employer and the employees is better served through the expressed cooperation of the Employer and the Union. Close contact and mutual sympathetic interest between the Employer and the employees will develop a better working system which will tend to constantly improve distribution, production and service, while improving the relationship between the employer, the employees, and the public.

### ARTICLE I MUTUAL RECOGNITION OF RIGHTS

**SECTION 1** ADT, LLC (the "Employer") hereby recognizes the Union as the exclusive bargaining representative with respect to rates of pay, wages, hours and other conditions of employment for all full-time and regular part-time employees originally described in the certification dated November 20, 1968 (Case Number 3-RC-4533) classified by the Employer as residential and small business installers, residential and small business high volume commissioned installers, residential and small business service technicians, employed by the Employer at its facility in Albany, NY; but excluding all alarm service investigators, relief supervisors, all office clerical employees and professional employees, guards and supervisors, as defined in the Act; and excluding all commercial installers and commercial service unless the employees are employed by the Employer and are located at, or are directly supervised by the Employer's supervisors located at its Albany, NY facility. If during the term of this Agreement the Employer relocates the covered employees from the Albany, NY office to another, this provision shall apply to the new office.

**SECTION 2:** The operation of the Employer's business and the direction of the working force including, but not limited to, the making and the enforcement of reasonable rules and regulations relating to the operation of the Employer's business, the establishment or reporting time, the right to hire, transfer, lay off, promote, demote and discharge for cause, assign or discipline employees, to relieve employees from duties because of lack of work or other legitimate reasons, to plan, direct and control operations, to determine the reasonable amount and quality of work needed, to introduce new or improved methods, to change existing business practices, and to transfer employees from one location or classification to

another is vested exclusively in the Employer, subject, however to the provisions of this agreement.

SECTION 3: All present employees who are now members of the Union or who hereafter become members of the Union and all new employees following 31 days of employment will be required as a condition of employment to maintain their membership in the Union during the duration of the agreement by offering to pay regular monthly dues and initiation fees levied against all members.

SECTION 4: The work to be performed as covered by the terms of this Agreement shall include installation, operation, inspection, maintenance and repair of all ADT equipment including the running of exposed wiring and the pulling of all cable, but on union controlled jobs it will not include the running of conduit except trim, the wiring of commercial lighting circuits, and the wiring of power circuits up to the high voltage (110 volts or higher) distribution pane.

ARTICLE 2  
ANTI-DISCRIMINATION

SECTION 1: The Employer recognizes and will not interfere with the rights of its employees to become members of the Union and there shall be no discrimination, interference, restraint or coercion by the Employer or any of its agents because of membership to the Union.

SECTION 2: The Employer recognizes and will not discriminate or segregate its employees in respect to hiring, compensation or other terms and conditions of employment because of the associate's union membership, race, color, religion, sex, creed, national origin or ancestry, age, marital status, veteran or disability status, or any other basis protected by law.

SECTION 3: The Employer agrees to notify the Union Representative at the hiring of any new employee and afford an opportunity for the Union Representative to explain the Union benefits and responsibilities.

SECTION 4: The Employer agrees that the Business Representative of the Union shall be allowed access to the plant shop where workers are employed under the terms of this agreement. This access shall be at a reasonable time and shall, in all cases, be cleared with management prior to entering the plant shop.

SECTION 5: An employee requested by the Employer to transfer permanently to another city shall have the option to accept or reject the request.

ARTICLE 3  
VOLUNTARY CHECK-OFF

SECTION 1: a) For the period of this Agreement, upon receipt of a written, personally signed authorization from any employee subject to this Agreement, the Employer will deduct from such employee's pay, the monthly membership dues, provided however, that the Employer shall not be obligated to deduct any delinquent dues which became delinquent prior to the effective date of the authorization. The Employer will transmit to the Financial Secretary of the Union on or before the 15th day of each month, the total deductions made by the Employer, together with a list of those employees for whom such deductions have been made.

b) When earnings are insufficient to cover the authorized deductions, Union dues shall be deducted in the next payroll in which sufficient pay is available.

SECTION 2: The Union will indemnify and keep indemnified the Employer against any and all liability and expense of every kind and nature, without any limitation whatsoever, that shall arise out of any action taken by the Employer in making deductions of Union dues and initiation fees and this indemnification shall include, but shall not be limited to, such matters as all costs of suits, proceedings, claims, demands and expenses, attorney's fees and court expenses.

SECTION 3: The form of dues deduction authorization shall be as follows:

"I hereby authorize my Employer, ADT, LLC to deduct my weekly membership dues to Local Union #3, International Brotherhood of Electrical Workers, affiliated with the A.F.L. - C.I.O., sick benefit pay and disability pension payments due me weekly, and any delinquent dues owed as of any current week. The amount of said dues shall be determined by official action of said Union and certified to my Employer by the Financial Secretary of the Union. Such deductions shall be transmitted to the Financial Secretary of such Union, on or before the 15th day after the last payday of each month. I agree that the Employer and the Union shall be under no liability to me for the deduction of dues determined in the above manner."

"This Authorization shall be automatically renewed, irrevocable for successive annual periods of one (1) year, unless written notice of its revocation is given by me to the Employer by registered mail, return receipt requested, during the ten (10) days immediately preceding the expiration of each term of one (1) year, or until the termination of the applicable collective bargaining agreement between the Employer and the Union, whichever occurs sooner."

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_.

SECTION 4: No provision of this Agreement shall be construed as requiring any employee to execute a Union dues check-off authorization.

ARTICLE 4  
GRIEVANCE PROCEDURE

SECTION 1: A grievance within the meaning of this Agreement shall be defined as any employee alleging a violation of a specific provision of this Agreement. The term "grievance" shall mean a claim by an employee that the Employer has violated an obligation to such employee, expressly provided in this Agreement, or by the Union regarding such an obligation of the employer to the Union.

Except as mutually agreed to by the Union and the Employer, the following procedure shall be followed for the purpose of adjusting grievances:

STEP 1: The employee shall discuss the grievance with his Immediate Supervisor within ten (10) working days after the alleged violation occurred or within ten (10) days of when the employee should reasonably have been aware of any alleged violation. The Employee shall, at all times, have the right to have his Union representative present in discussing grievances. The Employer will immediately advise the Union of each request. The supervisor shall attempt to settle the matter within three (3) working days.

STEP 2: If the grievance is not settled satisfactorily in STEP 1, it shall be appealed in writing by the Union to the next level of management within five (5) working days after the supervisor has answered. If not so appealed, the grievance shall be deemed not to exist. The Local Manager shall attempt to settle the matter within five (5) working days subsequent to the date of submission of the written grievance form.

STEP 3: If the grievance is not adjusted satisfactorily in STEP 2, it shall be appealed within five (5) working days to the Human Resources Representative of the Employer and the Business Representative of the Union. If not so appealed, the grievance shall be deemed not to exist.

STEP 4: If not adjusted satisfactorily in STEP 3 within ten (10) working days, the grievance shall be subject, at the insistence of either party, to arbitration as provided in Article 5. The time limit may be extended in this step if extenuating circumstances require.

SECTION 2: The Union and the Employer shall keep each other currently informed of their respective duly authorized representatives who will handle each of the steps of the grievance procedure.

SECTION 3: Employees shall be compensated for time spent with the Employer's representative on any grievance involving the Employer.

SECTION 4: Any form of written discipline will have a copy sent to the respective shop steward. If the discipline is so severe as to warrant either suspension or termination, the respective shop steward shall be notified before such discipline is administered.

SECTION 5: Any grievance settled prior to arbitration shall not set precedent nor prejudice any other matters unless specifically agreed to in writing by the Business Representative of the union and the Director of Labor Relations.

ARTICLE 5  
ARBITRATION

SECTION 1: In the event an Agreement cannot be reached between the Union and the Employer, with respect to a grievance involving and limited to the interpretation and application of any specific provision of the Agreement, it may be submitted on the request of either party to arbitration, pursuant to the Labor Arbitration Rules of the American Arbitration Association, provided such request is made within thirty (30) days after final decision has been rendered. The decision of the Arbitrator shall be binding on both parties for a period of time to be named in the arbitration decision, but in no event to antedate the period during which the Agreement is effective. The Arbitrator shall not have the authority to alter or modify any of the express provisions of the Agreement. The expenses, including fees and other necessary expenses of the Arbitrator, shall be shared equally by the Union and the Employer.

SECTION 2: Changes in business practice, matters involving capital expenditures, the opening and closing of new units, the choice of personnel (subject to seniority provisions if applicable), the choice of materials, services, products, processes and equipment, of other business questions of a like nature, or any dispute which either directly or indirectly involves the interpretation of application of the plans covering employees' pensions, disability benefits and death benefits, shall not be arbitrable.

ARTICLE 6  
HOURS OF WORK AND OVERTIME

**SECTION 1:** The workweek shall be forty (40) hours during any one workweek or eight (8) hours during any workday. The workweek for the purposes thereof shall be the same as the payroll week, which begins on Wednesday and ends on Tuesday.

The normal work schedule for the Service Department shall be a shift of eight and one-half hours with a thirty-minute lunch period comprising of five consecutive days, Monday through Saturday between the hours of 8:00 a.m. and 12:00 midnight. There will also be a four-day workweek comprised of ten and one half hour shifts, with a thirty-minute lunch period, between the hours of 8:00 a.m. and 12 midnight, Monday through Friday. Customer needs may periodically make it necessary for work to be performed beginning at 7:00 a.m. The Company will first seek qualified volunteers to perform such work. If there are no qualified volunteers then the least senior qualified person will be assigned to perform the work. Second shift will be defined as those shifts beginning at 12:00 noon and after. Advance notice of schedule changes will be given whenever possible, except in cases of emergency, such schedules shall be established one week in advance.

The Installation Department may be scheduled for any eight-hour period between 7:00 a.m. and 5:30 p.m. in any given day between Monday and Friday. Customer needs may periodically make it necessary to add an additional shift for residential installers from Tuesday through Saturday. The Company will first seek qualified volunteers to perform such work. If there are no qualified volunteers then the least senior qualified person will be assigned to perform the work. Such shifts will occur between the hours of 7:00 a.m. and 12:00 midnight. Except in cases of emergency, such schedules shall be established one week in advance. Second shift will be defined as those shifts beginning at 12:00 noon and after.

**SECTION 2:** In accordance with Section 1 of this article, the Employer will establish 12:00 noon to 8:30 p.m. for trouble and maintenance requirements. Volunteers among qualified personnel will be solicited. If no qualified volunteers exist, assignment will be based on reversed seniority among qualified personnel. Assignment (or volunteer) will be for a minimum of six (6) months. The Employer reserves all rights under Section 1 of this article.

**SECTION 3:** All time worked daily in excess of eight (8) hours in a scheduled 5 x 8 hour workweek, in excess of ten (10) hours in a 4 x 10 hour workweek, or weekly in excess of forty (40) hours, or on scheduled days off shall be compensated for at one and one-half (1 1/2) times the employee's regular straight time hourly rate. No time worked except for work performed on paid holidays, as hereinafter, listed in Article 8, shall under any circumstances be compensated for at more than one

and one-half (1 1/2) times the straight time hourly rate. There shall be no compounding, duplicating or pyramiding of overtime payments of any description. In any cases when an employee is not able to complete an assigned job during normal scheduled work hours he will notify his Supervisor by 1:30 p.m. of that day. At such point a decision shall be made as to when the job will be completed if the job was scheduled to be completed that day.

**SECTION 4:** Emergency overtime calls from home shall be compensated for at one and one-half (1 1/2) times the employee's regular hourly rate of pay from the time the employee leaves his home to the time reasonably required for him to return home. Employees on-call will receive at least three (3) hours at overtime rate each time they are notified, respond to a call and return home. If they are sent on another call before returning home, the time is added. (Example: Employee is called out, responds to the site and fixes the problem within two (2) hours. He receives a minimum of three (3) hours pay at the overtime rate. If he is beeped prior to returning home and responds to another call for an additional hour he would be paid three (3) hours minimum for the first call and one (1) hour for the second call. Total call-out pay is four (4) hours overtime.)

**SECTION 5:** Service Technicians are to "call in" with the one hour period prior to the end of their regularly scheduled workday to obtain their first work order for the next day. If a new system is implemented, it shall allow for retrieval of job assignments during regularly scheduled work hours.

**SECTION 6:** In order to assure continuity of service and production standards, it is agreed that a supervisor may perform installation and maintenance work when there is an insufficient number of Alarm Technicians available and when such work will not result in the layoff of any Alarm Technicians.

Supervisors shall not handle emergency call-outs except when Alarm Technicians assigned to the particular Central Station office are not available or except in major emergency situations.

ARTICLE 7  
CALL-OUTS

The call-out list shall include all qualified Service Technicians and Installers as so deemed by management with assignment based on seniority.

A call-out shift is assigned for a period of one (1) week to coincide with the current payroll period of Wednesday through Tuesday. The call-out list will be scheduled months in advance. Scheduled changes are the responsibility of the technician and must be submitted in writing to the supervisor one (1) week in advance, except in emergencies. On call schedule will start on Wednesday at 4:30 pm and end the following Wednesday at 8:00 am.

The Alarm Technician assigned to the call-out shift shall be paid (effective 11/25/15-\$145.00, effective 06/11/16-\$150.00, effective 06/11/17-\$155.00) for each week assigned. During scheduled call-out the Technician must be accessible by pager or telephone at all times during the assignment. The Alarm Technician assigned the call-out shift during a week containing a fixed holiday listed in Article 8 shall be shall be paid (effective 11/25/15-\$205.00, effective 06/11/16-\$210.00, effective 06/11/17-\$215.00) for such week.

A call-out, by definition, is that situation when a customer cannot arm their system or any system malfunction which affects the system(s) in such a way that the customer's facility/residence is susceptible to damage or loss due to unauthorized entry, fire, temperature, etc. or is deemed an emergency by the customer. A reasonable time for call-outs will be for the Technician to be in their vehicle en route to the customer's location within thirty (30) minutes of receiving the call-out. Whenever possible, the technician can attempt to resolve the problem over the telephone. If they are successful, then they are authorized to submit a minimum of thirty (30) minutes per incident at the appropriate overtime rate of pay on their weekly time sheet.

ARTICLE 8  
HOLIDAYS

**SECTION 1:** The holiday schedule will be the same as the ADT holiday schedule for a total of eleven holidays. There will be seven annual fixed holidays as follows:

New Year's Day	Labor Day
Martin Luther King Day	Thanksgiving Day
Memorial Day	Christmas Day
Independence Day	

The remaining four holidays will be floating holidays, some, but not all, may be assigned as a fixed holiday each year. The remaining floating holidays may be scheduled with two weeks notice and supervisory approval.

On those holidays identified by management, employees will be given the option of voluntarily working the scheduled day and, in return, be granted an additional day off that may be taken, with management approval, during the remainder of the calendar year. In the event an employee terminates prior to the day being used, the time will be paid at termination.

**SECTION 2:** Employees who are not required to work on these days shall be paid their regular rates when such holidays fall on their regular scheduled workdays.

For those individuals working a 4 x 10 hour schedule, holidays observed on a regularly scheduled workday will receive ten (10) hours of holiday pay. For a holiday observed on an employee's scheduled day off, he/she will receive either the next scheduled work day off or a floating holiday to be used during the calendar year.

**SECTION 3:** Employees shall be paid one and one-half (1 1/2) times their regular hourly rate in addition to their holiday pay for all work performed on listed holidays.

**SECTION 4:** When an employee is absent from work on a scheduled workday immediately preceding or succeeding a listed legal holiday, he shall not be paid for the holiday unless he submits a certificate from a doctor of medicine as proof of incapacity resulting from an illness or injury, or unless for absences as defined in Article 9, Section 1.

**SECTION 5:** If a guaranteed paid holiday falls on an employee's regular day off, he shall be paid straight time for the day, or at the discretion of the Employer, be allowed a day off in lieu thereof.

ARTICLE 9  
VACATION

SECTION 1: Vacations shall be granted to employees according to the following schedule based upon length of continuous service:

<u>LENGTH OF CONTINUOUS SERVICE</u>	<u>AMOUNT OF VACATION</u>
Up to 5 years	2 weeks / 80 hours
5 years to 9 years	3 weeks / 120 hours
10 years and over	4 weeks / 160 hours

Employees will earn vacation on a pro-rated basis subject to their length of service and if an employee terminates during the calendar year, he will receive his accrued vacation, if any, on a pro-rated basis. Proration of vacation time does NOT apply to those individuals retiring from the Company.

SECTION 2: Vacation eligibility shall be posted by January 15th of each calendar year. Vacation shall be scheduled by March 1st with everyone being able to schedule the first two weeks of his or her vacation. Any conflicts in scheduling shall be resolved through the principle of bargaining unit seniority by March 15th. Any vacation not scheduled by March 15th shall be scheduled on a first-come, first-serve basis, not subject to seniority. Any vacation not scheduled by October 1st shall be scheduled by management. No more than 20% of any department shall be permitted to schedule vacation at the same time.

If there is any unused vacation remaining as of December 31st of each year due to the request of management, based on business conditions, such vacation shall be permitted to be taken by March 31st of the following year or be paid in full for the unused time.

SECTION 3: If an employee takes his or her vacation during a period which includes a listed legal holiday, the employee shall receive an extra day's vacation, or an extra day's pay at their straight time rate of pay.

SECTION 4: In the event of the death of an employee during the year, any unused vacation shall be due and payable.

ARTICLE 10  
PAID ABSENCES

SECTION 1: a) An employee is eligible to take up to five (5) workdays with pay to attend the funeral and take care of personal matters related to the death of a member of your immediate family which includes your spouse, child, parent, or sibling. You may take up to three (3) workdays with pay for the death of any other member of your immediate family. These family members are defined as your spouse's parent, spouse's child by a former marriage, grandparents, or blood relatives residing in the same household.

b) In the event of a winter death where a spring burial is required, the employee shall be allowed to use one of his paid days off at the time of the burial.

SECTION 2: If you are called for jury duty, you may take the necessary time off with pay. Please give your supervisor a copy of the jury summons as soon as you can but no later than 48 hours of your receipt. On any day or half day you are not required to serve, please return to work and give your supervisor a statement of jury service. This document should be issued by the court.

SECTION 3: Employees having completed one (1) or more years of service shall be entitled to time off with pay at their regular hourly rate for sick leave in case of actual illness/off duty injury of the employee, which incapacitates the employee for work not to exceed five (5) days / forty (40) hours in the calendar year. Employees will call in at least one (1) hour before the start of the shift if the employee is sick. Commencing the end of the 1995 calendar year, the Employer agrees to reimburse employees with two (2) or more years of service for unused sick leave at a rate of 50% pay back. Under no circumstances are payments to exceed three (3) calendar days a year. Such payments shall be made no later than January 30th of the following calendar year. The Employer may require a certificate from a doctor of medicine as proof of incapacity resulting from illness or injury.

SECTION 4: If an employee reports to work and he/she is sent home due to lack of work, he/she shall be paid two (2) hours at the appropriate rate. If this occurs the employee will be given the option of leave without pay (except two (2) hours referenced herein) or using accrued time (i.e. vacation, sick-time) however the use of this time will not be required.

ARTICLE 11  
PLANS FOR EMPLOYEE PENSIONS,  
DISABILITY BENEFITS & DEATH BENEFITS

**SECTION 1:** The Employee hereby agrees that the provisions of the plans covering employee's pensions, disability benefits, and death benefits, as amended, subject to all the limitations and qualifications therein contained, are hereby incorporated in and made part of this Collective Bargaining Agreement. The Employer shall not, during the term of this Agreement, terminate this plan. The Employer, however, reserves the right to alter or modify this plan.

**SECTION 2:** The ADT, LLC Benefit Plans shall be implemented. Each Employee shall receive a written description of benefits provided.

ARTICLE 12  
GROUP HOSPITALIZATION, SURGICAL  
AND DENTAL PLAN

The Employer shall provide group hospitalization, surgical and dental benefits to members of the bargaining unit. The ADT, LLC Benefit Plans shall be implemented. Each employee shall receive a written description of the benefits provided.

The Union agrees that the Employer may elect to change carriers, self-insure and/or change benefits during the life of this Agreement providing it first notify the Union and fully advise the Union of such changes.

ARTICLE 13  
SENIORITY

**SECTION 1:** For the purpose of this Agreement seniority shall be defined as:

Length of continuous employment with the Employer, for all purposes except lay-off and vacation scheduling.

**SECTION 2:** Full-time employees shall have no seniority rights until they have served the Employer for six (6) months. Part-time employees shall have no seniority until they have served the Employer for one thousand (1,000) work hours, but in no event less than six (6) months. Upon completion of this probationary period the employee shall be considered as a regular employee and shall have seniority from the date of hire.

During the probationary period the employee may be disciplined or terminated at the sole discretion of the Employer, for whatever reason, and such discipline or termination shall not be subject to review through the grievance or arbitration procedure.

**SECTION 3:** When a lay-off (i.e. reduction in force due to lack of work) occurs, bargaining unit seniority shall apply. :

1. Part-time employees shall be laid-off first.
2. Full-time employees without seniority shall be laid-off next.
3. After all employees without seniority are laid-off, full-time employees with seniority shall be laid-off next with the least senior employee laid-off first; second least senior is next, etc. progressing through the list to the most senior, full-time employee.

In the event of a lay-off where the least senior person is not employed within the classification being reduced, that employee may be bumped by a senior employee from the other classification. This bumping is at the discretion of the senior employee involved who will be given the option of taking the lay-off rather than change classifications. An individual who uses seniority to bump into a new classification must meet performance expectations within ninety (90) days. It is understood that if bumping occurs in a temporary lay-off, at the time of recall the most senior person affected has the right to return to their prior position.

Before a lay-off occurs, the Company will consider alternative measures, such as reduction of workweek hours, before administering a lay-off.

**SECTION 4:** The right of seniority in re-employment shall be according to laid-off employees prior to new employees being hired. Job offers shall be made as follows:

1. The seniority list of laid-off employees shall be used to determine the order of job offers with most senior employees offered re-employment first, provided such laid-off employee responds to a call to report to work not more than ten (10) days after such receipt of notice sent to him by registered mail, to his last known post office address. If such laid-off employee fails to report after fifteen (15) days, he shall lose all rights of seniority, unless he is temporarily incapacitated, preventing him from responding, in which case he must notify the Employer in writing within three (3) days after receipt of notice, or as soon as his health permits.
2. If no laid-off employees are available from the lay-off list or such employees fail to meet the recall criteria, the Company may transfer employees from other locations or hire new employees.

In all cases listed above, jobs of an emergency nature may be filled at once by those next in line in seniority in the classification, pending return of laid-off employees having seniority who have been notified to report to work as herein provided. Return to work on this basis shall be at the employee's option without penalty for refusal.

Any laid-off employee offered to return for a known assignment of two (2) weeks or less shall not forfeit recall rights if they turn down such assignment.

SECTION 5: A voluntary resignation or discharge shall terminate seniority. Seniority shall terminate after six months of unemployment (layoff), absence on authorized furlough or because of sickness or accident disability with respect to employees having less than three (3) years of accumulated seniority; after one (1) year of unemployment (layoff) through any such cause with respect to employees having three (3) but less than ten (10) years of accumulated seniority and after the two (2) years of unemployment (layoff) or absence through any such cause with respect to employees having ten (10) or more years of accumulated seniority.

ARTICLE 14  
SEVERANCE PAY

SECTION 1: In the event of permanent layoff, each employee with more than two (2) years of continuous service with the Employer so laid off shall receive severance pay at the rate of one week's pay for each full year of continuous service. Such payment shall be based on the employee's authorized hourly wage rate in effect at the time he is laid off.

SECTION 2: If an employee who has received severance pay is rehired and the period since the date of his layoff is less than the period for which he has received severance pay, the amount paid to the employee in excess of the period of his actual layoff shall be considered as an advance to him by the Employer and repayment shall be made through payroll deductions at the rate of ten percent (10%) of the basic weekly wage until the amount is fully repaid; and as a condition of reemployment, the employee either before, at, or subsequent to the time he returns to the payroll, shall, upon the Employer's demand, execute any and all documents that may be necessary, desirable or proper to effectuate this provision.

SECTION 3: In the event an employee is rehired within a two (2) year period, his/her severance pay rights shall be reestablished on the basis of his/her record of continuous service, provided, however, that in the event of a subsequent layoff, the severance pay to which he/she is entitled shall be subject to a deduction equal to the amount of any severance pay previously received and for which the Employer was not reimbursed.

SECTION 4: An employee who resigns, is retired with pension, or is discharged, or otherwise dropped for cause shall not be entitled to severance pay.

ARTICLE 15  
PAY FOR USE OF EMPLOYEE-OWNED AUTOMOBILES,  
TRAVELING TIME AND EXPENSES

SECTION 1: a) The Employer shall not favor or discriminate against any employee by reason of the use of his personally-owned car in the service of the Employer.

b) Employees, when using their own cars in the Employer's service, and the Employer's direction, shall be compensated in accordance with IRS regulations with a minimum of Three dollars and fifty cents (\$3.50) per day.

c) Employee-owned motor vehicles shall be used in the service of the Employer only when approved by a Supervisor, Department/Local Manager.

SECTION 2: When the Employer deems it necessary to board employees near a job, such employees shall be paid up to a total of fifty dollars (\$50.00) per day for meals (breakfast, lunch and dinner) plus reasonable cost of room when an employee is required to be away from home overnight. Exceptions may be requested and granted at management's discretion for unusual circumstances or expense requirements. Receipts must accompany any single expense over twenty-five dollars (\$25.00).

SECTION 3: Employees who report directly to the jobsite from home are responsible for up to 45 minutes of unpaid commuting time from their home to their first job in the morning, and up to 45 minutes of unpaid commuting time from their last job to their home each day.

SECTION 4: The Company will provide employees a minimum of one (1) week's notice for overnight assignments if possible. In the event the company is able to do so and fails, the employee will receive time and a half for their first eight straight time hours.

ARTICLE 16  
WAGE RATES

SECTION 1: The wage scale is to be placed in effect as set forth in Schedule A of this agreement.

SECTION 2: Increases or decreases in the basic rates of pay shall not be made effective while the employee is absent due to sickness, accident or unauthorized leave of absence.

SECTION 3: When an employee is absent; for any reason except for leave of absence for military service, where credit for time for wage purposes is provided by law, for a continuous period of more than 30 (thirty) days, the interval from his last regular increase until the employee's next regular increase following return to duty, is extended one (1) month for each thirty (30) day period or a major portion thereof beyond the first thirty (30) days absence.

SECTION 4: It is understood and agreed that new employees may be hired at any of the rates indicated on the progression tables shown in Schedule "A" attached, consistent with their training, experience and other qualifications. With the exception of during the first year of employment, subject to the provisions of Article 15, Section 3 hereof, such employees thereafter progress in conformity with the periods and amounts shown on that portion of Schedule "A" beyond the rates at which they are employed. Wage increases outside the established progression may be made during the first year of employment at management's discretion.

ARTICLE 17  
BULLETIN BOARD

SECTION 1: The Employer shall furnish space on a Bulletin Board for posting of Union Bulletin, etc.

SECTION 2: The use of the Bulletin boards shall be confined to:

- a) Factual Notices and announcements of the Union pertaining to:
  1. Union Meetings
  2. Union Elections and Nominations
  3. Appointment of Union Officers
  4. Union Social and Recreational Affairs.
- b) Regularly issued financial statements of the Union.
- c) Jointly signed minutes of conferences between the Union and the Employer.
- d) Agreements concluded by the Union and the Employer.
- e) Such other material as may be approved in writing prior to posting, by the Employer.

**ARTICLE 18**  
**LEAVE OF ABSENCE**

**SECTION 1:** A leave of absence without pay may be granted to an employee, work conditions permitting, under the following conditions:

- a) Leave of absence will be granted, initially, for a period not exceeding ninety (90) days.
- b) Leave of absence may be extended, upon written request, but in no case for a period of more than an additional ninety (90) days.
- c) Employee will receive no wages during his absence.
- d) Employee will not accept employment of any kind or engage in self-employment.
- e) Employee's service record is governed by the rules and regulations of the Benefit Plan.
- f) Employee's return to work will be subject to employment conditions at that time.
- g) For the performance of ordered military duty in the service of the State or Federal Government.
- h) For all instances in accordance with the FMLA.

ARTICLE 19  
SAFETY

SECTION 1: A safety committee will be formed consisting of two members of the management team, and two members of the unit, with individual members being rotated on an as needed basis. The goal of the committee will be to identify and recommend work practices to minimize accidents in the work place. The committee shall meet at least four times (quarterly) per year.

ARTICLE 20  
WORKING STOPPAGE

SECTION 1: Since the Employer's business is one of protecting its customers against the hazards of fire and burglary and it is the mutual desire of both the Employer and the Union to provide uninterrupted and continuous protection service, to promote industrial peace and to provide for stable labor relations, the Employer agrees that there shall be no lockouts and the Union agrees that there shall be no strikes, sympathy strikes or other stoppage of work during the life of this Agreement.

ARTICLE 21  
SEPARABILITY / AGREEMENT OF PARTIES

If the enactment of legislation, or a determination of a court of final jurisdiction (whether in a proceeding between the parties or in one based on a similar statement of fact) invalidates any portion of this Agreement it shall not affect the validity of the rest of this Agreement, which shall remain in full force according to its terms in the same manner and with the same effect as if such invalid portion had not originally been included herein.

Any provision invalidated under the preceding paragraph shall immediately become the subject of negotiations between the parties in an effort to bring the provisions into conformance.

The provisions of this Agreement constitute the entire agreement between the parties. No waiver or modification of any provision of this Agreement shall be effective unless signed by the parties hereto, and no such writing, applicable to any particular instance or instances, shall be construed as any general waiver or modification, but shall be strictly limited to extent and occasion specified therein.

ARTICLE 22  
ANCILLARY BENEFITS

The Company may unilaterally confer other benefits not specifically listed in the contract which are offered to non-bargaining unit employees. These benefits will be subject to terms and conditions contained in the applicable plan documents. The Company reserves the right to modify and/or terminate these benefits at any time.

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ARTICLE 23  
TERMINATION DATE

This Agreement shall be effective from June 11, 2015 and shall remain in effect through June 10, 2018, and thereafter, from year to year, unless prior notice in writing shall be given by either party to the other of its termination or of any changes desired, sixty (60) days prior to the end of contract year.

IN WITNESS WHEREOF, the parties hereto duly executed this Agreement.

Local Union 43, International  
Brotherhood of Electrical Workers

ADT LLC  
Albany, NY

By: *[Signature]*  
\_\_\_\_\_  
\_\_\_\_\_

By: *[Signature]*  
\_\_\_\_\_  
\_\_\_\_\_

Date: 1-22-16

Date: 1/19/2016

**APPROVED**  
INTERNATIONAL OFFICE - I.B.E.W.  
  
**March 3, 2016**  
  
Lorvie Stephenson, President  
This approval does not make the  
International a party to this agreement.

A-176

SCHEDULE A  
ALARM TECHNICIANS

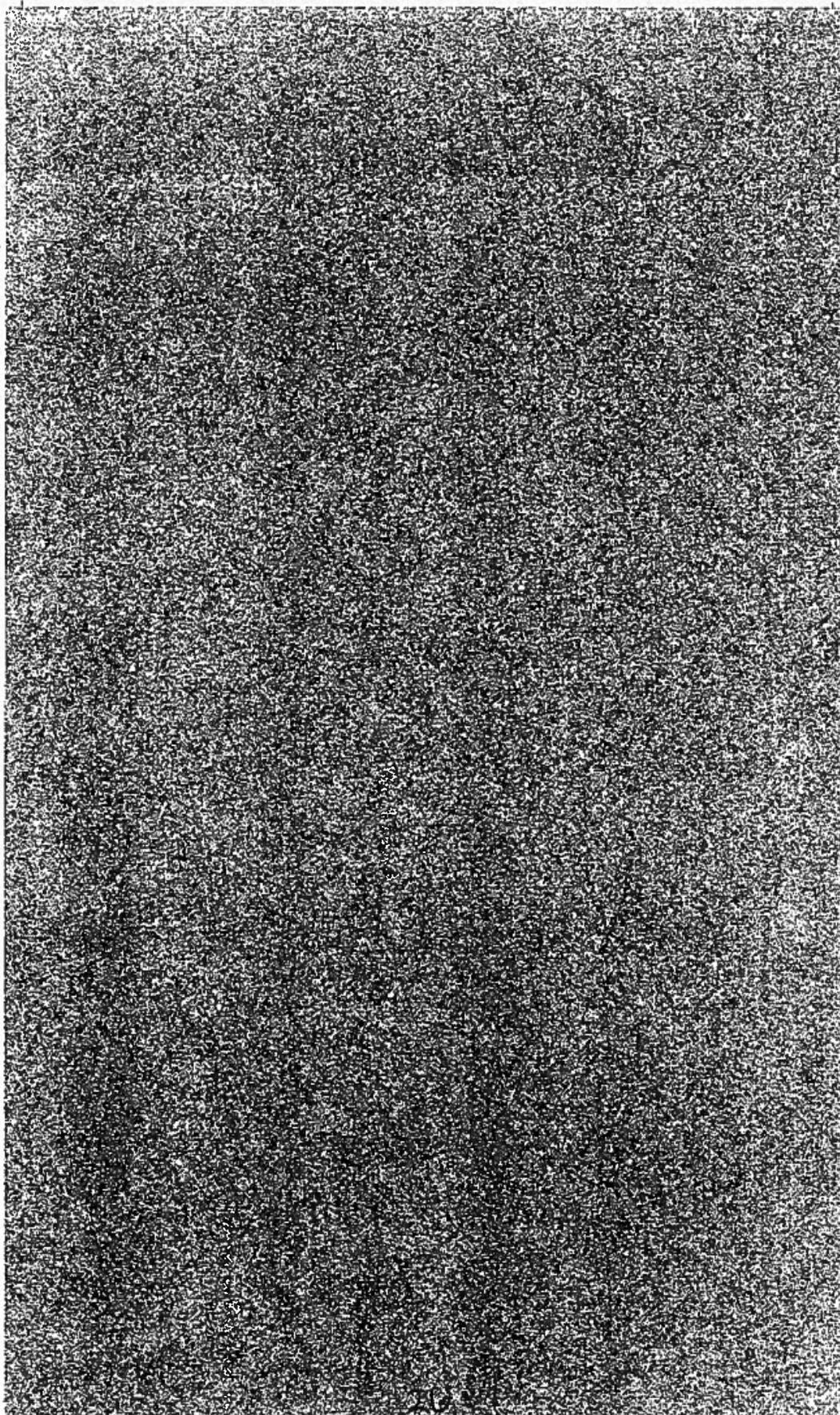
Classification	Effective 6/11/2014	At Ratification	Effective 6/11/2016	Effective 6/11/2017
Start	\$15.50	\$15.89	\$16.28	\$16.69
4 months	\$15.83	\$16.23	\$16.63	\$17.05
8 months	\$16.33	\$16.74	\$17.16	\$17.59
12 months	\$16.78	\$17.20	\$17.63	\$18.07
18 months	\$17.18	\$17.61	\$18.05	\$18.50
24 months	\$17.70	\$18.14	\$18.60	\$19.06
30 months	\$18.48	\$18.94	\$19.42	\$19.90
36 months	\$19.11	\$19.59	\$20.08	\$20.58
42 months	\$20.44	\$20.95	\$21.47	\$22.01
48 months	\$22.84	\$23.41	\$24.00	\$24.60
Lead	\$23.84	\$24.41	\$25.00	\$25.60
SST	\$24.34	\$24.91	\$25.50	\$26.10

Workers who are required to work 2nd shift shall receive a \$0.50 per hour differential added to their base rate.

Company and Union agree that the Company, using management discretion, will have the ability of designating a Lead Mechanic on those jobs where there are four (4) or more technicians (including Lead) assigned to a job. Subcontractors will be considered technicians for the purpose of this section. The intent of providing the Lead Mechanic incentive payment is for the designated technician to assist job profitability by bringing the job in on time and working as a point person.

Lead Mechanic is to be paid at \$1.00 over scale from the point he/she is assigned as Lead Mechanic until the completion of the job (even if the number of total technicians assigned to the job falls below four (4)). If the job is brought in at or under the estimated total hours, the technician will be paid an additional \$1.00 per hour for all hours he/she works on the job. The company reserves the right to relieve a technician from the Lead Mechanic position during a job if it is deemed that the technician is not performing satisfactorily.

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A-178

Pat Costello

From: Pat Costello  
Sent: Wednesday, September 07, 2016 9:04 AM  
To: Dave Madsen  
Subject: Fwd: Letter from Mike Kirk on 6 day work week

Dave.  
Please review and call me.

Pat

Sent from my iPhone

Begin forwarded message:

From: "Stewart, Michael T (West Henrietta)" <mtstewart@adt.com>  
Date: September 7, 2016 at 8:16:32 AM EDT  
To: Pat Costello <pcostello@ibew43.org>, Al Marzullo <amarzullo@ibew43.org>  
Cc: "Nixdorf, James C" <jnixdorf@adt.com>  
Subject: Letter from Mike Kirk on 6 day work week

Hi Pat & Al,

The below letter is from Mike Kirk and is outlining going to a 6 day work week in 2 weeks. I will look to call you as well to follow up and thanks.

Team,

With the integration of ADT and Protection 1 we have been given new customer service targets of 1.69 days on all new installations and service tickets created. This equates to being able to deliver, 24hour customer service to our new and existing customers 75% of the time which is a great objective to meet, while understanding that 25% of our customers may not be able to be available within 24 hours. While I understand that each market is different, and we need to approach each market as a separate entity and make decisions that are based solely on each location. Until we meet the present target, we will be implanting a mandatory six day workweek in the following markets beginning on Thursday, September 22<sup>nd</sup> and will continue until each market achieves the desired target which the manager will post locally for each market. I understand that this is a burden on some of our technicians and the only exception at this time are those technicians that are currently attending classes and are enrolled in higher education.

Allentown Pa  
Wiles-Barre Pa  
Bridgeville Pa  
Albany NY

3-CA-184936  
CASE NUMBER  
EXHIBIT NUMBER: JT-4  
ID'D \_\_\_\_\_ REC'D \_\_\_\_\_  
DATE 6/13/17

J. EX. 4

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The following districts will implement a mandatory 5day workweek on Thursday, September 22 2015 for the second and fourth week of every month until the target is achieved and can change to weekly if needed with no additional notice.

Syracuse NY  
Buffalo NY  
Erie Pa  
Altoona Pa  
Lancaster Pa

I appreciate your understanding and dedication to providing faster service to our customer and I truly appreciate your support, I am providing a two week notice to all technicians as I truly believe that this is the right thing to do! Please keep in constant communication with your manager and myself if you are confused as to why this critical initiative is important and why we need your immediate assistance and to see where we are to the target. Thank you for all that you do and keep those great customer service emails coming to me from your customers as I love to recognize great individual performances.... You guys and girls are awesome. Thank you.

Mike

**Mike Stewart**  
Regional HR Manager  
Northeast Region

**ADT Security Services**  
75 Town Centre Drive  
Suite 200  
Rochester, NY 14623

Tel: 585 471 6602  
Cell: 585 281 5218  
[mtstewart@adt.com](mailto:mtstewart@adt.com)  
[www.adt.com](http://www.adt.com)

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A-180

September 19, 2016

Michael Stewart, Regional HR Manager  
 ADT Security Services  
 75 Town Centre Drive  
 Rochester, NY 14623

3-CA-184936  
 CASE NUMBER  
 EXHIBIT NUMBER JT-5  
 ID'D \_\_\_\_\_ REC'D \_\_\_\_\_  
 DATE 6/13/17

Re: ADT – Six Day Work Week at Syracuse and Albany Locations

Dear Mr. Stewart:

Pursuant to our discussion, the Union demands that ADT immediately rescind the six-day workweek directive set to take effect on Thursday, September 22.<sup>1</sup> As I previously explained, Article 6 of the CBA explicitly and unambiguously provides for only four or five-day workweeks. At no point does the CBA authorize a six-day workweek or allow ADT to change the agreed-upon schedule. Again, the Union does not consent to the changes set forth in ADT's directive. Accordingly, ADT violates Section 8(d) of the National Labor Relations Act ("Act") by implementing, maintaining, and enforcing a six-day workweek as it would change existing terms and conditions of employment of unit employees embodied in the applicable collective bargaining agreement, all without Local Union 43's consent. The directive is an unlawful mid-term modification.

Under Section 8(d), it is clear that once an agreement is struck, an employer may not change terms and conditions of employment that are governed by a collective bargaining agreement during the term of that agreement, absent the consent of the union representing the employees. *Oakland Physicians Medical Center, LLC*, 362 NLRB No. 149 (2015) (changes constituted mid-term contract modifications within the meaning of Section 8(d)). Thus, if ADT refuses to rescind the unlawful six-day workweek directive, the Union will file an unfair labor practice charge with Region 3 of the National Labor Relations Board.

In addition, pursuant to the National Labor Relations Act, the Union is requesting that the following information be provided:

1. Please provide copies of any survey, study, investigation or summary related to customer service targets for installation and service tickets referenced in ADT's September 7, 2016 correspondence to bargaining unit members, together with any internal or external communications related thereto.

<sup>1</sup> The Union's demand to rescind the unlawful mid-term modification does not waive the Union's right to engage in bargaining over the effects of the Company's decision to implement a six-day workweek.

2. Please provide copies of all internal and external communications concerning studies, projections, recommendations, or other correspondence by Company personnel or outside personnel related to the need to change to a six-day workweek and/or recommendations on how to implement it operationally.
3. Please provide copies of all internal and external communications concerning application of the collective bargaining agreements between Local 43 and ADT to ADT's plan to implement a six-day workweek.
4. Please provide copies of all internal and external communications concerning application of a collective bargaining agreement between any labor organization and ADT to ADT's plan to implement a six-day workweek. This is relevant as it relates to ADT's knowledge concerning the bargaining process.
5. Please provide copies of all studies, investigations, or summaries and internal and external communications concerning the decision to implement six day workweeks twice a month for some locations and every week for other locations, and the factors ADT considered in settling those frequencies. Specifically, the Union seeks this information to address ADT's reasoning and accuracy of the facts, figures, and theories relied on, which may impact the Union's bargaining position.
6. Please provide copies of all internal and external communications concerning studies, projections, recommendations, or other correspondence by Company personnel or outside personnel relating to the decision to exclude only "those technicians that are currently attending classes and are enrolled in higher education" from having to work the extended workweek. This is relevant because it will impact any effects bargaining, if necessary.
7. Please provide copies of all internal and external communications concerning studies, projections, recommendations, or other correspondence in calculating how and whether each market will achieve the desired customer service target.
8. Please provide all internal and external communications concerning studies, projections, recommendations, or other correspondence detailing how the manager will post locally the desired target at each location, including the frequency of the posting, location of the posting, and general operation of the posting.
9. Please provide copies of all documents, correspondence, and internal and external communications relied on to support ADT's ability to establish a six-day workweek under any collective bargaining agreements between Local 43 and ADT or ADT and another labor organization.

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This information is necessary for the Union to fulfill its representative duties to administer and enforce the provisions of the collective bargaining agreement. Please provide this information no later than the close of business on Friday, October 7, 2015.

Very truly yours,

*Patrick Costello*

Patrick Costello

A-183

Pat Costello

From: Pat Costello  
Sent: Thursday, October 06, 2016 9:49 AM  
To: Stewart, Michael T (West Henrietta)  
Cc: Nixdorf, James C  
Subject: Re: Scanned Image Attached

Mike,  
I would request that you send all the information that you have completed to date now and send the full list of requests items by the 14th.

Also we are still waiting for the Syracuse ADT contract signature page. As you know this contract is in effect and has been ratified. I would hope we do not have to file a charge to get it signed.

Thanks

Pat

Sent from my iPhone

> On Oct 6, 2016, at 8:29 AM, Stewart, Michael T (West Henrietta) <mtstewart@adt.com> wrote:

>

> Hi Pat,

>

> We are working with our outside counsel to put together a response to your information request. We are targeting October 14 to respond. That should give us sufficient time to analyze the individual requests, and gather any relevant responsive information. Our counsel reached out to the Union's counsel on this issue, but the Union's counsel asked that I reach out to you directly given that the request came directly from you.

>

> Thank you,

>

> Mike Stewart

> Regional HR Manager

> Northeast Region

>

> ADT Security Services

> 75 Town Centre Drive

> Suite 200

> Rochester, NY 14623

>

> Tel: 585 471 6602

> Cell: 585 281 5218

> mtstewart@adt.com

> www.adt.com

>

> -----Original Message-----

> From: Pat Costello [mailto:pcostello@ibew43.org]

> Sent: Monday, September 19, 2016 8:28 PM

> To: Nixdorf, James C <jnixdorf@adt.com>; Stewart, Michael T (West

3-0A-184936  
CASE NUMBER  
EXHIBIT NUMBER: JT-6  
ID'D \_\_\_\_\_ REC'D \_\_\_\_\_  
DATE 10/13/17

J. EX. 6

A-184

> Henrieta) <mistewart@adt.com>; Kevin Gibb <KGibb@adt.com>

> Subject: Fwd: Scanned Image Attached

>

>

>

> Sent from my iPhone

>

> Begin forwarded message:

> Men,

> This is the response that I said would be drafted with respect to the mandatory six day week. I'm am at a conference all week but I have email access. Please answer via email. I have put a hard copy of the attached in today's mail.

>

> Pat Costello

>>

>

>

>

>

>

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A-185

Pat Costello

From: Stewart, Michael T (West Henrietta) <mtstewart@adt.com>  
 Sent: Thursday, October 13, 2016 12:37 PM  
 To: Pat Costello  
 Cc: Nixdorf, James C  
 Subject: RE: Scanned Image Attached  
 Attachments: In Standard MTTR Daily as of 07-Sep-16v3.xlsm; Copy of In Standard MTTR Daily as of 11-Oct-16v4.xlsm

Hi Pat,

I am writing in response to your request for information dated September 19, 2016. At the outset, ADT notes that several of the requests are vague and ambiguous and/or do not appear to be relevant. Specifically, to the extent you request information regarding ADT interactions with other unions or locations other than the location(s) represented by Local 43, that information is not relevant.

As noted in the email that was forwarded to you on September 7, 2016, following ADT's integration with Protection 1, in order to meet customer service targets of 1.69 days on all new installations and service tickets created, ADT determined that it needed to reduce the backlog of tickets/ work orders Nationwide across the entire ADT organization. The ADT Corporate Leadership Team has established a goal to reduce the backlog of tickets to 15,000. On September 7, 2016 the backlog for the entire ADT organization was 24,266 tickets and 9,266 tickets nationwide needed to be reduced. This backlog reduction was necessary for ADT to be in compliance with the metric of "In Standard" which is each location responding to our customers within 24 hours on service or install tickets 75% of the time or more. This has been a metric used by P-1 and with the merger with P-1, the In Standard metric will carry over to ADT as well. Attached is the spreadsheet of metrics setting forth customer service targets and backlog reduction needed for each location.

ADT determined the then-current backlog for each location and further determined the amount of the backlog that needed to be reduced in order for that location to meet the new customer service targets. The Albany location on September 7, 2016 had a backlog of 120 tickets and the backlog goal established was 24 tickets which required to reduce the backlog by 96 tickets. The Syracuse location on September 7, 2016 had a backlog of 88 tickets and the backlog goal established was 29 tickets which required to reduce the backlog by 59 tickets. Depending on the severity of the backlog, ADT determined which locations needed to temporarily implement 6 day work weeks every week, and which needed to temporarily implement 6 day work weeks bi-weekly. ADT prepared daily spread sheets showing, among other things, the current back log at each location and the goal number that the location is expected to reach before reverting to normal work weeks. The first spreadsheet shows this information as of September 7, 2016, the day the Union and employees were provided with notification of the new 6 day work week. The second attachment shows the same information as of October 11, 2016.

As of October 11, 2016 the Albany location has a backlog of 93 tickets and needs to reduce their backlog of tickets by 69 to achieve the backlog goal established of 24 tickets. The Syracuse location has a backlog of 27 tickets and has achieved the backlog goal established of 29 tickets. After 10/22/16 the Syracuse location plans to resume to the normal 5 day work schedule.

This information should address all of the concerns raised in your September 19 request.

Thanks,

Mike Stewart  
 Regional HR Manager

3-CA-184936  
 CASE NUMBER  
 EXHIBIT NUMBER: JT-7  
 ID'D \_\_\_\_\_ REC'D \_\_\_\_\_  
 DATE

6/13/17

J. EX. 7a

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Station	Rank (mtf)	Rank (mtf)	MTT	Current	Backlog	Backlog	Reduction
BANY	124	128	15.02	120	24	96	
RACUSE	102	120	8.02	88	29	59	

J. EX. 76

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Location	Rank (mtl) in Standard	Rank (mtl) MTR	(mtl) MTR	Current Backlog	Backlog Goal	Backlog Reduction
SHREVEPORT LA	10	13	2.95	46	48	-2
NEW ORLEANS, LA	95	77	4.89	160	124	36
BATON ROUGE LA	55	91	5.52	99	64	35
AFAYETTE LA	46	31	3.52	112	75	37
LOUISIANA AREA Total	23	27	4.47	417	312	105
DALLAS, TX	109	55	4.2	453	304	149
EAST TX	64	15	3.05	43	37	6
DALLAS AREA Total	45	22	4.08	496	340	156
ABUQUERQUE	22	51	4	79	61	18
EL PASO TX	79	64	4.57	48	29	19
AURORA	77	121	2.04	409	155	254
COLORADO SPRINGS	86	84	5.31	90	60	30
COLORADO EL PASO TX NM AREA Total	29	41	6.31	526	306	220
SAN ANTONIO	54	57	4.26	338	233	105
AUSTIN	25	25	3.32	130	139	-9
CENTRAL TEXAS AREA Total	16	17	3.9	468	373	95
KANSAS CITY	101	102	6.16	205	134	72
NEBRASKA/SD	81	92	5.53	80	35	45
KANSAS	83	127	11.19	96	23	73
KC MO, NEBRASKA, KS AREA Total	41	44	6.61	382	197	185
HOUSTON, TX	90	72	4.81	553	305	248
HOUSTON NORTH AREA Total	39	30	4.81	553	305	248
TUCSON	51	22	3.26	29	39	-10
ARIZONA	65	86	5.38	350	222	128
ARIZONA AREA Total	28	35	5.04	379	262	117
ST WORTH TX	17	58	4.27	192	171	21
WABOCK TX	15	89	5.41	49	38	11
ST WORTH WEST TEXAS AREA Total	7	29	4.49	241	209	32
TULSA OK	16	9	2.55	34	45	-11
OKLAHOMA CITY OK	29	38	3.68	133	92	42
OKLAHOMA AREA Total	8	7	3.34	167	136	31
HOUSTON SOUTH	52	63	4.49	491	309	182
HOUSTON SOUTH AREA Total	24	28	4.49	491	309	182
TACOMA	53	49	3.96	144	100	44
E. WA/MT	6	3	2.07	52	35	17
W. WA/AK	66	59	4.31	245	130	115
WASHINGTON ALASKA AREA Total	19	15	3.89	441	265	176
DARHO	14	17	3.1	7	12	-5

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UTAH	3	1	1.55	27	40	-13
OREGON	88	126	10.95	283	67	216
OREGON IDAHO UTAH AREA Total	14	47	7.14	317	120	197
SAN JOSE	37	60	4.32	240	147	93
PLEASANTON	42	36	3.67	323	226	97
SAN FRANCISCO	43	54	4.12	108	98	10
CONCORD SF AREA Total	15	20	3.98	671	471	200
CHATSWORTH, CA	80	75	4.87	436	252	164
CHATSWORTH AREA HQ Total	38	32	4.87	406	124	164
LAS VEGAS	51	35	3.61	124	120	4
RENO/SPARKS	92	82	5.21	50	28	22
NV LAS VEGAS AREA Total	25	18	3.92	174	148	26
ORANGE COUNTY	59	65	4.73	182	187	2
LOS ANGELES	32	19	3.14	216	197	19
TORRANCE, ORANGE COUNTY AREA Total	17	16	3.9	405	384	21
SAN DIEGO	68	74	4.86	225	147	76
SAN DIEGO RIVERSIDE AREA Total	30	31	4.86	223	147	76
BAKERSFIELD	13	10	2.62	67	48	-9
FRESNO	5	6	2.49	40	53	-13
SACRAMENTO	49	68	4.57	250	173	77
MODESTO	30	23	3.27	102	83	19
SACRAMENTO MODESTO AREA Total	13	13	3.85	459	356	103
REVERGIDE	28	39	3.68	188	167	21
INLAND EMPIRE AREA Total	11	21	3.68	188	167	21
COLUMBIA	58	52	4.05	188	128	60
GREENVILLE, SC	63	56	4.24	120	98	22
COASTAL SOUTH CAROLINA	105	80	5.04	175	107	68
SOUTH CAROLINA AREA Total	32	26	4.38	483	333	150
ORLANDO	73	45	3.79	425	340	85
ORLANDO AREA Total	34	12	3.79	425	340	85
MIRAMAR	57	37	3.68	942	622	220
MIRAMAR AREA Total	26	10	3.68	842	622	220
SOUTH ATLANTA	19	29	3.51	215	189	26
NORTHEAST ATLANTA	31	18	3.11	228	164	44
NORCROSS SO ATLANTA AREA Total	9	6	3.32	443	373	70
HUNTSVILLE AL	17	21	3.22	68	64	4
BIRMINGHAM, AL	12	7	2.5	128	138	-10
MONTGOMERY, AL	18	14	2.97	57	55	2
ALABAMA AREA Total	4	2	2.79	253	257	-4

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NORTHWEST FLORIDA	85	105	6.29	131	38	93
NORTHEAST FLORIDA	70	65	4.6	167	96	71
SAVANNAH GA	89	110	6.73	185	76	110
GAINESVILLE FL	63	101	5.94	118	59	59
JAX NW FLORIDA AREA Total	35	38	5.71	602	269	333
FAYETTEVILLE AR	1	2	1.85	10	21	-11
LITTLE ROCK AR	7	8	2.54	79	88	.9
JACKSON, MS	2	5	2.23	71	79	-8
ARKANSAS MS AREA Total	1	1	2.32	160	189	-29
LARGO	11	30	3.51	241	173	68
TAMPA AREA Total	23	43	3.77	264	184	80
SOUTHWEST GEORGIA	5	9	1.65	505	357	148
MOBILE, AL	4	4	2.08	34	52	-18
COLUMBUS GA	4	11	2.79	119	133	-14
SW GEORGIA MOBILE AREA Total	21	71	4.8	81	60	21
HOA GROUP	36	4	3.09	234	246	-12
HOA GROUP AREA Total	125	129			0	
PUNTA GORDA	51	51	2.94	262	206	56
SOUTHWEST FLORIDA AREA Total	9	12	2.84	262	206	56
WEST PALM BEACH	2	3	3.29	336	276	60
WEST PALM BCH AREA Total	26	24	3.29	336	276	60
PUERTO RICO	10	5	3.29	336	276	21
PR CARIBBEAN AREA Total	45	33	3.56	128	107	21
WEST PENNSYLVANIA	38	8	3.56	128	107	21
BUFFALO	119	122	8.4	254	97	157
ALBANY	99	104	5.8	58	29	23
SYRACUSE	124	128	15.02	120	24	96
EAST PENNSYLVANIA	102	120	8.02	88	29	59
KOCHESTER	118	117	7.51	256	91	155
CENTRAL PENNSYLVANIA	56	27	3.44	48	39	9
CENTRAL_WEST PA_WEST NY AREA Total	120	113	6.97	121	52	69
NE OHIO	48	49	7.61	945	362	583
NORTHWEST OHIO	121	70	4.74	116	52	54
CLEVELAND, OH	103	57	4.65	85	36	45
OHIO AREA Total	122	124	10.05	291	99	192
W MICHIGAN	50	48	7.59	492	196	296
DETROIT	97	88	5.4	140	58	82
NE MICHIGAN	39	20	3.19	255	191	67
	69	95	5.62	155	62	92

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MICHIGAN AREA Total	22	21	4.04	550	311	239
INDIANAPOLIS	106	76	4.89	281	150	331
CENTRAL ILLINOIS	34	93	5.54	130	65	65
NORTHERN INDIANA	67	66	4.64	149	67	52
INDIANA/CENTRAL IL AREA Total	36	33	4.9	360	311	269
DAYTON, OH	50	16	3.07	74	57	17
CENTRAL OHIO	82	100	5.95	289	133	156
CINCINNATI, OH	100	90	5.41	173	95	88
SOUTHERN OHIO AREA Total	37	37	5.21	536	275	261
CHICAGO NORTH	74	79	5	425	231	194
CHICAGO SOUTH	60	34	3.56	495	313	182
CHICAGO NORTH_SOUTH AREA Total	31	24	4.14	920	544	376
MINNESOTA	71	85	5.32	190	83	107
DES MOINES	52	62	4.4	31	21	10
BROOKFIELD WI	117	115	7.24	191	75	115
ROCKFORD WI	104	119	7.79	201	38	63
MINNESOTA WI IA AREA Total	40	42	6.34	513	217	296
ST. LOUIS	8	40	3.71	162	166	4
SPRINGFIELD, MO	78	103	6.22	61	30	31
MISSOURI ST LOUIS SPRINGFIELD AREA Total	1	23	4.1	228	196	27
CENTRAL NEW ENGLAND	93	98	5.92	310	176	134
WEST MASSACHUSETTS	110	114	7.12	140	64	76
CT VT WEST MA AREA Total	42	39	6.21	450	243	210
NEW HAMPSHIRE	40	78	4.98	170	93	77
RHODE ISLAND	24	26	3.34	25	31	-6
BOSTON	108	83	5.31	271	143	81
BOSTON RI NH ME AREA Total	33	34	4.99	416	263	153
DELAWARE	99	61	4.36	151	90	61
SOUTH NEW JERSEY	35	41	3.73	236	149	67
PHILADELPHIA	72	50	3.98	279	189	90
SOUTHERN NJ PHILLY DELAWARE AREA Total	27	19	3.97	646	428	218
MANHATTAN	84	81	5.16	96	38	58
LONG ISLAND	114	123	8.58	523	193	330
BROOKLYN/QUEENS	98	107	6.57	311	149	162
SOUTHERN NY STATE	111	87	5.39	296	153	143
SOUTHERN NY NYC LI AREA Total	46	46	6.89	1226	534	692
NORTH NJ	96	99	5.93	475	220	235
CENTRAL NJ/STATEN ISLAND	116	116	7.41	421	197	224
CENTRAL_NORTHERN NJ AREA Total	44	45	6.7	896	428	476

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CAPITOL	123	105	6.37	491	239	257
WEST MARYLAND	94	111	6.88	240	103	137
CAPITOL WEST MD AREA Total	49	43	6.53	731	343	388
WORTH EAST TENNESSEE	44	48	3.96	127	91	36
LEXINGTON KY	62	96	5.88	121	55	66
WEST KENTUCKY	48	32	3.53	39	36	3
VASHVILLE	76	73	4.85	225	142	83
MIDDLE KENTUCKY	47	42	1.76	135	86	49
SOUTHEAST TENNESSEE	38	44	3.77	47	41	6
MEMPHIS	41	46	3.8	150	143	7
MEMPHIS NASHVILLE CHATTANOOGA LOUISVILLE LEXINGTON AREA Tot	21	25	4.17	844	594	250
WINSTONSALEM	115	109	6.68	189	83	106
CHARLOTTE	123	97	5.91	236	120	116
CHARLOTTE/WINSTON SALEM AREA Total	47	40	6.23	425	204	221
CENTRAL MARYLAND	20	28	3.49	149	130	19
BALTIMORE, MD	33	53	4.08	225	176	45
CENTRAL MD BALTIMORE AREA Total	12	14	3.85	374	306	68
RICHMOND	112	125	10.9	390	136	254
WEST VIRGINIA	87	112	6.88	92	46	40
NORFOLK	107	118	7.61	337	141	196
ROANOKE VA	75	91	5.59	101	39	62
RICHMOND ROANOKE NORFOLK WEST VA AREA Total	43	50	8.56	920	362	558
RALEIGH	27	47	3.92	188	147	41
COASTAL NORTH CAROLINA	93	108	5.64	224	116	108
RALEIGH/COASTAL AREA Total	20	36	5.13	412	263	149
SOUTH CENTRAL	3	3	4.79	4220	2746	1471
WEST	2	2	4.23	3294	2310	984
SOUTH EAST	1	1	3.61	4673	3575	1098
MID NORTH	4	4	5.35	4739	2413	2326
ATLANTIC	5	5	5.79	7340	3953	3387
TOTAL US			4.81	24266	15000	9266

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REGION_NAME	Rank (mid) In Standard	(mid) In Standard	(mid) Not in Standard	Rank (mid) MITR	(mid) MITR	Current Backlog	Backlog Goal	Backlog Reduction
150-SOUTH EAST	1	41.32%	58.68%	1	3.61	4673	3575	1098
130-WEST	2	36.54%	63.46%	2	4.23	3294	2310	984
120-SOUTH CENTRAL	3	30.54%	69.46%	3	4.79	4220	2769	1451
180-MID NORTH	4	26.19%	73.81%	4	5.35	4739	2413	2326
190-ATLANTIC	5	24.67%	75.33%	5	5.79	7340	3053	3287
Total		31.55%	68.45%		4.81	24266	15000	9266

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300TH EAST	118-300TH EAST	319-008 MADISON	63	603	78.12%	4.24	33	71	2.1
SOUTH CENTRAL	118-300TH EAST	319-008 MADISON	26	629	78.12%	4.24	119	15	2
SOUTH CENTRAL	118-300TH EAST	319-008 MADISON	15	638	78.12%	4.24	119	15	2
WEST	118-300TH EAST	319-008 MADISON	85	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	65	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	67	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	68	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	69	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	70	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	71	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	72	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	73	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	74	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	75	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	76	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	77	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	78	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	79	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	80	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	81	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	82	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	83	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	84	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	85	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	86	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	87	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	88	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	89	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	90	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	91	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	92	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	93	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	94	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	95	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	96	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	97	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	98	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	99	603.28%	78.12%	4.24	310	212	120
WEST	118-300TH EAST	319-008 MADISON	100	603.28%	78.12%	4.24	310	212	120



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Location	Rank in Standard MTD	In Standard MTD	Current Svc Backlog	Svc Backlog Target	Svc Backlog Reduction Needed (mtH) MTR
ALBANY	127	[REDACTED]	93	24	[REDACTED]
SYRACUSE	43	51%	27	29	[REDACTED]

J. EX. 7c

A-199

Location	Rank In Standard MTD	In Standard MTD	Current Svc Backlog	Svc Backlog Target	Backlog Reduction Needed	(mtd) MITTR
HOUSTON TX	15	63%	40	48	8	3.26
HOUSTON TX	11	66%	48	75	27	3.21
HOUSTON TX	71	51%	103	124	21	3.16
HOUSTON TX	41	51%	39	64	25	3.21
HOUSTON TX	10	52%	230	312	82	3.16
HOUSTON TX	8	69%	41	37	4	3.21
HOUSTON TX	91	56%	260	304	44	3.21
HOUSTON TX	32	56%	301	340	39	3.16
HOUSTON TX	29	56%	36	29	7	3.21
HOUSTON TX	58	56%	21	60	39	3.88
HOUSTON TX	62	56%	198	155	43	3.88
HOUSTON TX	30	56%	61	61	0	3.42
HOUSTON TX	18	62%	316	306	10	3.42
HOUSTON TX	17	62%	94	139	45	3.42
HOUSTON TX	28	56%	183	233	50	3.42
HOUSTON TX	5	58%	277	373	96	3.42
HOUSTON TX	74	56%	33	23	10	3.61
HOUSTON TX	54	56%	84	134	50	3.61
HOUSTON TX	26	56%	21	39	18	3.35
HOUSTON TX	19	56%	138	197	59	3.81
HOUSTON TX	56	56%	270	305	35	3.6
HOUSTON TX	21	56%	270	305	35	3.6
HOUSTON TX	19	62%	144	222	78	3.6
HOUSTON TX	16	62%	29	39	10	3.6
HOUSTON TX	4	62%	173	262	89	3.6
HOUSTON TX	6	74%	23	38	15	3.02
HOUSTON TX	12	65%	125	171	46	3.02
HOUSTON TX	3	67%	148	209	61	3.01
HOUSTON TX	7	70%	37	45	8	3.01
HOUSTON TX	51	70%	104	91	13	3.72
HOUSTON TX	6	56%	141	136	5	3.15

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Region	Count	Percentage	Value 1	Value 2	Value 3	Value 4
<b>SOUTH CENTRAL</b>						
CONANTON SOUTH	109		301	309	8	3.8
MOBILE ON SOUTH AREA	46		301	309	8	3.8
	1		2,295	2,749	451	3.18
<b>WEST</b>						
YACOMA	66		120	100		3.18
W. WA/AK	123		243	130		
E. WA/MT	18	62%	55	35		3.51
WASHINGTON ALASKA AREA	39		418	265		
UTAH	4	71%	25	40		
OREGON	122		131	67		
IDAHO	38	53%	16	12		
OREGON IDAHO UTAH AREA	31		172	120		
NW FRANCISCO	99		183	98		3.59
PLEASANTON	61		251	226		3.62
SAN JOSE	49		110	147		3.29
CONCORD SF AREA	24		544	471		3.51
CHATESWORTH, CA	55		234	252		3.42
CHATESWORTH AREA HQ	20		234	252		3.42
RENO/SIPARKS	59		35	28		3.08
LAS VEGAS	25	56%	74	120		
NV LAS VEGAS AREA	8	54%	109	148		
LOS ANGELES	84		196	197		
ORANGE COUNTY	94		208	187		3.56
ORANGE, ORANGE COUNTY AREA	36		404	384		
SAN DIEGO	63		161	147		3.72
SAN DIEGO RIVERSIDE AREA	26		161	147		3.72
FRESNO	48		41	53		
SACRAMENTO	53		162	173		3.31
MODESTO	32	55%	75	83		
BAKERSFIELD	34	55%	45	48		
SACRAMENTO MODESTO AREA	15	50%	323	356		3.07
RIVERSIDE	44	51%	182	167		3.25
INLAND EMPIRE AREA	14	51%	182	167		3.25
	4		2,597	2,310		3.64

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WEST PALM BEACH	42	51%	370	276	3.02
WEST PALM BEACH AREA	12	51%	370	276	3.02
PORTO RICO	115		133	107	3.6
FL CARIBBEAN AREA	47		133	107	3.6
<b>SOUTH EAST</b>	<b>2</b>		<b>4,358</b>	<b>3,575</b>	<b>3.31</b>
ALBANY	127		93	24	
SUPPALO	81		45	29	3.09
ROCHESTER	104		35	39	3.06
SYRACUSE	43	51%	27	29	
EAST PENNSYLVANIA	88		110	91	
WEST PENNSYLVANIA	102		149	97	
CENTRAL PENNSYLVANIA	124		76	52	
CENTRAL_WEST PA, WEST NY AREA	42		535	362	
CLEVELAND, OH	110		112	99	3.9
NE OHIO	90		70	62	
NORTHWEST OHIO	93		50	36	3.78
OHIO AREA	43		232	196	3.59
NE MICHIGAN	97		106	62	
W MICHIGAN	83		65	58	
DETROIT	75		191	191	3.29
MICHIGAN AREA	34		362	311	3.89
CENTRAL ILLINOIS	39	52%	79	65	
INDIANAPOLIS	76		153	150	3.03
NORTHERN INDIANA	68		89	97	3.18
INDIANA/CENTRAL IL AREA	25		321	311	3.37
CENTRAL OHIO	69		160	133	
DAYTON, OH	60		83	57	
CINCINNATI, OH	70		84	85	3.41
SOUTHERN OHIO AREA	27		327	275	3.63
CHICAGO NORTH	33	55%	207	231	3.28
CHICAGO SOUTH	35	54%	279	313	
CHICAGO NORTH_SOUTH AREA	7	55%	486	544	3.72
ROCKFORD WI	67		44	38	

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DES MOINES	10	68%	23	21	
BROOKFIELD WI	117		150	75	
MINNESOTA	52		90	83	
MINNESOTA W/ IA AREA	30	77%	307	217	
ST. LOUIS	5	60%	80	166	
SPRINGFIELD, MO	21		19	30	3.36
MISSOURI ST LOUIS SPRINGFIELD AREA	2	74%	99	196	
	3		2,669	2,418	3.97
WEST MASSACHUSETTS	119		122	64	
CENTRAL NEW ENGLAND	114		263	176	
CT VT WEST MA AREA	48		385	240	
NEW HAMPSHIRE	112		202	93	
BOSTON	120		181	140	
RHODE ISLAND	9	68%	22	31	
BOSTON RI NH ME AREA	45		405	263	
PHILADELPHIA	79		214	189	3.67
SOUTH NEW JERSEY	113		212	149	
DELAWARE	108		105	90	
SOUTHERN NJ PHILLY DELAWARE AREA	41		531	428	3.97
MANHATTAN	22	59%	44	38	
SOUTHERN NY STATE	50		255	153	
LONG ISLAND	108		351	193	3.11
BROOKLYN/QUEENS	57		135	149	
SOUTHERN NY NYC LI AREA	29		685	534	3.71
NORTH NJ	95		250	220	3.92
CENTRAL NJ/STATEN ISLAND	89		270	197	
CENTRAL_NORTHERN NJ AREA	38		520	418	
CAPITOL	121		389	239	
WEST MARYLAND	111		207	103	
CAPITOL WEST MD AREA	50		596	343	3.99
MIDDLE KENTUCKY	116		82	86	
NORTH EAST TENNESSEE	46		78	91	3.15
SOUTHEAST TENNESSEE	71		35	41	

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WASHVILLE	86		152	142	3.82
WEST KENTUCKY	20	60%	31	36	
MEMPHIS	45	50%	87	143	
LEXINGTON KY	107		75	55	
MEMPHIS NASHVILLE CHATTANOOGA LOUISVILLE LEXINGTON AREA	28		540	594	3.42
CHARLOTTE	24	57%	93	120	
WINSTON-SALEM	78		68	83	3.1
CHARLOTTE/WINSTON SALEM AREA	16		161	204	
BALTIMORE, MD	87		241	176	3.65
CENTRAL MARYLAND	103		160	130	3.41
CENTRAL MD BALTIMORE AREA	40		401	306	3.54
RICHMOND	125		300	136	
WEST VIRGINIA	82		32	46	
NORFOLK	106		225	141	3.73
ROANOKE VA	126		115	39	
RICHMOND ROANOKE NORFOLK WEST VA AREA	49		672	362	
RALEIGH	36	53%	198	147	
COASTAL NORTH CAROLINA	47		199	116	
RALEIGH/COASTAL AREA	11	52%	397	263	
	5		5,293	3,953	
	1		17,162	15,000	3.74



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12/11/2020 11:00 AM

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A-207

International Brotherhood of Electrical Workers, Local Union 43



Local Union 43

ibew

October 24, 2016

Michael Stewart, Regional HR Manager  
ADT Security Services  
75 Town Centre Drive  
Rochester, NY 14623

3-CA-184936  
CASE NUMBER  
EXHIBIT NUMBER: JT-8  
ID'D \_\_\_\_\_ REC'D \_\_\_\_\_  
DATE 10/13/17

Re: ADT – Customer Service Targets at Syracuse and Albany Locations  
September 19th Request for Information Related to Customer Service Targets

Dear Mr. Stewart:

I write in response to your e-mail dated October 13, 2016 and the Information provided pursuant to the request for information concerning ADT's newly established service targets. In my September 19, 2016 letter, I requested information pursuant to IBEW Local Union 43's ("Union") rights under the National Labor Relations Act Law ("Act") to evaluate the service targets and the effects of those targets on the bargaining unit employees. As explained below, your response does not adequately provide the information ADT is required to provide under the Act.

Section 8(a)(5) of the National Labor Relations Act provides that it is an unfair labor practice for an employer to refuse to bargain with the representative of its employees. An employer's duty to bargain includes a general duty to provide information needed by the bargaining representative for contract administration. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152-153 (1956). Information pertaining to employees within the bargaining unit is presumptively relevant to a union's representational duties. Thus, employee job duties, work hours, and policies that relate thereto are presumptively relevant.

Where the requested information pertains to employees outside the bargaining unit, the union has the "initial burden to show relevancy." *NLRB v. Associated General Contractors*, 633 F.2d 766, 770 (9th Cir. 1980), cert. denied 452 U.S. 915 (1981). However, this burden is not a heavy one. "The Supreme Court has adopted a liberal, discovery-type standard by which relevancy of requested information is to be judged." *NLRB v. Leonard B. Hebert, Jr. & Co.*, 696 F.2d 1120, 1124 (5th Cir. 1983). The Union need only be "acting upon the probability that the desired information [is] relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967). Accordingly, information that is "potentially relevant and will be of use to the union in fulfilling its responsibilities as the employees' exclusive bargaining representative" must be produced. *Pennsylvania Power & Light Co.*, 301 NLRB 1104, 1104-1105 (1991); *Conrock Co.*, 263 NLRB 1293, 1294 (1982) ("An employer must furnish information that is of even probable or potential

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J. Ex. 8



relevance to the union's duties."'). The requested information need not be dispositive of the issue for which it is sought but need only have some bearing on it. *Id.* at 1105.

Where an employer believes an information request is vague, the onus to request clarification rests with the employer. *See Keauhou Beach Hotel*, 298 NLRB 702, 702 (1990). The employer must request clarification or comply with the request by furnishing appropriate information based on a reasonable interpretation of the request. *Id.* at 703. An employer may not simply refuse to comply with a request it considers overly broad and/or onerous. *Id.*

ADT has failed to adequately respond to the requested information or advise which requests it believes to be vague, ambiguous, or lacks relevance. ADT was obligated to notify the Union of its objections to each request and where clarification is necessary. *Hospital Episcopal San Lucas*, 319 NLRB 54, 57 (1995); *Martin Marietta Energy Systems*, 316 NLRB 868 (1993).

Despite that failure, the following is a recitation of the Union's September 19<sup>th</sup> request (in bold), a clarified request (where needed), the relevance of the requested information (where needed), and the information the Union believes remains outstanding and must be provided:

**Request No. 1: Please provide copies of any survey, study, investigation or summary related to customer service targets for installation and service tickets referenced in ADT's September 7, 2016 correspondence to bargaining unit members, together with any internal or external communications related thereto.**

**Clarification:** The Union requests copies of all ADT communications, both internal and external, discussing the customer service targets for the Syracuse and Albany locations. Related communications include how the customer service target of 1.69 days was established, who was involved in the decision-making process, when this information was conveyed to ADT management in the Northeast Region, any feedback offered by ADT management in the Northeast Region, and communication of the customer service target to bargaining unit employees. If such communications were written, please describe the documents in detail, and provide complete photocopies or arrange a mutually-convenient time and place for their inspection and copying.

**Relevance:** This information is presumptively relevant as it pertains to the terms and conditions of bargaining unit members. The customer service target of 1.69 impacts the overtime hours and workload of all bargaining unit employees in the Syracuse and Albany locations, which are mandatory subjects of bargaining and fundamental terms and conditions of employment. The Union also needs this target to gauge how the employee hours and job duties have changed since the implementation of the new customer service target and to effectively police the CBA.

**Outstanding Information:** All internal and external communications related to the customer service targets and any survey, study, investigation or summary relating to how the customer service target of 1.69 days was established, when it was established, and who made the decisions in establishing the number at 1.69 days. For example, on or about September 7, 2016, Michael Kirk sent an email to bargaining unit employees advising of the "customer service targets of 1.69 days on all new installations and service ticket created" and the need to "reduce the backlog of tickets/ work orders" but a full copy of that e-mail and its recipients was not provided to the Union on October 13th. Similarly, in your October 13 response, you advised that the "ADT Corporate Leadership Team has established a goal to reduce the backlog of tickets" – the Union requests information relating to who is in the Corporate Leadership Team, when they made the decision, and communications of the Corporate Leadership Team with the ADT management about the customer service target.

**Request No. 7:** Please provide copies of all internal and external communications concerning studies, projections, recommendations, or other correspondence in calculating how and whether each market will achieve the desired customer service target.

**Relevance:** This information is presumptively relevant as it pertains to the terms and conditions of bargaining unit members. The customer service target of 1.69 impacts the overtime hours and workload of all bargaining unit employees in the Syracuse and Albany locations, which are mandatory subjects of bargaining and fundamental terms and conditions of employment. The Union also needs this target to gauge how the employee hours have changed since the implementation of the new customer service target. As similar issues may exist between ADT and other unions, this information is relevant to compare ADT's decision and use it as a gauge when evaluating ADT's compliance with the collective bargaining agreement between the Union and ADT.

**Outstanding Information:** ADT has failed to provide any communications in connection with this request.

**Request No. 8:** Please provide all internal and external communications concerning studies, projections, recommendations, or other correspondence detailing how the manager will post locally the desired target at each location, including the frequency of the posting, location of the posting, and general operation of the posting.

**Relevance:** This information is presumptively relevant as it pertains to the terms and conditions of bargaining unit members. The customer service target of 1.69 impacts the overtime hours and workload of all bargaining unit employees in the Syracuse and Albany locations, which are mandatory subjects of bargaining and fundamental terms and conditions of employment. The Union also needs this target to gauge how the employee hours have changed since the implementation of the new customer service target. As similar issues may exist between ADT and other unions, this information is

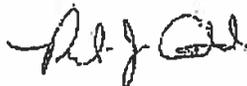
A-210

relevant to compare ADT's decision and use it as a gauge when evaluating ADT's compliance with the collective bargaining agreement between the Union and ADT.

Outstanding Information: ADT has failed to provide any communications in connection with this request.

This information is necessary for the Union to fulfill its representative duties to administer and enforce the provisions of the collective bargaining agreement. Please provide this information and documentation to us by October 31, 2016. As always, please let me know if you have any questions or need further clarification.

Very truly yours,



Patrick Costello

A-211

International Brotherhood of Electrical Workers, Local Union 43



Local Union 43

ibew

October 24, 2016

Michael Stewart, Regional HR Manager  
ADT Security Services  
75 Town Centre Drive  
Rochester, NY 14623

3-6A-184936  
CASE NUMBER  
EXHIBIT NUMBER: JT-9  
ID'D \_\_\_\_\_ REC'D \_\_\_\_\_  
DATE 6/13/17

Re: ADT – Six Day Work Week at Syracuse and Albany Locations  
September 19th Request for Information Related to Six-Day Workweek

Dear Mr. Stewart:

I write in response to your e-mail dated October 13, 2016 and the information provided pursuant to the request for information concerning ADT's six-day workweek directive. In my September 19, 2016 letter, I requested information pursuant to IBEW Local Union 43's ("Union") rights under the National Labor Relations Act Law ("Act") to obtain information relating to the implementation of a six-day workweek. As explained below, your response does not adequately provide the information ADT is required to provide under the Act.

Section 8(a)(5) of the National Labor Relations Act provides that it is an unfair labor practice for an employer to refuse to bargain with the representative of its employees. An employer's duty to bargain includes a general duty to provide information needed by the bargaining representative for contract administration. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152-153 (1956). Information pertaining to employees within the bargaining unit is presumptively relevant to a union's representational duties. Thus, employee job duties, work hours, and policies that relate thereto are presumptively relevant.

Where the requested information pertains to employees outside the bargaining unit, the union has the "initial burden to show relevancy." *NLRB v. Associated General Contractors*, 633 F.2d 766, 770 (9th Cir. 1980), cert. denied 452 U.S. 915 (1981). However, this burden is not a heavy one. "The Supreme Court has adopted a liberal, discovery-type standard by which relevancy of requested information is to be judged." *NLRB v. Leonard B. Hebert, Jr. & Co.*, 696 F.2d 1120, 1124 (5th Cir. 1983). The Union need only be "acting upon the probability that the desired information [is] relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967). Accordingly, information that is "potentially relevant and will be of use to the union in fulfilling its responsibilities as the employees' exclusive bargaining representative" must be produced. *Pennsylvania Power & Light Co.*, 301 NLRB 1104, 1104-1105 (1991); *Conrock Co.*, 263 NLRB 1293, 1294 (1982) ("An employer must furnish information that is of even probable or potential

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J. EX. 9



relevance to the union's duties."'). The requested information need not be dispositive of the issue for which it is sought but need only have some bearing on it. *Id.* at 1105.

Where an employer believes an information request is vague, the onus to request clarification rests with the employer. See *Keauhou Beach Hotel*, 298 NLRB 702, 702 (1990). The employer must request clarification or comply with the request by furnishing appropriate information based on a reasonable interpretation of the request. *Id.* at 703. An employer may not simply refuse to comply with a request it considers overly broad and/or onerous. *Id.*

ADT has failed to adequately respond to the requested information or advise which requests it believes to be vague, ambiguous, or lacks relevance. ADT was obligated to notify the Union of its objections to each request and where clarification is necessary. *Hospital Episcopal San Lucas*, 319 NLRB 54, 57 (1995); *Martin Marietta Energy Systems*, 316 NLRB 868 (1993).

Despite that failure, the following is a recitation of the Union's September 19<sup>th</sup> request (in bold), a clarified request (where needed), the relevance of the requested information (where needed), and the information the Union believes remains outstanding and must be provided:

**Request No. 2: Please provide copies of all internal and external communications concerning studies, projections, recommendations, or other correspondence by Company personnel or outside personnel related to the need to change to a six-day workweek and/or recommendations on how to implement it operationally.**

**Clarification:** The Union requests copies of all ADT communications, both internal and external, discussing the six-day workweek for the Syracuse and Albany locations. Related communications include how the six-day workweek was established, who was involved in the decision-making process, when this information was conveyed to ADT management in the Northeast Region, any feedback offered by ADT management in the Northeast Region, and communication of the six-day workweek to bargaining unit employees. If such communications were written, please describe the documents in detail, and provide complete photocopies or arrange a mutually-convenient time and place for their inspection and copying.

**Relevance:** This information is presumptively relevant as it pertains to the terms and conditions of bargaining unit members. The six-day workweek impacts the hours of work for all bargaining unit employees in the Syracuse and Albany locations, which is a mandatory subject of bargaining and fundamental term and condition of employment.

**Outstanding information:** All internal and external communications related to the six-day workweek and any survey, study, investigation or summary relating to how the six-day workweek was established, when it was established, and who made the decisions in establishing the sixth day as compared to overtime. For example, in your October 13

response, you advised that the "ADT Corporate Leadership Team has established a goal to reduce the backlog of tickets" -- the Union requests information relating to who is in the Corporate Leadership Team, when they made the decision, and communications of the Corporate Leadership Team with the ADT management about the six-day workweek.

**Request No. 3:** Please provide copies of all internal and external communications concerning application of the collective bargaining agreements between Local 43 and ADT to ADT's plan to implement a six-day workweek.

**Relevance:** The six-day workweek impacts the hours of work for all bargaining unit employees in the Syracuse and Albany locations, which is a mandatory subject of bargaining and fundamental term and condition of employment.

**Outstanding Information:** ADT has failed to provide any communications in connection with this request.

**Request No. 4:** Please provide copies of all internal and external communications concerning application of a collective bargaining agreement between any labor organization and ADT to ADT's plan to implement a six-day workweek. This is relevant as it relates to ADT's knowledge concerning the bargaining process.

**Relevance:** The six-day workweek impacts the hours of work for all bargaining unit employees in the Syracuse and Albany locations, which is a mandatory subject of bargaining and fundamental term and condition of employment. As similar language may exist between ADT and other unions, this information is relevant to compare ADT's decision and use it as a gauge when evaluating ADT's compliance with the collective bargaining agreement between the Union and ADT.

**Outstanding Information:** ADT has failed to provide any communications in connection with this request.

**Request No. 5:** Please provide copies of all studies, investigations, or summaries and internal and external communications concerning the decision to implement six day workweeks twice a month for some locations and every week for other locations, and the factors ADT considered in setting those frequencies. Specifically, the Union seeks this information to address ADT's reasoning and accuracy of the facts, figures, and theories relied on, which may impact the Union's bargaining position.

**Outstanding Information:** ADT advised that "[d]epending on the severity of the backlog, ADT determined which locations needed to temporarily implement 6 day work weeks every week, and which needed to temporarily implement 6 day work weeks bi-weekly." ADT did not advise of what was considered when evaluating the "severity of the backlog" or other studies, investigations, summaries, or communications in determining the frequency of six-day workweeks.

**Request No. 6:** Please provide copies of all internal and external communications concerning studies, projections, recommendations, or other correspondence by Company personnel or outside personnel relating to the decision to exclude only "those technicians that are currently attending classes and are enrolled in higher education" from having to work the extended workweek. This is relevant because it will impact any effects bargaining, if necessary.

**Relevance:** The exclusion of individuals impacts the ability of the location to satisfy the customer service target and the frequency of the six-day workweeks. As stated above, six-day workweek impacts the hours of work for all bargaining unit employees in the Syracuse and Albany locations, which is a mandatory subject of bargaining and fundamental term and condition of employment.

**Outstanding Information:** ADT has failed to provide any communications in connection with this request.

**Request No. 9:** Please provide copies of all documents, correspondence, and internal and external communications relied on to support ADT's ability to establish a six-day workweek under any collective bargaining agreements between Local 43 and ADT or ADT and another labor organization.

**Clarification:** The Union requests copies of all ADT communications, both internal and external, discussing the six-day workweek for the Syracuse and Albany locations. Related communications include how the six-day workweek was established, who was involved in the decision-making process, when this information was conveyed to ADT management in the Northeast Region, any feedback offered by ADT management in the Northeast Region, and communication of the six-day workweek to bargaining unit employees. If such communications were written, please describe the documents in detail, and provide complete photocopies or arrange a mutually-convenient time and place for their inspection and copying.

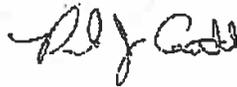
**Relevance:** The six-day workweek impacts the hours of work for all bargaining unit employees in the Syracuse and Albany locations, which is a mandatory subject of bargaining and fundamental term and condition of employment. As similar language may exist between ADT and other unions, this information is relevant to compare ADT's decision and use it as a gauge when evaluating ADT's compliance with the collective bargaining agreement between the Union and ADT.

**Outstanding Information:** All internal and external communications related to the six-day workweek and any survey, study, investigation or summary relating to how the six-day workweek was established, when it was established, and who made the decisions in establishing the sixth day as compared to overtime.

A-215

This information is necessary for the Union to fulfill its representative duties to administer and enforce the provisions of the collective bargaining agreement. Please provide this information and documentation to us by October 31, 2016. As always, please let me know if you have any questions or need further clarification.

Very truly yours,



Patrick Costello

bio\BEW43-ADT\Stewart\Demand-InfoReq2-Workweek

A-216

**Bryan T. Arnault**

**From:** Pat Costello <pcostello@ibew43.org>  
**Sent:** Monday, October 31, 2016 3:50 PM  
**To:** Bryan T. Arnault  
**Subject:** FW: Scanned Image Attached  
**Attachments:** 0481\_001.pdf

**From:** Stewart, Michael T (West Henrietta) [mailto:mtstewart@adt.com]  
**Sent:** Monday, October 31, 2016 3:44 PM  
**To:** Pat Costello  
**Subject:** FW: Scanned Image Attached

Pat,

In response to your letter dated October 24, 2016 which follows my email and information provided to you on October 13, I am consulting with our legal team regarding the issues you raised. I will update you on my progress later this week.

Thank you,  
 Mike

**Mike Stewart**  
 Regional HR Manager  
 Northeast Region

**ADT Security Services**  
 75 Town Centre Drive  
 Suite 200  
 Rochester, NY 14623

**Tel:** 585 471 6602  
**Cell:** 585 281 5218  
[mtstewart@adt.com](mailto:mtstewart@adt.com)  
[www.adt.com](http://www.adt.com)

**From:** scanToEmail@ibew43.org [mailto:scanToEmail@ibew43.org]  
**Sent:** Wednesday, October 26, 2016 8:32 AM  
**To:** Stewart, Michael T (West Henrietta) <mtstewart@adt.com>  
**Subject:** Scanned Image Attached

This email, including attachments, may contain information that is private or confidential. If you received this communication in error, please delete it from your system without copying it and notify sender by reply communication. ADT Security Services and its affiliates reserve the right to monitor communications handled by its data communications systems to help ensure compliance with ADT's policies, confidentiality obligations, and applicable laws.

J. EX. 10

3-GA-184936  
 CASE NUMBER  
 EXHIBIT NUMBER: JT-10  
 ID'D  
 DATE REC'D  
 6/13/17

A-217

10/11/20 4:5 Confidentiality Notice: This electronic mail transmission is intended solely for the use of the individual or entity to which it is addressed and may contain confidential and/or privileged information which is protected. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please notify the sender immediately by e-mail and delete the original message.  
1825W Local 43, 4366 Waterhouse Rd, Clay NY, 13041

A-218

**Bryan T. Arnault**

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**From:** Pat Costello <pcostello@ibew43.org>  
**Sent:** Friday, November 18, 2016 12:32 PM  
**To:** Stewart, Michael T (West Henrietta); Bryan T. Arnault  
**Subject:** FW: Scanned Image Attached  
**Attachments:** 0514\_001.pdf

Mike,

Please see attached. I also put this in the mail to you today.

Pat

**From:** scanToEmail@ibew43.org [mailto:scanToEmail@ibew43.org]  
**Sent:** Friday, November 18, 2016 12:24 PM  
**To:** Pat Costello  
**Subject:** Scanned Image Attached

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IBEW Local 43, 4568 Waterhouse, Rd, Clay NY, 13041

3-GA-184936  
CASE NUMBER  
EXHIBIT NUMBER: JT-11  
ID#      REC'D       
DATE

6/13/17

J Ex. 11

A-219

International Brotherhood of Electrical Workers, Local Union 43

**Local Union 43**



**ibew**

November 18, 2016

Michael Stewart, Regional HR Manager  
ADT Security Services  
75 Town Centre Drive  
Rochester, NY 14623

Re: IBEW 43's September 19<sup>th</sup> and October 24<sup>th</sup> Requests for Information

Dear Mr. Stewart:

I write to follow up on the status of the Union's two information requests dated October 24, 2016 (attached). On October 31, 2016, you advised that "[i]n response to your letter dated October 24, 2016 which follows my email and information provided to you on October 13, I am consulting with our legal team regarding the issues you raised. I will update you on my progress later this week." I have not received any response from you, your attorney, or anyone at ADT. Please provide a response immediately.

As explained in my earlier letters, ADT is required to provide this information under the National Labor Relations Act ("Act"). This information is necessary for the Union to fulfill its representative duties to administer and enforce the provisions of the collective bargaining agreement. Please provide this information and documentation to us by November 22, 2016. If ADT does not respond by November 22, 2016, I will be filing an unfair labor charge in connection with ADT's failure to provide relevant requested information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Patrick Costello".

Patrick Costello

Enclosures

Cc: Bryan T. Arnault, Esq.  
Blitman & King LLP

A-220

**Bryan T. Arnault**

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**From:** Pat Costello <pcostello@ibew43.org>  
**Sent:** Friday, November 18, 2016 12:49 PM  
**To:** Stewart, Michael T (West Henrietta); Bryan T. Arnault  
**Subject:** FW: Scanned Image Attached  
**Attachments:** 0510\_001.pdf

Mike,

This is the second email sent out on October 24<sup>th</sup>.

Pat

**From:** scanToEmail@ibew43.org [mailto:scanToEmail@ibew43.org]  
**Sent:** Friday, November 18, 2016 10:33 AM  
**To:** Pat Costello  
**Subject:** Scanned Image Attached

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3-GA-184936  
CASE NUMBER  
EXHIBIT NUMBER: JT-12  
ID'D \_\_\_\_\_ REC'D \_\_\_\_\_  
DATE  
6/13/17

J. EX. 12

A-221

International Brotherhood of Electrical Workers, Local Union 43

**Local Union 43****ibew**

October 24, 2016

Michael Stewart, Regional HR Manager  
 ADT Security Services  
 75 Town Centre Drive  
 Rochester, NY 14623

Re: ADT – Customer Service Targets at Syracuse and Albany Locations  
 September 19th Request for Information Related to Customer Service Targets

Dear Mr. Stewart:

I write in response to your e-mail dated October 13, 2016 and the information provided pursuant to the request for information concerning ADT's newly established service targets. In my September 19, 2016 letter, I requested information pursuant to IBEW Local Union 43's ("Union") rights under the National Labor Relations Act Law ("Act") to evaluate the service targets and the effects of those targets on the bargaining unit employees. As explained below, your response does not adequately provide the information ADT is required to provide under the Act.

Section 8(a)(5) of the National Labor Relations Act provides that it is an unfair labor practice for an employer to refuse to bargain with the representative of its employees. An employer's duty to bargain includes a general duty to provide information needed by the bargaining representative for contract administration. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152-153 (1956). Information pertaining to employees within the bargaining unit is presumptively relevant to a union's representational duties. Thus, employee job duties, work hours, and policies that relate thereto are presumptively relevant.

Where the requested information pertains to employees outside the bargaining unit, the union has the "initial burden to show relevancy." *NLRB v. Associated General Contractors*, 633 F.2d 766, 770 (9th Cir. 1980), cert. denied 452 U.S. 915 (1981). However, this burden is not a heavy one. "The Supreme Court has adopted a liberal, discovery-type standard by which relevancy of requested information is to be judged." *NLRB v. Leonard B. Hebert, Jr. & Co.*, 696 F.2d 1120, 1124 (5th Cir. 1983). The Union need only be "acting upon the probability that the desired information [is] relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967). Accordingly, information that is "potentially relevant and will be of use to the union in fulfilling its responsibilities as the employees' exclusive bargaining representative" must be produced. *Pennsylvania Power & Light Co.*, 301 NLRB 1104, 1104-1105 (1991); *Conrock Co.*, 263 NLRB 1293, 1294 (1982) ("An employer must furnish information that is of even probable or potential

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relevance to the union's duties."'). The requested information need not be dispositive of the issue for which it is sought but need only have some bearing on it. *Id.* at 1105.

Where an employer believes an information request is vague, the onus to request clarification rests with the employer. *See Keauhou Beach Hotel*, 298 NLRB 702, 702 (1990). The employer must request clarification or comply with the request by furnishing appropriate information based on a reasonable interpretation of the request. *Id.* at 703. An employer may not simply refuse to comply with a request it considers overly broad and/or onerous. *Id.*

ADT has failed to adequately respond to the requested information or advise which requests it believes to be vague, ambiguous, or lacks relevance. ADT was obligated to notify the Union of its objections to each request and where clarification is necessary. *Hospital Episcopal San Lucas*, 319 NLRB 54, 57 (1995); *Martin Marietta Energy Systems*, 316 NLRB 868 (1993).

Despite that failure, the following is a recitation of the Union's September 19<sup>th</sup> request (in bold), a clarified request (where needed), the relevance of the requested information (where needed), and the information the Union believes remains outstanding and must be provided:

**Request No. 1: Please provide copies of any survey, study, investigation or summary related to customer service targets for installation and service tickets referenced in ADT's September 7, 2016 correspondence to bargaining unit members, together with any internal or external communications related thereto.**

**Clarification:** The Union requests copies of all ADT communications, both internal and external, discussing the customer service targets for the Syracuse and Albany locations. Related communications include how the customer service target of 1.69 days was established, who was involved in the decision-making process, when this information was conveyed to ADT management in the Northeast Region, any feedback offered by ADT management in the Northeast Region, and communication of the customer service target to bargaining unit employees. If such communications were written, please describe the documents in detail, and provide complete photocopies or arrange a mutually-convenient time and place for their inspection and copying.

**Relevance:** This information is presumptively relevant as it pertains to the terms and conditions of bargaining unit members. The customer service target of 1.69 impacts the overtime hours and workload of all bargaining unit employees in the Syracuse and Albany locations, which are mandatory subjects of bargaining and fundamental terms and conditions of employment. The Union also needs this target to gauge how the employee hours and job duties have changed since the implementation of the new customer service target and to effectively police the CBA.

Outstanding Information: All internal and external communications related to the customer service targets and any survey, study, investigation or summary relating to how the customer service target of 1.69 days was established, when it was established, and who made the decisions in establishing the number at 1.69 days. For example, on or about September 7, 2016, Michael Kirk sent an email to bargaining unit employees advising of the "customer service targets of 1.69 days on all new installations and service ticket created" and the need to "reduce the backlog of tickets/ work orders" but a full copy of that e-mail and its recipients was not provided to the Union on October 13th. Similarly, in your October 13 response, you advised that the "ADT Corporate Leadership Team has established a goal to reduce the backlog of tickets" -- the Union requests information relating to who is in the Corporate Leadership Team, when they made the decision, and communications of the Corporate Leadership Team with the ADT management about the customer service target.

Request No. 7: Please provide copies of all internal and external communications concerning studies, projections, recommendations, or other correspondence in calculating how and whether each market will achieve the desired customer service target.

Relevance: This information is presumptively relevant as it pertains to the terms and conditions of bargaining unit members. The customer service target of 1.69 impacts the overtime hours and workload of all bargaining unit employees in the Syracuse and Albany locations, which are mandatory subjects of bargaining and fundamental terms and conditions of employment. The Union also needs this target to gauge how the employee hours have changed since the implementation of the new customer service target. As similar issues may exist between ADT and other unions, this information is relevant to compare ADT's decision and use it as a gauge when evaluating ADT's compliance with the collective bargaining agreement between the Union and ADT.

Outstanding Information: ADT has failed to provide any communications in connection with this request.

Request No. 8: Please provide all internal and external communications concerning studies, projections, recommendations, or other correspondence detailing how the manager will post locally the desired target at each location, including the frequency of the posting, location of the posting, and general operation of the posting.

Relevance: This information is presumptively relevant as it pertains to the terms and conditions of bargaining unit members. The customer service target of 1.69 impacts the overtime hours and workload of all bargaining unit employees in the Syracuse and Albany locations, which are mandatory subjects of bargaining and fundamental terms and conditions of employment. The Union also needs this target to gauge how the employee hours have changed since the implementation of the new customer service target. As similar issues may exist between ADT and other unions, this information is

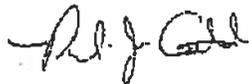
A-224

relevant to compare ADT's decision and use it as a gauge when evaluating ADT's compliance with the collective bargaining agreement between the Union and ADT.

Outstanding Information: ADT has failed to provide any communications in connection with this request.

This information is necessary for the Union to fulfill its representative duties to administer and enforce the provisions of the collective bargaining agreement. Please provide this information and documentation to us by October 31, 2016. As always, please let me know if you have any questions or need further clarification.

Very truly yours,



Patrick Costello

A-225

**Bryan T. Arnault**

---

**From:** Pat Costello <pcostello@ibew43.org>  
**Sent:** Friday, November 18, 2016 12:46 PM  
**To:** Stewart, Michael T (West Henrietta); Bryan T. Arnault  
**Subject:** FW: Scanned Image Attached  
**Attachments:** 0511\_001.pdf

Mike,

This is one of the letters from October 24<sup>th</sup>. I will forward second letter in an email to follow.

Pat

**From:** scanToEmail@ibew43.org [mailto:scanToEmail@ibew43.org]  
**Sent:** Friday, November 18, 2016 10:50 AM  
**To:** Pat Costello  
**Subject:** Scanned Image Attached

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3-CA-184936  
CASE NUMBER  
EXHIBIT NUMBER: JT-13  
ID'D \_\_\_\_\_ REC'D \_\_\_\_\_  
DATE 6/13/17

J. EX. 13

A-226

International Brotherhood of Electrical Workers, Local Union 43

**Local Union 43****ibew**

October 24, 2016

Michael Stewart, Regional HR Manager  
 ADT Security Services  
 75 Town Centre Drive  
 Rochester, NY 14623

**Re: ADT – Six Day Work Week at Syracuse and Albany Locations  
 September 19th Request for Information Related to Six-Day Workweek**

Dear Mr. Stewart:

I write in response to your e-mail dated October 13, 2016 and the information provided pursuant to the request for information concerning ADT's six-day workweek directive. In my September 19, 2016 letter, I requested information pursuant to IBEW Local Union 43's ("Union") rights under the National Labor Relations Act Law ("Act") to obtain information relating to the implementation of a six-day workweek. As explained below, your response does not adequately provide the information ADT is required to provide under the Act.

Section 8(a)(5) of the National Labor Relations Act provides that it is an unfair labor practice for an employer to refuse to bargain with the representative of its employees. An employer's duty to bargain includes a general duty to provide information needed by the bargaining representative for contract administration. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152-153 (1956). Information pertaining to employees within the bargaining unit is presumptively relevant to a union's representational duties. Thus, employee job duties, work hours, and policies that relate thereto are presumptively relevant.

Where the requested information pertains to employees outside the bargaining unit, the union has the "initial burden to show relevancy." *NLRB v. Associated General Contractors*, 633 F.2d 766, 770 (9th Cir. 1980), cert. denied 452 U.S. 915 (1981). However, this burden is not a heavy one. "The Supreme Court has adopted a liberal, discovery-type standard by which relevancy of requested information is to be judged." *NLRB v. Leonard B. Hebert, Jr. & Co.*, 696 F.2d 1120, 1124 (5th Cir. 1983). The Union need only be "acting upon the probability that the desired information [is] relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967). Accordingly, information that is "potentially relevant and will be of use to the union in fulfilling its responsibilities as the employees' exclusive bargaining representative" must be produced. *Pennsylvania Power & Light Co.*, 301 NLRB 1104, 1104-1105 (1991); *Conrock Co.*, 263 NLRB 1293, 1294 (1982) ("An employer must furnish information that is of even probable or potential

4568 Waterhouse Road ◊ Clay, NY 13041 ◊ Phone 315-422-0435 ◊ Fax 315-472-5823 ◊ www.ibew43.org

relevance to the union's duties."). The requested information need not be dispositive of the issue for which it is sought but need only have some bearing on it. *Id.* at 1105.

Where an employer believes an information request is vague, the onus to request clarification rests with the employer. See *Keauhou Beach Hotel*, 298 NLRB 702, 702 (1990). The employer must request clarification or comply with the request by furnishing appropriate information based on a reasonable interpretation of the request. *Id.* at 703. An employer may not simply refuse to comply with a request it considers overly broad and/or onerous. *Id.*

ADT has failed to adequately respond to the requested information or advise which requests it believes to be vague, ambiguous, or lacks relevance. ADT was obligated to notify the Union of its objections to each request and where clarification is necessary. *Hospital Episcopal San Lucas*, 319 NLRB 54, 57 (1995); *Martin Marietta Energy Systems*, 316 NLRB 868 (1993).

Despite that failure, the following is a recitation of the Union's September 19<sup>th</sup> request (in bold), a clarified request (where needed), the relevance of the requested information (where needed), and the information the Union believes remains outstanding and must be provided:

**Request No. 2:** Please provide copies of all internal and external communications concerning studies, projections, recommendations, or other correspondence by Company personnel or outside personnel related to the need to change to a six-day workweek and/or recommendations on how to implement it operationally.

**Clarification:** The Union requests copies of all ADT communications, both internal and external, discussing the six-day workweek for the Syracuse and Albany locations. Related communications include how the six-day workweek was established, who was involved in the decision-making process, when this information was conveyed to ADT management in the Northeast Region, any feedback offered by ADT management in the Northeast Region, and communication of the six-day workweek to bargaining unit employees. If such communications were written, please describe the documents in detail, and provide complete photocopies or arrange a mutually-convenient time and place for their inspection and copying.

**Relevance:** This information is presumptively relevant as it pertains to the terms and conditions of bargaining unit members. The six-day workweek impacts the hours of work for all bargaining unit employees in the Syracuse and Albany locations, which is a mandatory subject of bargaining and fundamental term and condition of employment.

**Outstanding Information:** All internal and external communications related to the six-day workweek and any survey, study, investigation or summary relating to how the six-day workweek was established, when it was established, and who made the decisions in establishing the sixth day as compared to overtime. For example, in your October 13

response, you advised that the "ADT Corporate Leadership Team has established a goal to reduce the backlog of tickets" -- the Union requests information relating to who is in the Corporate Leadership Team, when they made the decision, and communications of the Corporate Leadership Team with the ADT management about the six-day workweek.

**Request No. 3:** Please provide copies of all internal and external communications concerning application of the collective bargaining agreements between Local 43 and ADT to ADT's plan to implement a six-day workweek.

**Relevance:** The six-day workweek impacts the hours of work for all bargaining unit employees in the Syracuse and Albany locations, which is a mandatory subject of bargaining and fundamental term and condition of employment.

**Outstanding Information:** ADT has failed to provide any communications in connection with this request.

**Request No. 4:** Please provide copies of all internal and external communications concerning application of a collective bargaining agreement between any labor organization and ADT to ADT's plan to implement a six-day workweek. This is relevant as it relates to ADT's knowledge concerning the bargaining process.

**Relevance:** The six-day workweek impacts the hours of work for all bargaining unit employees in the Syracuse and Albany locations, which is a mandatory subject of bargaining and fundamental term and condition of employment. As similar language may exist between ADT and other unions, this information is relevant to compare ADT's decision and use it as a gauge when evaluating ADT's compliance with the collective bargaining agreement between the Union and ADT.

**Outstanding Information:** ADT has failed to provide any communications in connection with this request.

**Request No. 5:** Please provide copies of all studies, investigations, or summaries and internal and external communications concerning the decision to implement six day workweeks twice a month for some locations and every week for other locations, and the factors ADT considered in setting those frequencies. Specifically, the Union seeks this information to address ADT's reasoning and accuracy of the facts, figures, and theories relied on, which may impact the Union's bargaining position.

**Outstanding Information:** ADT advised that "[d]epending on the severity of the backlog, ADT determined which locations needed to temporarily implement 6 day work weeks every week, and which needed to temporarily implement 6 day work weeks bi-weekly." ADT did not advise of what was considered when evaluating the "severity of the backlog" or other studies, investigations, summaries, or communications in determining the frequency of six-day workweeks.

**Request No. 6:** Please provide copies of all internal and external communications concerning studies, projections, recommendations, or other correspondence by Company personnel or outside personnel relating to the decision to exclude only "those technicians that are currently attending classes and are enrolled in higher education" from having to work the extended workweek. This is relevant because it will impact any effects bargaining, if necessary.

**Relevance:** The exclusion of individuals impacts the ability of the location to satisfy the customer service target and the frequency of the six-day workweeks. As stated above, six-day workweek impacts the hours of work for all bargaining unit employees in the Syracuse and Albany locations, which is a mandatory subject of bargaining and fundamental term and condition of employment.

**Outstanding Information:** ADT has failed to provide any communications in connection with this request.

**Request No. 9:** Please provide copies of all documents, correspondence, and internal and external communications relied on to support ADT's ability to establish a six-day workweek under any collective bargaining agreements between Local 43 and ADT or ADT and another labor organization.

**Clarification:** The Union requests copies of all ADT communications, both internal and external, discussing the six-day workweek for the Syracuse and Albany locations. Related communications include how the six-day workweek was established, who was involved in the decision-making process, when this information was conveyed to ADT management in the Northeast Region, any feedback offered by ADT management in the Northeast Region, and communication of the six-day workweek to bargaining unit employees. If such communications were written, please describe the documents in detail, and provide complete photocopies or arrange a mutually-convenient time and place for their inspection and copying.

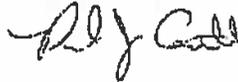
**Relevance:** The six-day workweek impacts the hours of work for all bargaining unit employees in the Syracuse and Albany locations, which is a mandatory subject of bargaining and fundamental term and condition of employment. As similar language may exist between ADT and other unions, this information is relevant to compare ADT's decision and use it as a gauge when evaluating ADT's compliance with the collective bargaining agreement between the Union and ADT.

**Outstanding Information:** All internal and external communications related to the six-day workweek and any survey, study, investigation or summary relating to how the six-day workweek was established, when it was established, and who made the decisions in establishing the sixth day as compared to overtime.

A-230

This information is necessary for the Union to fulfill its representative duties to administer and enforce the provisions of the collective bargaining agreement. Please provide this information and documentation to us by October 31, 2016. As always, please let me know if you have any questions or need further clarification.

Very truly yours,



Patrick Costello

812\IBEW43-ADT\StewartDemand-InfoReq2-Workweek

A-231

From: Pat Costello <pcostello@ibew43.org>  
Sent: Thursday, December 15, 2016 6:03 PM  
To: Michael T Stewart (West Henrietta)  
Cc: Bryan T. Arnault  
Subject: Information request

Mike,

Could you please send me all the responses that you have generated concerning our most recent information requests.

Thank you

Pat

Sent from my iPhone

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3-GA-184936  
CASE NUMBER  
EXHIBIT NUMBER: JT-14  
ID'D \_\_\_\_\_ REC'D \_\_\_\_\_  
DATE 6/13/17

J. EX. 14

A-232

3-CA-184936  
CASE NUMBER  
EXHIBIT NUMBER: JT-15  
ID'D \_\_\_\_\_ REC'D \_\_\_\_\_  
DATE 6/13/17

[REDACTED]

**From:** Stewart, Michael T (West Henrietta) [mailto:mtstewart@adt.com]  
**Sent:** Friday, December 16, 2016 9:54 AM  
**To:** Pat Costello  
**Cc:** Nixdorf, James C  
**Subject:** Information request follow up

Hi Pat,

In addition to the information we already provided on October 13, 2016 responsive to your request for information, please see the attached memo.

We have now provided you the information in our possession that is responsive to your request.

Thanks,

Mike Stewart  
Regional HR Manager  
Northeast Region

ADT Security Services  
75 Town Centre Drive  
Suite 200  
Rochester, NY 14623

Tel: 585 471 6602  
Cell: 585 281 5218  
[mtstewart@adt.com](mailto:mtstewart@adt.com)  
[www.adt.com](http://www.adt.com)

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135W Local 43, 1588 Waterhouse Rd, Clay NY, 13041

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## Install & Service Team Manager Talking Points

### Talking Points

- Due to an increasing demand for Saturday service by our customers and the significant backlog we are experiencing in many markets, we are asking both Install and Service technicians to voluntarily work on their day(s) off.
- Nationally, we are designating one Saturday and one Monday in August (August 22 and 24) and one Saturday and one Monday in September (September 19 and 21) as mandatory days for all technicians. The technician will work their scheduled day off on one of the days in August and one of those days in September.
- Although we are asking the techs to volunteer to work 1 day off in August and September, if you wish to work additional days off, you can.
- If a technician already has an approved scheduled vacation during the mandatory work days, the technician will need to work with their manager to establish another day off in the month where they can make up for the missed mandatory day.
- The Technician Volunteer Incentive Program will be available to technicians who volunteer to work on their day(s) off. If we implement mandatory overtime, this program will not apply.
- The FSC and OSC will be staffed on Saturdays. Additionally, managers will be working these Saturdays and Mondays during this period of time.
- Team Managers should direct any questions that they cannot answer to their AGM.

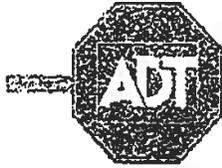
### AGM, AAM, TM - Timing and Increasing Scheduled Capacity

Nationally, we have designated one Saturday and one Monday in August (August 22 and 24) and one Saturday and one Monday in September (September 19 and 21) as mandatory days for all technicians. The technician will work their scheduled day off on one of the days in August and one of those days in September. (Install and Service Techs)

Team Managers for both Install and Service will need communicate to all Field Technicians and agree / determine the Schedule with their AGM and open the schedule for the respective dates to expand the capacity using Service Manager in the Scheduling System. The individual SSO increased capacity for the September 19 & 21 dates needs to be opened no later than COB - THURSDAY SEPTEMBER 10.

Communicate immediately to all Techs and ensure we are continually asking for Techs to volunteer as we look to expand capacity. AGMs and TMs will determine the Gross Add capacity and or Service Capacity where MTTR needs to be improved and will need to open the Schedules using Service Manager by COB - THURSDAY SEPTEMBER 10.

②



## Install & Service Technician FAQs

### FAQs

*Why are we requesting technicians to work on their day off?* We have an increasing demand from our customers for Saturday work. We are also experiencing a significant backlog across the business and an increase in our MTTI which negatively impacts the customer experience. To ensure that we are meeting the demands of our customers and satisfying the needs of business we believe that the best way to meet both is by utilizing our most qualified employee resources.

*When will ADT implement voluntary overtime?* We are asking for team members to begin volunteering now. Technicians who are normally scheduled to work Tuesday – Saturday we would like to have volunteer for one Monday in August and one Monday in September to work. Technicians who are normally scheduled to work Monday – Friday we would like to have volunteer to work one Saturday in August and one Saturday in September. (Saturday August 22 and Monday August 24, and Saturday September 19 and Monday September 21 are designated national mandatory days )

*Can I volunteer to work more than 1 day off in each month?* Yes.

*Can I volunteer to work overtime on my regular work day instead of working on my day off?* Yes, however, the Technician Incentive Plan would not be applicable.

*What happens if you do not get enough volunteers?* Mandatory overtime may be implemented.

*If I have preplanned PTO (vacation or floating holiday), how will it be affected?* Management will honor time off requests that have been approved, however you will be required to work on a subsequent day off. Any requests that have not been approved will be reviewed on a case by case basis.

*Will the FSC/OSC and Team Managers be available to the technicians?* Yes. The FSC and OSC will be fully staffed, including Saturdays. Additionally, managers are expected to work on these Saturdays.

*What Technician Incentive plan is available if I volunteer?* In addition to your regular overtime pay, the National Tech Volunteer Program will be applicable. This incentive does not apply to a work day which management has classified as mandatory. It only applies to volunteering to work on your day off. The details of the program are below.

ADT will pay an incentive of twenty-five (\$25) dollars per NEW installation to any Technician that voluntarily works during a scheduled day off.

ADT will pay an incentive of fifty (\$50) dollars to any Technician that voluntarily works during a scheduled day off completing greater than or equal to six (6) hours of Service.

This Volunteer Incentive is in addition to the Technician's normal compensation for the jobs and hours worked on this day. The incentive will be paid under the following guidelines:

- The work is performed on the Technician's scheduled day off.
- The decision to work is voluntary and pre-approved by Team Manager.

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- The branch will accept a Technician's voluntary request to work at the branch's discretion, based on the availability of jobs and sound business principle. A minimal backlog does not justify the work and expense.

*What happens if I don't volunteer, will the overtime become mandatory?* If we do not get enough technicians to volunteer, mandatory overtime may be implemented for a period of time. If mandatory overtime is implemented, technicians *will not* be eligible for the Technician Incentive.

*Who should the tech speak with if they have other questions?* Please reach out to your manager or Area General Manager should you have questions.

5

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

**ADT, LLC d/b/a ADT Security Services and International Brotherhood of Electrical Workers, Local Union 43.** Cases 03–CA–184936 and 03–CA–192545

February 27, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN  
AND EMANUEL

On August 4, 2017, Administrative Law Judge Michael A. Rosas issued the attached decision. The Respondent filed exceptions, a supporting brief, and a reply brief. The Charging Party filed an answering brief. The General Counsel filed an answering brief, cross-exceptions, a brief in support of cross-exceptions, and a reply brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge’s rulings, findings, and conclusions only to the extent consistent with this Decision and Order.<sup>1</sup>

This case arises from the Respondent’s unilateral decision to implement, temporarily, a mandatory 6-day workweek at its Albany and Syracuse, New York facilities for service and installation technicians covered by collective-bargaining agreements between the Respondent and the International Brotherhood of Electrical Workers, Local Union 43 (the Union). For the reasons discussed below, we find, contrary to the judge, that the Respondent did not violate Section 8(a)(5) and (1) of the National Labor Relations Act by unilaterally implementing a 6-day workweek for service and installation technicians at both the Albany and Syracuse facilities. Because the Respondent had no duty to bargain over the change to a 6-day workweek, and because the Union communicated to the Respondent that it was requesting information solely for the purpose of bargaining about that change, we also reverse the judge’s finding that the Respondent violated Section 8(a)(5) and (1) by unreasonably delaying in providing the Union with the requested information.<sup>2</sup> We also find that the Respondent did not vio-

late Section 8(a)(5) and (1) of the Act within the meaning of Section 8(d) by modifying its collective-bargaining agreements with the Union when it implemented the 6-day workweek. Accordingly, we dismiss those complaint allegations. However, we agree with the judge, for the reasons he states, that the Respondent violated Section 8(a)(5) and (1) by bypassing the Union and dealing directly with employee Michael Sopok when it granted him an exemption from the mandatory 6-day workweek.<sup>3</sup>

I. FACTS

The Respondent installs and services residential and commercial security systems. Since 1968, the Respondent has had collective-bargaining agreements with the Union (the Agreements) covering service and installation technicians at its Albany and Syracuse facilities.<sup>4</sup> Article 6, section 1 of the Agreements defined a “normal work schedule” for service technicians as

a shift of eight and one-half hours with a thirty-minute lunch period comprising of [sic] five consecutive days, Monday through Saturday between the hours of 8:00 a.m. and 12:00 midnight. There will also be a four-day workweek comprised of ten and one half hour shifts, with a thirty-minute lunch period, between the hours of 8:00 a.m. and 12 midnight, Monday through Friday. Customer needs may periodically make it necessary for work to be performed beginning at 7:00 a.m. The Company will first seek qualified volunteers to perform such work. If there are no qualified volunteers the least senior qualified person will be assigned to perform the work.

Article 6, section 1 of the Albany Agreement provided that installation technicians

may be scheduled for any eight-hour period between 7:00 a.m. and 5:30 p.m. in any given day between Monday and Friday. Customer needs may periodically make it necessary to add an additional shift for residential installers from Tuesday through Saturday. The Company will first seek qualified volunteers to perform

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gain in good faith); *FirstEnergy Generation, LLC v. NLRB*, 929 F.3d 321, 334 (6th Cir. 2019) (finding that because the employer did not have a duty to bargain over a particular subcontracting decision, it had no duty to provide the Union with information related to that decision).

<sup>3</sup> Sopok worked out of the Albany facility. Because the violation for dealing directly with Sopok is the only unfair labor practice violation in this case, we shall limit the notice-posting remedy to the Albany facility. See *Marriott Corp.*, 313 NLRB 896, 896 (1994).

<sup>4</sup> The most recent collective-bargaining agreement covering the Albany unit (the Albany Agreement) was effective from June 11, 2015 to June 10, 2018. The most recent collective-bargaining agreement covering the Syracuse unit (the Syracuse Agreement) was effective from June 11, 2016, to June 10, 2019.

<sup>1</sup> We shall amend the judge’s conclusions of law and modify his recommended Order to conform to the violation found. We shall substitute a new notice to conform to the Order as modified.

<sup>2</sup> See, e.g., *American Stores Packing Co.*, 277 NLRB 1656, 1658–1659 (1986); *Emery Industries*, 268 NLRB 824, 824–825 (1984); see also *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152 (1956) (holding that the duty to furnish information derives from the statutory duty to bar-

such work. If there are no qualified volunteers then the least senior qualified person will be assigned to perform the work.

Article 6, section 1 of the Syracuse Agreement provided that installation technicians

may be scheduled for any eight-hour shift between 7:00 a.m. and 5:30 p.m. in any given day between Monday and Friday. Customer needs may periodically make it necessary for work to be performed on a second shift and/or Saturdays. The Company will first seek qualified volunteers to perform such work. If there are no qualified volunteers then the least senior qualified person will be assigned to perform the work.

The overtime provision in Article 6, section 3 of the Agreements provided that

[a]ll time worked daily in excess of eight (8) hours in a scheduled 5 x 8 hour workweek, in excess of ten (10) hours in a 4 x 10 hour workweek, or weekly in excess of forty (40) hours, or on scheduled days off shall be compensated for at one and one-half (1½) times the employee's regular straight time hourly rate.

In addition, Article 1, section 2 of the Agreements provided that “[t]he operation of the Employer’s business and the direction of the working force including . . . to determine the reasonable amount and quality of work needed . . . is vested exclusively in the Employer, subject, however, to the provisions of this agreement.”

In 2016, the Apollo Group purchased the Respondent and merged it with Protection One, another Apollo Group subsidiary. Subsequently, the Apollo Group decided to apply to the Respondent, on a nationwide basis, Protection One’s customer retention policy of responding to 75 percent of service calls within 24 hours.

Service and installation technicians’ regular schedule was a 40-hour, 5-day workweek. On September 7, 2016,<sup>5</sup> the Respondent emailed technicians and the Union’s president, Patrick Costello, announcing that it would be implementing a mandatory 6-day workweek in Albany and a mandatory biweekly 6-day workweek in Syracuse for all technicians in order to meet new “customer service targets” resulting from the Respondent’s integration with Protection One. The email added that the 6-day workweek would begin on September 22 and would be in effect every week at the Albany facility and the second and fourth week of each month at the Syracuse facility until the “market achieves the desired target which the manager will post locally for each market.”

<sup>5</sup> All subsequent dates are in 2016 unless otherwise stated.

The Union protested the Respondent’s decision, demanded that the Respondent rescind it, and asserted that the Respondent’s failure to bargain over the change was an unfair labor practice. Nevertheless, the Respondent implemented the decision. It maintained a 6-day workweek for technicians for approximately 1 month at the Syracuse facility and until December 2016 or January 2017 at the Albany facility.<sup>6</sup>

## II. ANALYSIS

The General Counsel alleges that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to bargain with the Union regarding implementing a 6-day workweek for service and installation technicians at the Albany and Syracuse facilities. The General Counsel also alleges that the Respondent violated the Act under a different theory when it implemented a 6-day workweek for Albany service technicians, Albany installation technicians, and Syracuse service technicians. The General Counsel asserts that by doing so, the Respondent modified the Agreements without the Union’s consent and thereby failed to continue in effect all the terms of the Agreements as required by Section 8(d), in violation of Section 8(a)(5) and (1) of the Act.<sup>7</sup>

The Respondent points out that the Agreements granted it the authority to determine the amount of work needed to conduct its business, to modify technicians’ work schedules, and to assign technicians to work on scheduled days off at time-and-a-half pay. This combination of provisions, the Respondent asserts, authorized it to implement a 6-day workweek, and therefore it did not violate the Act by doing so.

As the Board has explained, unilateral-change cases and contract-modification cases

are fundamentally different in terms of principle, possible defenses, and remedy. In terms of principle, the ‘unilateral change’ case does not require the General Counsel to show the existence of a contract provision; he need only show that there is an employment practice concerning a mandatory bargaining subject, and that the employer has made a significant change thereto

<sup>6</sup> Albany technicians worked Saturdays in addition to their regular Monday through Friday schedules, while Syracuse technicians worked one of their scheduled days off.

<sup>7</sup> The judge found the implementation of a 6-day workweek unlawful with respect to all technicians, but his analysis addressed only the General Counsel’s unilateral-change allegations. The General Counsel cross-excepts to the judge’s failure to consider the contract-modification allegations in the complaint regarding both groups of Albany technicians and the Syracuse service technicians, but not the Syracuse installation technicians—doubtless because language in art. 6, sec. 1 of the Syracuse Agreement expressly provided that installation technicians may periodically have to work on Saturdays.

*without bargaining.* The allegation is a *failure to bargain.* In the ‘contract modification’ case, the General Counsel must show a contractual provision, and that the employer has modified the provision. The allegation is a failure to adhere to the contract. . . . [T]he issue [in a contract modification case] is whether the contract *forbade* the conduct. In the unilateral change cases, the issue is whether the contract *privileges* the conduct.

*Bath Iron Works Corp.*, 345 NLRB 499, 501-502 (2005) (emphasis in original), *affid. sub nom. Bath Marine Draftsmen’s Assn. v. NLRB*, 475 F.3d 14 (1st Cir. 2007). “[A] remedy for a unilateral change is to bargain; the remedy for a contract modification is to honor the contract.” *Id.* at 501. Unlike an employer that unlawfully modifies a contract, an employer that implements an unlawful unilateral change only needs to restore the status quo ante until the parties reach an impasse in bargaining. *Id.* at 503. Because the remedies are mutually exclusive, an allegedly unlawful employer decision cannot be *both* a unilateral change *and* a contract modification. Accordingly, the General Counsel has alleged these theories in the alternative. For the following reasons, we reject them both.<sup>8</sup>

#### A. The Unilateral-Change Allegations

The Board recently announced that it would apply the “contract coverage” standard to evaluate the merits of an employer’s defense that contractual language privileged it to make a disputed unilateral change without further bargaining with a union. See *MV Transportation, Inc.*, 368 NLRB No. 66, slip op. at 1–2 (2019). The Board decided to apply the “contract coverage” standard retroactively in all pending cases. *Id.*, slip op. at 2. Accordingly, we do so here.

Under contract coverage, the Board examines “the plain language of the collective-bargaining agreement to determine whether action taken by an employer was within the compass or scope of contractual language granting the employer the right to act unilaterally.” *Id.* In doing so, “the Board will give effect to the plain meaning of the relevant contractual language, applying ordinary principles of contract interpretation.” *Id.*, slip op. at 11. Cognizant of the fact that “‘a collective bargaining agreement establishes principles to govern a myriad of fact patterns’” and that “‘bargaining parties [cannot] anticipate every hypothetical grievance and . . . address it in their contract,’” the Board stated that it “will

<sup>8</sup> The Respondent also defends against the unilateral-change allegations on the basis that its implementation of a 6-day workweek did not constitute a material, substantial, and significant change in the technicians’ terms and conditions of employment. For the reasons stated by the judge, we reject that defense.

not require that the agreement specifically mention, refer to or address the employer decision at issue.” *Id.*, slip op. at 11 (quoting *NLRB v. Postal Service*, 8 F.3d 832, 838 (D.C. Cir. 1993) (alterations in *MV Transportation*)). “Where contract language covers the act in question, the agreement will have authorized the employer to make the disputed change unilaterally, and the employer will not have violated Section 8(a)(5).” *Id.*

We find that the Respondent’s implementation of a 6-day workweek for technicians at both the Albany and Syracuse facilities was within the compass or scope of language in the Agreements granting the Respondent the right to take that action unilaterally. Article 6, section 3 of the Agreements provided for payment of overtime wages for work performed “weekly in excess of forty (40) hours, or on scheduled days off.” Article 1, section 2 of the Agreements vested in the Respondent the exclusive right “to determine the reasonable *amount* . . . of work needed.” Read together, these provisions authorized the Respondent to determine the amount of work it needed the technicians to perform and to require its technicians to work in excess of 40 hours a week or on scheduled days off to accomplish that work. Accordingly, we find that the Agreements covered the Respondent’s decision to implement, temporarily, a 6-day workweek for service and installation technicians in Albany and Syracuse, and the Respondent did not violate Section 8(a)(5) and (1) by doing so without bargaining with the Union.<sup>9</sup>

#### B. The Contract-Modification Allegations

To determine whether an employer has unlawfully modified a contract by failing to adhere to its terms, the Board applies the “sound arguable basis” standard. *Bath Iron Works*, 345 NLRB at 501–502. Under that standard, if “an employer has a ‘sound arguable basis’ for its interpretation of a contract and is not ‘motivated by union animus or . . . acting in bad faith,’ the Board ordinarily will not find a violation.” *Id.* at 502. The employer’s interpretation need not be the only reasonable one in or-

<sup>9</sup> Additional contractual language further supports our finding as to the Albany and Syracuse installation technicians. Art. 6, sec. 1 of the Albany Agreement provided that “[c]ustomer needs may periodically make it necessary to add an additional shift for residential installers from Tuesday through Saturday,” and art. 6, sec. 1 of the Syracuse Agreement similarly provided that “[c]ustomer needs may periodically make it necessary for work to be performed on a second shift and/or Saturdays.” Although the Agreements provided that the Respondent “will first seek qualified volunteers to perform such work,” performance of the work was compulsory: the Agreements provided that “[i]f there are no qualified volunteers then the least senior qualified person will be assigned to perform the work.” Plainly, these provisions granted the Respondent the right to periodically require installation technicians to work an extra shift on a 6th day.

der to pass muster under the “sound arguable basis” standard; it is sufficient that its interpretation is “colorable.” *Id.* at 503. If an employer presents a reasonable interpretation of the relevant contractual language, and the General Counsel does likewise, the Board “will not enter the dispute to serve the function of arbitrator in determining which party’s interpretation is correct.” *NCR Corp.*, 271 NLRB 1212, 1213 (1984). Under those circumstances, the employer will not have violated the Act. See *id.*

We find that the Respondent had a sound arguable basis for interpreting the Agreements as giving it the right to implement a 6-day workweek for Albany service and installation technicians and Syracuse service technicians. Preliminarily, no party claims that the Respondent implemented a 6-day workweek for anything other than legitimate business reasons—i.e., that it was motivated by animus or acting in bad faith. And its interpretation of the relevant contract language was certainly reasonable. As discussed in detail above in connection with the General Counsel’s unilateral-change allegations, Articles 1 and 6 of the Agreements, read together, granted the Respondent the right to modify technicians’ regular work schedules by requiring them to work a 6-day workweek. The Agreements required the Respondent to pay technicians time-and-a-half for work on scheduled days off, but it is undisputed that the Respondent paid technicians the appropriate overtime rate during the temporary 6-day workweek period.

The General Counsel argues that the Respondent failed to follow the overtime provisions in the contract, which require the Respondent to seek volunteers when overtime work is necessary before assigning the work to the least senior qualified employee. The Respondent, however, was in an “all hands on deck” situation, in which it needed every available employee to perform overtime work in order to meet its customer service targets. It would have been nothing more than a formality for the Respondent to have sought volunteers when it was assigning overtime to all of the technicians, whether they would have volunteered or not.<sup>10</sup>

<sup>10</sup> In a contract-modification case, “the Board may examine the past practice of the parties as to the interpretation and implementation of the contractual language in question, in order to determine the parties’ intent.” *Comau, Inc.*, 364 NLRB No. 48, slip op. at 5 fn. 16 (2016). A memo included in the record shows that, on a previous occasion, the Respondent sought volunteers to work 1 scheduled day off per month for 2 months but added that it may resort to “mandatory overtime” should it not “get enough volunteers.” There is no indication that the Union protested this earlier, comparable decision by the Respondent. Indeed, at the hearing, Union President Costello testified that employees on a Monday through Friday schedule have worked on Saturdays, and he conceded that “the contract gives the employer the right to

Accordingly, we find that the Respondent adhered to the Agreements when it implemented a 6-day workweek, and we therefore dismiss the allegations that it violated Section 8(a)(5) and (1) within the meaning of Section 8(d) of the Act.

#### AMENDED CONCLUSIONS OF LAW

1. The Respondent, ADT, LLC d/b/a ADT Security Services, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Brotherhood of Electrical Workers, Local Union 43 is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has violated Section 8(a)(5) and (1) of the Act by bypassing the Union and dealing directly with a unit employee regarding his terms and conditions of employment.

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

5. The Respondent has not otherwise violated the Act as alleged in the complaint.

#### ORDER

The Respondent, ADT, LLC d/b/a ADT Security Services, Albany and Syracuse, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Bypassing the Union and dealing directly with unit employees regarding their terms and conditions of employment.

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

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

(a) Within 14 days after service by the Region, post at its Albany, New York facility copies of the attached notice marked “Appendix.”<sup>11</sup> Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site,

schedule work on a day off.” This evidence further supports the Respondent’s reasonable interpretation of the Agreements.

<sup>11</sup> 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.”

ADT, LLC D/B/A ADT SECURITY SERVICES

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and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the Albany facility, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at that facility at any time since September 22, 2016.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 3 a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

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

Dated, Washington, D.C. February 27, 2020

\_\_\_\_\_  
John F. Ring, Chairman

\_\_\_\_\_  
Marvin E. Kaplan, Member

\_\_\_\_\_  
William J. Emanuel, Member

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

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

**FEDERAL LAW GIVES YOU THE RIGHT TO**

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT bypass the Union and deal directly with unit employees regarding their terms and conditions of employment.

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

ADT, LLC D/B/A ADT SECURITY SERVICES

The Board's decision can be found at <http://www.nlr.gov/case/03-CA-184936> 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.



*Alicia E. Pender, Esq.*, for the General Counsel.  
*Jeremy C. Moritz, Esq. (Ogletree, Deakins, Nash, Smoak & Stewart, P.C.)*, of Chicago, Illinois, for the Respondent.  
*Bryan T. Arnault, Esq. (Blitman & King)*, of Syracuse, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried in Albany, New York, on June 13, 2017. Based on timely filed charges by the International Brotherhood of Electrical Workers, Local Union 43 (Union or Charging Party), the General Counsel issued a complaint alleging that ADT, LLC d/b/a ADT Security Services (ADT or the Respondent) violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act)<sup>1</sup> by failing and refusing to bargain collectively and in good faith with the Union in several respects. The dispute revolves around the Respondent's implementation on September 22, 2016 of a mandatory biweekly 6-day workweek for all service technicians in its Syracuse office and a mandatory 6-day workweek for all service and installation technicians in its Albany office without affording the Union an opportunity to bargain over such changes.<sup>2</sup> An additional issue arose when the Respondent allegedly bypassed the Union and dealt directly with an Albany office employee in granting him an exception from the new scheduling policy. Finally, it is alleged that the Re-

<sup>1</sup> 29 U.S.C. §§ 151-169.

<sup>2</sup> All dates are 2016 unless otherwise indicated.

spondent unreasonably delayed in fully responding to information requested by the Union relevant to the 6-day workweek scheduling change.

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

#### FINDINGS OF FACT

##### I. JURISDICTION

The Respondent, a corporation with offices and places of business in Albany and Syracuse, New York, has been engaged in the installation and services of residential and commercial security systems. In conducting such business operations, the Respondent annually derives gross revenues in excess of \$500,000 from the sale and retail alarm systems, and purchases and receives at said facilities goods valued in excess of \$5000 directly from points outside the State of New York. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

##### II. ALLEGED UNFAIR LABOR PRACTICES

###### A. *The Respondent's Operations*

The Respondent was purchased by the Apollo Group in 2016. Subsequently, the Apollo Group merged the Respondent with another subsidiary, Protection One. As part of the consolidation, the Apollo Group decided to apply Protection One's customer retention policy of responding to 75 percent of service calls within 24 hours (the In Standard policy) to the Respondent on a nationwide basis.

During the period of time at issue, the following individuals were employed by the Respondent as supervisors within the meaning of Section 2(11) of the Act and as its agents within the meaning of Section 2(13) of the Act: Peter Bernard—Manager; Michael Kirk—Area General Manager; Michael Stewart—Regional HR Manager.

Prior to September, employees worked standard 8 a.m. to 4:30 p.m. shifts, five days per week, 40 hours total. The Respondent occasionally requested employees to work overtime beyond the end of their regular shifts or on regular days off, but did so in order of seniority. If necessary, all employees could be required to work overtime. However, backlogs were usually handled by a manager calling Patrick Costello, the Union's president and assistant business manager, and asking for volunteers. Costello would then call employees and offer the overtime opportunities based on seniority.

###### B. *The Collective-Bargaining Agreements*

As of September 2016, there were three technicians employees by the Respondent's Albany office. They comprised the Albany unit, which constituted the following unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees originally described in the certification dated November 20, 1968 (Case

Number 3-RC-4533) classified by the Respondent as residential and small business installers, residential and small business high volume commissioned installers, residential and small business service technicians, employed by the Respondent at its facility in Albany, NY; but excluding all alarm service investigators, relief supervisors, all office clerical employees and professional employees, guards and supervisors, as defined in the Act; and excluding all commercial installers and commercial service unless the employees are employed by the Respondent and are located at, or are directly supervised by the Respondent's supervisors located at its Albany, NY facility.

As of September 2016, there were 12 technicians employed by the Respondent's Syracuse office. They comprised the Syracuse unit, which constituted the following unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees originally described in the certification dated November 20, 1968 (Case Number 3-RC-4533) classified by the Respondent as residential and small business installers, residential and small business high volume commissioned installers, residential and small business technicians, employed by the Respondent at its facility in Syracuse, NY, but excluding all alarm service investigators, relief supervisors, all office clerical employees and professional employees, guards and supervisors, as defined by the Act; and excluding all commercial installers and commercial service unless the employees are employed by the Respondent and are located at, or are directly supervised by the Respondent's supervisors located at, its Syracuse, NY facility.

The Respondent has recognized the Union as the exclusive collective-bargaining representative of the Syracuse and Albany units as reflected in successive collective-bargaining agreements (CBA), the most recent of which are effective from June 11, 2016, to June 10, 2019 as to the Syracuse unit, and June 11, 2015, to June 10, 2018 with respect to the Albany unit.<sup>3</sup>

The disputed scheduling provisions are set forth in identical versions of article 6 in the Syracuse and Albany CBAs. In pertinent part, the identical provisions establish a 40-hour employee workweek and 8-hour workday. The workweek is deemed to start on Wednesday and end on Tuesday, the same as the payroll week. Section 1 further defines the regular workweek as follows:

The normal work schedule for the Service Department shall be a shift of eight and one-half hours with a thirty-minute lunch period comprising of five consecutive days, Monday through Saturday between the hours of 8:00 a.m. and 12:00 midnight. There will also be a four-day workweek comprised of ten and one half hour shifts, with a thirty-minute lunch period, between the hours of 8:00 a.m. and 12 midnight, Monday through Friday. Customer needs may periodically make it necessary for work to be performed beginning at 7:00 a.m. The Company will first seek qualified volunteers to perform

<sup>3</sup> Jt. Exh. 2-3.

such work. If there are no qualified volunteers then the least senior qualified person will be assigned to perform the work. Second shift will be defined as those shifts beginning at 12:00 noon and after. Advance notice of schedule changes will be given whenever possible, except in cases of emergency, such schedules shall be established one week in advance.

The Installation Department may be scheduled for any eight-hour period between 7:00 a.m. and 5:30 p.m. in any given day between Monday and Friday. Customer needs may periodically make it necessary for work to be performed on a second shift and/or Saturdays. The Company will first seek qualified volunteers to perform such work. If there are no qualified volunteers then the least senior qualified person will be assigned to perform the work. Such second shifts will occur between the hours of 7:00 a.m. and 12:00 midnight. Except in cases of emergency, such schedules shall be established one week in advance. Second shift will be defined as those shifts beginning at 12:00 noon and after.

Section 2 provides the Respondent with additional authorization regarding assignments outside of the regular schedule:

In accordance with Section 1 of this article, the Employer will establish 12:00 noon to 8:30 p.m. for trouble and maintenance requirements. Volunteers among qualified personnel will be solicited. If no qualified volunteers exist, assignment will be based on reversed seniority among qualified personnel. Assignment (or volunteer) will be for a minimum of six (6) months. The Employer reserves all rights under Section 1 of this article.

Sections 3 and 4 provide for the assignment and compensation of overtime and emergency overtime work, respectively:

All time worked daily in excess of eight (8) hours in a scheduled 5 x 8 hour workweek, in excess of ten (10) hours in a 4 x 10 hour workweek, or weekly in excess of forty (40) hours, or on scheduled days off shall be compensated for at one and one-half (1-1/2) times the employee's regular straight time hourly rate. No time worked except for work performed on paid holidays, as hereinafter, listed in Article 8, shall under any circumstances be compensated for at more than one and [one-half] (1-1/2) times the straight time hourly rate. There shall be no compounding, duplicating or pyramiding of overtime payments of any description. In any cases when an employee is not able to complete an assigned job during scheduled work hours he will notify his Supervisor by 1:30 p.m. of that day. At such point a decision shall be made as to when the job will be completed if the job was scheduled to be completed that day.

Emergency overtime calls from home shall be compensated at one and one-half (1½) times the employee's regular hourly rate of pay from the time the employee leaves his home to the time reasonably required for him to return home. Employees on-call will receive at least three (3) hours at overtime rate each time they are notified, respond to a call and return home. If they are sent on another call before returning home, the time is added. (Example: Employee is called out, responds to the site and fixes the problem within two (2) hours. He re-

ceives a minimum of three (3) hours pay at the overtime rate. If he is beeped prior to returning home and responds to another call for an additional hour he would be paid three (3) hours minimum for the first call and one (1) hour for the second call. Total call out pay is four (4) hours overtime.)

### C. The 6-Day Workweek

The mandatory nationwide 6-day workweek was prompted by ADT's acquisition by Apollo and ADT's subsequent merger with Protection 1 on September 1. Based on Protection 1's superior customer retention rate, Apollo instructed ADT to adopt Protection 1's policy requiring that 75 percent of service calls be responded to within 24 hours. Under that directive, the mandatory overtime was applicable to all employees. There was no limitation on ADT's ability to schedule work 7 days a week for 8 hours each day. The only exceptions were for those attending school classes paid for by ADT.<sup>4</sup>

On September 6, Kirk communicated the rollout of the ADT integration with Protection 1 in an email to ADT managers and supervisors:

Team,

With the integration of ADT and Protection 1 we have been given new customer service targets of 1.69 days on all new installations and service tickets created. This equates to being able to deliver, 24-hour customer service to our new and existing customers 75% of the time which is a great objective to meet, while understanding that 25 percent of our customers may not be able to be available within 24 hours. While I understand that each market is different, and we need to approach each market as a separate entity and make decisions that are based solely on each location. Until we meet the present target, we will be implanting a mandatory 6-day workweek in the following markets beginning on Thursday, September 22 and will continue until each market achieves the desired target which the manager will post locally for each market. I understand that this is a burden on some of our technicians and the only exception at this time are those technicians that are currently attending classes and are enrolled in higher education.

Allentown Pa  
Wilkes-Barre Pa  
Bridgeville Pa  
Albany NY

The following districts will implement a mandatory 6 Day workweek on Thursday, September 22 2016 for the second and fourth week of every month until the target is achieved and can change to weekly if needed with no additional notice.

Syracuse NY  
Buffalo NY  
Erie Pa  
Altoona Pa  
Lancaster Pa

<sup>4</sup> James Nixdorf, ADT's director of labor relations, oversee the processing of disciplinary matters and CBAs. He testified about the changes, but professed little knowledge about the actual rollout.

I appreciate your understanding and dedication to providing faster service to our customer and I truly appreciate your support, I am providing a two week notice to all technicians as I truly believe that this is the right thing to do! Please keep in constant communication with your manager and myself if you are confused as to why this critical initiative is important and why we need your immediate assistance and to see where we are to the target. Thank you for all that you do and keep those great customer service emails coming to me from your customers as I love to recognize great individual performances . . . You guys and girls are awesome. Thank you.

Kirk followed up 1 minute later with another email directing the "Team" to "get this in the hands of every technician no later than 9:00 AM tomorrow morning."<sup>5</sup> His email was forwarded to the technicians on September 7. Additionally, Stewart, the Respondent's regional human resources manager, forwarded the email to Costello, the Union's representative. During the conversation that followed, Costello asserted that the change violated the CBA and requested it be rescinded immediately. Stewart agreed to pass along Costello's view to the Respondent's hierarchy but doubted that the change would be rescinded.<sup>6</sup>

In the Albany location, the 6-day schedule was implemented during the week of September 22 and lasted until December or January 2017. In the Syracuse location, the biweekly 6-day workweek occurred over the course of nearly a month. During that time, Albany unit employees worked Saturdays in addition to their regular Monday through Friday schedules, while Syracuse unit employees worked their off day. Based on article 6 of the Syracuse CBA, Albany and Syracuse unit employees received 1-1/2 times regular compensation for working on their regular days off.

In Albany, David Madsen, an installation technician in the Albany branch, served as the Union's shop steward and reported to Costello. He worked the 6 days per week schedule for at least 6 Saturdays until December or January 2017. At the time, two technicians were out or going out on medical leave, which left Madsen and another employee as the only technicians available to work on Saturdays. As it turned out, Madsen was the only technician to work on Saturdays. He did not, however, file a grievance over the directive.

#### D. The Information Request

On September 19, prior to the scheduling change, Costello wrote to Stewart protesting ADT's unilateral decision to implement a 6-day workweek schedule:

As I previously explained, Article 6 of the CBA explicitly and unambiguously provides for only four or five-day workweeks. At no point does the CBA authorize a 6-day workweek or allow ADT to change the agreed-upon schedule.

The letter further demanded ADT rescind the directive and asserted that the failure to bargain over the change constituted an unfair labor practice. The letter further requested the production by October 7 of a broad range of information relating to

the decision-making, planning and implementation of the scheduling change.<sup>7</sup>

On October 6, Stewart responded to Costello that ADT was putting together a response to the September 19 information request and expected to provide it by October 14. Costello did not object to the revised production date but requested that Stewart immediately provide all of the responsive information in his possession.<sup>8</sup>

On October 13, Stewart replied to Costello by email. Stewart noted at the outset that ADT considered several of the requests vague, ambiguous or nonrelevant. Stewart then explained the purpose of the 6-day workweek as a measure to reduce a backlog of open work orders so the offices would be compliant with the company metric for customer service. To do so, each location was required to respond to customer's requests within 24 hours, 75 percent of the time. Stewart noted this was a standard also used by Protection-1 before the merger. Stewart attached a data set to the email, showing the backlog of open work orders in the Albany and Syracuse locations and also the reductions achieved. He declined, however, to provide information regarding ADT's interactions with other unions, claiming the information was not relevant. He did not provide further explanation or an answer to other questions as set out in the September 19th email.<sup>9</sup>

On October 24, Costello responded to Stewart's email of October 13. He explained that Stewart's response was insufficient and restated his argument as to why the requested information was relevant. Not having received a response to his October 24 information requests, Costello followed up with another letter and email to Stewart on November 18. He warned that if the information was not received by November 22 he would file an unfair labor practice charge.<sup>10</sup>

On December 15, Costello asked Stewart to send him "all the responses that you have generated concerning our most recent information requests."<sup>11</sup> Stewart responded on December 16 by providing a "Talking Points" memorandum given to all installation and service team managers.<sup>12</sup> Costello did not understand all of the information contained on the spreadsheets.

#### E. Direct Dealing

Michael Sopok, a technician in the ADT's Albany branch, learned of ADT's 6-day workweek directive along with the rest of the workforce on September 22. On that day, he told shop steward Madsen that he had a problem working on Saturdays because of his childcare situation but did not ask him to approach management. Sopok then called Peter Bernard, the installation team manager, about his dilemma.<sup>13</sup> Bernard forwarded Sopok's request to Kirk. Kirk asked that Sopok provide documentation relating to the childcare issue, which Sopok did. Kirk approved Sopok's request through Bernard. As a re-

<sup>7</sup> Jt. Exh. 5.

<sup>8</sup> Jt. Exh. 6.

<sup>9</sup> Jt. Exh. 7.

<sup>10</sup> Jt. Exh. 10-13.

<sup>11</sup> Jt. Exh. 14.

<sup>12</sup> Jt. Exh. 15.

<sup>13</sup> It is not disputed that as a shop steward, Madsen did not have the authority to bargain with ADT.

<sup>5</sup> Jt. Exh. 1.

<sup>6</sup> Costello's credible testimony was not refuted. (Jt. Exh. 4; Tr. 25.)

sult, Sopok did not have to work the mandatory Saturday shift and was removed from the 6-day workweek schedule. However, a few weeks after submitting his request, Sopok's exemption was conditioned on an extended 5-day workweek, with up to 12 hours per day. As a result, he resigned.

#### Legal Analysis

##### 1. unilateral change to a 6-day workweek in the Albany and Syracuse units

The complaint alleges that the Respondent violated Section 8(a)(5) of the Act on September 22 by imposing a mandatory 6-day workweek for unit employees in the Albany unit. Further, the Respondent is alleged to have violated the act by unilaterally imposing a biweekly 6-day workweek on employees in the Syracuse unit. The Respondent denies the allegations, claiming the issue is not a unilateral change, but rather a dispute between the Respondent and the Union over an interpretation of the contract. In support of their interpretation, the Respondent relies on the argument that Syracuse and Albany units have always permitted management to schedule work on regular days off, schedule mandatory overtime and require employees to work past the end of their shifts.

An employer violates Section 8(a)(5) and (1) of the Act if it makes material unilateral changes during the course of a collective-bargaining relationship on matters that are mandatory subjects of bargaining. "for . . . a circumvention of the duty to negotiate . . . frustrates the objectives of Section 8(a)(5) much as does a flat refusal." *NLRB v. Katz*, 369 U.S. 736, 743, 747 (1962); *United Cerebral Palsy of New York City*, 347 NLRB 603, 606 (2006). Items falling within the language of Section 8(d) are mandatory subjects of bargaining. *NLRB v. Borg-Warner Corp.*, 356 U.S. 342, 349 (1958). The Board has also held that "in order for a statutory bargaining obligation to arise with respect to a particular change unilaterally implemented by an employer, such change must be a 'material, substantial, and a significant' one affecting the terms and conditions of employment of bargaining unit employees." *Angelica Healthcare Services Group*, 284 NLRB 844, 853 (1987).

The work schedules of ADT's unit employees were vital aspects of working conditions and are mandatory subjects of bargaining. See *Meat Cutters, Local 189 v. Jewel Tea Co.*, 381 U.S. 676, 691 (1965); *Bloomfield Health Care Center*, 352 NLRB 252, 256 (2008). Moreover, the Board has long held changes similar to ADT's unilateral changes in a 6-day workweek as material and significant. In *Fall River Savings Bank*, the employer unilaterally changed scheduled work from a 5-day workweek to a 6-day workweek based on the rationale that the revision was a reasonable variation of past practices involving flexible work on Saturdays. The Board disagreed, finding that the change in working conditions amounted to a conversion from voluntary to mandatory overtime. 260 NLRB 911 (1982).

Similarly, in *Intracoastal Terminal, Inc.*, the Board held that changing a Monday through Friday workweek to Wednesday through Sunday was unlawful. The Board rejected the argument that changes in work schedules were insubstantial, even though they roughly amounted to the same number of hours the employees had worked under the previous schedule. The Board noted that it was axiomatic that "regular and overtime hours of

work are vital aspects of working conditions" to be discussed with a bargaining units representative. 125 NLRB 359, 359-360, 367-368 (1959), enf. denied in relevant part on other grounds 286 F.2d 954 (5th Cir. 1961).

Nor is the impact of the change any less significant because it affected only a few members of the unit. See *Bloomfield Healthcare Center*, supra at 252 (unilateral change made to bargaining unit's schedule was significant even though it only affected a few members of the unit); *Georgia Power Co.*, (unilateral change to scheduling violated Section 8(a)(5) even though it affected only one unit employee). Similarly, even a slight change in the amount of time worked per day can constitute a material change. See *Pepsi-Cola Bottling Co. of Fayetteville, Inc.*, 330 NLRB 134 (2000) (schedule change was a material and significant change because it resulted in route salesmen commencing their workdays 15 minutes earlier than they had before).

The Respondent's alteration of work schedules constituted a material, substantial and significant change in the terms and conditions of employment of the Albany units and, as such, was a mandatory subject for the purposes of collective bargaining. As such, the Respondent's failure to afford the Union an opportunity to bargain over the scheduling change violated Section 8(a)(5) and (1) of the Act.

##### 2. Unilateral creation of exceptions in the Albany unit and direct dealing with a bargaining unit member

The General Counsel and Charging Party further allege that the Respondent, without prior notice to the Union or affording it an opportunity to bargain, also violated Section 8(a)(5) by not informing the Union of the change in schedule. Further, they allege the Respondent dealt directly with unit Michael Sopok, a unit employee, on September 22, creating an exception to the mandatory 6-day workweek policy for all service and installation technicians in the Albany unit. The Respondent denies the allegations, contends the exception granted to Sopok stemmed from a unique situation that he chose to raise directly with the Respondent, and was not intended to undermine the Union.

Direct dealing involves interaction with employees that bypasses the union about a mandatory subject of bargaining. *Mercy Health Partners*, 358 NLRB 566 (2012), citing *Champion International Corp.*, 339 NLRB 672, 673 (2003). The standard for direct dealing was laid out in *Permanente Medical Group*, 332 NLRB 1143, 1144 (2000), as "[a]n employer engages in unlawful direct dealing when (1) the employer communicates directly with union represented employees; (2) the discussion is for the purpose of establishing or changing wages, hours, and terms and conditions of employment or undercutting the union's role in bargaining; and (3) such communication is made to the exclusion of the union." Id. at 1144.

The Respondent argues that it did not engage in direct dealing with Sopok because there was neither a promise of a benefit nor issuance of a threat. It further argues that the prohibition of such interaction with employees would mean that it would have to negotiate with the Union over any trivial changes in shifts, hours or time off.

I disagree with the Respondent's belief that prohibiting interactions between management and employees about work

schedules would lead to mandatory negotiations with the Union over any change in shifts, hours or time off. Sopok's request stemmed from a unilateral and unexpected change made by the Respondent that deviated substantially from the bargaining agreement that unit members reasonably relied upon. It affected the entire bargaining unit. I would decline to extend this interpretation to situations involving shift changes or alterations occurring during the course of a bargaining agreement resulting from the normal course of business, and not stemming from any unilateral and unexpected modification of the terms and conditions of the bargaining agreement.

The Respondent's direct dealing with Sopok, a unit bargaining unit employee, in arranging an exception for him from the 6-day workweek schedule, bypassed the unit representative and undermined the union's role in bargaining. By granting a unit employee member an exception that could plausibly be interpreted as favorable treatment, the Respondent effectively undermined confidence in the Union by the bargaining group. In doing so, the Respondent violated Section 8(a)(5) and (1) of the Act by failing to meet and bargain exclusively with the bargaining representative of its employees before implementing a change to the terms and conditions of unit employees. See *Allied—Signal*, 307 NLRB 752, 753 (1992); *Northwest Graphics Inc. and Local 6-505-M*, 343 NLRB 84,176 (2004).

### 3. Delay in providing requested information to the union relating to the 6-day workweek

The General Counsel and Charging Party also allege that the Respondent failed to provide requested information in a timely manner. The Respondent contends that it met its obligation to supply information to the Union by providing the requested information or asserting legitimate objections to information requests deemed vague or ambiguous.

Under Section 8(d) of the Act, the Respondent has an obligation to provide the Union with requested information that is relevant and necessary to the Union's performance of its duties as collective-bargaining representative, including deciding whether to process grievances. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967); *Centura Health St. Mary-Corwin Medical Ctr.*, 360 NLRB 689, 689 (2014). The applicable standard is whether there exists "a probability that such data is relevant and will be of use to the union in fulfilling its statutory duties and responsibilities as the employees' exclusive bargaining representative." See *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979) ("the duty to bargain collectively, imposed by Section 8(a) of the NLRA, includes a duty to provide relevant information requested by the union for the proper performance of its duty as the employees' bargaining representative").

In determining whether the requested information is or was probably relevant to the union's role, the Board has typically applied a liberal discovery-type standard. *Brazos Electric Power Cooperative*, 241 NLRB 1016(1979). When information sought concerns matters outside the bargaining unit, the union must establish the relevance of that information by making a special demonstration of relevance based on the logical foundation and a factual basis for the information. *Shoppers Food Warehouse Corp.*, 315 NLRB 258, 258 (1994). The Board need

only find a probability that the requested information is relevant and would be useful to the union in carrying out its responsibilities. *Reiss Viking*, 312 NLRB 622, 625 (1993), citing *Postal Service*, 310 NLRB 391, 391–392 (1993).

Each of the Union's requests explained in detail how the information was going to be used in relation to the dispute. Neither the October 13th nor December 16th emails provided sufficient information relative to what was being sought by the Union. Stewart's response on October 13th proffered justifications for the change and provided a data set that seemed to answer parts of Costello's questions but it does not, as Stewart says "address all of the concerns raised" in the September 19th request. The December 16th communication appears to be an internally directed marketing document, apparently used by management to explain to their employees why they were to work longer hours. It is also the only document provided. The Respondent provided information in a haphazard manner over a 3-month period.

The Respondent notes that the time to respond is not delineated in the Act and the precedent is largely fact driven, differs on a case by case basis, and is based on the totality of circumstances surrounding the event. *Allegheny Power*, 339 NLRB 585, 587 (2003). The Respondent's delay in providing relevant information sought by the Union, when evaluated in conjunction with its unlawful unilateral change to work schedules, along with its direct dealing with a unit employee in carving out exceptions to its unlawful action, was unreasonable.

The Respondent also concedes that the information could have been forwarded to the Union earlier than December, but denies that the delayed production was unreasonable, driven by animus or resulted in harm to the Union. The Respondent also cites several decisions in which delays ranging from several months to almost a year were found neither unreasonable nor prejudicial to the Union. *Union Carbide Co.*, 275 NLRB 197, 201 (1985); see also *Dallas & Mavis Forwarding Co.*, 291 NLRB 980 (1988). These arguments lack merit. The Union became aware of the change in schedule only after the decision was made and announced to employees. When the Union attempted to respond, the Respondent was slow to act and provided insufficient information. Stewart's belated and incomplete reply to the Union's request for relevant information as it rolled out the unlawful change to unit employees' work schedules, was prejudicial and hampered the Union's ability to enforce the contract.

Finally, the Respondent asserted that some of the requests were vague or non-relevant without providing clarification and proceeded to provide only information that obliquely responded to the detailed requests made by the union. When an employer believes an information request is vague, however, it has the responsibility to request clarification. See *Keauhou Beach Hotel*, 298 NLRB 702,702 (1990) (employer may not simply refuse to comply with a request it deems overly broad, onerous or non-relevant). See also *Hospital Episcopal San Lucas*, 319 NLRB 54, 57 (1995) (employer is required to notify the Union of its objections to each request and as needed, ask for clarification).

Under the circumstances, the Respondent's repeated failure to meet its statutory obligation to timely provide the requested

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information violated Section 8(a)(5) and (1) of the Act.

1. ADT, LLC d/b/a ADT Security Services is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally and without the consent of the Union when it:

(a) Changed the terms and conditions of employment in the Albany unit by imposing a 6-day workweek for service and installation technicians in that location.

(b) Changed the terms and conditions of employment in the Syracuse unit by imposing a biweekly 6-day workweek for the service technicians in that location.

(c) Refused to bargain with the Union by making changes to employees' terms and conditions of employment by unilaterally imposing a biweekly 6-day workweek for the installation technicians in the Syracuse unit without first giving the Union notice and an opportunity to bargain.

(d) Unilaterally created exceptions to the workweek policy for the Albany unit. And engaged in direct dealing with employees regarding mandatory terms and conditions of employment.

(e) Delayed in providing information to the Union necessary and relevant to its role as the employees' bargaining representative.

4. The aforementioned unfair labor practices by the Respondent affected commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

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

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>14</sup>

#### ORDER

The Respondent, ADT LLC d/b/a ADT Security Services, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally and without the consent of the Union imposing a 6-day workweek for service and installation technicians in the Albany unit, or otherwise changing employees' terms and conditions of employment as set forth in the Albany collective-bargaining agreement.

(b) Unilaterally and without the consent of the Union imposing a biweekly 6-day workweek for the service technicians in the Syracuse unit, or otherwise changing employees' terms and conditions of employment as set forth in the Syracuse collective-bargaining agreement.

(c) Refusing to bargain with the Union by making changes

to employees' terms and conditions of employment by unilaterally imposing a biweekly 6-day workweek for the installation technicians in the Syracuse unit without first giving the Union notice and an opportunity to bargain.

(d) Unilaterally creating exceptions to the workweek policy for the Albany unit.

(e) Engaging in direct dealing with employees regarding mandatory terms and conditions of employment.

(f) Delaying in providing information to the Union that is necessary and relevant to its role as the employees' bargaining representative.

(g) Refusing to provide information to the Union that is necessary and relevant to its role as the employees' bargaining representative.

(h) In any like or related manner interfering with, restraining or coercing Respondent's 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) At the request of the Union, rescind the unlawful unilateral changes to the workweek for the Albany unit and Syracuse unit.

(b) Provide the Union with the information it requested on September 19 and October 24 that it has not already provided.

(c) Within 14 days after service by the Region, post at its facilities in Albany and Syracuse, New York, copies of the attached notice marked "Appendix."<sup>15</sup> Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent since September 22, 2016.

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

Dated, Washington, D.C. August 4, 2017

#### 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

<sup>14</sup> 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.

<sup>15</sup> 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."

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 unilaterally make changes to unit work schedules without consulting the bargaining representatives of the unit.

WE WILL NOT unilaterally bargain, negotiate or directly deal with individual members of the bargaining unit about the terms and conditions of employment without notifying and including the bargaining unit representatives.

WE WILL NOT fail or refuse or unreasonably delay in providing requested information to bargaining unit representatives when the information is necessary for the representatives to fulfill their duty to unit members.

WE WILL notify you that the workweek directive has been rescinded.

WE WILL notify you that the mandatory 6-day workweek order from our September 7, 2016 memorandum has been rescinded.

ADT, LLC D/B/A ADT SECURITY SERVICES

The Administrative Law Judge's decision can be found at <http://www.nlr.gov/case/03-CA-184936> 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.



### CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2020, copies of the foregoing Petition for Review were served on the following counsel by serving a true and correct copy by electronic mail at the addresses listed below:

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/s/ Matthew J. Ginsburg  
Matthew J. Ginsburg

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

INTERNATIONAL	)	
BROTHERHOOD OF	)	
ELECTRICAL WORKERS,	)	
LOCAL UNION 43,	)	
	)	
Petitioner,	)	
	)	
v.	)	Petition for Review
	)	
NATIONAL LABOR RELATIONS	)	
BOARD,	)	
	)	
Respondent.	)	

**PETITION FOR REVIEW**

International Brotherhood of Electrical Workers, Local Union 43,  
 (“Local 43”) hereby petitions the Court for review of the Decision and Order  
 of the National Labor Relations Board (“NLRB”) in cases 03-CA-184936  
 and 03-CA-192545, entered on the 27th day of February 2020, and  
 published as *ADT, LLC, d/b/a ADT Security Services*, 369 NLRB No. 31.  
 (Attached as Exhibit 1).

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