

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

NEXSTAR BROADCASTING, INC.
d/b/a KOIN-TV

and

Cases 19-CA-248735
19-CA-255180
19-CA-259398
19-CA-262203

NATIONAL ASSOCIATION OF BROADCAST
EMPLOYEES & TECHNICIANS, THE
BROADCASTING AND CABLE TELEVISION
WORKERS SECTOR OF THE COMMUNICATIONS
WORKERS OF AMERICA, LOCAL 51, AFL-CIO

COUNSEL FOR THE GENERAL COUNSEL'S
BRIEF TO THE ADMINISTRATIVE LAW JUDGE

Elizabeth DeVleming
Sarah Burke
Counsel for the General Counsel
National Labor Relations Board, Region 19
Jackson Federal Building
915 2nd Avenue, Suite 2948
Seattle, WA 98174
Telephone: (206) 220-6280
Facsimile: (206) 220-6305
Elizabeth.DeVleming@nrlb.gov
Sarah.Burke@nrlb.gov

TABLE OF CONTENTS

I. **FACTS**..... 1

 A. **Overview**..... 1

 B. **The First 18 Months of Contract Negotiations – 2017 and 2018** 2

 C. **Respondent’s Unabashed Hostility Toward and Defamation of the Union In 2019**..... 4

 1. **Respondent’s Personal Attacks on Biggs-Adams During Bargaining** 4

 2. **Respondent’s Misleading and Defamatory 2019 Bargaining Update Memos**..... 5

 D. **Respondent’s Failure to Engage in Meaningful Bargaining in 2019**..... 6

 1. **The January 2019 Negotiations** 7

 2. **The April, June, and August 2019 Negotiations** 8

 3. **The October 2019 Negotiations**..... 9

 4. **The Final Negotiations in December 2019**..... 11

 E. **Respondent’s Consistent Unavailability and Cancellations of Scheduled Sessions Throughout 2019** 12

 1. **Respondent’s Unavailability for Bargaining in February, May, July, September, and November 2019** 12

 2. **Respondent’s Cancellation of the Scheduled January and February 2020 Bargaining Sessions** 14

 F. **Respondent’s January 8, 2020 Withdrawal of Recognition from the Union** 15

 1. **The Testimony of Casey Wenger** 16

 2. **The Testimony of Douglas Key** 18

 3. **The Testimony of Patrick Nevin** 19

 4. **The Testimony of Rick Brown** 23

 5. **Charting Respondent’s Witnesses’ Hearsay Testimony Shows Respondent Did Not Have Objective Evidence to Support its Withdrawal of Recognition** 26

6.	The Union Gathered, Verified, and Produced to Respondent Objective Evidence Establishing its Continued Majority in Both Units	30
G.	Respondent's Stipulated Pre- and Post-Withdrawal Unilateral Changes.....	31
H.	Respondent's Post-Withdrawal Crackdown on Unit Employees' Union and Protected, Concerted Activities	33
I.	Summation	35
II.	ARGUMENT	37
A.	Respondent Violated § 8(a)(5) of the Act by Bargaining in Bad Faith and Engaging in Overall Surface Bargaining.....	37
1.	Respondent Demonstrated its Bad Faith by Failing and Refusing to Meet with the Union for Bargaining on a Regular Basis.....	39
2.	Respondent Demonstrated its Bad Faith by Delaying in Providing and/or Refusing to Provide Information	41
3.	Respondent Demonstrated its Bad Faith in its Defamatory Bargaining Memos... 43	
4.	Respondent Demonstrated its Bad Faith by Failing to Provide Meaningful Health Care Proposals	44
B.	Respondent Violated § 8(a)(5) of the Act by Withdrawing Recognition from the Union Without Objective Evidence of an Actual Loss of Majority Support	46
C.	Respondent Violated § 8(a)(5) by Making a Series of Unilateral Changes to Unit Employees' Terms and Conditions of Employment Without First Notifying and Bargaining with the Union	52
D.	Respondent Violated § 8(a)(1) of the Act by Coercing Unit Employees in Their Exercise of Protected Activities.....	53
III.	SPECIAL REMEDIES ARE WARRANTED	54
IV.	THE GENERAL COUNSEL'S MOTION TO AMEND THE SECOND CONSOLIDATED COMPLAINT AT HEARING TO WITHDRAW PARAGRAPHS 9 AND 11 SHOULD BE GRANTED.....	57
V.	CONCLUSION	61

PROPOSED ORDER

PROPOSED NOTICE TO EMPLOYEES

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>88 Transit Lines, Inc.</i> , 300 NLRB 177 (1990).....	46
<i>All Seasons Climate Control, Inc.</i> , 357 NLRB No. 70, slip op. at 1 n.2 (2011).....	56
<i>Altura Commc'n Sols., LLC</i> , 369 NLRB No. 85 (May 21, 2020).....	38
<i>Anderson Lumber Co.</i> , 360 NLRB 538 (2014).....	50
<i>Arvin Industries</i> , 285 NLRB 753 (1987).....	51
<i>Atlanta Hilton & Tower</i> , 271 NLRB No. 214 (1984).....	39, 42
<i>Audio Visual Services Group</i> , 367 NLRB No. 103, slip op. at 6 (2019).....	38, 43
<i>Avon Convalescent Center, Inc.</i> , 219 NLRB 1210 (1975).....	49
<i>Bemis Co., Inc.</i> , 370 NLRB No. 7 (Aug. 7, 2020).....	40, 44
<i>Bricklayers Local Union No. 1 of Missouri, Bricklayers, Masons and Plasterers International Union, AFL-CIO (St. Louis Home Insulators, Inc.)</i> , 209 NLRB 1072 (1974).....	49
<i>Bryant & Stratton</i> , 321 NLRB 1007 (1996).....	41
<i>Bryant & Stratton Bus. Inst. v. NLRB</i> , 140 F.3d 169, 182 (2d Cir. 1998).....	45
<i>Calex Corp.</i> , 322 NLRB 977 (1997).....	40, 41
<i>Camelot Terrace</i> , 357 NLRB No. 161, slip op. at 4 (2011).....	56
<i>Celanese Corp. of Am.</i> , 95 NLRB 664 (1951).....	47
<i>Clock Elec., Inc.</i> , 338 NLRB 806 (2003).....	53

<i>Coastal Marine Services, Inc.</i> , 367 NLRB No. 58, slip op. at 1, n.2 (2019).....	59
<i>Colorflo Decorator Prods.</i> , 228 NLRB 408 (1977).....	49
<i>Consumers Distributing</i> , 274 NLRB 346 (1985).....	59
<i>Crete Cold Storage, LLC</i> , 354 NLRB 1000 (2009).....	50
<i>Crystal Springs Shirt Corp.</i> , 229 NLRB 4 (1977).....	56
<i>Dallas & Mavis Specialized Carrier Co.</i> , 346 NLRB 253 (2006).....	45
<i>DaNite Sign Co.</i> , 356 NLRB No. 124 (2011).....	50
<i>Detroit Edison Co. v. NLRB</i> , 440 U.S. 301 (1979).....	58
<i>Equipment Trucking Co., Inc.</i> , 336 NLRB 277 (2001).....	53
<i>Ferri Supermarkets, Inc.</i> , 330 NLRB 1119 (2000).....	48
<i>Frankl II</i> , 693 F.3d 1051 (9th Cir. 2012).....	47
<i>Garden Ridge Management</i> , 349 NLRB No. 103 (2006).....	40
<i>Gas Spring Co.</i> , 296 NLRB 84 (1989).....	51
<i>Gen. Elec. Co.</i> , 150 NLRB 192 (1964).....	46
<i>General Maintenance Engineers</i> , 142 NLRB 295 (1963).....	59
<i>George Banta Co. v. NLRB</i> , 626 F.2d 354 (4th Cir. 1980).....	59
<i>Globe Business Furniture</i> , 290 NLRB 841 (1988).....	43
<i>GM Electrics</i> , 323 NLRB 125 (1997).....	53
<i>Golden Eagle Spotting Co., Inc.</i> , 319 NLRB 64 (1995).....	41

<i>Green Oak Manor,</i> 215 NLRB 658 (1974).....	47
<i>Highlands Medical Center,</i> 347 NLRB 1404 (2006).....	47
<i>Highlands Regional v. NLRB,</i> 508 F.3d 28 (D.C. Cir. 2007)	47
<i>HQM of Bayside, LLC,</i> 348 NLRB 758 (2006).....	48
<i>HTH Corp.,</i> 356 NLRB No. 182, slip op. at 7-8 (2011).....	56
<i>ImageFIRST,</i> 366 NLRB No. 182, slip op. at 1 n.3 (Aug. 27, 2018).....	54
<i>Insurance Agents (Prudential Insurance),</i> 119 NLRB 768 (1957).....	51
<i>International Woodworkers of Am. v. NLRB,</i> 263 F.2d 483 (D.C. Cir. 1959)	42
<i>Irvington Motors,</i> 147 NLRB 377 (1964).....	44
<i>Ishikawa Gasket Am., Inc.,</i> 337 NLRB 175 (2001).....	55
<i>J.H. Rutter Rex Mfg. Co.,</i> 396 U.S. 258 (1969)	54
<i>J.H. Rutter-Rex Mfg. Co.,</i> 86 NLRB 470 (1949).....	39
<i>Johnson Controls,</i> 368 NLRB No. 20 (2019)	51
<i>K Mart Corp.,</i> 242 NLRB 855 (1979).....	44
<i>Kauai Veterans Express Co.,</i> 369 NLRB No. 59, slip op. at 1 (Apr. 16, 2020)	50
<i>Kimtruss Corp.,</i> 305 NLRB 710 (1991).....	59
<i>Kitsap Tenant Support Services, Inc.,</i> 366 NLRB No. 98, slip op. at 8 (2018).....	38, 39
<i>Lafayette Park Hotel,</i> 326 NLRB 824 (1998).....	53
<i>Lancaster Nissan, Inc.,</i> 344 NLRB 225 (2005).....	40

<i>Leavenworth Times</i> , 234 NLRB 649 (1978).....	56
<i>Levitz Furniture Co. of the Pac.</i> , 333 NLRB 717 (2001).....	46, 47
<i>Litton Systems</i> , 300 NLRB 324 (1990).....	43
<i>Lutheran Heritage Village-Livonia</i> , 343 NLRB 746 (2004).....	53
<i>Mac-Millan Ringerfree Oil Co.</i> , 160 NLRB 877 (1966).....	44
<i>Mar-Jac Poultry Co.</i> , 136 NLRB 785 (1962).....	55
<i>Mayer v. Ordman</i> , 391 F.2d 889 (6th Cir. 1968).....	58
<i>McCarthy Constr. Co.</i> , 355 NLRB No. 67, slip op. at 1, (2010).....	55
<i>Mesker Door, Inc.</i> , 357 NLRB 591 (2011).....	43
<i>Mid-Continent Concrete</i> , 336 NLRB 258 (2001).....	39, 42, 45
<i>Miller Electric Pump & Plumbing</i> , 334 NLRB 824 (2001).....	53
<i>Myers Investigative & Sec. Servs., Inc.</i> , 354 NLRB 367 (2009).....	55
<i>Narricot Industries</i> , 353 NLRB 775 (2009).....	50
<i>National Extrusion & Mfg. Co.</i> , 357 NLRB 127 (2011).....	42
<i>Newport News Shipbuilding & Dry Dock Co v. Schauffler</i> , 303 U.S. 54 (1938).....	58
<i>Nexstar Broadcasting, Inc. d/b/a KOIN-TV</i> , 367 NLRB No. 117 (2019).....	37, 42
<i>Nexstar Broadcasting, Inc. d/b/a KOIN-TV</i> , 369 NLRB No. 61 (2020).....	37, 42
<i>Nexstar Broadcasting, Inc. d/b/a KOIN-TV</i> , 370 NLRB No. 72 (2021).....	37, 42, 57
<i>Nexstar Broadcasting, Inc., d/b/a KOIN-TV</i> , 370 NLRB No. 68 (2021).....	31, 37, 42

<i>NLRB v. Acme Ind. Co.</i> , 385 U.S. 432 (1967)	41, 42
<i>NLRB v. B.A. Mullican Lumber & Manufacturing Co.</i> , 535 F.3d 271 (4th Cir. 2008).....	51
<i>NLRB v. Federal Eng'g Co.</i> , 153 F.2d 233 (6th Cir. 1946).....	59
<i>NLRB v. Fitzgerald Mills Corp.</i> , 314 F.2d 260 (2d Cir. 1963).....	46
<i>NLRB v. Gissel Packing</i> , 395 U.S. 575 (1969)	43
<i>NLRB v. Hardesty Co.</i> , 308 F.3d 859 (8th Cir. 2002).....	39, 42
<i>NLRB v. Insurance Agents' International Union</i> , 361 U.S. 477 (1960)	38, 44
<i>NLRB v. Katz</i> , 369 U.S. 736 (1962)	52
<i>NLRB v. Pratt & Whitney Aircraft Division</i> , 789 F.2d 121 (2d Cir. 1986).....	43
<i>NLRB v. Stanislaus Implement & Hardware Co.</i> , 226 F.2d 377 (9th Cir. 1955).....	42
<i>NLRB v. United Food and Commercial Workers Union, Local 23</i> , ("UFCW"), 484 U.S. 112 (1987).....	58, 59
<i>NLRB v. Wonder State Mfg. Co.</i> , 344 F.2d 210 (8th Cir. 1965).....	39
<i>Ohio Power Co.</i> , 216 NLRB 987 (1975).....	42
<i>Olympia Fields Osteopathic Med. Ctr.</i> , 278 NLRB 853 (1986).....	59
<i>Overnite Transportation Co.</i> , 296 NLRB 669 (1989).....	38
<i>Pacific Coast M.S. Industries Co., Ltd.</i> , 355 NLRB 1422 (2010).....	54
<i>People Care</i> , 327 NLRB No. 144 (1999)	40
<i>Phillips 66</i> , 369 NLRB No. 13, slip op. at 6 (2020).....	38, 39
<i>Public Service Co. of OK (PSO)</i> , 334 NLRB 487 (2001).....	38, 39

<i>Regency Service Carts, Inc.</i> , 345 NLRB 671 (2005).....	40, 46
<i>Reichhold Chemicals</i> , 288 NLRB 69 (1988).....	38
<i>Sheet Metal Workers Local 28</i> , 306 NLRB 981 (1992).....	60
<i>Siemens Building Technologies</i> , 345 NLRB 1108 (2005).....	47
<i>Solano Rail Car Co.</i> , Case 20-CA-20941, unpublished Board order issued October 27, 1987, <i>petition for review denied</i> <i>Boilermakers Local 6 v. NLRB</i> , 872 F.2d 331 (9th Cir. 1989).....	60
<i>Solo Cup Co. v. NLRB</i> , 332 F.2d 447 (4th Cir. 1964).....	45
<i>Southside Elec. Coop.</i> , 247 NLRB 705 (1980).....	41
<i>Sparks Nugget</i> , 968 F.2d 991 (9th Cir. 1992)	46
<i>St. Margaret Mercy Healthcare Ctrs.</i> , 350 NLRB 203 (2007).....	54
<i>Station Casino, LLC</i> , 358 NLRB 1556 (2012).....	54
<i>Stevens Int'l.</i> , 337 NLRB 143 (2001).....	44
<i>Sure-Tan, Inc. v. NLRB</i> , 467 U.S. 883 (1984)	55
<i>The Boeing Company</i> , 365 NLRB No. 154, slip op. at 4-5 (2017).....	54
<i>Tiidee Products, Inc.</i> , 194 NLRB 274 (1972).....	56
<i>Toledo Blade Co.</i> , 343 NLRB 385 (2004).....	52
<i>Torrington Extend-A-Care Employment Assn. v. NLRB</i> , 17 F.3d 580 (2d Cir. 1994).....	39
<i>United Tech. Corp.</i> , 274 NLRB 1069 (1985).....	43
<i>United Technologies</i> , 296 NLRB 571 (1999).....	45

<i>Universal Fuel, Inc.</i> , 358 NLRB No. 150, slip op. at 2 (2012)	55
<i>UPMC</i> , 366 NLRB No. 142, slip op. at 1 (August 6, 2018)	54
<i>Valley Health System</i> , 369 NLRB No. 16, slip op. at 1 (Jan. 30, 2020)	47
<i>West Coast Casket Co., Inc.</i> , 192 NLRB 624 (1971)	38
Statutes	
29 U.S.C. § 158	1
29 U.S.C. § 158(d)	37

This case was heard by the Honorable Amita B. Tracy from November 12-18, 2020, by Zoom videoconference, pursuant to a Second Consolidated Complaint alleging that Nexstar Broadcasting, Inc., d/b/a KOIN-TV ("Respondent"), has engaged in unfair labor practices within the meaning of §§ 8(a)(1) and (5) of the National Labor Relations Act ("Act"), 29 U.S.C. § 158 *et. seq.* It involves Respondent's three-year campaign to weaken a longtime incumbent union, culminating in its withdrawal of recognition from that union, and its concurrent and subsequent actions to ensure the union never returns. As discussed in detail herein, the facts and the record as a whole support finding that Respondent has violated the Act as alleged in the Second Consolidated Complaint, amended at hearing, by: engaging in overall surface bargaining, withdrawing recognition from a longtime incumbent Union absent evidence of an actual loss of majority support, making unilateral changes without notifying or bargaining with the Union, and coercing employees in the exercise of their § 7 rights. Counsel for the General Counsel respectfully requests an order remedying these violations.

I. FACTS¹

A. Overview

Respondent is a local television and media company that runs 197 stations nationwide, including the KOIN-TV local news station in Portland, Oregon. On about January 17, 2017, Respondent purchased the business of LIN Corporation, a Media General Company ("LIN Corporation"), which was then doing business as KOIN-TV ("KOIN-TV"). In January 2017, when Respondent purchased KOIN-TV, it became the employer of two bargaining units of employees (the "Units") who had been represented by the National Association of Broadcast Employees & Technicians, The Broadcasting and Cable Television Workers Sector of the Communication Workers of America, Local 51, AFL-CIO (the "Union"), for 15 years.

¹ References to the transcript appear as (__:__). The first number refers to the transcript page; the second to the line. References to Joint Exhibits appear as (JX__); references to General Counsel Exhibits appear as (GCX __); and references to Respondent Exhibits appear as (RX __).

The first Unit, as certified by the Board, includes all regular full-time and regular part-time engineers and production employees (excluding the chief engineer, office clericals, guards and supervisors as defined in the Act, and all other employees of KOIN-TV) (the "Technical Unit" or "Unit 1"). The second Unit, as voluntarily recognized by the parties, includes all regular full-time and regular part-time news, creative services employees, and web producers (excluding news producers, IT employees, on-air talent/"performers", office clericals, professionals, guards and supervisors as defined in the Act, and all other employees of KOIN-TV) (the "Production Unit" or "Unit 2"). As of January 8, 2020, Respondent employed 27 employees in Unit 1 and 12 employees in Unit 2 (collectively, the "Unit employees"). (RX 4; 847:8-850:24, 853:4-16.)

Since its purchase of KOIN-TV, Respondent has continued to operate the business in basically unchanged form and has employed, as a majority of its employees, individuals who were previously employees of LIN Corporation at KOIN-TV in the two Units represented by the Union. It therefore became a successor to LIN Corporation and inherited its CBA with the Union. (JX 1, 2.)

The collective bargaining agreement Respondent assumed when it purchased KOIN-TV in January 2017 was in effect from July 29, 2015, to July 28, 2017. (JX 1.) As such, just six months after Respondent took over KOIN-TV, the CBA it had inherited was set to expire. (JX 1, 2.) In advance of the July 2017 expiration, however, Respondent and the Union negotiated two contract extensions – so the CBA did not officially expire until September 2017. (JX 1, 2.) Meanwhile, however, the parties began to bargain for a successor contract in an atmosphere where Respondent was engaged in a concerted campaign to sow division, distrust, and apathy between its employees and their Union.

B. The First 18 Months of Contract Negotiations – 2017 and 2018

Respondent's bargaining team throughout these negotiations included: Vice President of Labor and Employment Relations Chuck Pautsch ("Pautsch"); Nexstar Broadcasting President Tim Busch ("Busch") (who participated only through January 1, 2019); KOIN Broadcasting, Inc. Vice President and

General Manager Patrick Nevin ("Nevin"); Business Administrator/Human Resources Representative Casey Wenger ("Wenger"); Director of Technical Operations/Operations Manager Rick Brown ("Brown"); and KOIN News Director Rich Kurz ("Kurz"). Pautsch served as Respondent's lead negotiator since early in the bargaining process. In about November 2019, toward the end of bargaining, Lisa Newell took over for Wenger as Respondent's Business Administrator. (JX 44; 237:9-13.)

For the vast majority of the bargaining process, Union President Carrie Biggs-Adams ("Biggs-Adams") and Unit 1 member, shop steward, and employee bargaining representative Ellen Hansen ("Hansen") served as the Union's negotiating team at the bargaining table. (JX 1.) Biggs-Adams has bargained well over 50 contracts throughout her professional career since 1978, of which at least 40 were broadcast television-related. (44:14-17.) In March 2018, the parties were joined by an FMCS Mediator, who attended negotiations until the final bargaining session on December 10, 2019. (JX 1.)

Bargaining took place at various hotels near Respondent's facility in Portland, Oregon. The Union's office manager would book the hotel conference rooms and the parties would split the cost of the meeting rooms. (52:1-11.) Scheduling would generally occur in person, at the bargaining table. (54:6-11.) Prior to the end of each session, the Union typically sought to set bargaining dates for the next two months. (52:1-11.)

Pautsch, who is based in Irving, Texas, and Biggs-Adams, who is based in San Francisco, California, would travel to Portland for negotiations. (44:1-7, 570:15-16.) The two-day sessions typically started between 9:00 a.m. and 10:00 a.m. each day, with the first day of bargaining typically ending between 4:00 p.m. and 5:00 p.m. and the second day of bargaining typically ending earlier than the first day, depending on Pautsch's flight schedule. (54:23-24; JX 13, 14, 15.) Biggs-Adams would typically take the last direct flight home following the second day of bargaining, around 6:00 p.m. (44:1-7, 55:6-16.) It was never the Union's choice to end bargaining early on the second day; this depended on Respondent's team's flight schedules. (107:9-13).

When bargaining commenced in June 2017, Respondent's initial proposal was 52 pages long and contained about 45 changes to the 26-article Expired CBA. (JX 3.) In contrast, the Union's initial proposal was 4 pages long and contained about 19 proposed changes. (JX 4.) According to Biggs-Adams, the bargaining held between Respondent and the Union in 2017 and 2018 was "herky-jerky" and "difficult," in large part because it was not proceeding in a linear fashion. (42:25-43:4, 44:14-17, 44:20-24, 67:17-68:1-4.)

C. Respondent's Unabashed Hostility Toward and Defamation of the Union in 2019

Even with this rocky precedent in 2017 and 2018, Biggs-Adams found that contract negotiations with Respondent in 2019² became "much harder," in part due to Respondent's increasing hostile conduct toward the Union and toward her personally. (68:7-72:9-13.) These details discussed below demonstrate that Respondent's conduct towards Biggs-Adams and the Union throughout the course of bargaining, both orally and in writing, was designed to undermine and belittle the opposing side.

1. Respondent's Personal Attacks on Biggs-Adams During 2019 Bargaining

Biggs-Adams recalled that, while she personally "certainly didn't shy away from swearing," the tone of her bargaining counterparts was consistently "nasty" and there was an overall "lack of respect" for what she would say, write, or present. (165:9-11, 165:16-18.) Respondent's own bargaining notes indicate that when Biggs-Adams accused Respondent of trying to get out of the parties' CBA during the April 23 bargaining session, Pautsch did not deny this allegation, but instead said, "that is because of you" (meaning Biggs-Adams personally). (JX 15:5.) In addition, on June 27, Nevin called Biggs-Adams a "bitch," "obnoxious," and "foul-mouthed," among other "obscene names," and otherwise "insulted" her – according to both Biggs-Adams and Hansen. (167:14-168:10; JX 14, 000011.)

² All dates hereafter are in 2019, unless otherwise indicated.

2. Respondent's Misleading and Defamatory 2019 Bargaining Update Memos

Throughout the bargaining process, the Union had a practice of generating bargaining bulletins following the second day of each two-day bargaining session. These bargaining bulletins served to keep Unit members up to date on what was going on at the bargaining table. (75:17-25; JX 17.) Throughout this round of successor contract bargaining with Respondent, the Union issued 35 such memos, which neutrally described the state of bargaining. (JX 17.)

Beginning in March 2019, Respondent issued at least seven of its own "bargaining update" memos. While these bargaining updates purported to similarly update Unit employees about the bargaining process, they rarely did so; instead, they appeared to be designed to belittle and defame Biggs-Adams and the Union. (JX 21, 25, 26, 30, 32, 38, 43.) Although these memos were signed by Nevin, they were in fact written by Pautsch – Biggs-Adams' lead bargaining counterpart. (636:13-15.)

In Respondent's initial March 5, 2019 memo, Respondent suggested that the Union's initiation fee was as much as ten times higher than the initiation fees at other stations, and that this fact was "unfortunate and reprehensible." The same memo went on to describe Respondent's health insurance proposal as keeping employees' health care costs low. (JX 21.)

In Respondent's June 20 memo, Respondent called Biggs-Adams the "assigned union representative," even though Respondent knew Biggs-Adams' title was President of the Local. This memo also falsely proclaimed that Biggs-Adams was "repeatedly unprepared and unwilling to engage in progressive negotiations." (JX 26; 688:13-16.) The June 20 memo also accused the Union of using stall tactics to avoid discussing wages when, in fact, as of that date *only* the Union had presented a wage proposal, while Respondent had not (and ultimately never did). (JX 26, 690:22-24-691:3-4.)

In one particularly hostile memo dated July 22, Respondent wrote that Biggs-Adams was "without direction, focus and is quite frankly narcissistic." (JX 30.) Respondent went on to reference a conversation at the bargaining table during the June 26 and 27 bargaining sessions where Respondent had yet again

refused to refer to Biggs-Adams as the President of the Local, and she had asked to be accorded the respect of being referred to by her proper title. Respondent wrote in the July 22 memo that this request was “indicative of the fact that [Biggs-Adams] just can't focus on the issues at hand or bargaining in your best interest” and demonstrated her “universally bizarre behavior and waste of everyone's time.” (JX 30.)

While Pautsch, the author of Respondent's memos, testified that the idea behind the memos was to keep the record straight, the July 22 memo summarizing the June 26 and 27 bargaining sessions failed to mention that Respondent's team had left bargaining early the first day at 3:00 p.m. and even earlier the second day, at 2:45 p.m. (637:9-10-13, 636:13-15; JX 14 Bates 000009, 000012.) The memo also failed to relay that during the June 27 session, according to Biggs-Adams and Hansen, Nevin “insulted” Biggs-Adams and called her “obscene names” including “a bitch,” “obnoxious,” and “foul-mouthed.” (JX 14 Bates 000011; 167:14-168:4-10.)

Respondent issued two memos in August, one on August 2 and the other on August 20. (JX 32, 38.) The August 2 memo informed Unit employees that Respondent would no longer be deducting Union dues or initiation fees from them. (JX 32; 176:16-19.) The August 20 memo entitled “Questions and Answers” was purportedly in response to questions Nevin had received from employees after he issued the August 2 memo. (JX 38.) Curiously, the August 20 memo no longer asserted that the Union's initiation fee was as much as ten times higher than other stations, as the initial March 5 memo had suggested; instead, the August 20 memo indicated that the Union's initiation fee was six times higher. (JX 38.) The memo also complained of “countless acts of bizarre and unprofessional behavior, numerous rants and frequent verbal abuse by union representatives.”

D. Respondent's Failure to Engage in Meaningful Bargaining in 2019

As set forth earlier, there was a total of six sets of 2-day bargaining sessions, meaning 12 days of bargaining total, held during 2019. (JX 1.) The first sessions were towards the end of January, at the beginning of the year.

1. The January 2019 Negotiations

It wasn't until the January 24 and 25, 2019 bargaining sessions – more than 19 months into the bargaining process – that Respondent first presented a proposal on any economic issues.³ (JX 17.) Respondent's proposal, labeled "KOIN Package Proposal #8," included proposals on paid leave, insurance and benefits plans, and overtime, but *not* wages. (JX 11.) This proposal contained Respondent's first, and only, written health care proposal: changing the Unit employees' health insurance rates from the locked-in premiums in the Expired CBA to employees paying 10.4% of their gross pay from each given paycheck toward their premiums. (JX 17 Bates 000033.)

The 10.4% health insurance premiums concerned the Union because this meant that, if a bargaining unit member worked any overtime, their premiums for health care could fluctuate significantly. (JX 17 Bates 000033; 93:23-94:4.) Further, this proposal differed from the terms set forth in the Expired CBA in that it did not set a cap on the rate an employee could have to pay. (93:23-94:4.) As such, following the January 24, 2019 negotiations, Biggs-Adams sent an email to Respondent's bargaining team, asking for "the COBRA rates and what the employer contributions are on [Respondent's proposed] plans," and a clarification regarding Respondent's 10.4% employee contribution proposal. (JX 18.) This information was necessary for the Union to understand the economics of Respondent's proposal and what its impact would be on the membership – in part, because Respondent had not yet made a wage proposal, so the percentage-per-paycheck Respondent proposed for health insurance rates did not translate into a tangible dollar amount. (101:3-5.)

On the same date, Respondent provided the COBRA rates, 2017 dental and vision contributions by employees, and 2019 medical contributions – but Respondent did not provide its own contribution rates at that time, as Biggs-Adams had requested. (698:1; JX 18, 60(a)-(c).) After receiving this response and

³ Respondent also presented proposals on non-economic topics, including union security, union business, and indemnification. (JX 17 Bates 000033.)

reviewing Respondent's January 2019 health insurance proposal (that it would keep its current health insurance plan), Biggs-Adams spoke to her membership about the current coverage and learned that Respondent's health plan did not provide adequate abortion or gender dysphoria coverage. (99:10-23.)

2. The April, June, and August 2019 Negotiations

By the parties' next bargaining sessions – which were not held until three months later, on April 23 and 24 – Biggs-Adams had still not received a summary plan description of Respondent's health care coverage from Respondent but, from speaking with her membership, understood that Respondent's coverage of abortion and gender dysmorphia was inadequate. (99:10-13, 388:21-23; JX 1, 18.) The Union viewed these as important issues, because a bargaining unit member's child had recently received gender dysmorphia treatment but was denied coverage under Respondent's health care plan, and the Union also wanted to ensure that its members would have full abortion coverage whenever medically necessary (99:1-4, 99:11-23.) When Biggs-Adams first broached the subject of Respondent's coverage of gender dysmorphia and abortion at the April 2019 negotiations, Pautsch said he was not aware whether Respondent provided these types of coverage and that he would find out and get back to Biggs-Adams. (100:2-5.)

Even without an answer regarding gender dysmorphia and abortion coverage from Pautsch, the Union provided Respondent with its first health care proposal on April 23. (JX 8(b).) The Union agreed to Respondent's initial proposal that its members would be covered under Respondent's in-house plans, so long as the rate bargaining unit members paid for coverage did not increase above the capped amounts under the Expired CBA. (JX 8(b).) Though Respondent had received this health insurance counterproposal from the Union in April, Respondent *never* brought a written counter back to the table. (JX 1, 13, 14, 15.) That same day, however, Respondent countered not to the health proposal, but instead, regarding union security and dues checkoff. (JX 5(h), 6(h).) Accordingly, the April bargaining sessions did not result in any agreements on health insurance. (JX 13, 14, 15.)

In addition to providing a health proposal at the April 23 session, the Union provided a wage proposal to Respondent at the April 24 session, at the request of Respondent (despite that Respondent had not made a wage proposal yet). (JX 13, 14, 15.) The Union's wage proposal set forth a minimum wage amount for each classification and wage increases of 3.5% on each anniversary of the contract. (128:4-10; JX 9.) Respondent neither responded to this wage proposal nor made a wage proposal of its own before it abruptly withdrew recognition from the Union in January 2020 and ceased all contract negotiations. (150:21-25, 182:21-22; JX 1.)

During the June 26 and 27 sessions, Pautsch explained Respondent's initial health care proposal from January to Biggs-Adams as a "me-too" proposal: that if there was a reduction in non-represented employee health care contributions, the represented employees would receive the same change in contributions. (JX 14 Bates 000008.) Biggs-Adams viewed this a "trust me" proposal and did not view it as meaningful bargaining because, as she explained at the table, the proposal would nevertheless be a cut for the Units in comparison to the terms set forth in the Expired CBA. (JX 14 Bates 000008, JX 15:7; 383:6-7.) As such, the June sessions did not result in any agreement on health insurance. (JX 13, 14, 15.)

When the parties met again on August 15 and 16 (more than a month and a half later), the Union reiterated its health insurance proposal from April 23 and reminded Respondent that abortion coverage was an issue for the Union. Respondent did not make another health insurance proposal, but it did request information about the benefits available only to dues-paying Union members that were described on the Union's website. (JX 33; 187:15-188:1-9.)

3. The October 2019 Negotiations

The parties did not meet again until October 7 and 9, nearly two months after the August sessions. (JX 1.) On October 7, at the table, Biggs-Adams again raised the question to Pautsch about adding coverage for gender dysmorphia and abortion. Pautsch represented that he would talk with Busch the following day and provide a better answer about what Respondent's plan covered. (JX 14 Bates 000014.)

On October 9, ten minutes prior to the start of that day's bargaining session, Nevin finally emailed Biggs-Adams the summary health plan descriptions for the previous year, in response to her requests since April for this information. (100:2-5; JX 14 Bates 000014, JX 42.) Nevin told Biggs-Adams that if she had further questions regarding gender dysmorphia or abortion coverage, she could use appropriate search terms to search the document herself. (JX 42; 228:15-23.) In this same email, Nevin reiterated Respondent's request that the Union provide it with information regarding the Union's "Union Plus" benefits, which are extra-contractual benefits the Union provides to Union members only.⁴ (JX 42; 228:24-229:3.)

On October 9, Pautsch began the session by verbally proposing that Respondent could offer both its health care plan and the Union Plus programs as options in the CBA. (604:8-21; JX 14 Bates 000016, JX 15.) As Biggs-Adams explained to Respondent at the bargaining table, the Union rejected this as unworkable because it would cause Respondent (and the Union) to discriminate against those Unit employees who chose to remain non-members of the Union. (231:20-23.) Pautsch then told Biggs-Adams he could not change Respondent's nationwide health plan to include abortion and gender dysmorphia coverage. (JX 16 Bates 000016.) Biggs-Adams reiterated that it was pertinent for her to know the dollar amount of Respondent's health care contributions so that she might be able to shop around for other plans that did provide gender dysmorphia and abortion coverage. (233:21-23.) Pautsch did not provide this figure, and bargaining ended at 10:33 a.m. – less than 30 minutes after it had begun. (234:4-6; JX 14 Bates 000018, JX 15:19.)

Pautsch testified at the hearing that it would be "out of [his] lane within the corporation to amend the plan" to include additional gender dysmorphia and abortion coverage. (602:22-25.) However, when questioned further, he stated, "So, could Respondent have changed [the health care plan] for one location? I would have considered it. We would have considered it, but I thought the better way to look at this was to

⁴ This request, and the Union's response, were investigated in Case 19-CB-248966. Although the Region dismissed the charge, the General Counsel sustained Respondent's appeal. Regardless, the Union entered into a unilateral settlement with the Region which was unsuccessfully appealed by Respondent. (JX 63.)

look at other options.” (686:14-16.) Pautsch went on to say that it was “difficult or not practical to add to the plan on a one-off basis.” (687:16-18.) However, none of this was ever communicated to Biggs-Adams at the bargaining table.

4. The Final Negotiations in December 2019

The December 9 bargaining session, held exactly two months after the last one, started with a two-hour caucus by Respondent. (JX 13 Bates 000031, JX 14 Bates 000019.) Upon Respondent’s return, nearly 11 months after they were first requested by the Union, Respondent finally provided Biggs-Adams with its health insurance plan contribution numbers. (698:18; JX 13 Bates 000031, JX 14 Bates 000019, JX 16, JX 47.) Biggs-Adams suggested that instead of discussing the Union Plus plans, which are Union member-only programs, Respondent might be interested in the Union’s Flex Plan, which is a Taft-Hartley trust. (231:20-22.)

Pautsch testified at the hearing that he viewed the Flex Plan as a negative because it afforded Respondent “little control” and he felt that Respondent would “lose the ability to have some sort of say” in the health care plan. (610:14-15, 611:12-13.) However, at the bargaining table, Pautsch disingenuously told Biggs-Adams that he “would look into it.” (JX 14 Bates 000020, JX 16.)

Following Pautsch’s representation, at 1:32 p.m. that day, Biggs-Adams emailed Pautsch documents regarding the Union’s Flex Plan. (JX 49(a)-(f).) Respondent requested a break at 1:30 p.m. to review the documents Biggs-Adams had provided. (JX 16.) Around 3:20 p.m., Respondent, through the FMCS Mediator, informed Biggs-Adams that Respondent wanted to stick with its own health plan. (JX 14 Bates 000020.) The parties did not return to the bargaining table again that day. (JX 16.)

December 10, 2019 was the parties’ last day of bargaining to date. They talked again about gender dysphoria and women’s reproductive coverage, with the Union reiterating that the lack of coverage under Respondent’s plan was a problem. Biggs-Adams also reiterated that the Union needed to know the dollar amounts that would be charged to employees in 2020 for Respondent’s health plan. Pautsch failed

to provide this information and instead asked the Union for a better wage offer. (JX 14 Bates 000022, JX 16; 264:8-12.) Specifically, according to Respondent's own bargaining notes, Pautsch told Biggs-Adams to "assume we want to finish health care if you want to make a wage offer. Make a counter." (JX 14 Bates 000022, JX 16.) Since only the Union had made a wage offer to date and Respondent had never countered, Biggs-Adams refused, noting that she would not bargain against herself. (264:8-12; JX 14 Bates 000022.) Pautsch then once again left the bargaining table early – by noon – to catch a flight. (266:21-24; JX 13 Bates 000034.)

In sum, Respondent's only health proposal was to charge employees 10.4% of their gross income for health coverage and to keep its existing health plan – without ever making a wage proposal which would clarify roughly the dollar amounts Unit employees would pay. It never budged from this initial proposal and delayed 11 months in providing the Union with relevant information it needed to even begin to evaluate the proposal. (JX 1, JX 8(a).) The parties have not met again to date since December 10, 2019.

E. Respondent's Consistent Unavailability and Cancellations of Scheduled Bargaining Sessions Throughout 2019

As discussed above, the Union and Respondent met for successor bargaining a total of six sets of two consecutive dates, or 12 total days, during calendar year 2019. (JX 1.) There was no bargaining held in the months of February, May, July, September, or November 2019. (JX 1.)

1. Respondent's Unavailability for Bargaining in February, May, July, September, and November 2019

As discussed above, the parties first met for bargaining in 2019 on January 24 and 25. (JX 1.) However, Respondent informed the Union that it was unavailable to bargain in the month of February 2019 due to it being a "sweeps" month.⁵ (108:6-24.)

⁵ "Sweeps" refers to a four-week period where television ratings have a higher value and are used to garner advertising dollars. Sweeps takes place in every year in roughly the months of February, May, July, and November. (108:8-20.)

However, the parties made plans to meet on March 14 and March 15, and the dates were confirmed by Wenger on February 6. (JX 20.) Unfortunately, that same day, the FMCS Mediator responded by email that she had a mandatory meeting those days and would not be available, but she could move her schedule around to accommodate the parties if necessary. The FMCS Mediator went on to offer two alternative consecutive date options. Of these dates, Biggs-Adams confirmed the Union's availability for March 28 and 29. However, Wenger responded that none of the alternative dates offered by the Mediator would work for Pautsch – but he did not provide a reason for Pautsch's unavailability. Thus, the parties did not meet for bargaining in March.

Instead, Wenger suggested that any dates between April 1 and 12 would work for Respondent. (JX 20.) Unfortunately, Biggs-Adams was unavailable during Wenger's proffered April dates due to a long-scheduled set of Union trials during the first week of April and the National Association of Broadcasters conference in Las Vegas the following week, through April 13.⁶ (JX 20.) However, Biggs-Adams offered *three* sets of alternative dates for that month: April 15-16, April 22-26, or April 29-May 3. (JX 20.) The FMCS Mediator confirmed her availability for any of these dates, and the Union and Respondent ultimately agreed to meet (and did meet) on April 23 and 24. (JX 1.)

The parties also did not meet in May, July, September, or November. As with February, Respondent asserted its unavailability in May was due to it being another "sweeps" month. (108:21-24, 148:10-18, 169:15-19.) Despite the Union's offers of and requests for July and November bargaining dates, bargaining did not occur during either of those months, again due to Respondent's asserted unavailability – this time without explanation. For example, at the parties' October negotiations, when

⁶ Biggs-Adams conveyed her unavailability for bargaining at only two points during 2019: once, for her long-scheduled Union trials in late March 2019, when the Mediator had to cancel the parties' previously scheduled sessions in mid-March, and once in late August 2019, when her husband was ill and needed surgery. (210:16-25, 326:2-12.) Biggs-Adams did arrive uncharacteristically late to negotiations on December 10 because the Union's Secretary-Treasurer Emeritus had passed away. (259:4-5). However, this only delayed the start of bargaining by about 30 minutes. (JX 13 Bates 000032, JX 14 Bates 000021, JX 16.) On the same date, Respondent ended bargaining very early, around noon, so that Pautsch could catch his flight – as had become Respondent's usual practice. (266:21-24; JX 13 Bates 000034.)

Biggs-Adams proposed November 13 and 15 as future bargaining dates, Respondent did not agree to those dates or offer any alternative November dates, and did not explain why. (JX 13 Bates 000022.) Similarly, although the Union was available to meet in September, Respondent was not, and no explanation was provided. (210:16-25.) Biggs-Adams assumed Respondent's unavailability in July and November was similarly due to July and November being sweeps months, but Respondent did not provide explanations for its lack of availability for bargaining during the months of July, September, or November. (169:15-19, 171:21-172:15, 225:17-226:6, 417:6-25; JX 13 Bates 000022, JX 17 Bates 000044.)

Respondent's claim of unavailability due to sweeps was puzzling, as the parties had met during sweeps months in 2017 and 2018 and there was only a single individual on Respondent's side of the table who was directly involved in producing news to meet sweeps months ratings goals: Brown. Brown was not Respondent's lead bargaining spokesman; Pautsch was. (170:2-8; JX 1.) The Union did not find it acceptable that Respondent had essentially taken the position that it could not bargain during any sweeps months in 2019 (a total of 4 of 12 months, or 1/3 of the entire year), especially since the parties could have bargained without Brown present, if necessary. (169:25-170:8.)

2. Respondent's Cancellation of the Scheduled January and February 2020 Bargaining Sessions

At the October 2019 bargaining sessions, the parties agreed to meet and bargain on January 14 and 15, 2020. Biggs-Adams noted this in her written bargaining notes, and Pautsch testified at the hearing that he was aware of these scheduled bargaining dates as of October 2019. (JX 13 Bates 000027, JX 16; 648:2-6.) Even though the parties had committed to these mid-January 2020 bargaining dates in October 2019, immediately after the final, December 10 bargaining session, Respondent cancelled the January sessions. (JX 51; 267:6-19, 277:2-7.)

While Pautsch claimed the cancelation of the January 14 and 15, 2020, dates was due to a "misunderstanding," because he would be in New York that week, the Union understood (and Pautsch's

testimony confirmed) that the purpose of Pautsch's trip to New York was for a conflicting contract bargaining session he had scheduled with another Union Local. (279:19-25; JX 51.) Pautsch offered that he would be available January 23 and 24 and, based on this representation, the Union booked a room at the Portland Hilton on January 3, 2020 for bargaining on January 23 and 24. (GX 2.) In addition to these dates in January, the parties also agreed to dates in February 2020. (JX 51, 52; 278:13-15, 279:5-9.)

Notwithstanding the parties' scheduled bargaining dates in January and February 2020, on January 8, 2020, Respondent abruptly withdrew recognition from the Union and cancelled the previously scheduled bargaining sessions. (JX 55; GCX 2, 9, 10.) When Respondent cancelled these bargaining sessions, the Union was ultimately charged a \$1,000 cancellation fee for the hotel, which Respondent has not refunded. (296:2-9; GX 2.) In fact, Respondent has since failed and refused to respond to any of the Union's inquiries about bargaining or its recognition status and ceased all further negotiations. (JX 52, 53, 54, 58; GCX 13, 14.)

F. Respondent's January 8, 2020 Withdrawal of Recognition from the Union

Respondent's sole written communication to the Union informing it of its decision to withdraw recognition, dated January 8, 2020, stated that Respondent had a "good faith reasonable doubt," based on "substantial objective evidence," that the Union retained the support of the majority of the employees in either Unit. (JX 55.)

On the same date of this single written communication to the Union, Respondent's Vice President and General Manager Nevin held meetings with the Unit employees to inform them about the "exciting," "good" news that Respondent had taken a "positive step forward:" it was no longer going to recognize the Union. (452:23-454:1, 498:18-499:23, 534:3-12.) At these meetings, Nevin shared with Unit employees that management had not relied on any formal poll of the Unit employees or other type of objective evidence to justify its withdrawal of recognition. Instead, Nevin told the employees that he had "had a few conversations with people" who had "come into his office and talked to him," and that Respondent had

“decided based on these conversations that there wasn’t enough support” for the Union. (460:13-18, 500:22-501:3.) Union steward Robert Dingwall (“Dingwall”) testified that he and fellow steward Matthew Rashleigh (“Rashleigh”) were shocked by Nevin’s announcement, since they were both confident that the Union retained the majority support of the Unit employees. (501:4-10.)

At the administrative hearing held in November 2020, Respondent provided its own supervisors and managers – (now-former) Business Administrator Wenger, Vice President/General Manager Nevin, and Director of Technology/Operations Manager Brown – to testify secondhand about what employees had allegedly told them about their support for the Union.⁷ Respondent provided only a single employee witness, Douglas Key (“Key”), to testify firsthand about his own feelings about the Union.

1. The Testimony of Casey Wenger

KOIN-TV’s former Business Administrator Wenger testified that, on undefined dates between months to up to *years* prior to Respondent’s January 2020 withdrawal of recognition, he had a total of about four or five “conversations with employees” about the Union.⁸ (757:16-758:4.) Wenger specifically recalled that toward the end of summer 2019 (several months prior to Respondent’s January 2020 withdrawal of recognition), Respondent’s digital web producer Cambrie Juarez (“Juarez”) expressed to him her concern that she did not want to have to pay Union dues and fees, and then allegedly asked how she could “get out of the Union or not be in the Union.” (749:19-751:5.) Respondent did not call Juarez as a witness. However, when Respondent counsel inquired whether Wenger recalled any other employees who he had allegedly spoken to about this, Wenger responded clearly that he did not remember any other employees’ names. (751:6-8.)

⁷ It should be noted that the testimony from Respondent’s supervisors and managers was elicited through leading testimony by Respondent’s counsel and was improperly allowed into the record as hearsay, despite Petitioner’s and the Union’s repeated and standing objections. (745:7-15, 747:16-749:4.)

⁸ Wenger was KOIN-TV’s Business Administrator for about 11 to 12 years before he retired on November 15, 2019. (743:12-17, 745:1-4.)

Despite this clear testimony, Respondent counsel then attempted to lead Wenger to elicit testimony about an alleged conversation with an employee named Levan Funes ("Funes"), but counsel for the Petitioner's objection to this leading questioning was sustained. (751:9-16.) When Respondent's counsel asked Wenger if there was something that would help refresh his recollection as to who else he might have spoken to, Wenger responded that his notes would help – but Respondent's counsel did not have those notes available to refresh Wenger's recollection. (751:17-23.) Thus, Respondent counsel instead affirmatively offered to refresh Wenger's recollection with a list of all the names of the members in each Unit, which Wenger agreed might help refresh his recollection. (751:24-752:6.) With the employee list in front of him, Wenger was seemingly able to recall that he had also spoken with Funes, creative service producer Derric Crooks ("Crooks"), digital content producer Kelly Doyle ("Doyle"), and photographer/videographer Brian Watkins ("Watkins"). (752:19-753:6.)

Wenger testified that when Crooks was first hired, Wenger met him at his new hire orientation and Crooks indicated that he did not like having to be in the Union and wanted to know what he needed to do to "not be in the Union." (753:7-20.) Wenger did not testify about any other conversation with Crooks, other than this single conversation with Crooks that took place during his new hire orientation. Wenger did not testify to when Crooks' new hire orientation took place, but Respondent provided a document setting forth all of the Unit employees' dates of hire. This document reflects that Crooks was hired nearly a year prior to Respondent's withdrawal of recognition: on January 16, 2019. (RX 4.)

Similarly, Wenger testified that when Doyle was a new hire, she informed Wenger that she did not want to join the Union because she felt like she could not afford to pay the Union's dues and fees. Thus, according to Wenger, Doyle asked Wenger "the same thing [the other employees had asked him]. What does she need to do to not join the Union?" (753:21-754:5.) Wenger testified explicitly that this is *all* Doyle said to him. (754:6-7.)

Wenger testified that on some unidentified date soon after Watkins ceased serving on the Union's bargaining committee, Watkins asked Wenger, "how do I get out of the Union?" (754:8-20.) Although Wenger did not provide a date for when this conversation took place, it should be noted that Hansen took over for Watkins as the Union's sole employee bargaining team member in October 2017. (JX 1.) Thus, by his own testimony, the conversation appeared to be over 3 years ago.

Finally, Wenger testified that at Funes' new hire orientation, Funes indicated that he was not going to join the Union and he was not going to pay the Union's dues and fees. In Wenger's words, "[h]e made it clear... that he wanted no part of the Union." (754:21-755:3.) According to Respondent's records, Funes was hired on June 12, 2018 – more than 1½ years prior to Respondent's withdrawal of recognition. (RX 4.) Wenger did not testify to any more recent conversations with Funes about this subject.

Respondent did not call any of these employees – Funes, Crooks, Doyle, or Watkins – as witnesses.

2. The Testimony of Douglas Key

The sole Unit employee witness Respondent called at the hearing was photojournalist Douglas Key ("Key"). In response to leading questioning from Respondent counsel,⁹ Key testified about his own lack of support for the Union and the plan he developed "about a year ago" to get rid of the Union and bring in a better one. (765:1-6.) Key noted that he and Watkins had discussed this plan together and then, during group meetings held between October 2019 and January 2020, discussed their plan with other Unit employees who they believed were unhappy with the Union, including Chris Thibodaux ("Thibodaux") and Bill Cortez ("Cortez").¹⁰ (765:7-767:22, 768:18-19.) Key testified (over counsel for Petitioner's and the

⁹ This testimony from Key was elicited by the following question from Respondent counsel: "I want to draw your attention to approximately a year ago today, let's just say. Were you part of any effort to try and remove NABET as your bargaining representative?" (765:1-4.)

¹⁰ In response to Respondent's counsel's questioning, and Key's testimony, about Key's conversations with Watkins, Thibodaux, and Cortez about this subject, both counsel for Petitioner and the Union's counsel reiterated their standing objections to the introduction of this hearsay evidence. (765:17-766:8, 767:4-12.)

Union's counsel's hearsay objections) that at these meetings, Thibodaux and Cortez expressed "their concerns and reasons for not wanting the Union or not understanding what is the Union actually doing for us." (768:8-14.) However, Respondent did not call Thibodaux, Cortez, or Watkins as witnesses.

Despite Key's clear initial testimony, after Respondent counsel suggested that other individuals may also have attended and expressed concerns at these group meetings, Key testified that the morning photographer, John Karl Petersen, had also "said things" about this subject at these group meetings. (769:2-10, 770:4-12.) At this point, the Administrative Law Judge noted that Key appeared to be looking at an employee list to come up with Petersen's name, and directed him not to look at any documents unless someone asked him to do so. (769:11-20.) Nonetheless, having reviewed this document, Key testified that at these group meetings, Petersen had indicated that "he did not want the Union here no more." (770:13-14.) Respondent did not call Petersen as a witness.

Key also recalled that on unknown dates within the year preceding Respondent's withdrawal of recognition, a few other employees had also told him "about their discomfort and not wanting the Union here": including Cambrie Juarez, Richie Robertson, Robert "Robby" Sherman, an employee named Jay whose last name was not identified,¹¹ and Andrew Bisset. (770:19-771:25.) Respondent did not call any of these employees – Juarez, Robertson, Sherman, Jay, or Bisset – as witnesses.

3. The Testimony of Patrick Nevin

Next, Respondent called KOIN-TV's former Vice President and General Manager Nevin, who left KOIN-TV in early June 2020. (781:4-8.) Nevin testified in response to a very open-ended question from Respondent's counsel that, on unidentified dates, a number of Union members as well as non-represented employees had come forward to both himself and to other department heads to report their dissatisfaction with this particular Union and the ongoing round of contract negotiations. Nevin noted that he had had a

¹¹ There is no "Jay" reflected on Respondent's employee list as of January 8, 2020, and the record does not clarify who Key was referring to. (RX 4.)

number of conversations with employees who were frustrated with the Union's contract bargaining priorities and strategies. However, Nevin did not initially indicate when any of these purported conversations took place, or with whom. (783:24-784:7.)

When pressed by Respondent's counsel, Nevin recalled one such conversation with main anchor Jeff Gianola – who was not ever a member of either Unit – about what Unit members had expressed to him in terms of their concerns about the bargaining process. Given this double hearsay, the Administrative Law Judge ruled clearly on the record that the testimony was hearsay and she would not be considering it. (785:14-786:12, 795:12-22.)

Nevin also testified that during “this period of bargaining” (between June 2017 and December 2019), he: was told by unnamed sources that attendance at Union meetings was dwindling; had observed that only three Unit employees had attended certain actions coordinated by the Union; and, along with other managers, had been “told” by an unnamed source that a Union picnic had been cancelled due to lack of participation. (786:13-787:15.) Nevin also noted that during the two and a half year bargaining process, the Union had utilized three different Unit employees as bargaining team members, suggesting (through the use of hearsay) that at least one of the earlier employee bargaining team members (Watkins) had removed himself from the Union's team because of Union President and lead bargaining spokeswoman Biggs-Adams' conduct at the bargaining table. (788:1-789:15.) However, Respondent did not provide any of these purported sources of information as witnesses at the hearing.

Nevin also testified about hearsay comments made to him by Unit employees about the Union *during their exit interviews* – in other words, as they ceased their employment with Respondent and thus left the bargaining units. (790:12-19.) Specifically, Nevin testified that former employee Chelsea Wicks (“Wicks”), who was no longer a member of either Unit as of Respondent's January 2020 withdrawal of recognition, told him during her exit interview that one of her primary reasons for leaving Respondent was

the lack of Union representation and the fact that a new collective bargaining agreement had not yet been reached, meaning she had not received a raise in over 3 years. (790:20-791:2, 795:23-796:14; RX 4, 5.) Nevin did not testify to when this conversation took place, but Respondent's records reflect that Wicks' separation date was November 29, 2019 – a month and a half prior to its withdrawal of recognition. (RX 5.) Respondent did not call Wicks as a witness.

In addition, Nevin testified that former employee Ben Moore ("Moore"), who was also no longer a Unit member as of the withdrawal of recognition, told him during his exit interview that some of the reasons he was transferring to another Nexstar station were "the initiation fees and the high dues and just the contentious nature of the Union." (791:3-10, 796:15-22; RX 4, 5.) Moore left Respondent on February 27, 2019 – more than 10 months prior to Respondent's withdrawal of recognition. (RX 5.) Respondent did not call Moore as a witness.

Finally, Nevin testified that former employee Jordan Aleck ("Aleck") had expressed her concerns about "the divisive nature of the Union" to him during her exit interview and also noted that the newsroom was divided and she did not want to be a part of it. (291:11-16.) Although Nevin claimed he could not recall when Aleck stopped working for Respondent, Respondent's own records show that Aleck's date of separation from Respondent was July 5, 2019 – more than six months prior to Respondent's withdrawal of recognition. (RX 5.) Respondent did not call Aleck as a witness.

When prompted by Respondent's counsel about whether he had had any conversations with Unit employees about "whether or not they wanted the Union removed" in the period between about October 2019 and January 2020, Nevin responded that he had had such conversations with a few employees during this time frame. (791:17-792:9.) Specifically, Nevin suggested that Watkins came to him "several times" during this time frame to share with Nevin that the employees were going to take a vote and that he

and other employees felt strongly that there was not majority support for the Union.¹² In addition to informing Nevin that the employees were going to take a vote, according to Nevin, Watkins also had questions for Nevin about how a vote would actually take place. (792:10-20.) Again, Respondent did not call Watkins as a witness.

Nevin also suggested that he had a similar conversation with Paul Birmele (“Birmele”) during this October 2019–January 2020 time frame – even though Respondent’s own records reflect that Birmele left Respondent’s employ on September 18, 2019, several months prior to the withdrawal. (792:21-793:4, 797:13-19; RX 5.) Nevin did not testify to the details of this purported conversation, and Respondent did not call Birmele as a witness.

Finally, Nevin indicated on direct examination that he had a conversation with Tom Westarp (“Westarp”) during the October 2019-January 2020 time frame. Nevin testified that Westarp called him on his cell phone over a weekend and asked him what could be done to remove the Union. Nevin asked Westarp what was going on, and Westarp indicated that he had heard that there might be a vote but that he personally did not think a vote was going to happen. According to Nevin, during this phone conversation, Westarp also indicated that he believed the Union did not enjoy majority support and that his coworkers were asking him to take the lead in asking for a vote, but that he did not feel comfortable taking on that role. When led by Respondent’s counsel, Nevin also indicated that Westarp expressed that he personally wanted the Union out. (793:5-794:8.) Respondent did not call Westarp as a witness.

Then, on re-direct examination, after Respondent’s counsel inquired whether Nevin had spoken with an employee named Christian Montes (“Montes”) during this same time period, Nevin agreed that he had done so. Nevin explained that Montes had come to him asking for a wage increase and that, when

¹² There is no evidence in the administrative record that any petition or signatures were ever gathered by Watkins, Key, or any other of the Unit employees reflecting any lack of continued support for the Union, nor that any kind of vote was ever held – whether informally amongst the Unit employees or by the Board itself through a formal representation case proceeding. Respondent withdrew recognition from the Union without any such vote having occurred.

Nevin responded that Respondent could not grant any individual wage increases since that had to be bargained with the Union, Montes asked him what the employees could do to get the Union out.¹³ (801:16-802:25.) Respondent did not call Montes as a witness.

Interestingly, Nevin's testimony that his alleged conversations with Watkins, Birmele, and Westarp occurred between October 2019 and January 2020, and that his alleged conversation with Montes occurred in late 2019, conflicts with the dates set forth in the position statement Respondent provided during the investigation on March 26, 2020 – just 2½ months after its withdrawal of recognition. In the position statement, Respondent indicated that Nevin's alleged conversations with Watkins about this subject occurred in March 2018, November 2018, February 2019, and May 2019; his conversation with Birmele occurred in July 2019; and his conversations with Westarp occurred in April and May 2019. (GCX 19, pp. 27-28.) The position statement does not mention any conversation had between Nevin and Montes, on any date. In fact, according to the position statement, the only conversation Nevin had with *any* Unit employee later than October 2019 was the November 2019 conversation Nevin had with Wicks during her exit interview. (798:23-799:6; GCX 19, pp. 27-28.)

4. The Testimony of Rick Brown

Finally, Respondent's Director of Technology, Brown, also testified as to Respondent's purported claim of employee disaffection. (808:6-7.) Brown testified that from 2019 through the January 2020 withdrawal of recognition, he had a series of conversations with employees in the Units about their "position on the Union." (808:21-809:3.) For example, Brown testified that Key had informed him that he was looking into getting rid of the Union and that he knew that if the employees succeeded in getting rid of the Union, they would have to wait a year before bringing in another union to represent them (which Key

¹³ This testimony was admitted into the record over the objections of both counsel for the Petitioner and the Union's counsel, on the grounds that Respondent's counsel's questioning was leading, called for hearsay, and was outside the scope of the cross-examination (not to mention the direct examination).

intended to do). According to Brown, during this conversation, Key indicated that he had “12 yes votes” at the time, but that he needed 19 to “be certified in the Union.” (809:4-810:12.)

Brown initially did not testify as to when this conversation occurred. However, on follow-up by the Administrative Law Judge, Brown testified that this first conversation with Key occurred in about December of 2019. (811:9-18.) Brown also then testified that he also had a second, follow-up conversation with Key just a day or two later, during which Key corrected himself: that he only had “ten, 11 of the photographers against the Union.”¹⁴ (810:15-811:5.) There is no evidence in the administrative record that Key ever collected written signatures from these employees, let alone that he provided them to Respondent. Moreover, despite having called Key as a witness at hearing, Key did not corroborate that he ever told Respondent about the specific number of employees who were allegedly unhappy with the Union. Nonetheless, 10-11 photographers out of Unit 1’s total of 27 employees would not constitute a majority (as Key acknowledged). There is no evidence that Key shared the names of these allegedly disaffected photographers with Respondent.

In addition, Brown testified that at some point in calendar year 2019, he had a conversation with Westarp in which Westarp was upset and expressed that he wanted the Union out. Brown noted that he was aware that Westarp had felt this way for a while. (812:1-5, 812:9-12.) Again, Respondent did not call Westarp as a witness.

Brown also testified that early on in the contract negotiations process, likely at some point in 2018, Unit 1 employee James Boehme (“Boehme”) approached Brown with his concerns about the Union. Specifically, Boehme told Brown that Unit employee Adam Dalton (“Dalton”) had told Boehme that the Union’s President at the time, Kevin Wilson (“Wilson”), had been “attacking” Dalton for disagreeing with what was happening at negotiations and wanting to leave his role as an employee member of the Union’s

¹⁴ The photographers are included in Unit 1, which, as of Respondent’s January 8, 2020 withdrawal of recognition, was a Unit of 27 employees.

bargaining team. Boehme expressed to Brown that he was frustrated to hear about the Union's treatment of Dalton. According to Brown, Boehme thus asked him how the employees could "get this Union out of here." (812:25-813:25.) Respondent did not call either Boehme or Dalton as witnesses.

Brown further testified that engineer Vivian Coday ("Coday") came to him "in '19 right after she started and just through all of '19," asking "how to get the Union out."¹⁵ (814:10-23.) Brown did not provide any further details and Respondent did not present Coday as a witness.

Additionally, Brown testified that Funes told him that he was "adamant that this Union should not be in KOIN-TV." Brown did not provide a date for this conversation, other than mentioning that Brown had indicated that he did not want the Union there since he first started (in June 2018). (814:24-815:5; RX 4.) As stated previously, Respondent did not call Funes as a witness.

Brown also testified that Thibodaux had mentioned to him on undefined dates that he did not want the Union there and felt that it was "inhibiting what we need to be moving forward on at KOIN." (815:6-12.) Brown did not elaborate on the dates of these purported conversations and Respondent did not call Thibodaux as a witness.

Further, Brown testified that Petersen came to him at some point in 2019 (although he could not recall the month) asking for a raise, to which Brown responded, "during negotiations we are not giving out raises." Brown alleged that Petersen responded, "I wish the Union was not here. I want it out. How do we get it out?" (815:13-19.) This testimony was eerily similar to Nevin's testimony about his purported conversation with Montes, when Montes inquired about a raise during Respondent's ongoing negotiations with the Union. Again, Respondent provided no concrete details and called neither Petersen nor Montes as witnesses.

¹⁵ This testimony is confusing, since Respondent's records reflect that Coday was hired at KOIN-TV (by Respondent's predecessor, LIN Corporation) in 2006 – not 2019. (RX 4.) There is no evidence that Coday was not hired on by Respondent at that time, along with the other existing Unit employees. (RX 3.) Thus, Coday would have started at Respondent in 2017, not 2019.

Finally, Brown testified that Jahaad Harvey (“Harvey”) came to him “when he first was hired,” after receiving his Union welcome letter, and allegedly expressed at that time both that he did not want to join the Union, as the letter invited him to do, and that he “did not want it to be here at KOIN.” (816:1-8.) Harvey was hired in July 2017. (RX 4.) Brown further testified that in about October 2019, when the Union sent out letters offering to waive employees’ initiation fees for joining the Union, Harvey approached him again, very upset about this letter. According to Brown, Harvey expressed that he did not want to join the Union even with an initiation fee waiver, and “that he wanted the Union out of here.” (816:9-18.) During this conversation, Harvey shared that his mother had said that it appeared that the Union was “starting to get desperate” and “needed everyone to sign up, even if it meant waiving their fees.” Brown admitted that he told Harvey that he agreed with Harvey’s mother that the Union was getting desperate. (831:14-832:2.) Respondent did not call Harvey as a witness.

5. Charting Respondent’s Witnesses’ Hearsay Testimony Shows Respondent Did Not Have Objective Evidence to Support its Withdrawal of Recognition

The below charts summarize the above-described unauthenticated hearsay evidence (with the sole exception of the testimony by Key) offered by Respondent at the administrative hearing in support of its January 8, 2020 withdrawal of recognition. Only current Unit employees as of Respondent’s January 8, 2020 withdrawal of recognition are *italicized* in these charts. Former Unit employees as of the withdrawal of recognition are reflected in the charts but are not highlighted, and their employment separation dates are reflected in the 4th column from the left.

Unit 1 / Technical Unit (27 Employees as of January 8, 2020 Withdrawal of Recognition)

Employee Name	Date of Alleged Conv. about Disaffection (and Proximity to 1/8/20 WD)	Source (Witness)	In Unit as of 1/8/20 WD?	Did Employee Indicate They Wanted Union Out/to Cease Being Represented by the Union (vs. Not be a Member and/or Pay Dues)?
<i>Levan Funes</i>	June 2018 (1 year, 7 months)	Wenger (754:21-755:3) Brown (814:24-815:5)	Yes	Yes, per Brown. No, per Wenger – only indicated that he was not going to join the Union and was not going to pay the Union’s dues

				and fees.
<i>Brian Watkins</i>	~ October 2017 (Wenger testimony); Throughout 2019 (Key testimony); Several times between October 2019 and January 2020 (Nevin testimony)	Wenger (754:8-20) Key (765:1-8) Nevin (792:2-20)	Yes	Yes, per Key and Nevin. No, per Wenger – only asked “how do I get out of the Union?”
<i>Douglas Key</i>	N/A (as of date of withdrawal); December 2019 (Brown testimony)	Key himself (765:1-6); Brown (809:4-811:21)	Yes	Yes
<i>Chris Thibodaux</i>	Between October 2019 and January 2020 (Key testimony); Undefined date(s) (Brown testimony)	Key (767:25-768:21); Brown (815:6-12)	Yes	Yes, per Brown. Unclear, per Key – Thibodaux and a list of others expressed to Key their “concerns and reasons for not wanting the Union or not understanding what is the Union actually doing for us.”
<i>Bill Cortez</i>	Between October 2019 and January 2020 (unknown)	Key (767:25-769:1)	Yes	Unclear – Cortez and a list of others expressed to Key their “concerns and reasons for not wanting the Union or not understanding what is the Union actually doing for us.”
<i>John “Karl” Petersen</i>	At some point between October 2019 and January 2020 (Key testimony); At some point in 2019 (Brown testimony)	Key (769:2-770:14); Brown (815:13-19)	Yes	Yes
<i>Richard “Richie” Roberson</i>	At some point in 2019 (unknown)	Key (770:15-771:2)	Yes	Unclear – Roberson and a list of others all told Key at some point in 2019 “about their discomfort and not wanting the Union here.” No other details.
<i>Robert Sherman</i>	At some point in 2019 (unknown)	Key (770:15-771:7)	Yes	Unclear – Sherman and a list of others all told Key at some point in 2019 “about their discomfort and not

				wanting the Union here." No other details.
<i>Andrew Bisset</i>	At some point in 2019 (unknown)	Key (770:15-771:23)	Yes	Unclear – Bisset and a list of others all told Key at some point in 2019 "about their discomfort and not wanting the Union here." No other details.
Ben Moore	During exit interview on about 2/27/19 (~ 10 months)	Nevin (791:4-10)	No – left Respondent on 2/27/19	No – only indicated that he was transferring in part because of "the initiation fees and the high dues and just the contentious nature of the Union."
<i>Tom Westarp</i>	At some point between October 2019 and January 2020 (Nevin testimony); At some point in 2019 (Brown testimony)	Nevin (793:5-794:8); Brown (812:1-12)	Yes	Yes
<i>Christian Montes</i>	At some point between October 2019 and January 2020 (unknown)	Nevin (801:16-802:25)	Yes	Yes
<i>James Boehme</i>	At some point in 2018 (~ 1 to 2 years)	Brown (812:7-813:25)	Yes	Yes
<i>Vivian Coday</i>	Throughout 2019 (unknown)	Brown (814:15-23)	Yes	Yes
<i>Jahaad Harvey</i>	July 2017 (~ 2 and a half years) and October 2019 (~ 3 months)	Brown (816:2-18)	Yes	Yes

Unit 2 / Production Unit (12 Employees as of January 8, 2020 Withdrawal of Recognition)

<i>Cambrie Juarez</i>	Late Summer 2019 (~ 6 months); At some point in 2019 (unknown)	Wenger (749:24-751:6); Key (770:15-18)	Yes	No, per Wenger – Juarez only asked how <i>she</i> could "get out of the Union or not be in the Union." Unclear, per Key – Juarez and a list of others all told him at some point in 2019 "about their discomfort and not wanting the Union here." No other
-----------------------	---	---	-----	---

				details.
<i>Derric Crooks</i>	January 16, 2019 (~ 1 year)	Wenger (753:7-20)	Yes	No – only indicated that he did not like having to be in the Union and wanted to know what he needed to do to “not be in the Union.”
<i>Kelly Doyle</i>	July 22, 2019 (~ 1 year, 6 months)	Wenger (753:21-754:7)	Yes	No – only asked “What does she need to do to not join the Union?”
Chelsea Wicks	During exit interview on about 11/29/19 (~ 1 and a half months)	Nevin (790:20-791:2)	No – left Respondent on 11/29/19	No – only indicated that one of her primary reasons for leaving Respondent was the lack of Union representation and the fact that a new collective bargaining agreement had not yet been reached, meaning she had not received a raise in over three years.
Jordan Aleck	During exit interview on about 7/5/19 (~ 6 months)	Nevin (791:12-16)	No – left Respondent on 7/5/19	No – only expressed her concerns about “the divisive nature of the Union” and noted that the newsroom was divided, and she did not want to be a part of it.
Paul Birmele	September 2019 ? (~ 3-4 months)	Nevin (792:23-793:4)	No – left Respondent on 9/18/19	Yes

Non-Unit Employees

Jeff Gianola	Unknown	Nevin (785:14-786:11)	No – (as a News Anchor, Gianola was <i>never</i> a member of either Unit)	No – not in Unit; only reported that Unit employees were frustrated about the lack of progress in contract bargaining and the fact that they had not had a raise in over three years.
--------------	---------	-----------------------	---	---

As discussed in further detail below, even considering this overwhelmingly unauthenticated hearsay evidence in the light most favorable to Respondent, as the charts above make clear, Respondent was only able to assert that a total of 10 employees in Unit 1 and a single employee in Unit 2 had ever expressed a desire for the Union to be *removed* as the Units’ collective bargaining representative. That is 11 out of the total of 39 then-current employees in both Units (10 out of 27 in Unit 1, and only 1 out of 12 in

Unit 2). In addition, most of the attributed hearsay statements were made months or even years prior to Respondent's January 8, 2020 withdrawal of recognition from the Union, and none of the employees to whom the statements were attributed even corroborated the hearsay (with the exception of Key). Thus, as of January 8, 2020, when Respondent abruptly and unilaterally withdrew recognition from the Union, it quite clearly did not have evidence of an actual loss of majority support for the Union in either of the Units.

6. The Union Gathered, Verified, and Produced to Respondent Objective Evidence Establishing its Continued Majority in Both Units

Knowing that the Union still retained majority support, Union stewards Hansen, Dingwall, and Rashleigh set out to gather objective evidence in support of that fact. They collected written signatures soon after the withdrawal of recognition on a pro-Union petition reflecting the Unit employees' continued support for the Union. (478:3-16, 504:8-21, 538:15-22.) The petition read,

I hereby authorize NABET-CWA, its agents or assigns, to continue to act for me as my exclusive representative for the purpose of collective bargaining with KOIN-TV regarding wages, benefits, and other terms and conditions of employment. I understand and agree that this petition and my signature may be used to establish continuing majority support among the employees in the unit in which I am employed.

(GCX 13.)

Despite that several employees told Hansen they were reluctant to sign the post-withdrawal petition in support of the Union, out of fear of retaliation from Respondent, the three stewards were nonetheless quickly able to collect signatures from 19 out of the 27 employees in Unit 1 and 7 out of the 12 employees in Unit 2, making a total of 26 out of 39 total employees – a healthy majority in each of the two Units. (478:13-16, 505:2-17, 538:18-539:1, 542:7-10, 842:18:844:2, 846:24-847:6; GCX 13.)

However, fearful that these employees could be retaliated against for expressing their continued support for the Union, especially because Respondent had already unlawfully issued Hansen a written warning in July 2018 in retaliation for her union and protected, concerted activities as a shop steward,

member of the Union's bargaining committee, and member of the Union's Executive Board,¹⁶ the Union was reticent to provide these employees' signatures directly to Respondent. Instead, the Union reached out to a neutral: a retired Catholic Priest named Father Jack Mosbrucker ("Father Mosbrucker"), who had no affiliation with the Union. (301:21-302:11, 306:2-15, 505:18-506:1, 539:2-9, 551:13-24.)

At the Union's request, Father Mosbrucker reviewed the Unit employees' pro-Union petition and crafted a letter to Respondent which he signed and dated February 18, 2020. In that letter, Father Mosbrucker informed Respondent that he had personally reviewed the Unit employees' signatures and certified that there were 19 signatures from members of the Technical Unit (Unit 1) and 7 signatures from members of the Production Unit (Unit 2). Mosbrucker's letter thus confirmed for Respondent that the Union retained the substantial majority support of the employees in both Units. (302:11-303:23, 506:5-8, 552:5-554:8; GCX 13.)

Notwithstanding Respondent's receipt of this objective evidence that the Union in fact retained majority support in both Units, Respondent nonetheless has continued to refuse to recognize the Union or resume contract negotiations to date. (305:12-15, 506:11-14, 539:10-16; GCX 14; JX 54.)

G. Respondent's Stipulated Pre- and Post-Withdrawal Unilateral Changes

Before the hearing, Respondent stipulated that even before the withdrawal of recognition, on about September 30, 2019, Respondent assigned the bargaining unit work of shooting video at Portland Trailblazers games to an individual who was not in either of the Units without first notifying the Union. (JX 1, ¶17.) In addition, Respondent stipulated that on about January 2, 2020, without having notified the Union, it assigned the bargaining unit work of setting up Respondent's morning television program to an individual who was not in either of the Units. (JX 1, ¶23.)

¹⁶ *Nexstar Broadcasting, Inc., d/b/a KOIN-TV*, 370 NLRB No. 68 (2021).

Respondent further stipulated that on the very date that it withdrew recognition from the Union, January 8, 2020, Respondent removed the Union bulletin boards at its facility and did not inform the Union of this decision. (JX 1, ¶19.) Respondent also stipulated that around the same time, in early January 2020, Respondent announced a change to its existing vacation policy for Unit 1 photographers, without first having notified the Union of this decision. (JX 1, ¶21.)

Finally, Respondent stipulated that on March 25, 2020, it followed through with its January 8, 2020, promise (discussed below) and implemented an across-the-board 1.5% wage increase for all of the Unit employees that was retroactive to January 1, 2020. Respondent admits that it did not notify the Union of this decision. (JX 1, ¶22.)

At the hearing, the Union's three shop stewards, Unit employees Hansen, Dingwall, and Rashleigh, also confirmed all of the above facts that were admitted by Respondent prior to the hearing. Specifically, Hansen and Rashleigh confirmed that Respondent took down the Union's bulletin boards in its facility simultaneously with or immediately prior to the January 8, 2020 withdrawal of recognition meetings. (459:12-22, 534:21-23, 537:5-12; GCX 8.) In addition, Hansen and Dingwall testified that, although the past practice between the parties was that *two* Unit 1 photographers could request vacation for a particular popular vacation week during the month of July, Respondent had posted a vacation calendar contemporaneously with its withdrawal of recognition indicating that for 2020, only *one* Unit 1 photographer could request vacation for that particular week. In fact, the record reflects that not a single Unit 1 photographer was ultimately allowed to take vacation during this week. (470:2-475:4, 506:15-507:4; GCX 3, 15, 16.)

Dingwall also testified that both before and soon after the January 2020 withdrawal of recognition, he noticed that Sports Executive Producer Travis Teich ("Teich"), who was not in either of the Units, was doing bargaining unit work. Specifically, he noted that some of Teich's weekly emails to the entire newsroom reflected that his name was listed alongside an anchor's or reporter's as going out to a certain

event to perform certain kinds of the Units' work, including shooting video at Portland Trailblazers games in both November 2019 and February 2020. (506:15-507:15, 509:24-510:17, 511:12-513:2; GCX 17, 18.)

Finally, Hansen and Dingwall testified that on about March 17, 2020, employees in the Units were invited to small meetings with management where Respondent informed them that, as promised, all of them were to be immediately given a 1.5% wage increase, retroactive to January 1, 2020. All of the Unit employees then received the promised 1.5% wage increase. This was the Unit employees' first wage increase in nearly three years – since the Expired CBA was last in effect. (475:13-478:2, 515:3-517:2; JX 59.)

No Respondent witness disputed any of Hansen's, Dingwall's, or Rashleigh's testimony as to these changes.

H. Respondent's Post-Withdrawal Crackdown on Unit Employees' Union and Protected, Concerted Activities

At the hearing, Nevin testified that at some point between October 2019 and January 2020, he had a conversation with Unit 1 employee Montes about Montes' dissatisfaction with the Union. During this conversation, when Montes allegedly asked Respondent for a raise, Nevin told Montes that Respondent was "not in a position to offer anybody an increase in pay that was in the Union, because "that is something that's negotiated at the Union table." (801:16-802:25.) In addition, Brown testified at the hearing that at some point in 2019, during a similar conversation with Unit 1 employee Petersen, Brown told Petersen the same thing: that "during negotiations, [Respondent was] not giving out raises." (815:13-19.)

Then, on January 8, 2020, Respondent abruptly called its Unit employees into small group meetings, held by Nevin, to inform them that it had "exciting," "good" news – that Respondent had taken a "positive step forward" and was no longer going to recognize the Union. (452:23-454:1, 498:18-499:23, 534:3-12.) During these same January 8, 2020 meetings, Respondent admits that it promised its employees in both Units that they would soon be receiving a 1.5% wage increase. (JX 1, ¶20.) However,

Respondent indicated that the raises could not be given for a period of 45 days or it would look like Respondent was “incentivizing anti-Union feelings.”¹⁷ (454:2-14.)

Soon after Respondent’s January 8, 2020 withdrawal of recognition from the Union, Hansen began discussing Respondent’s withdrawal of recognition with her coworkers. On one such occasion on about January 8, 2020, Hansen was discussing the withdrawal of recognition with new Unit 2 employee Travis Box (“Box”) at the coffee machine at Respondent’s facility. Hansen asked Box how he felt and what he was thinking about what was going on. As Box began to respond, Hansen’s direct supervisor, Brown, approached the two Unit employees and told them, “I wouldn’t talk about that if I were you.” Hansen responded, “Rick, we’re just getting coffee.” Box then quickly walked back to his desk, Brown walked away, and Hansen finished making her coffee. (439:16-21; 462:24-463:23, 464:17-465:12; GCX 11.)

On another occasion, on about January 23, 2020, after Unit 2 production employee Colin Cashin (“Cashin”) asked his Union steward Hansen a Union-related question, Hansen went upstairs with a Union negotiations bulletin to give to him. Cashin was not in his office, so Hansen gave the Union bulletin to Cashin’s fellow Unit 2 employee Neil Sparks (“Sparks”) and asked him to hand the bulletin off to Cashin upon his return. On Hansen’s way back downstairs, she passed Brown in the hallway. A few minutes later, Brown came up to Hansen and asked her if she had a few minutes to talk. Hansen agreed. Brown told Hansen, “You are not to be handing out bulletins. We are not recognizing the Union, and you cannot do that.” According to Hansen, Brown seemed very angry and his voice was raised. (466:19-469:12; GCX 12.)

¹⁷ According to Dingwall, Nevin noted at these meetings that, following Respondent’s withdrawal of recognition, the Union would have 45 days to “fight it or do nothing.” (499:24-500:2; GCX 5.) Rashleigh similarly testified that at these meetings, Nevin indicated that “nothing would change for 45 days” and that “in that time, the Union could respond or not.” (534:7-12.) Like Dingwall and Rashleigh, Hansen also testified that Nevin alluded to a 45-day period during which Respondent could not initiate this wage increase or make any other “changes to anything in terms of union benefits” – despite that it immediately instituted the changes addressed above. (454:3-5, 455:1-15; GCX 4, 6.)

At the hearing, Dingwall testified that during his Spring 2020 performance review, his direct supervisor, Brown, informed him that he would be receiving a 1% raise on top of the across-the-board 1.5% wage increase that had been unilaterally implemented by Respondent in March 2020. Dingwall asked Brown why he was only getting an additional 1% wage increase when he knew that several other Unit employees had gotten an additional 2% increase. According to Dingwall, at this point, Brown became visibly angry and told Dingwall that the Unit employees were not supposed to be discussing their wages with one another, that Brown knew who Dingwall had spoken to, and that Brown would also be talking to that person. Brown warned Dingwall that if he (Brown) wanted to, he could revoke the Unit employees' raises entirely. Dingwall was shocked, since he had never before been told that Respondent did not allow its employees to talk about their wages or raises. (513:9-515:2.)

No Respondent witness disputed any of Hansen's, Dingwall's, or Rashleigh's testimony on these points.

I. Summation

While the longtime incumbent Union attempted to bargain with Respondent for a successor contract beginning in June 2017, negotiations were contentious, with Respondent embarking on its course of 2 ½ years of surface bargaining without any intention to reach agreement. Despite the Union's consistent demands that Respondent make proposals regarding health insurance, Respondent made its first and only proposal on health care (to keep its existing health plan and charge employees 10.4% of every paycheck for premiums) in January 2019, more than 1 ½ years into the bargaining process – and it never budged from this initial proposal. In addition, despite the Union's many requests since at least April 2019, Respondent delayed until the final bargaining session held in December 2019 before it finally provided the Union with some of the information it needed in order to understand what Respondent contributed to its own health plan. Throughout the last year of bargaining, Respondent regularly failed and refused to meet and bargain with the Union on a regular schedule and cancelled previously scheduled

bargaining sessions. Because of Respondent's inability to meet, the parties did not meet for bargaining at all in the months of February, May, July, September, or November 2019. Accordingly, by December 10, 2019, the parties had not come to any tentative agreements as to several major economic terms. (72:23-73:5.) Meanwhile, Respondent repeatedly denigrated the Union and its bargaining team both at and away from the bargaining table, including by calling Union President Biggs-Adams a "bitch" during the June 27 bargaining session and by issuing a series of personal and defamatory bargaining "memos" directly to bargaining unit employees throughout 2019. In sum, Respondent engaged in overall surface bargaining within the meaning of the Act.

Respondent capped off its bad faith by abruptly cancelling the parties' previously scheduled bargaining dates in January and February 2020 and withdrawing recognition from the Union on January 8, 2020. (JX 55, 58.) Since that date, Respondent has failed and refused to respond to any of the Union's inquiries about bargaining or its recognition status and has ceased all further negotiations. (JX 52, 53, 54, 58; GCX 13, 14.) Respondent's sole written communication to the Union informing it of its decision to withdraw recognition indicated that Respondent had a "good faith reasonable doubt," based on "substantial objective evidence," that the Union retained the support of the majority of its employees in either unit. (JX 55.) However, Respondent clearly did not in fact have objective evidence of an actual loss of majority support for the Union in either Unit at the time it withdrew recognition.

Both simultaneously with and immediately after withdrawing recognition, Respondent made a series of unilateral changes to represented employees' terms and conditions of employment without first notifying or bargaining with the Union. It also made threats and promises to employees in an attempt to quell their protected § 7 activities and prevent them from reorganizing. As discussed below, all of this conduct violated the Act.

II. ARGUMENT

Since Respondent took over operations at KOIN-TV in January 2017, it has demonstrated a clear contempt for the Union and engaged in a sustained campaign of unfair labor practices to undermine the Union and frustrate the central purposes of the Act. In fact, Respondent has already been found by the Board to have violated the Act four times in less than two years. See *Nexstar Broadcasting, Inc. d/b/a KOIN-TV*, 370 NLRB No. 72 (2021) (unlawful delay and refusal to provide information to union during collective bargaining); *Nexstar Broadcasting, Inc. d/b/a KOIN-TV*, 370 NLRB No. 68 (2021) (unlawful discipline of employee and refusal to provide information regarding discipline); *Nexstar Broadcasting, Inc. d/b/a KOIN-TV*, 369 NLRB No. 61 (2020) (unilateral change in employees' terms and conditions of employment); *Nexstar Broadcasting, Inc. d/b/a KOIN-TV*, 367 NLRB No. 117 (2019) (unlawful delay in providing and refusal to provide information to union during collective bargaining).

On January 14, 2021, the Board even specifically noted that in light of Respondent's recent history of repeat unfair labor practices, if Respondent's "pattern of unlawful conduct persists," the Board will soon be forced to consider extraordinary remedies in order to deter Respondent from further violations of the Act. *Nexstar Broadcasting, Inc., d/b/a KOIN-TV*, 370 NLRB No. 72, n.2 (2021).

A. Respondent Violated § 8(a)(5) of the Act by Bargaining in Bad Faith and Engaging in Overall Surface Bargaining

Section 8(d) of the Act defines the nature and extent of the obligation to bargain:

... to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement ... but such obligation does not compel either party to agree to a proposal or require the making of a concession.

29 U.S.C. § 158(d). Thus, the essence of bad-faith bargaining is a purpose to frustrate the possibility of arriving at any agreement, and the Board looks to the totality of an employer's conduct to determine

whether an employer has bargained in bad faith. *Altura Commc'n Sols., LLC*, 369 NLRB No. 85 (May 21, 2020). See also *West Coast Casket Co., Inc.*, 192 NLRB 624, 636 (1971).

Section 8(d) of the Act defines collective bargaining as “the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment... but such obligation does not compel either party to agree to a proposal or require the making of a concession.” Sixty years ago, the Supreme Court held that the statutory duty to “meet... and confer in good faith” is not fulfilled by “purely formal meetings between management and labor, while each maintains an attitude of “take it or leave it.” *NLRB v. Insurance Agents' International Union*, 361 U.S. 477, 485 (1960). Rather, “[c]ollective bargaining... presupposes a desire to reach ultimate agreement, to enter into a collective bargaining contract.” *Id.* Thus, “the touchstone of bad-faith bargaining is a purpose to frustrate the very possibility of reaching an agreement.” *Phillips 66*, 369 NLRB No. 13, slip op. at 6 (2020).

In assessing whether a party has failed or refused to bargain in good faith, the Board considers the totality of the circumstances. *Audio Visual Services Group*, 367 NLRB No. 103, slip op. at 6 (2019); *Kitsap Tenant Support Services, Inc.*, 366 NLRB No. 98, slip op. at 8 (2018); *Overnite Transportation Co.*, 296 NLRB 669, 671 (1989), *enfd.* 938 F.2d 815 (7th Cir. 1991). “From the context of an employer's total conduct, it must be decided whether the employer is engaging in hard but lawful bargaining to achieve a contract that it considers desirable or is unlawfully endeavoring to frustrate the possibility of arriving at any agreement.” *Public Service Co. of OK (PSO)*, 334 NLRB 487, 487 (2001), *enfd.* 318 F.3d 1173 (10th Cir. 2003).

Although the Board does not evaluate whether particular proposals are acceptable or unacceptable, it will examine proposals when appropriate and consider whether, on the basis of objective factors, bargaining demands constitute evidence of bad-faith bargaining. *Audio Visual Services Group*, 367 NLRB No. 103, slip op. at 6 (2019); *Reichhold Chemicals*, 288 NLRB 69 (1988). See also *Altura Commc'n*

Sols., LLC, 369 NLRB No. 85 (2020); *Phillips 66*, 369 NLRB No. 13, slip op. at 4 n.9 (2020); *Kitsap*, 366 NLRB No. 98, slip op. at 8 (2018).

An employer is “obliged to make *some* reasonable effort in *some* direction to compose his differences with the union, if § 8(a)(5) is to be read as imposing any substantial obligation at all.” *Atlanta Hilton & Tower*, 271 NLRB No. 214 (1984) (emphasis in original). Therefore, “mere pretense at negotiations with a completely closed mind and without a spirit of cooperation does not satisfy the requirements of the Act.” *Mid-Continent Concrete*, 336 NLRB 258, 259 (2001), *enfd. sub nom. NLRB v. Hardesty Co.*, 308 F.3d 859 (8th Cir. 2002) (quoting *NLRB v. Wonder State Mfg. Co.*, 344 F.2d 210 (8th Cir. 1965)). The objective of the Board’s analysis is not to judge the value of the parties’ proposals, but to determine, by objective factors, whether the parties are not reaching agreement because of hard but lawful bargaining, or whether a party is actively seeking to “... frustrate the possibility of arriving at any agreement.” *Public Service Co. of OK*, 334 NLRB 487 (2001).

1. Respondent Demonstrated its Bad Faith by Failing and Refusing to Meet with the Union for Bargaining on a Regular Basis

With respect to the § 8(d) obligation of the parties to meet at reasonable times,

The obligation to bargain collectively surely encompasses the affirmative duty to make expeditious and prompt arrangements, within reason, for meeting and conferring. Agreement is stifled at its source if opportunity is not accorded for discussion or so delayed as to invite or prolong unrest or suspicion. “It is not unreasonable to expect of a party to collective bargaining that he display a degree of diligence and promptness in arranging for [bargaining] sessions when they are requested and in the elimination of obstacles thereto, comparable to his other business affairs of importance.

J.H. Rutter-Rex Mfg. Co., 86 NLRB 470, 506 (1949). Delaying tactics, such as unwillingness to schedule meetings or schedule sufficient time for bargaining, can suggest unwillingness to reach agreement, and therefore demonstrate bad faith. *Torrington Extend-A-Care Employment Assn. v. NLRB*, 17 F.3d 580 (2d

Cir. 1994). The reasonable times inquiry is not limited solely to an examination of the number of sessions held. *Bemis Co., Inc.*, 370 NLRB No. 7 (Aug. 7, 2020).

In the instant matter, Respondent's dilatory tactics and arbitrary scheduling of meetings further establish its failure to bargain in good faith with the Union. While the parties held 42 total dates (21 sets of two consecutive dates) of negotiations, as the negotiations progressed, the sessions did not increase in frequency; rather, they decreased. While Respondent may attempt to argue that the total number of dates it met with the Union over a 2 ½-year period sufficiently demonstrates its good faith attempts at negotiating, "that number, standing alone, is not dispositive." *Bemis Co., Inc.*, 370 NLRB No. 7 (Aug. 7, 2020.) The Board has found that an employer failed to meet at reasonable times in circumstances where parties repeatedly met but failed to make sufficient progress. *Id.*, citing *Garden Ridge Management*, 349 NLRB No. 103, slip op. at 131-132 (2006) (bad faith found where parties met 20 times in 11 months and reached 28 tentative agreements); *Calex Corp.*, 322 NLRB 977, 978 (1997) (bad faith found where parties met 19 times in 15 months and reached agreement on 75 percent of the contract).

Respondent's repeated refusals to agree to additional bargaining dates or provide reasons for its unavailability likewise support a finding that it failed to meet at reasonable times. *See, e.g., Regency Service Carts, Inc.*, 345 NLRB 671, 672-73 (2005) (despite 29 bargaining sessions in 32 months, employer failed to meet at reasonable times, in part due to consistent refusal to agree to dates offered by the union and preferring to meet after the last date provided by the union); *Lancaster Nissan, Inc.*, 344 NLRB 225, 227-228 (2005) (employer turned deaf ear to union's repeated requests for additional meetings and would schedule no more than two meetings per month); *Garden Ridge Management*, 349 NLRB No. 103 (2006) (employer rejected without explanation 8 requests from a union to meet more frequently); *People Care*, 327 NLRB No. 144 (1999) (employer's negotiator available only once per month and refused to set times for future meetings in advance, saying he could only agree on a date at the next session).

While Respondent provided “sweeps” as the reason for its unavailability in February and May, the evidence shows the parties had no issue meeting during sweeps months in 2017 and 2018. Respondent did not even bother providing a reason for its unavailability in July, September, or November 2019, leaving Biggs-Adams only to guess. Further, even when Respondent did agree to bargaining sessions, more than a month passed between the third, fourth, fifth, and final sets of bargaining sessions in 2019.

Perhaps most egregiously, Pautsch, knowing as early as October 2019 that he was already scheduled to bargain with the Union on January 14 and January 15, 2020, decided to schedule negotiations for these same dates with a different union, on the other side of the country. Decades of Board law have established that the fact that a party’s chosen bargaining representative or representatives are busy is no excuse for failing to meet at reasonable times and at reasonable intervals. *Calex Corp.*, 322 NLRB 977, 978 (1997). *See also Golden Eagle Spotting Co., Inc.*, 319 NLRB 64 (1995) (employer failed to bargain in good faith by, among other things, refusing to meeting on consecutive days and arriving to sessions late and leaving early); *Southside Elec. Coop.*, 247 NLRB 705 (1980) (employer failed to bargain in good faith by, among other things, limiting the frequency and length of meetings); *Bryant & Stratton*, 321 NLRB 1007, 1042 (1996), *enfd.* 140 F.3d 169 (2d Cir. 1998). While Pautsch then recommitted to later dates in January 2020 and February 2020, Respondent outright cancelled those dates just weeks later when it withdrew recognition from the Union, thereby causing financial harm to the Union, which had already booked a conference room for these dates.

At the hearing, Respondent did not deny that the parties had only met six times in 2019, and it stipulated to the authenticity of the ample record evidence illustrating its above-described dilatory practices.

2. Respondent Demonstrated its Bad Faith by Delaying in Providing and/or Refusing to Provide Information

An employer is obligated to furnish its employees’ collective-bargaining representative with information that is relevant to its performance of its duties as collective bargaining representative. *NLRB v.*

Acme Ind. Co., 385 U.S. 432, 436 (1967). The test for relevance is a liberal “discovery-type standard.” *Id.* at 437. Information pertaining to bargaining unit employees is presumptively relevant. *Ohio Power Co.*, 216 NLRB 987, 991 (1975).

The refusal to provide information, in addition to constituting an independent violation of § 8(a)(5), has also been found to be a behavior indicating a lack of good faith. *Mid-Continent Concrete*, 336 NLRB 258, 259 (2001), *enfd. sub nom. NLRB v. Hardesty Co.*, 308 F.3d 859 (8th Cir. 2002) (evidence of bad faith bargaining includes the failure to provide relevant information); *Atlanta Hilton Tower*, 271 NLRB 1600 (1984) (failure to provide relevant information evidences bad faith bargaining); *International Woodworkers of Am. v. NLRB*, 263 F.2d 483, 484 (D.C. Cir. 1959); *NLRB v. Stanislaus Implement & Hardware Co.*, 226 F.2d 377 (9th Cir. 1955) (failure to provide information is inference of not bargaining in good faith); *National Extrusion & Mfg. Co.*, 357 NLRB 127, 168 (2011) (employer that failed to provide Union with requested information ordered to cease and desist from bargaining in bad faith).

Many of Respondent's failures and refusals to provide information and its significant delay in providing other information were dealt with in prior hearings, where the Board has already found that Respondent failed to provide information to the Union during the bargaining process on more than one occasion.¹⁸ However, these previous Board decisions further demonstrate Respondent's pattern of overall bad faith and unwillingness to engage in meaningful contract negotiations.

In addition to the previously litigated incidents, the record reflects that after receiving a request from Biggs-Adams in January 2019 for the amounts Respondent paid toward its health care coverage, which request Biggs-Adams reiterated during the August 2019 bargaining sessions, Respondent delayed in providing this information to Biggs-Adams until December 9, 2019 – nearly a year after it was first

¹⁸ See *Nexstar Broadcasting, Inc. d/b/a KOIN-TV*, 370 NLRB No. 72 (2021) (unlawful delay and refusal to provide information to union during collective bargaining); *Nexstar Broadcasting, Inc. d/b/a KOIN-TV*, 370 NLRB No. 68 (2021) (unlawful discipline of employee and refusal to provide information regarding discipline); *Nexstar Broadcasting, Inc. d/b/a KOIN-TV*, 369 NLRB No. 61 (2020) (unilateral change in employees' terms and conditions of employment); *Nexstar Broadcasting, Inc. d/b/a KOIN-TV*, 367 NLRB No. 117 (2019) (unlawful delay in providing and refusal to provide information to union during collective bargaining).

requested. The information requested by Biggs-Adams was not only relevant but necessary for her to evaluate Respondent's health care proposal. Despite this, once Respondent finally provided the responsive information, it promptly withdrew recognition from the Union, leaving Biggs-Adams with no time to review the long-awaited information before Respondent terminated the bargaining process altogether. Respondent's delay in responding to Biggs-Adams' repeated requests for the relevant health care plan information thus not only impeded bargaining but constituted further evidence of Respondent's bad faith.

3. Respondent Demonstrated its Bad Faith in its Defamatory Bargaining Memos

"The Board has long held that 'an employer has a fundamental right, protected by § 8(c) of the Act, to communicate with its employees concerning its position in collective-bargaining negotiations and the course of those negotiations.'" *Mesker Door, Inc.*, 357 NLRB 591, 595 (2011) (quoting *United Tech. Corp.*, 274 NLRB 1069, 1074 (1985), *enfd. sub nom. NLRB v. Pratt & Whitney Aircraft Division*, 789 F.2d 121 (2d Cir. 1986)). However, not all such communications are protected.

Respondent's 2019 "bargaining update" memos went beyond the protections of § 8(c). The memos did not merely express negative "opinions" about the Union; rather, in these memos Respondent made materially false statements about the Union's initiation fees, Biggs-Adams' unwillingness to negotiate, and Biggs-Adams' alleged stalling to avoid wage discussions. *See, e.g., NLRB v. Gissel Packing*, 395 U.S. 575 at 618 (1969) (distinguishing statements of opinion from unlawful statements designed to "mislead" employees). The truth was that Biggs-Adams and the Union had been the only side to provide a wage proposal, which Respondent failed to *ever* respond to or counter. As such, Respondent's dishonest and at times defamatory claims further demonstrated Respondent's overall surface bargaining. *Litton Systems*, 300 NLRB 324, 330 (1990), *enfd.* 949 F.2d 249 (8th Cir. 1991), *cert. denied* 503 U.S. 985 (1992).

Further, an employer may not explain its proposals directly to its employees when it "has denied the [u]nion the very information it needed to evaluate those same proposals during negotiations." *Globe Business Furniture*, 290 NLRB 841, 841 n.2 (1988), *enfd. mem.* 889 F.2d 1087 (6th Cir. 1989); *Audio*

Visual Servs. Grp., Inc., 367 NLRB No. 103 (Mar. 12, 2019); *Bemis Co., Inc.*, 370 NLRB No. 7 (Aug. 7, 2020). Respondent's March 5, 2019 memo to the bargaining Units claimed that its health insurance proposal would keep health care costs low. Notwithstanding that the Union would disagree with this characterization, the fact is that by the time Respondent authored this memo, it was already in receipt of the Union's information request for the amounts Respondent contributed towards its health care plan – yet it had not provided the Union with this requested information (and would not do so until many months later, in December 2019). This failure to timely provide the Union with relevant information prevented the Union from properly evaluating Respondent's proposal and frustrated the Union's ability to come to an agreement.

4. Respondent Demonstrated its Bad Faith by Failing to Make Meaningful Health Care Proposals

Negotiating as a kind of “sham” while intending to avoid an agreement amounts to bad faith bargaining in violation of § 8(a)(5) of the Act. If a party to the bargaining process is unwilling to make any meaningful modifications of its principal proposals, in effect it is maintaining “an attitude of ‘take it or leave it,’” which was condemned by the U.S. Supreme Court in *NLRB v. Insurance Agents' International Union [Prudential Insurance Co. of Am.]*, 361 U.S. 477, 485 (1960). See also *K Mart Corp.*, 242 NLRB 855, 875 (1979).

In *Irvington Motors*, 147 NLRB 377 (1964), *enfd.* 343 F.2d 759 (3d Cir. 1965), the employer was found to have engaged in surface bargaining when its offer merely reiterated existing practices and its first written counterproposal was not submitted until 3.5 months after it had been requested. See also *Mac-Millan Ringerfree Oil Co.*, 160 NLRB 877 (1966), *enf. denied on other grounds* 394 F.2d 26 (9th Cir. 1968). Similarly, in *Stevens Int'l.*, 337 NLRB 143, 149-50 (2001), the Board found that the employer did not engage in good faith effects bargaining. Although the employer had met with the union and invited it to propose terms for a plant closing agreement, the Board found that it had engaged in overall bad faith bargaining because the employer had summarily rejected the union's proposal without offering a

counterproposal and failed to negotiate further, despite the union's offer to modify its proposal. *See also Dallas & Mavis Specialized Carrier Co.*, 346 NLRB 253, 257 (2006) (finding bad faith where the employer listened and responded to the union's proposal regarding the effects of ceasing operations but then summarily rejected all but one of the union's proposals without providing an explanation or counterproposal, and did not respond when the union requested further bargaining).

Here, Respondent provided its first economic proposal nearly 20 months after bargaining first commenced – on January 24, 2019. However, this proposal did not even include wages. In fact, even after a total of 42 sessions, held over 2 ½ years, Respondent never presented the Union with a wage proposal. This lengthy delay to provide an economic proposal was further evidence of Respondent's overall bad faith. *United Technologies*, 296 NLRB 571 (1999) (failure to provide economic proposal for a full year indicative of bad faith).

Respondent's January 24, 2019 economic proposal contained its first and only written health care proposal (to retain its own health plan and have employees contribute 10.4% of their gross pay per paycheck in premiums). However, throughout bargaining, Respondent's unwillingness to provide explanations about or budge from this initial health care proposal, compounded by its refusal to provide the Union with its health insurance cost information for nearly a full year, further establish its failure to bargain in good faith with the Union. *See, e.g., Solo Cup Co. v. NLRB*, 332 F.2d 447, 448-49 (4th Cir. 1964); *Bryant & Stratton Bus. Inst. v. NLRB*, 140 F.3d 169, 182 (2d Cir. 1998). *See also Mid-Continent Concrete* 336 NLRB 258 (2001) (refusal to provide explanations for proposals and orchestrated delay tactics were evidence of bad-faith bargaining).

The Union provided its first health care proposal to Respondent at the parties' April 23, 2019 bargaining session, in which it agreed to Respondent's proposal to maintain its own health care plan, but countered that the cost of such insurance charged to the bargaining unit would not exceed the caps in the Expired CBA. At the August 15 bargaining sessions, after receiving no written counterproposal from

Respondent, the Union again reiterated its health insurance proposal and requested Respondent's health cost numbers so that it could consider modifying its proposal appropriately. Respondent, again, made no counterproposal and did not provide its health care costs until many months later, on the eve of its withdrawal of recognition.

On October 9, 2019, through the FMCS Mediator, Respondent rejected the Union's proposal with no reason provided and did not provide any written counteroffer. In fact, from January 24, 2019 until the very last bargaining session on December 10, 2019, Respondent never altered its initial health care proposal whatsoever. Such immovable posture is another indicator of a refusal to bargain in good faith. *See, e.g., Sparks Nugget*, 968 F.2d at 994-95 (1992); *88 Transit Lines, Inc.*, 300 NLRB 177, 178 (1990) ("if a party is so adamant concerning its initial positions on a number of significant mandatory subjects, we may properly find bad faith evinced by its 'take-it-or-leave it' approach to bargaining"), *enf'd mem.*, 937 F.2d 598 (3d Cir. 1991); *Regency Serv. Carts*, 345 NLRB at 671 (citing cases). *See also Gen. Elec. Co.*, 150 NLRB 192, 194 (1964), *enf'd*, 418 F.2d 736 (2d Cir. 1969); *NLRB v. Fitzgerald Mills Corp.*, 314 F.2d 260, 265-67 (2d Cir. 1963).

Much like the unlawful conduct in *Stevens International*, Respondent here summarily rejected the Union's proposals without offering counterproposals and despite the Union's attempts and expressed willingness to modify its own proposal. Respondent's conduct is in fact worse than the conduct described in *Irvington Motors*, because Respondent never even submitted a written counterproposal on health care. For these reasons, Respondent engaged in bad faith through its unwillingness to modify its proposals and its unexplained blanket rejections of the Union's offers.

B. Respondent Violated § 8(a)(5) of the Act by Withdrawing Recognition from the Union Without Objective Evidence of an Actual Loss of Majority Support

In order for an employer to withdraw recognition from an incumbent union, it must possess "objective evidence that the union has lost majority support." *Levitz Furniture Co. of the Pac.*, 333 NLRB

717 (2001). In relying on objective evidence to withdraw recognition, however, an employer acts “at its peril.” *Levitz*, 333 NLRB at 725; *Highlands Regional v. NLRB*, 508 F.3d 28, 32 (D.C. Cir. 2007). See also *Frankl II*, 693 F.3d at 1060 (9th Cir. 2012). If the employer is incorrect in its assessment of evidence of loss of support, even if its assessment was made in good faith, it will have violated § 8(a)(5) of the Act by withdrawing recognition.¹⁹ Finally, although the Board will permit an employer to rely on hearsay evidence demonstrating that a Union has lost majority support, employers have the burden of authenticating unsubstantiated hearsay evidence in order to prove an *actual* loss of majority support. See *Valley Health System*, 369 NLRB No. 16, slip op. at 1 and n.4 (Jan. 30, 2020) (employer could not rely on “unauthenticated email submissions for which they could not show that the purported submitters actually supported decertifying the Union” to lawfully withdraw recognition) *Siemens Building Technologies*, 345 NLRB 1108, 1109 (2005). See also *Highlands Medical Center*, 347 NLRB 1404, 1407 n.17 (2006) (unsubstantiated hearsay assertions from employees that they no longer supported the union was not sufficiently objective evidence employer could rely upon to lawfully withdraw recognition), *enforced* 508 F.3d 28, 32 (D.C. Cir. 2007).

Here, when Respondent withdrew recognition from the Union on January 8, 2020, there was no “actual loss” of majority support as required under *Levitz*. Instead, when Respondent abruptly withdrew

¹⁹ Respondent, both in withdrawing recognition and now in litigating this case, appears to be relying on precedent overturned by the Board about 20 years ago. On the record, Respondent’s counsel asserted that *Green Oak Manor*, 215 NLRB 658 (1974), which applied the rule set forth in *Celanese Corp. of Am.*, 95 NLRB 664 (1951), supports its withdrawal of recognition from the Union. That old standard articulated that an employer could withdraw recognition from an incumbent union if it had a “good faith reasonable doubt” that the union retained majority support. Respondent’s reliance on this long-expired precedent is also apparent in Respondent’s January 8, 2020 withdrawal of recognition letter itself, in which Respondent explicitly stated that it was withdrawing recognition from the Union in light of its “good faith reasonable doubt” about the Union’s continued majority status. (JX 55.)

The Board explicitly overturned the 1951 “good faith reasonable doubt” standard applied in *Celanese* in its 2001 *Levitz* decision. *Levitz Furniture Co. of the Pac.*, 333 NLRB 717 (2001). In *Levitz*, the Board pronounced that an employer may unilaterally withdraw recognition from an incumbent union *only* when the union has *actually* lost the support of the majority of the bargaining unit employees. The *Levitz* Board also clearly held that the burden would be squarely on the employer to defeat a post-withdrawal refusal to recognize and bargain allegation by proving, as a defense, the union’s actual loss of majority status. *Levitz* has remained the standard for the past almost 20 years and is still in effect today.

recognition from the Union, the *only evidence* Respondent possessed was hearsay, based on a couple of its managers' recollection of past conversations – some of which had occurred years prior – with various employees (some long-since-separated from Respondent's employ). Thus, in a fallacious attempt to prove an actual loss of majority support, Respondent called these managers as witnesses at the hearing.

As reflected in the charts above on pages 26-29 of this brief, all of Respondent's management witnesses provided hearsay testimony about conversations they allegedly had with approximately 18 total employees. However, only 13 of these employees were employees in the Units at the time Respondent withdrew recognition: 1 had never been a member of either of the Units, and 4 had ended their employment relationship with Respondent prior to January 8, 2020.²⁰ In addition, most of these alleged hearsay conversations happened several months before Respondent withdrew recognition, while several others happened more than a year beforehand.²¹

At the hearing, Respondent was unable to proffer any evidence to authenticate or corroborate its managers' hearsay evidence, with the exception of the testimony of a single employee witness, Key. The fact that Respondent could only produce a single employee to testify about his opposition to the Union at the administrative hearing, out of 39 total Unit employees as of the date of the withdrawal of recognition, underscores how unreliable this hearsay evidence was. One employee's disaffection does not in any way constitute a majority of 39.

Moreover, Respondent's failure to present *any* other employees to corroborate its managers' alleged conversations about their alleged disaffection upon which it based its decision to withdraw recognition warrants an adverse inference. The Board has held that an adverse inference may be drawn

²⁰ In fact, three of these employees had severed their employment relationship with Respondent *between six and 18* months prior to the withdrawal of recognition. However, the operative date for determining whether there is objective evidence of a lack of majority support is the date an employer's withdrawal of recognition becomes effective. *See HQM of Bayside, LLC*, 348 NLRB 758 (2006), *enforced* 518 F.3d 256 (4th Cir. 2008).

²¹ *See Ferri Supermarkets, Inc.*, 330 NLRB 1119, 1120 (2000) (evidence of disaffection that was over a year old could not support withdrawal of recognition).

based on the failure of a party to question its own witnesses about matters which would normally be thought reasonable, where such omissions do not appear unintentional. *Colorflo Decorator Prods.*, 228 NLRB 408, 410 (1977). In fact, “[w]here relevant evidence which would properly be part of a case is within the control of the party whose interest it would naturally be to produce it, and he fails to do so, without satisfactory explanation, the [trier of fact] may draw an inference that such evidence would have been unfavorable to him.” 29 Am. Jur. 2d § 178. See also *Avon Convalescent Center, Inc.*, 219 NLRB 1210 (1975); *Bricklayers Local Union No. 1 of Missouri, Bricklayers, Masons and Plasterers International Union, AFL-CIO (St. Louis Home Insulators, Inc.)*, 209 NLRB 1072 (1974). Compounding Respondent’s testimonial evidentiary dearth was the absence of any evidence introduced that the allegedly disaffected employees signed a petition or cards committing such concerns to writing or presented objective written evidence of such disaffection to management. Therefore, Respondent did not have the necessary evidence that the Union had *actually* lost the support of the majority of the bargaining Unit employees to justify withdrawing recognition from the incumbent Union, as required by *Levitz*. In addition, this means Respondent has not and cannot meet its burden to defeat a post-withdrawal refusal to recognize and bargain allegation by proving, as a defense, the Union’s actual loss of majority status. Accordingly, Respondent cannot satisfy the *Levitz* standard in either respect.

Of course, *even if* Respondent’s hearsay evidence were fully credited and considered (and the distant timing of some of these purported conversations disregarded), its evidence would still fail to meet *Levitz*’s requirement of objective proof of an actual loss of majority support for the Union from the employees in both Units. At the hearing, Respondent’s managers testified that only 11 employees of the 39 total – 10 of the 27 employees in Unit 1 and 1 of the 12 employees in Unit 2 – had *ever* informed

Respondent of their alleged desire to no longer have the Union as their collective-bargaining representative prior to January 8, 2020.²²

Two additional employees in Unit 1 and three additional employees in Unit 2 apparently made statements to their Business Administrator, Wenger, expressing some level of dissatisfaction with the Union's dues and fees and/or that they did not want to personally join the Union. However, the Board has routinely found that statements like these *cannot* be used to support a withdrawal of recognition, since an individual employee's lack of membership in the union means only that the employee does not wish to pay dues – it does not mean that the employee no longer wishes for the union to represent the employees.²³ Of course, even including these additional Unit employees (making a total of 14 out of the 39 – 11 out of 27 Unit 1 employees and 3 out of 12 Unit 2 employees), Respondent has not proven an actual loss of majority support. Indeed, it should be noted that Respondent was even unable to demonstrate that a majority of employees in either of the Units, either jointly or severally, had ever expressed negative thoughts of any kind about the Union.

Even assuming, *arguendo*, that these numbers added up, the unreliability and insufficiency of Respondent's evidence was further laid bare by the fact that the Union provided concrete, objective evidence shortly after the withdrawal of recognition that a substantial majority of employees from both Units

²² Although employee witness Key also testified that four additional employees had vaguely expressed to him, on undefined dates in 2019, their "discomfort and not wanting the Union here" (without providing any additional details about these purported conversations), there is no record evidence that Respondent was aware that those four putative employees felt this way. In fact, according to Brown, when Key approached him in December 2019 about the number of employees who allegedly wanted the Union gone, Key first relayed that only 12 employees felt this way, and just a day or two later, informed Brown that, in fact, only a total of 10 employees (including Key himself) felt this way. There is no record evidence that Key provided Brown or any other member of management with a list of the names of employees who had informed him that they wanted to get rid of the Union. Further, it is unclear in the record whether Key was relaying the total number of Unit 1 employees who did not support the Union or the total number of employees in both Units combined. Either way, there was no objective evidence adduced at hearing to support the vague comments.

²³ See *Kauai Veterans Express Co.*, 369 NLRB No. 59, slip op. at 1 (Apr. 16, 2020) (employee petition that professed desire to cease union membership, but was silent on whether employees no longer wanted union representation, insufficient to support employer's withdrawal of recognition under *Levitz*). See also *Anderson Lumber Co.*, 360 NLRB 538, 542 (2014), *enforced in pertinent part* 801 F.3d 321 (D.C. Cir. 2015); *DaNite Sign Co.*, 356 NLRB No. 124 (2011); *Crete Cold Storage, LLC*, 354 NLRB 1000 n.2 (2009) (determination of majority support turns on whether a majority of employees wish to be represented by a particular union, not on whether a majority choose to become members of the union); *Narricot Industries*, 353 NLRB 775 (2009) (decreased union membership does not constitute objective proof of a union's loss of majority support).

(26 of the 39 total – 19 out of the 27 Unit 1 employees and 7 out of the 12 Unit 2 employees) in fact still desired the Union as their collective-bargaining representative. In fact, these employees were each willing to sign a petition attesting to this desire that was reviewed and verified by a neutral, third party (the type of objective evidence which Respondent could not produce).²⁴ In other words, there were at least a few Unit 1 employees on Respondent's "list" of purported anti-Union employees who were not willing to express their alleged disaffection in writing, but *were* willing to express their continued support for the Union in writing – by signing the pro-Union petition disseminated by their Union stewards and independently verified by a former priest who was and is neutral to the dispute.²⁵

In sum, no matter how the evidence is interpreted, Respondent was unable to prove that it possessed sufficient objective evidence of an actual loss of majority support in either, let alone both, of the

²⁴ Respondent apparently believed that under current Board law, after it withdrew recognition, the burden would shift to the Union to file an election petition with the Board within 45 days, to prove that it retained majority status. (649:9-650:7.) Again, Respondent improperly relies on precedent, *Johnson Controls*, 368 NLRB No. 20 (2019), that does not control. In that case, the Board established a new process whereby an employer may *anticipatorily announce its intention to withdraw recognition* from an incumbent union no more than 90 days prior to the expiration of a collective bargaining agreement. However, a union can then file for an election within 45 days of such an "anticipatory withdrawal" to prove that it retains majority support. Under *Johnson Controls*, only after the 45 days have passed and the union has neglected to file an election petition (and only assuming the employer's own objective evidence independently establishes an actual loss of majority support) can the employer then lawfully withdraw recognition.

Here, of course, Respondent unilaterally withdrew recognition from the Union nearly two and a half years after the CBA had expired, well into the successor contract bargaining process. In other words, this was not an anticipatory withdrawal (let alone an anticipatory announcement of an intention to withdraw) to which *Johnson Controls* would apply. Of course, even if *Johnson Controls* did apply, Respondent did not wait the requisite 45 days for the Union to file for an election before it withdrew recognition; it did so abruptly, without any prior notice to the Union, and, as discussed above, based on wholly insufficient evidence of an actual loss of majority support.

²⁵ Largely for this reason, Respondent's likely reliance on *NLRB v. B.A. Mullican Lumber & Manufacturing Co.*, 535 F.3d 271 (4th Cir. 2008), does not advance its position. (See GCX 19, pp. 33-37.) In *Mullican*, a majority of the current bargaining unit employees had in fact filed a decertification petition, and the employee who had collected the signatures on the decertification petition told the employer the specific number of anti-union signatures on the petition and that they constituted a majority of the bargaining unit. *Id.* at 274. According to the 4th Circuit, this specific, concrete evidence supported and confirmed the additional vague, conclusory evidence from employees commenting that there was no majority support.

As noted above, this case is wholly distinguishable from *Mullican*, as Respondent had no such specific, concrete evidence when it withdrew recognition. Regardless, note that Respondent cites to the decision of the 4th Circuit Court of Appeals. In the Board's own underlying *Mullican* decision, which the 4th Circuit reversed, the Board concluded that even this type of evidence – evidence much stronger than Respondent's – was *not* sufficient to justify the employer's withdrawal of recognition. Of course, since the Board generally applies its "nonacquiescence" policy," see *Arvin Industries*, 285 NLRB 753, 757 (1987), Administrative Law Judges are to follow Board precedent, not Court of Appeals precedent, unless overruled by the United States Supreme Court. *Gas Spring Co.*, 296 NLRB 84, 97 (1989) (citing, *inter alia*, *Insurance Agents (Prudential Insurance)*, 119 NLRB 768 (1957), *rev'd* 260 F.2d 736 (D.C. Cir. 1958), *aff'd*. 361 U.S. 477 (1960)), *enfd.* 908 F.2d 966 (4th Cir. 1990), *cert. denied* 498 U.S. 1084 (1991).

two Units at the time it withdrew recognition from the Union. Accordingly, Respondent violated § 8(a)(5) of the Act when it withdrew recognition from the Union on January 8, 2020.

C. Respondent Violated § 8(a)(5) by Making a Series of Unilateral Changes to Unit Employees' Terms and Conditions of Employment Without First Notifying and Bargaining with the Union

Section 8(a)(5) prohibits an employer from making changes to its employees' terms or conditions of employment without giving the union prior notice and an opportunity to bargain regarding the change. *NLRB v. Katz*, 369 U.S. 736 (1962). The changes, however, must have a "material, substantial, and significant impact on employees' terms and conditions of employment." *Toledo Blade Co.*, 343 NLRB 385, 387 (2004).

As discussed above, there is no dispute that both contemporaneous with and following Respondent's withdrawal of recognition, it made numerous unilateral changes to Unit employees' terms and conditions of employment, without prior notice to or bargaining with the Union. As discussed above, Respondent admits that as it withdrew recognition from the Union, it also made various unilateral changes to Unit employees' terms and conditions of employment, including removing the Union's bulletin boards, changing its Unit photographers' vacation policy, granting a post-withdrawal wage increase to Unit employees, and assigning bargaining Unit work to non-Unit employees.

Since the Union retained the majority support of both Units at the time Respondent admittedly made such unilateral changes, Respondent violated § 8(a)(5) of the Act by making these unilateral changes to its Unit employees' terms and conditions of employment without first notifying and bargaining with the Union.

D. Respondent Violated § 8(a)(1) of the Act by Coercing Unit Employees in their Exercise of Protected Activities²⁶

It is well established under Board law that an employer violates the Act by promising or granting a benefit in order to discourage § 7 activity. *See Clock Elec., Inc.*, 338 NLRB 806, 807–808 (2003). The uncontroverted record evidence reflects that, immediately after Respondent withdrew recognition from the Union, after years of informing employees that it could not grant any wage increases during the bargaining process, it promised Unit employees a wage increase as a reward for Respondent’s unlawful withdrawal of recognition from the Union and cessation of negotiations. The Board has found an employer’s withdrawal of recognition to be unlawful where it promised employees raises if they decertified the union, then told employees it was granting them a wage increase because they had decertified the Union. *In re Equipment Trucking Co., Inc.*, 336 NLRB 277 (2001). In sum, Respondent’s immediate promise of a wage increase to reward employees for going along with Respondent’s efforts to oust the Union and/or to keep them from reorganizing clearly violated § 8(a)(1) of the Act.

In its recent *Boeing* decision, the Board set forth its current test for evaluating workplace rules. First, the Board confirmed existing law: that it will find a rule unlawful if it explicitly restricts employees’ protected, concerted activity. *See also Lutheran Heritage Village-Livonia*, 343 NLRB 746 (2004), *citing Lafayette Park Hotel*, 326 NLRB 824, 825 (1998), *enfd.* 203 F.3d 52 (D.C. Cir. 1999). However, if a rule is not explicitly unlawful, the Board will evaluate two things: (1) the rule’s potential impact on protected,

²⁶ Although not alleged in the Second Consolidated Complaint, there is an additional act of coercive conduct that should be encompassed by the Counsel for General Counsel’s motion to conform the pleadings to the proof at the conclusion of the hearing. Specifically, Brown testified at the hearing that when a Unit employee shared his mother’s derogatory feelings about the Union – that the Union was acting “desperate” by waiving employees’ initiation fees – Brown told this employee that he agreed with his mother’s opinion about the Union. The Board’s test for determining whether an employer’s statements or communications with employees violate § 8(a)(1) is an objective one, *i.e.*, whether the statement reasonably tends to interfere with, restrain or coerce an employee in the exercise of statutory rights. *GM Electrics*, 323 NLRB 125, 127 (1997). Neither the employer’s motivations nor the statement’s actual effects on the employee listener are considered. *Miller Electric Pump & Plumbing*, 334 NLRB 824, 825 (2001). Respondent’s Director of Technology/Operations Manager Brown telling his direct report that he believed the Union was acting “desperate” was objectively coercive of employees’ § 7 rights, since it would reasonably lead an employee to believe that if they were to accept the Union’s “desperate” offer to waive the initiation fee, Respondent would think less of them. As such, Brown’s statement constituted an additional independent violation of § 8(a)(1) of the Act.

concerted activity; and (2) the employer's legitimate business justifications for maintaining the rule. If the employer's justifications for the rule outweigh the potential impact on employees' rights, the rule is lawful. Conversely, if the potential impact on employees' rights outweighs the employer's justifications for the rule, it is unlawful. *The Boeing Company*, 365 NLRB No. 154, slip op. at 4-5 (2017).

All of the "rules" communicated to employees in this case constituted explicit prohibitions on protected activities. An employer, like Respondent, who explicitly prohibits employees from discussing their wages with one another clearly violates the Act. *Id.*, slip op. at 4. See also *ImageFIRST*, 366 NLRB No. 182, slip op. at 1 n.3 (Aug. 27, 2018). Similarly, rules explicitly prohibiting employees from discussing their union, while permitting them to discuss other non-work-related topics, are unlawful. See also *Station Casino, LLC*, 358 NLRB 1556, 1634 (2012), citing *Pacific Coast M.S. Industries Co., Ltd.*, 355 NLRB 1422 (2010). In addition, overbroad and discriminatory prohibitions on distributing union literature violate the Act. See *UPMC*, 366 NLRB No. 142, slip op. at 1 (August 6, 2018). Finally, threatening to revoke a wage increase if employees engage in protected activities is also unlawful. See generally, *St. Margaret Mercy Healthcare Ctrs.*, 350 NLRB 203, 204 (2007).

Since the undisputed record evidence reflects that following its unlawful withdrawal of recognition, Respondent instructed Unit employees to cease engaging in their Union and other protected, concerted activities, including discussing the Union, distributing Union literature, and discussing their wages with one another, without any similar crackdown on other non-work activities, and also threatened Unit employees that Respondent would revoke the unilateral wage increase it had just implemented if Unit employees did not cease discussing their wages with one another, it is clear that Respondent unlawfully coerced employees in the exercise of their § 7 rights, in violation of § 8(a)(1).

III. SPECIAL REMEDIES ARE WARRANTED

The Board has broad discretionary authority to fashion remedies that effectuate the purposes of the Act and alleviate the harm created by unfair labor practices. *J.H. Rutter Rex Mfg. Co.*, 396 U.S. 258,

260-263 (1969); *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 898 (1984); *Ishikawa Gasket Am., Inc.*, 337 NLRB 175, 176 (2001), *enfd.* 354 F.3d 534 (6th Cir. 2004) (Board may impose additional remedies “where required by the particular circumstances of a case”). Consistent with this authority, Counsel for the General Counsel requests that the Administrative Law Judge issue a decision and recommended Order requiring the traditional remedies warranted by these violations of the Act, in addition to requirements that Respondent commit to a regular bargaining schedule and submit regular bargaining reports to the Region and Union, and a Notice reading remedy.²⁷

The Board does not lightly order special remedies. *See, e.g., Myers Investigative & Sec. Servs., Inc.*, 354 NLRB 367, n.2 (2009); *McCarthy Constr. Co.*, 355 NLRB No. 67, slip op. at 1, (2010); *Universal Fuel, Inc.*, 358 NLRB No. 150, slip op. at 2 (2012). In *Universal Fuel*, for example, the Board declined to adopt the Judge’s proposed bargaining schedule where there was “no allegation, and no evidence, that the Respondent had dragged its feet in scheduling bargaining sessions, canceled sessions without valid reasons, agreed to meet only for brief periods of time, failed to send representatives with authority to conclude agreements, or engaged in any other kinds of dilatory tactics.” 358 NLRB No. 150, slip op. at 3. As discussed throughout this brief, however, in this case, there is ample evidence that Respondent has engaged not only in dilatory tactics, including by regularly asserting its unavailability for bargaining during nearly half of the months in 2019, but a host of other violations, including withdrawing recognition of the Union, that require a remedy with greater impact. It is for that reason, as set forth in the Second Consolidated Complaint, that Counsel for the General Counsel seeks an appropriate vehicle for remedying Respondent’s egregious violations and a way to ensure the remedy is communicated to all represented employees.

²⁷ Counsel for the General Counsel withdraws the request set forth in the Second Consolidated Complaint for an extension of the certification year under *Mar-Jac Poultry Co.*, 136 NLRB 785, 786-87 (1962), as this case does not involve a certification year.

It is for this reason that, in addition to the traditional remedies for the unfair labor practices committed by Respondent, Counsel for the General Counsel has also proposed a remedial Order requiring Respondent to bargain with the Union upon its request within 15 days of a Board Order; bargain on request for a minimum of 15 hours a week until an agreement is reached or until the parties agree to a respite; prepare written bargaining progress reports every 15 days and submit them to the Regional Director and to the Union; and make whole employee negotiators for any earnings lost while attending bargaining sessions. The Board has held that, in appropriate circumstances, it may order such remedial relief to rectify particularly serious unfair labor practices. *Leavenworth Times*, 234 NLRB 649, 649 n.2 (1978); *Crystal Springs Shirt Corp.*, 229 NLRB 4, 4 n.1 (1977); *Tiidee Products, Inc.*, 194 NLRB 274 (1972).

In cases involving failure to bargain, the Board has held that the standard for imposing additional remedies is whether the failure to bargain in good faith has "infected the core of the bargaining process." *Camelot Terrace*, 357 NLRB No. 161, slip op. at 4 (2011) (reimbursement for negotiating expenses); *HTH Corp.*, 356 NLRB No. 182, slip op. at 7-8 (2011) (reimbursement for negotiating expenses). In *All Seasons Climate Control, Inc.*, 357 NLRB No. 70, slip op. at 1 n.2 (2011), the Board upheld the Judge's remedial order directing special remedies including the imposition of a bargaining schedule of 15 hours per week and monthly progress reports based on the employer's egregious conduct. In addition to soliciting and encouraging a decertification effort during bargaining and then withdrawing recognition from the union, the Board in that case found that the employer had engaged in bad faith during a year of contract negotiations by failing to meet with the union for collective bargaining on a sufficient number of days and for reasonable amounts of time on the days that it did meet; failing and refusing to provide relevant information; and, through its sole negotiator, making statements appearing to limit his authority to negotiate on certain subjects.

In this case, Respondent capped its 2½ years of bad faith bargaining with an unlawful withdrawal of recognition. In addition, Respondent's dilatory tactics throughout the bargaining process (including its

expressed unavailability for bargaining in February, May, July, September, and November 2019), its failure to meaningfully negotiate over health insurance, its failure to provide information to the Union, its defamatory bargaining update memos sent to Unit employees, and its discipline of the Union's employee bargaining team member, Hansen, during the bargaining process, demonstrate that through the totality of its conduct, Respondent has struck at the core of the bargaining process. Therefore, the additional remedy of a bargaining schedule is wholly justified.

In addition, in order to ensure that Respondent's wrongdoing is communicated to all of the employees in both Units, Counsel for the General Counsel has proposed that the Order require that, at a meeting or meetings scheduled to ensure the widest possible audience, a supervisor or agent of Respondent identified in paragraph 4 of the Second Consolidated Complaint read the Notice to Employees in English on worktime, in the presence of a Board agent. Alternatively, Counsel for the General Counsel seeks an Order requiring that Respondent promptly have a Board agent read the Notice to Employees during worktime in the presence of Respondent's supervisors and agents identified in paragraph 4 of the Second Consolidated Complaint.

The Board indicated only a week prior to the filing of this brief that, in light of the fact that *four* Board orders have now issued against Respondent within the last two years alone, the next time the Board is presented with evidence that Respondent has persisted in its unlawful conduct, it will be "forced" to consider extraordinary remedies in order to deter Respondent from continuing to violate the Act without adequate consequence. *Nexstar Broadcasting, Inc., d/b/a KOIN-TV*, 370 NLRB No. 72, n.2 (2021). As such, there can be no question that the requested special remedies are warranted.

IV. THE GENERAL COUNSEL'S MOTION TO AMEND THE SECOND CONSOLIDATED COMPLAINT AT HEARING TO WITHDRAW PARAGRAPHS 9 AND 11 SHOULD BE GRANTED

At the close of the hearing in this matter, the Administrative Law Judge specifically directed that the parties address the propriety of her denial of the General Counsel's Motion to Amend to withdraw

paragraphs 9 and 11 of the Second Consolidated Complaint. Those paragraphs alleged further conduct in support of a finding of surface bargaining. Although initially granted, that ruling was reversed.

Congress specifically established the Office of the General Counsel to segregate the Agency's prosecutorial, nonreviewable functions from its reviewable, adjudicatory functions. *NLRB v. United Food and Commercial Workers Union, Local 23 ("UFCW")*, 484 U.S. 112, 124-25 (1987) (discussing legislative history of the Act). Section 3(a) of the Act, § 153(a), creates within the Agency a five-member Board, which is empowered by Section 10(a), § 160(a), to adjudicate those unfair labor practice complaints brought by the General Counsel pursuant to § 153(d).

Section 3(d) of the Act vests the General Counsel with "final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under Section 10" of the Act and "in respect of the prosecution of such complaints before the Board." There is no provision in the Act that allows for any type of judicial review of the General Counsel's prosecutorial function in investigating and disposing of unfair labor practice charges and the Supreme Court has repeatedly counseled that § 3(d)'s "final authority" forecloses direct judicial review of the General Counsel's pre-hearing investigatory and prosecutorial functions. *See, e.g., UFCW*, 484 U.S. at 129 (NLRA "discloses Congress' decision to authorize review of *adjudications*, not of *prosecutions*") (emphasis in original); *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 316 (1979); *Newport News Shipbuilding & Dry Dock Co v. Schauffler*, 303 U.S. 54, 57 (1938). Indeed, not only is the General Counsel's *decision* whether to prosecute unreviewable, but the *manner* in which he makes this determination is likewise precluded from judicial review. *See, e.g., Mayer v. Ordman*, 391 F.2d 889, 889 (6th Cir. 1968).

It is settled that under a reasonable reading of § 3(d), the General Counsel possesses unreviewable "final authority" that includes not only authority to decide whether to issue unfair labor practice complaints, but also, in some circumstances, authority extending beyond the point at which a complaint is issued. *UFCW*, 484 U.S. 112 (1987). Thus, the General Counsel controls the purely "prosecutorial"

decision to withdraw a complaint, *i.e.*, an effective dismissal. *Id.* at 125-26 (authority to dismiss complaint pursuant to prehearing informal settlement); *George Banta Co. v. NLRB*, 626 F.2d 354 (4th Cir. 1980), *cert. denied*, 449 U.S. 1080 (1981) (in context of prehearing informal settlement, authority to dismiss a complaint allegation on grounds that investigation failed to provide sufficient supporting evidence). *See also NLRB v. Federal Eng'g Co.*, 153 F.2d 233, 234 (6th Cir. 1946) (NLRB retains exclusive discretion to determine whether it would be in the public interest to abandon administrative proceedings once a charge is filed).

In addition, the General Counsel's prosecutorial authority has been held by the Board to extend to situations where, following a remand by the Board, the General Counsel withdraws the complaint, *Olympia Fields Osteopathic Med. Ctr.*, 278 NLRB 853 (1986), and where, post-hearing, the General Counsel seeks to withdraw a complaint in light of an intervening change in the law undermining the General Counsel's theory of a violation. *Consumers Distributing*, 274 NLRB 346 (1985).

Further, it is well settled that since the General Counsel controls the complaint, the Charging Party cannot enlarge upon or change the General Counsel's theory of the case. *See Coastal Marine Services, Inc.*, 367 NLRB No. 58, slip op. at 1, n.2 (2019), and cases cited therein. *See also Kimtruss Corp.*, 305 NLRB 710 (1991) (Board reversing finding of ALJ based on a theory of a violation proffered only by the Charging Party, but not by the General Counsel, noting that it was improper for the Judge to consider such a theory).

It is true that at some point, a complaint may be said to have advanced so far into the adjudicatory process that a dismissal takes on the character of an adjudication, and at that point the General Counsel no longer possesses unreviewable authority in the matter. Thus, the Board has held that "where ... relevant evidence has been adduced at a hearing, the General Counsel no longer retains absolute control over the complaint, and a subsequent motion to dismiss the complaint or any portion thereof is within the [Administrative Law Judge's] discretionary authority." *General Maintenance Engineers*, 142 NLRB 295 (1963) (footnote omitted).

Conversely, the Board has held that where (1) a hearing has opened; (2) the General Counsel seeks to withdraw complaint allegations because he believes the evidence obtained in the investigation does not, taken as a whole, support the allegations; and (3) Counsel for the General Counsel has not yet introduced evidence in support of the allegations (*i.e.*, the *evidentiary* hearing has not effectively commenced), the General Counsel retains unreviewable authority under Section 3(d) to withdraw the complaint allegations in question. *See, e.g., Sheet Metal Workers Local 28*, 306 NLRB 981, 982 (1992); *Solano Rail Car Co.*, Case 20-CA-20941, unpublished Board order issued October 27, 1987, *petition for review denied*, *Boilermakers Local 6 v. NLRB*, 872 F.2d 331 (9th Cir. 1989).

In the instant case, three days before the hearing opened, Counsel for the General Counsel informed the Administrative Law Judge and the parties in writing that Counsel for the General Counsel would be moving to withdraw paragraphs 9 and 11 from the Second Consolidated Complaint at the outset of the hearing. Then, as represented, at the outset of the hearing on November 12, 2020, Counsel for the General Counsel so moved. The Administrative Law Judge initially granted Counsel for the General Counsel's motion to amend the complaint. However, the next morning, on November 13, 2020, the Administrative Law Judge revoked her decision to grant the motion, indicating instead that she would reserve ruling on the motion until her decision issued.

Because no relevant evidence had been introduced at the hearing before Counsel for the General Counsel moved to withdraw complaint paragraphs 9 and 11 (*i.e.*, at the very outset of the first day of hearing on November 12, 2020), clearly-established Board law required the Administrative Law Judge to grant Counsel for the General Counsel's motion. The Administrative Law Judge's decision to rescind her order granting the motion and instead postpone ruling on the motion does not allow a different result. No rationale has been advanced to deviate in this case from the Board's established precedent. As such, the Administrative Law Judge's error in reversing her decision to grant Counsel for the General Counsel's

motion to withdraw complaint allegations at the outset of the hearing should not be compounded by ultimately denying the General Counsel's motion.

V. CONCLUSION

As described above and alleged in the Second Consolidated Complaint, as amended at the hearing, by its overall conduct since the beginning of negotiations in June 2017, but particularly since about March 2019, Respondent has failed and refused to bargain in good faith with the Union and has engaged in overall surface bargaining in violation of §§ 8(a)(1) and (5) of the Act. It also defamed and undermined the Union repeatedly in violation of § 8(a)(1). Most seriously, however, Respondent violated §§ 8(a)(1) and (5) by withdrawing recognition from the Union on January 8, 2020, despite lacking objective evidence of an actual loss of employee support for the Union in either Unit. Respondent thereafter continued to violate §§ 8(a)(1) and (5) by promising and implementing unilateral changes without first bargaining with the Union. Following its withdrawal of recognition, Respondent also repeatedly violated § 8(a)(1) by interfering with and coercing employees in their exercise of § 7 rights. For the reasons stated above, the General Counsel respectfully requests that the Administrative Law Judge find a violation for each allegation in the Second Consolidated Complaint, as amended, and issue the attached proposed Order and Notice to Employees, consistent with those findings.

DATED at Seattle, Washington, this 22nd day of January, 2021.

Respectfully submitted,

/s/ Elizabeth DeVleming

/s/ Sarah Burke

Elizabeth DeVleming
Sarah Burke
Counsel for the General Counsel
National Labor Relations Board, Region 19
Jackson Federal Building
915 2nd Avenue, Suite 2948
Seattle, WA 98174

PROPOSED ORDER

The Respondent, Nexstar Broadcasting, Inc., d/b/a KOIN-TV, its stockholders, officers, representatives, agents, servants, employees, attorneys, successors, alter egos, and assigns, and all members and persons acting in concert or participation with them, shall:

1. Cease and desist from

- (a) Failing and refusing to recognize National Association of Broadcast Employees & Technicians, The Broadcasting and Cable Television Workers Sector of the Communication Workers of America, Local 51, AFL-CIO ("Union"), and to bargain collectively and in good faith with the Union concerning the wages, hours, and other terms and conditions of employment of the following bargaining units of employees (the "Units"):

The first, as certified by the National Labor Relations Board, consists of all regular full-time and regular part-time engineers and production employees, but excluding the chief engineer, office clericals, guards and supervisors as defined in the Act, and all other employees of KOIN-TV.

The second, as voluntarily recognized by the parties, consists of all regular full-time and regular part-time news, creative services employees, and web producers, but excluding news producers, IT employees, on-air talent/"performers", office clericals, professionals, guards and supervisors as defined in the Act, and all other employees of KOIN-TV.

- (b) Withdrawing recognition from the Union in the absence of a demonstrated showing that the Union lost its majority status;
- (c) Engaging in bargaining with no intention of reaching agreement (surface bargaining);
- (d) Delaying in making and/or failing to make meaningful proposals on health insurance, delaying in responding to the Union's proposals on health insurance, or otherwise failing and refusing to bargain with the Union regarding the Units' terms and conditions of employment;
- (e) Failing and refusing to meet and bargain with the Union at reasonable times and intervals and engaging in dilatory tactics designed to frustrate bargaining with the Union;
- (f) Defaming and denigrating the Union in the eyes of the Units;
- (g) Unilaterally changing the Units' terms and conditions of employment, including by granting a wage increase, removing the Union's bulletin boards, or changing vacation scheduling, without providing prior notice to the Union and a meaningful opportunity to bargain;
- (h) Transferring any of the Units' work to be performed by anyone outside the Units;
- (i) Promising and granting benefits, including a wage increase, to discourage § 7 activity;
- (j) Prohibiting employees from discussing the Union and their wages, prohibiting distribution of union literature, or threatening to revoke a wage increase for engaging in § 7 protected activities; and

- (k) In any like or related manner refusing to bargain collectively and in good faith with the Union as the exclusive collective bargaining representative of the Units and/or interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in § 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Immediately recognize and, upon request, bargain collectively and in good faith with the Union as the exclusive collective bargaining representative of the Units;
 - (b) Rescind our withdrawal of recognition of the Union as the exclusive collective bargaining representative of the Units;
 - (c) Rescind, upon request from the Union, any and all changes to the Units' terms and conditions of employment that were made as a result of without first bargaining with the Union, including changes to the Units' wages, the photographer vacation schedule; removal of the Union's bulletin boards; and the transfer of bargaining unit work to those outside the Units;
 - (d) Within 15 days of the Union's request, bargain with the Union at reasonable times in good faith until full agreement or a bona fide impasse is reached, and if an understanding is reached, incorporate such understanding in a written agreement. Unless the Union agrees otherwise, such bargaining sessions shall be held for a minimum of 15 hours a week, and Respondent shall submit written bargaining progress reports every 15 days to the Agency's Centralized Compliance Unit, serving copies thereof on the Union.
 - (e) Within 14 days after service by the Region, post at all of its facilities copies of the attached notice marked 'Appendix.' Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, 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 facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 23, 2019.
 - (f) Within 14 days after service by the Region: (i) hold one or more mandatory employee meetings, on working time and at times when the Respondent customarily holds employee meetings, and scheduled to ensure the widest possible employee attendance, at which the Order will be read to the bargaining unit employees by a responsible Employer official in the presence of a Board agent or, at the Employer's option, by a Board agent in the presence of a responsible Employer official; (ii) announce the meeting(s) for the order reading in the same manner it would

customarily announce a meeting of employees; and (iii) require that all unit employees attend the meeting(s);

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

PROPOSED NOTICE TO EMPLOYEES

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative 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.

WILL NOT interfere with, restrain, or coerce you in the exercise of the above rights.

The National Association of Broadcast Employees & Technicians, the Broadcasting and Cable Television Workers Sector of the Communications Workers of America, Local 51, AFL-CIO, ("Union"), is our employees' representative in dealing with us regarding wages, hours and other working conditions in the bargaining units described below:

All regular full-time and regular part-time engineers and production employees, but excluding chief engineer, office clericals, professionals, guards and supervisors as defined in the Act, and all other employees of KOIN-TV.

All regular full-time and part-time news, creative services employees, and web producers, but excluding news producers, IT employees, on-air talent (a/k/a "performer"), office clericals, professionals, guards and supervisors as defined in the Act and all other employees of KOIN-TV.

WE WILL NOT withdraw recognition from the Union or refuse to recognize and bargain with the Union as your collective bargaining representative.

WE WILL NOT fail or refuse to meet and bargain in good faith with the Union for a collective bargaining agreement covering employees in the units described above.

WE WILL NOT bargain with the Union without an intention to reach an agreement or otherwise engage in surface bargaining.

WE WILL NOT fail and refuse to meet and bargain with the Union at reasonable times and intervals.

WE WILL NOT delay in making a proposal to keep health insurance at status quo or otherwise fail to make meaningful proposals about health insurance.

WE WILL NOT defame and/or denigrate the Union to you via our bargaining updates or in any other way.

WE WILL NOT make changes to your wages without notifying the Union and bargaining to agreement or lawful impasse with the Union, and **WE WILL NOT** tell you we are making changes to your wages to persuade you to stop supporting the Union.

WE WILL NOT make changes to the photographer vacation schedule without notifying the Union and bargaining to agreement or lawful impasse with the Union.

WE WILL NOT remove the Union's bulletin boards without notifying the Union and bargaining to agreement or lawful impasse with the Union.

WE WILL NOT transfer photography work and assignment editor work to members of management or employees outside of the bargaining unit without notifying the Union and bargaining to agreement or lawful impasse with the Union.

WE WILL NOT tell you that you cannot discuss your wages or wage increases with your coworkers. **YOU HAVE THE RIGHT** to discuss your wages with your coworkers.

WE WILL NOT tell you that you cannot talk to your coworkers about the Union at work while allowing you to talk about other non-work-related topics. **YOU HAVE THE RIGHT** to discuss the Union with your coworkers.

WE WILL NOT tell you that you cannot distribute Union literature while at work because we unlawfully withdrew recognition from the Union. **YOU HAVE THE RIGHT** to distribute Union literature on non-work time in non-work areas.

WE WILL recognize the Union as your collective bargaining representative.

WE WILL rescind our withdrawal of recognition from the Union in writing.

WE WILL, beginning within 15 days of the Union's request, meet with the Union at reasonable times, which will be for a minimum of 15 hours per week or an alternative schedule to which the Union agrees, and bargain in good faith with them as your exclusive collective bargaining representative with respect to your wages, hours, and other terms and conditions of employment. If an understanding is reached, **WE WILL** embody that understanding in a written agreement.

WE WILL submit written bargaining progress reports every 15 days to Region 19 of the National Labor Relations Board, and **WE WILL** serve copies of these reports on the Union.

WE WILL maintain in effect the wage increase we granted without notifying or bargaining with the Union based on the Union's request that it not be rescinded.

WE WILL rescind our changes to the photographer vacation schedule.

WE WILL reinstall the Union's bulletin boards in their previous locations.

WE WILL stop transferring bargaining unit work to managers and/or non-bargaining unit employees, and **WE WILL** restore all such bargaining unit work to bargaining unit employees.

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

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Counsel for the General Counsel's Brief to the Administrative Law

Judge was served on the 22nd day of January, 2021, on the following parties:

E-file:

The Honorable Amita B. Tracy
Administrative Law Judge
National Labor Relations Board
Division of Judges
901 Market Street, Suite 300
San Francisco, CA 94103

E-mail:

Charles P. Roberts III, Esq.
Constangy, Brooks, Smith & Prophete, LLP
100 N. Cherry Street, Suite 300
Winston Salem, NC 27101-4016
E-mail: croberts@constangy.com

Timothy A. Davis, Esq.
Constangy, Brooks, Smith & Prophete, LLP
2600 Grand Boulevard, Suite 750
Kansas City, MO 64108-4628
E-mail: tadavis@constangy.com

Charles W. Pautsch, Esq.
Vice President of Labor and Employment
Nexstar Media Group, Inc.
545 John Carpenter Freeway, Suite 700
Irving, TX 75062
E-mail: cpautsch@nexstar.tv

Anne I. Yen, Attorney
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501-6430
E-mail: ayen@unioncounsel.net



Kristy Kennedy, Office Manager